

**Contracting Through the Lens of Classical Pragmatism:
An Exploration of Local Government Contracting**

by

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Abstract

Public administrators are responsible for providing public services to ensure the health, prosperity, and wellbeing of their communities. Serving as the ambassadors of public wellbeing, they are privy to an array of useful tools by which to achieve this goal. Contracting is but one such tool; however, with increased use over the past several decades, it has become an interesting factor in the study of public administration.

Deeply rooted in American history, contracting has become a common method for providing public services. It has particularly enjoyed increased use since the 1970s with the emergence of public choice and other economic theories. The primary rationale behind its increased use has been to compensate for government deficiencies, namely inefficiency and higher costs in delivering public services, and dissolve government monopoly. This rationale, however, has been met with challenges. Critics argue its emphasis is stemmed in dangerous ideology and that such emphasis on contracting has led to less accountability, reduced quality, and even greater inequity among communities.

Reviewing the literature, the research explored the nature of public service contracting, highlighting its strengths and weaknesses. Also through review of the literature, the research explored a new way to analyze contracting based on four principles of classical pragmatism: practical, pluralistic, participatory, and provisional orientations. The research further applied these pragmatic principles using a case study method with the City of Austin, Texas as the study environment.

The research found that contracting from a pragmatic approach can relieve public administrators of their ideological bases, allowing them to approach problems more objectively. This in turn allows the administrator to fully place the needs of the community first and arrive at more appropriate solutions to problems.

Evidence was found that the City of Austin is remarkably pragmatic in its contracting practices. This case study, while unique to Austin, may serve as a guide for other public administrators in ensuring their contracting practices sufficiently meet the needs of their communities in a pragmatic fashion.

About the Author

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Chapter I: Introduction

Food for Thought: A Scenario Exercise

Scenario 1:

For many years Joe's city has provided its own in-house solid waste collection and disposal services. Managing the system from start to finish, the city has long been responsible for collecting garbage and transporting it to a nearby city-owned landfill facility. Fueled by a slowing economy, operating costs have risen significantly. For example, labor, vehicle maintenance, and landfill operation have become more expensive with prices showing no signs of falling in the near future. In addition, increased public interest on environmental issues has transcended to pressure from the community and city council to explore new waste management methods, which results in higher research and development costs. Joe's task as city administrator is to develop a plan that moves the city into its next generation of waste management. Should the city continue providing these solid waste services in-house, or are there ways to creatively contract to maximize citizen environmental quality interests while maintaining the best level of costs?

Scenario 2:

Susan is the city administrator of a rapidly growing city. New growth has created increased demand for the expansion of many public services ranging from power line tree trimming to police and fire protection. To administer these services effectively the respective departments must be outfitted with the necessary equipment, including vehicles requiring maintenance on a regular basis. Historically the city has relied on contracting with private firms to provide vehicle maintenance services. Because vehicle maintenance is not seen as directly impacting citizens, it has not been a core government

function¹. Yet, a benchmarking comparison of other like size cities indicates that many are transitioning away from contracting vehicle maintenance services and implementing them internally.

Providing vehicle maintenance services internally has some advantages. For example, as staff works on the same vehicles over time they become more familiar with each vehicle's specific issues, allowing them to address problems quicker and create a more efficient service environment. In addition, the city can reduce its costs associated with contract administration and monitoring. Deviating from the contract model, however, may result in the loss of contractor expertise accumulated over the years. In addition, the city could incur political pushback from the local auto service industry which contributes greatly to the local economy. The question before Susan is whether to continue the current contracting model or create a fleet department that can conduct all routine maintenance operations in-house.

Scenario 3:

Matt is the director of a city's parks and recreation department. A new interest in health and wellness has recently taken the country by storm and landed as an action item on the local city council agenda. At the urging of a vocal citizen advisory board the city council implemented an ordinance requiring all community recreation centers to provide wellness programs for children and adults. Unfortunately, Matt currently lacks enough staff trained to administer these programs at all sites, but there are numerous private providers throughout the city who could take part in this new programming opportunity.

¹ *Core government functions* refer to the essential services government must provide to ensure the health and wellbeing of society. These services have the most direct or immediate impact on citizens (i.e. police and fire protection, clean air and water, etc.)

Keeping in mind the city council has just made this a core function of the department, Matt's task as a public administrator is to decide whether it is better to administer the programs internally or through contract with a private firm. If administered internally, what factors must be evaluated in the decision making process? Likewise, if Matt chooses to implement a contract, what variables must be considered to ensure it meets the needs and desires of the community?

Research Purpose

The three scenarios discussed above illustrate the depth and complexity in the field of public administration. Yet, these are just some of the compelling issues and problems public administrators face daily. Moreover, the diverse set of circumstances discussed above demonstrates the widespread impact contracting has on public administration. From the examples above, contracting clearly influences the entire spectrum of public service delivery.

Public administrators are responsible for providing public services that ensure the health and prosperity of their communities. They serve as conduits of action, bridging solutions to problems. As such, public administrators are equipped with numerous problem solving tools. Contracting is but one such tool; however, its increased use over the past several decades has made it an interesting focal point of research (Savas 2000).

While the history of contracting in the United States dates back to the country's founding, it has seen an increased presence in public administration since the late 1970s and early 1980s (Savas 2000; Boyne 1998a). Premised on an ideology favoring reduced government, contracting emphasizes public service delivery through competition and the free market system (Boyne 1998a). Proponents of contracting suggest many advantages,

including increased efficiency and reduced costs. Opponents, on the other hand, fear its emphasis on efficiency may undercut societal values such as equity and democracy.

Regardless of its strengths and faults, what is most important to understand is that contracting remains a powerful contemporary public administration tool. Therefore, it is critical that administrators understand the implications of contracting and practice its application in a responsible, prudent manner. But what school of thought can adequately prepare administrators for these challenges? The philosophy of classical pragmatism provides a worthy starting point.

Classical pragmatism is a philosophy anchored by four tenets: practical pluralistic, participatory, and provisional (Brendel 2006). Together, these tenets teach that potential solutions to problematic situations should be assessed by their practicality and usefulness in achieving a state of continuous learning and improvement². These tenets encourage creative experimentation and exploration of multiple experiences and perspectives. Furthermore, they foster solutions not born out of fixed ideologies, but rather out of an appreciation for flexibility and adaptability to present circumstances (Shields 2008; Brendel 2006).

The applicability of classical pragmatism in public administration is best illustrated by examination of its operation in a real world environment. Enter the City of Austin – capital city and epicenter of government in the State of Texas. Aside from serving as the state government cornerstone, the City of Austin has also experienced rapid local growth in recent decades, gaining nearly 118,000 new residents in the last

² Brom and Shields (2006) provide an extraordinary discussion on the application of classical pragmatism in the field of public administration.

nine years alone and covering a geographical area of nearly 300 square miles (City of Austin 2009).

Such rapid growth has yielded increased demand for public services. Like all local governments, the City of Austin often implements contracting as a way to provide its citizens with the services they have come to expect.

Therefore, the purpose of this research is threefold. First, drawing on the concepts presented in classical pragmatism, this research explores the use of contracting at the municipal government level. Second, the tenets of classical pragmatism are used to assess the contracting practices employed by the City of Austin. Finally, based on the analysis, recommendations to improve contracting practices in the City of Austin are presented.

Summary of Chapters

The following chapters embark on an exploratory journey. Chapter II includes a review of scholarly literature focusing both on the topics of contracting and classical pragmatism. This chapter also provides a brief discussion of the nuances of the City of Austin before unveiling the conceptual framework used as a tool of inquiry to address the research purpose. Chapter III details the research methodology and explains the operationalization of the conceptual framework. Results of the research are discussed in Chapter IV, focusing on the practical, pluralistic, participatory, and provisional orientations of contracting in the City of Austin. Finally, Chapter V provides recommendations and conclusions for the City of Austin, but which can also be of value to other municipalities.

Chapter II: Literature Review and Conceptual Framework

Statement of Purpose

This chapter serves two purposes. First, scholarly literature on the appropriate use of contracting as a means to provide public services is reviewed and discussed. Second, through review of scholarly literature on the principles of classical pragmatism, this chapter explores a different way to analyze contracting that should reveal new and useful ways to improve contracting processes.

Contracting Overview

Public managers have the awesome responsibility of providing society with public services. From police and fire protection to water treatment and sanitation, these services are necessary for ensuring society's overall health and wellbeing. The public entrusts these managers to decide what services to provide and the methods for doing so. Contracting with private firms and non-profit agencies is a common form of public service delivery. This section examines the broad issue and importance of contracting through review of scholarly literature, highlighting both advantages and disadvantages. This section also discusses circumstances managers must consider before proceeding with contracting decisions.

Contracting Defined

Contracting is but one form of public service delivery. In actuality, contracting is a subset of delivery methods associated with privatization (Fernandez and Smith 2006; Savas 2000)³. Conservative advocates of privatization note its potential to reduce the role

³ Privatization is a philosophical concept that defines the roles and relationships between the public and private sectors (Savas 2000).

of government and increase the role of private institutions in public service delivery (Savas 2000; Nightingale and Pindus 1997). As Savas (2000, 2) sharply explains, “it means relying more on the private sector and less on government.”

Savas (2000) goes on to describe a broad, three-method privatization taxonomy consisting of three distinct forms: delegation, divestment, and displacement⁴. Delegation includes seven separate governing tools, contracting being one of them,⁵ and requires a constant and active role of government to retain the ultimate responsibility of the service or program while delegating production of it to the private sector (Savas 2000).

Representing a form of privatization, contracting can be understood as a mechanism of providing public services through a private firm or the government purchase of a public service (Shields 1992; Warner and Hefetz 2002a). The use of contracting is not new. Contracting has been employed in the United States since the country’s founding and even before. Hessian mercenaries, for example, were contracted to fight on behalf of the British army in the American War for Independence. Another early example was the contracting of postal mail services in the 1790s when the United States still had no formal mail carrier system (Savas 2000). Likewise, it has long been the practice of local governments to mix public provision with government contracting in the delivery of public goods (Hefetz and Warner 2004). What is new, however, is the increased use of private firms since the 1970s with the explicit objective of introducing competition in order to reduce government costs and inefficiencies (Boyne 1998a).

Much of this new reliance on contracting in an effort to address high costs and

⁴ *Divestment*: government completely relinquishes responsibility of providing service; *Displacement*: private sector grows and eventually displaces a government activity (Savas 2000).

⁵ Review of the literature confirms contracting to be the most common and pervasive forms of privatization used in the United States (Fernandez and Smith 2006; Savas 2000; Nightingale and Pindus 1997)

government inefficiencies coincides with and is reinforced by principles embedded in public choice theory (Boyne 1998a).

Public Choice Theory

Over the past fifty years, the economic theory of public choice has served as a theoretical rationale for increasing private sector delivery of public services (Box 1999; Boyne 1998a). It is an ideology – dogmatic and fixated on the belief system that government is by nature inefficient and that delivery of goods through government deters free market goals⁶. As such, public choice theory is a rigid belief system, offering little accommodation to other perspectives. This is in stark contrast to the principles of classical pragmatism, which is an alternative to fixated belief systems and promotes the values of flexibility and change. Yet, regardless of its rigidity, public choice remains a leading economic theory, steering many of the country's economic policy decisions.

Core to public choice theory is the belief that government as a sole provider represents a monopoly. Monopolies are inherently inefficient because there is no incentive for or advantage to acting efficiently (Boyne 1998a). Public choice theory suggests oversupply and inefficiencies resulting from government monopoly could be addressed if public services were provided through a competitive market approach (Boyne 1998a; Ewoh 1999). The free market creates a competitive setting forcing private firms to act in more efficient ways. If they do not, their competition certainly will.

Therefore, advocates of public choice theory would have one believe that market

⁶ According to several authors, public choice theory is consistent with the ideology expressed by President Reagan that government interferes with the efficiencies available from the more flexible free market. It argues that competition creates market discipline in the public sector while sustaining the benefits of public sector engagement (Nightingale and Pindus 1997; Warner and Hefetz 2002b; Carver 1989).

provision of government services encourages competition and efficiency⁷ while still preserving the values of customer preference and participation (Warner and Hefetz 2002b; Savas 2000).

Hefetz and Warner (2004) note, however, that public choice theory is surrounded by critical debate. Opponents of public choice theory argue the benefits of contracting may be overstated because if certain conditions (i.e. competitive bidding and multiple vendors) are not met, it can reduce overall efficiency and quality (Warner and Hefetz 2002a). Providing this in the form of a hypothetical, a local government lacks the resources to provide its own solid waste management services. Therefore, it decides to contract out to a specialized waste management firm. Contracting out solid waste services is not uncommon among local governments⁸. Unfortunately, in this example, there is only one firm within a reasonable geographic jurisdiction providing these services, thus the only firm selected.

Critics of public choice theory argue that while this is indeed part of free market principles, it places the government at a disadvantage due to lack of multiple vendors participating in a competitive bidding process. Without this mechanism, the government is seemingly at the mercy of the private corporation providing the services – a position that could weaken the government’s bargaining authority and impair quality of services in the interest of cost savings and profit. In this instance, private monopoly is substituted for a public monopoly (Ewoh 1999; Warner and Hefetz 2002a).

⁷ While improved efficiency is a common argument for public choice theory, critics note that contracting fails to take into account the operational or transactional costs, including costs of drafting the contract and other monitoring or long-term oversight costs (Warner and Hefetz 2002a).

⁸ According to DeHoog (1990), solid waste services (i.e. garbage collection) are considered “hard services” frequently outsourced by government.

Critics of public choice theory articulate additional concerns. Its emphasis on utility and efficiency may contribute to the subordination of public service values such as equity and citizen voice (Haque 2001; Box 1999). For example, Haque (2001, 68) points out that a “change in public service mission from a citizen-centered to efficiency-oriented focus” has contributed to a “considerable restructuring in the allocation and use of public sector resources in such a way that the underprivileged citizens could be left out from the government provision of services.”

Specifically, many industrialized nations have reduced expenditures and subsidies of public services such as healthcare, education, unemployment, and other crucial welfare programs. This in combination with rising food prices and decreased wages has adversely affected low-income families (Haque 2001). As Haque (2001, 69) explains, the “benefits of public sector reforms have not reached low-income citizens.” While this example is of a global perspective, it still illustrates the negative impact of the shift towards efficiency-driven principles – principles rooted in public choice theory.

Principles inspired by public choice theory also create fragmentation by favoring the upper-income taxpayer (Haque 2001; Warner and Hefetz 2002a). Providing public services under a market model emphasizes efficiency and cost savings. To achieve this, service providers either reduce services or charge more for them. In either case, availability of services to the underprivileged is reduced⁹. This further separates the affluent from the disadvantaged based on ability to pay, thus undermining equity (Haque

⁹ This is especially true in metropolitan areas. Warner and Hefetz (2002a) discuss the variance in private supply of public services between suburban and inner city areas. With cost of service delivery higher in inner cities (note: inner cities are usually characterized by greater levels of poverty), private suppliers are likelier to favor the more affluent suburban areas. For services that are supplied in the inner cities, they are likely more expensive in order to counter the higher delivery costs. Thus, those in the inner city must either pay more for or have less access to services. This example illustrates the point that service delivery under public choice principles favors the wealthy, fueling the argument that such a model encourages inequality.

2001; Warner and Hefetz 2002a). Likewise, while some argue that private markets enhance citizen sovereignty and choice (Savas 2000), other authors like Warner and Hefetz (2002a) and Hirsch and Osborne (2000) suggest competitive markets may undermine democratic values because they do not include elements of public debate, citizen participation, or ample accountability.

Contemporary public managers remain faced with the challenge of balancing public and private sector service provision while at the same time ensuring long-term public interests are maintained. Using some of the points made about public choice theory, this section now examines some of the advantages and disadvantages of contracting public services.

Advantages to Contracting

The literature suggests a number of advantages associated with contracting public services. Nightingale and Pindus (1997) present a detailed list of benefits to providing services through a private contractor. To summarize, they identify increased flexibility, cost savings¹⁰ due to increased efficiency (if market is truly competitive), ability to obtain special skills or knowledge through supplemental staff, ability to meet demands beyond current government capacity, improved service quality, and greater customer choice¹¹. A few of these are described in greater detail as follows.

Adding to the advantages identified by Nightingale and Pindus (1997), Siegel (1999), and others¹² emphasize expertise and access to technologies as key advantages to

¹⁰ See the City of Philadelphia/TWC experiment in Cohen and Eimicke (2008) for an empirical example of cost savings as a result of contracting. In this example, contracting of transitional employment programs resulted in net savings to the State of Pennsylvania worth over \$6.4 million per class. This program was also of great social value to the state's underprivileged.

¹¹ Many of these points are reiterated by fellow authors.

¹² Watt (2005) and O'Regan and Oster (2000) also make this point.

contracting. Ultimately, this can stimulate quicker delivery and higher quality of service. Because private firms typically specialize in a service, they often have greater access to advanced technology and equipment than most governments. Private firms can also maximize economies of scale, avoid start-up costs, and produce less waste as a result of operating in their core competencies and capitalizing on their specialized knowledge (Siegel 1999; Watt 2005)¹³. Ugboro et al. (2001) reemphasize this point by stipulating that pooling together expertise allows for more effective use of resources, ultimately leading to better decision-making¹⁴.

Furthermore, contracting is revered as a method for promoting efficiency. Echoing an earlier point by Boyne (1998a), governments¹⁵ act as monopolies. They do not act efficiently because the incentives and advantages for doing so do not exist; whereas these attributes are present in the competitive market (Boyne 1998a). Market-based reforms attempt to overcome public sector inefficiency and reduce public monopolies through increased competition (Haque 2001). Hirsch (1995) asserts that the more competitive the market, the greater the efficiency gains from contracting¹⁶.

Disadvantages to Contracting

In addition to the potential advantages of contracting, the literature also identifies several disadvantages. According to Nightingale and Pindus (1997), contracting can weaken the ability of a community to avow its collective interests; generate potential for fraud and abuse; direct cost savings away from the taxpayer toward the contractor; and

¹³ This is particularly important with capital-intensive projects (Siegel 1999).

¹⁴ The work of Ugboro et al. (2001) focuses on contracting in the public transportation services.

¹⁵ This is particularly true with city governments (Boyne 1998a)

¹⁶ Hirsch (1995) also cautions the reader that cost savings as a result from competition only exists if the market is truly competitive. Ewoh (1999) explains that simply switching from a governmental monopoly to a private one results in no cost savings, and can in fact create greater potential for fraud and abuse.

create incentive to reduce service quality in order to reduce costs and maximize profit.

The following elaborates on some key disadvantages in greater detail.

Hefetz and Warner (2004) assert that emphasis on contracting can have a negative impact on service quality. As the literature has well pointed out, efficiency can result in significant cost savings¹⁷. These cost savings, however, can be at the expense of quality. This is especially important since contractors are bound by stipulations of the contract, which may not include quality as a defined measure of performance. Guided by profit motive, private firms often lack the incentive to dedicate themselves to standards of high quality alone. While high quality may be a meritorious goal, it can be quickly disregarded when cheaper, lower quality resources promise a greater profit margin.

To provide a simple, yet relevant example, consider the local government that decides to contract out mowing of city medians in an effort to reduce its own operations costs. As part of the contract, the city stipulates it needs X medians mowed on a monthly rotation, yet fails to include stipulations regarding site presentation and quality. Over the course of several months, the contractor successfully fulfills their contractual obligation by mowing said medians; but leaves every site looking storm-struck. Grass clippings and brush debris kicked up by the mowers mars the otherwise pristine mowing work. As a result, citizens begin calling city hall complaining of unsightly medians.

In this example, the contractor had no incentive to ensure a clean mowing site. Instead, it was more beneficial and advantageous to ‘mow and go’. Yes, the medians were mowed as promised; but, quality became the sacrificial offering for efficiency. As a

¹⁷ See Cohen and Eimicke (2008) for an empirical example demonstrating a situation where contracting did not result in expected cost savings. In their example, the City of Atlanta initiated a 20-year contract with United Water Services to manage its water system in light of massive budget deficits. While promised nearly \$20 million a year in savings, the city only enjoyed about half of this amount. Water quality and system maintenance also faltered as a result of contracting.

result, cost and time savings were enjoyed only by the contractor at the expense of quality, and public satisfaction.

Another disadvantage associated with the emphasis on efficiency is the transactional cost of contracting. Siegel (1999) describes transactional costs as those supporting the implementation of a contract. These include staff time necessary to create the contract and prepare the bidding process, cost of information gathering and distribution, and monitoring and auditing costs (Siegel 1999). Often, these costs are overlooked in the initial contracting analysis, lessening cost savings and overstating the once-attractive notion of efficiency (Siegel 1999; Warner and Hefetz 2002a; Warner and Hefetz 2002b).

Contracting also creates an environment susceptible to fraud and abuse (Nightingale and Pindus 1997). Expanding on this, Hefetz and Warner (2004) point out private firms are not characterized by the same intrinsic values as governments – values of public service and democracy. Driven by pressure to prevail over competition, it is no surprise that private industry can succumb to temptations of fraudulent antics to secure a profit and dominate the market. This behavior, however, neglects accountability and exploits the public and their trust. Frederickson (1999) shares in the concerns that contracting can lead to a propensity for corruption and argues that systems of monitoring and accountability must remain in place to secure the values and ethics important to public service^{18, 19}.

¹⁸ See Garofalo and Geuras (1999) for a more thorough discussion of ethics in public administration. Their work centers on the unification of multiple ethics theories in sustaining core public service values.

¹⁹ For other Texas State Applied Research Projects dealing with contracting ethics see Dovalina (2006).

To illustrate this, Frederickson (1999) elaborates on the “ill winds” scandal of the 1980s²⁰. This scandal involved the paying-off of procurement officers in the U.S. Department of Defense by some of the country’s most well-regarded defense corporations. In order to secure contracts, bids were rigged in return for large bribes. Understood to be the “largest single defense scandal in American history” (Frederickson 1999, 308), it was seen as the result of poor oversight and monitoring capabilities.

Finally, contracting threatens the communal orientation of public service. Governments hold intrinsic interest in social values such as choice and equity – values that are reflective of society and can not be met by ideologies of the private sector alone (Hefetz and Warner 2004; Box 1999). McGuire et al. (1987) believe contracting with private firms can cause governments to be distracted from achieving these values and other service delivery goals beyond efficiency valued by governments²¹.

Because these values are generally the responsibility of government and not necessarily part of their business models, private firms often excuse themselves of overlooking fairness and citizen protection in their contracting processes²². Thus, without active government attention, these values can be at risk when public services are provided by private firms (Gerbasi and Warner 2007). Ignoring these important values also takes away the ability for a community to assert its collective interests (Nightingale

²⁰ Frederickson (1999) also elaborates on two other high-profile corruption cases – one being the savings and loan scandal and the other involving HUD. Like “ill winds”, both of these events were credited as being the result of poor oversight function. It is also interesting to note that all three examples provided by Frederickson occurred as public choice became the dominant economic theory.

²¹ Governments must also consider the importance placed on a service by the community. Some services are so important to the community that neglect of efficiency is warranted and even prudent (Prager and Desai 1996). Carver (1989) also stipulates that governments must consider the type of service, state of the government, and state of the community in the contracting process.

²² Ewoh (1999) and Haque (2001) argue that contracting creates isolation of the disadvantaged, undermining equity and contradicting the expectation of government to seek the common good.

and Pindus 1997). This stymies the community's ability to participate and thus, citizens remain distant and disengaged in the governmental process.

For all its notable advantages, it is clear contracting also imposes significant concerns to public managers. As established, these concerns range from elements of efficiency to the endangerment of traditional public service values. The following section explores some of the important decision factors public managers must consider in their efforts to mitigate these challenges.

Decision Factors to Consider

To contract, or not to contract: that is the question. When faced with the decision to contract public services, public managers should evaluate a wide range of variables to ensure service delivery methods meet the needs and interests of their community effectively. The following highlights important decision factors managers should consider to help mitigate the challenges of contracting and ultimately lead to more successful service delivery.

First, Box (1999) presents many ethical considerations that should be accounted for when choosing between public or private service delivery methods. Essential to his decision criteria is citizen participation and public demand. Participation embodies the democratic values of public administration and helps to facilitate equity. It helps ensure the collective voices of the citizenry, even the disadvantaged, are represented in the contracting process, thus enabling public sector stability (Box 1999)²³. By this same token, participatory contracting should reflect community preference and public demand. As Box (1999) and Carver (1989) point out, contracting decisions are greatly influenced

²³ Box (1999) also emphasizes the importance of regulation, expertise, willingness to take risks, and compassion and promotion of community on the part of the public administrator.

by the unique needs and characteristics of a community²⁴. Only through active participation are these needs and citizen desires fully understood, and therefore addressed in the contracting process²⁵.

Another important consideration is feasibility given the type of service being contracted. Simply stated, some services are a better fit for contracting than others. For example, Box (1999) as well as Hirsch and Osborne (2000) explain that services directly impacting the citizen (i.e. police security and fire protection) should be provided in-house, while the more distant and obscure services (i.e. vehicle maintenance) are suitable for contracting²⁶. Similarly, DeHoog (1990) entertains a dichotomy between hard and soft services – hard services are more visible to citizens and soft services are more complex or difficult to measure. According to DeHoog (1990), public managers should consider contracting hard services, such as garbage collection and water treatment, because their outcomes can be easily identified and quantified. In contrast, public managers should avoid contracting soft services, like health and human services, because their results may be complex and less tangible, making them difficult to specify in a contract (DeHoog 1990).

Finally, public managers should consider the importance of accountability in the contracting process (Ewoh 1999; Dicke 2002). Written contract stipulations serve as the primary tools for ensuring accountability. These stipulations are the boundaries in which

²⁴ Political ideologies and economic demographics can have an interesting impact on a community's contracting preferences (McGuire et al., 1987). Leroux and Carr (2007) also find that communities with populations that are largely non-white or over age 65 enjoy greater heterogeneity and typically prefer in-house service provision unless that service is very expensive. Nelson (1997) and Hirsch (1995) find that more heterogeneous communities are less likely to contract out for services. Similarly, communities that are more homogenous typically contract more services (Leroux and Carr 2007; Nelson 1997; Hirsch 1995).

²⁵ Chen (2009) suggests empirical evidence of this in Bozeman (2002) and Hefetz and Warner (2007).

²⁶ The authors refer to these as output and input services, respectively. Lamothe et al. (2008) also speaks to the feasibility of contracting services depending on their measurability.

the contractor must operate. While contract stipulations operate as the boundaries, they are not always perfect. Accountability is threatened when these stipulations are poorly designed or written. Furthermore, accountability is at risk if these stipulations are not properly monitored by the overseeing governmental body (Frederickson 1999).

For government to preserve the traditional public service values discussed above, public managers must ensure they remain accountable to the citizenry and provide them with the services they expect. “Resources must be spent to obtain a level of service production in accordance with what the electorate expects, and there is a risk of social loss if what is expected is not delivered” (Hirsch and Osborne 2000, 316). Whether a public service is provided by a private firm or not, responsibility for that service and citizen wellbeing ultimately falls on government (Box 1999; Carver 1989).

To remain accountable, public managers should thoroughly research the potential contractors and choose the one best suited to provide the service (Ewoh 1999; Cohen and Eimicke 2008)^{27, 28}. To do this, managers must clearly and concisely state contractual goals and objectives (Ewoh 1999; Heinrich and Choi 2007; Cohen and Eimicke 2008). This point is reemphasized by Frederickson (1999) and Savas (2000), who maintain that contracts should be precise with goals and performance standards clearly articulated. Public managers should also retain oversight and monitoring, or policing, capabilities to gauge contractor performance and ensure public money is used appropriately (Frederickson 1999; Savas 2000).

²⁷ Reliance on lowest-cost selection methods can limit a municipality’s ability to select the most qualified and competent service provider (Ewoh 1999).

²⁸ The federal government uses the A-76 system to gauge potential contractors. One of its strengths is that it assesses all contracting costs, direct or indirect, before selecting a provider (Prager and Desai 1996).

In summation, the literature demonstrates a strong consensus among the authors regarding the advantages and disadvantages of contracting, particularly through the lens of public choice theory. The literature also highlights several key factors public managers should consider when making the decision to contract public services. They must not only consider the contract technicalities like service type, but also the more worldly principles of ethics and accountability.

There are, however, limits to analyzing contracting wholly from the perspective of public choice. With a firmer understanding of contracting now in place, the research shifts focus to classical pragmatism and provides a new set of principles from which to analyze and achieve effective contracting.

Limits to Contracting Literature

Thus far, a great deal of literature has discussed the strengths and weaknesses of contracting, relying heavily on public choice theory as the primary analytical perspective. A key weakness in this discussion, however, is that public choice theory represents an ideology. Ideologies, by their inherent nature, are inflexible, often radical, belief systems. The danger of acting on ideologies is that they are fixations – imposing themselves as one-size-fits all approaches to problem solving (Stolcis 2004). For example, the ideological perspective of public choice is that the free market is better at providing most public services because the government is too expensive and inefficient. Hence, ideologies do not accommodate or seek to unite a diversity of views, but rather follow a dogma of self-governing independence and self-determination (Garrison 2000). In so doing, they create factions and division between those working to resolve problems.

Public choice is a widely accepted and practiced economic theory. It does not, however, assert or realize upfront the value of public administration. Instead, it often demonizes public administration and ignores the very aspects a public manager must consider when resolving public problems. While contracting is a useful and important tool, it is not the only one available in public service provision. It is one of many tools that must be analyzed against the totality of any problematic situation. Therefore, a new way of analyzing contracting and public service provision is required – one that relaxes fixation and promotes the value of diversity. This new analytical perspective rests in the principles of pragmatism.

What is Pragmatism?

If one conducts an internet search for the definition of *pragmatism*²⁹, a multiplicity of results emerges. The Merriam-Webster Online Dictionary defines the term as 1) “a practical approach to problems and affairs”; and 2) “an American movement in philosophy founded by C. S. Peirce and William James and marked by the doctrines that the meaning of conceptions is to be sought in their practical bearings, that the function of thought is to guide action, and that truth is preeminently to be tested by the practical consequences of belief” (Merriam-Webster Online Dictionary 2008).

Likewise, the Britannica Online Encyclopedia describes pragmatism as “a school of philosophy based on the principle that the usefulness, workability, and practicality of ideas, policies, and proposals are the criteria of their merit. It stresses the priority of action over doctrine, of experience over fixed principles, and it holds that ideas borrow

²⁹ For other Texas State Applied Research Projects dealing with pragmatism see Gatlin (2006), Wilson (2001), Perez (2000), Brom(2000), Howard-Watkins (2006), Johnson (2008), and Gillfillan (2008).

their meanings from their consequences and their truths from their verification”
(Britannica Online Encyclopedia 2008).

Pragmatism is derived from the Greek word *pragma*, meaning action, and represents a practical, action-oriented approach to assessing and solving problems (James 1907). Pragmatic philosophies can be applied to all academic disciplines. It emphasizes human experience over *a priori* reasoning and holds that truth is found through the process of verification (Britannica Online Encyclopedia 2008). Being practical and experiential in orientation, pragmatism is “attractive because it has both depth and complexity” (Shields 2008, 197).

Serving as a timeless pillar in American philosophy³⁰, pragmatism emerged in the late 19th and early 20th centuries as a means to bridge science and religion in the wake of Charles Darwin’s revolutionary theories on biology. While many philosophers contributed to the early materialization of pragmatism, it is primarily the product of philosophers Charles Sanders Peirce, William James, Oliver Wendell Holmes, Jr., Jane Addams, and John Dewey. A quote from O. C. McSwite demonstrates the relevance and influence of pragmatism in modern American history and intellect.

Pragmatism formed the core of the intellectual ethos of early twentieth-century America.
(McSwite 1997, 132)

Today, there are two primary, yet fundamentally different, perspectives of pragmatism: classical pragmatism and neo-pragmatism, or postmodern pragmatism³¹.

³⁰ Pragmatism is a distinctly American contribution to philosophy (Zanetti and Carr 2000). According to Brom and Shields (2006, 302), “Classical pragmatism is generally considered to be the only truly original philosophical school and tradition to have emerged in America.”

³¹ Some scholars have considered a third stage of pragmatism known as positivized pragmatism. According to Hollinger and Depew (1995, xv) this stage occurred between the classical and postmodern pragmatism stages.

Classical pragmatism promotes the teachings of philosophers like John Dewey and Charles Sanders Peirce who believe truth and meaning are based on an assessment of empirically tested observations, conceptions, and human experiences – experiences which help to stimulate inquiry and dialogue (Shields 2003; Shields 2008). Unwilling to endorse ideological extremes, classical pragmatists see the value of empirically testing multiple ideas and solutions to uncover “what works”. In addition to this scientific disposition, classical pragmatism is tolerant and imaginative in form. Rather than being limited by finite or predetermined ideological criteria, pragmatism is broad and accommodating to a great diversity of views (Garrison 2000).

Classical pragmatism also views truth as contingent, and therefore amendable (Garrison 2000; Shields 2008). Important to this provisional theme is the belief that “what works” is true for now – so long as it is supported by the evidence. Truth evolves at the direction of new evidence and findings. Thus, classical pragmatism is forward-looking with the goal of using continuing experiment to facilitate inquiry, derive truth, and develop plans for action (Shields 2008). Brom and Shields (2006, 305) argue that this “emphasis on continuous breakdown, and subsequent evolution, of fixed beliefs through the process of continuous and intelligent inquiry is the key to its basic strength.”

Finally, classical pragmatism does not separate theory from practice, but combines them harmoniously (Garrison 2000; Shields 2008). The field of public administration is used to further illustrate this point. In public administration, practitioners are continually faced with a wide range of challenges. These challenges, also known as problematic situations, are the focal point of public administration, serving as the stimulus for change and action (Shields 2008). Problematic situations remain the

focal point regardless of size and scope of the problem. Thus, problematic situations transcend scale (Shields 2008). No one theory alone is adequate enough to address the complexity in scale of problematic situations associated with public administration (Shields 2008). A key insight of classical pragmatism, however, is that theories are useful tools and that unity of multiple theories by the practitioner can overcome problematic situations of any scale (Shields 2008). Hence, theory and practice are joined via the public administrator. Through principles of classical pragmatism, practitioners assemble theories and use them to implement practical, workable solutions on the ground (Shields 2008).

Like classical pragmatism, neo-pragmatism rejects fixated belief systems and ideological extremes. Unlike classical pragmatism, however, neo-pragmatism relies much on the teachings of Richard Rorty³², who disagrees with the relevance of scientific method and experience in justifying beliefs (Hoch 2006). For Rorty and many other neo-pragmatists, truth and experience are simply linguistic terms describing our beliefs (Hoch 2006) – something is true simply because it is said to be true. Empirical evidence and experience do not matter because their meanings are constructed and therefore, not trustworthy. As Miller (2004, 244) explains, “Like fact, or evidence, experience is a word-shaped object whose meaning is up for grabs.” Hence, evidence and experience are not seen as tools to help the community find what works.

Evans (2005, 254) demonstrates apprehensions to this neo-pragmatic distinction and explains that it “denies the nature of the connections that exist among people – between societies, between people and the rest of the natural world.” A key flaw of neo-

³² Garofalo and Geuras (1999) provide in chapter two of their work an insightful discussion on the perspectives of Rorty, or Rortianism. Their discussion looks at Rortianism distinctions between seeking solidarity and truth in the role of public administrators.

pragmatic philosophy is that because it places little emphasis on human experience, it disregards the importance of communities of interest and open communication – values stemmed in public administration (Evans 2005; Garrison 2000).

While much use has been made of the neo-pragmatist model and its convictions over the past several decades, it lacks sufficient regard to many of the core values of public administration. On the other hand, classical pragmatism provides a setting for these important values and more by founding itself on a democratic, participatory, and pluralistic ethos (Shields 2008). Shields (2008) argues classical pragmatism is the taproot of public administration and should be more fully recognized as such.

Given what the field is about, public administration leaves its imprint on policy by making programs work (Shields 1996). Such programs exist in a constantly changing democratic setting, which creates new needs – leading to new problems and challenges. Classical pragmatism, henceforth referred to as *pragmatism*, is well-suited to help people tasked with making programs work in this environment. For these reasons, pragmatism serves as the philosophical underpinning of this paper. Specifically, values of public administration are examined using four critical tenets of pragmatism.

Public Administration and the Tenets of Pragmatism

When one thinks of public administration, he or she likely thinks of the political process used to create policies and dictate the daily lives of citizens. To many, the term *public administration* is nothing more than a reference to rule-making with an eloquent twist. While it is true that rule-making is an important component of public administration, there is also a much deeper meaning associated with the field. Public administration, as a discipline, is guided by many important core values. These values

include freedom, democracy, diversity, and inclusion. It is a field dedicated to fostering leaders who can make decisions, but in a moral, ethical, and responsible manner. It also encourages leaders to recognize their own fallibility in making decisions and to embrace, rather than avert, procedural change when necessary. Therefore, it is action-oriented in practice, but remains bound by these important democratic principles. This makes it the perfect conduit for implementing the principles of pragmatism.

Reemphasizing earlier points by Shields (2008), pragmatism is rich in both depth and complexity. While this lends itself as one of pragmatism's strengths, it also makes it a difficult concept to summarize and even easier to misinterpret. However, David Brendel (2006) has developed a means of consolidating the complexities of pragmatism into four simple and memorable tenets. Known as the "four Ps" framework, the tenets are: practical, pluralistic, participatory, and provisional. These tenets are used to explore the applicability of pragmatism in the field of public administration.

Tenet 1: Practical Orientation

To be practical from the chair of a classical pragmatist is to actively seek a resolution to a problematic situation. This means public administrators must seek workable solutions to the challenges they face. Relying on ideologies and dogmatic principles (i.e. free market is *always* more efficient than government) do little to address problems from a practical perspective. These ideologies do not garner workable solutions, but instead supply the inflexible answers necessary to keep the ideology in tact. Such reliance on ideologies and dogmatic principles is unproductive in working towards resolution of a problematic situation.

Elaborating on this point, Garrison (2000, 466) asserts, “Public administration is a theoretically informed praxis; therefore, practical rationality is among its utmost concerns.” It is derived from an ambition to get things done and “willingness to tackle the problem” (Shields 2003, 511). One way to understand this more easily is to look at classical pragmatism’s notion of *community of inquiry*, which is a powerful organizing principle applicable to multiple public administration contexts (Shields 2003)³³. The community of inquiry “reconciles some of the prominent controversies in public administration such as the practice/theory dichotomy, the role of expertise, and ways to include democracy in practice” (Shields 2003, 511).

A community of inquiry consists of three key ideas: the problematic situation, scientific attitude, and participatory democracy (Shields 2003). The practicality of pragmatism begins with the diagnosis of a problematic situation in need of a practical, workable solution (Hildebrand 2005; Shields 2008). This problematic situation ignites the community of inquiry, which must first define and understand the problem before determining the appropriate course of action (Stolcis 2004; Shields 2003). What then emerges is an empirical, process-oriented search for a solution driven by inquiry and shaped by collective experience. Classical pragmatists consider this to be the scientific, or experimental, attitude (Shields 2003).

The concepts of inquiry and experience can not be overemphasized. “Inquiry is the landscape where experience is given meaning” (Shields 2004, 358). Inquiry is also the medium for bridging theory and practice because it employs theories as tools to reconcile some larger practical problem (Shields 2005). Inquiry can also be understood

³³ Dr. Patricia Shields has written extensively on classical pragmatism and the community of inquiry concept.

as the vessel for communication – through inquiry, practitioners can compare perspectives, consider data, engage in hypothesis formation and test proposed solutions. More on this idea is discussed in the following sections on participation.

Consider the classic Buddhist proverb of the three blind men who try to describe an elephant (Shields 2003). In the story, each blind man describes a separate piece of the elephant, arriving at different conclusions. One feels the tail and proclaims the elephant to be a rope. Another touches the ear and proclaims it a fan. The third feels the leg and thinks it a tree. Lacking in this scenario is dialogue between the men describing their unique understandings and experiences.

Had a community of inquiry been initiated, the men would have likely discussed their independent findings, gone back to the elephant and felt how it was simultaneously like a fan, a tree, and a rope, and arrived at a much more thorough conclusion. Thus, empirical inquiry is essential for opening the channels of dialogue, encouraging the facilitation of ideas, and reaching meaning and contingent truth (what is the elephant?). Again, this participatory aspect is further expanded in the following sections.

Hence, experience is a critical trait of the community of inquiry. Learning from the three blind men, a sharing of experiences is necessary for arriving at the best conclusion. All practical decisions are shaped by discussions of one's own experience and those of others (Stolcis 2004). Consider the following quotes:

Knowledge is irrevocably and inescapably embedded in experience.

(Webb 1999, 16)

A universe of experience is the precondition of a universe of discourse.

(Dewey 1938, 68)

Shields (1996, 403) offers that “experience is used to define and specify the context.” It is how we translate truth. Because the community of inquiry is strengthened by the articulation of differing ideas, it is also enhanced by the promotion of differing experiences. Thus, to ignore experience would be irresponsible, for it is through experience that public administrators are able to enrich their own lives as well as those of the citizenry they serve (Shields 2004, Shields 1998).

Pragmatism maintains that problematic situations must be addressed by practical solutions, or those experienced and tested in practice. Inevitably, there is a link between pragmatism and public administration in that the implementation of public policy is, by nature, the execution of practical solutions to address complex societal problems (Shields 2008). Practitioners must be willing to make tough decisions that can widely impact the livelihood of their community. To be effective, public administrators must share insight and listen to others (Shields 2003). The community of inquiry offers the setting from which they can achieve this. Through a community of inquiry, public administrators can engage in fruitful inquiry, learn from collective experiences, and exercise practical solutions to problematic situations.

Tenet 2: Pluralistic Orientation

Another key element of pragmatism is pluralism, or the ability to consider multiple approaches to solving problems. Central to the theme of Shields’ community of inquiry is that those in the community must refrain from being fixated in their views or ideological belief systems. Instead, the community “must welcome all perspectives and be flexible in their approach to problem solving” (Shields 2003, 519). Likewise, Garrison (2000) points out that while people may remain committed to their own ideals,

they must also be committed to listening to the views of others without suppressing or denying their validity. Hildebrand (2005) considers the ability to think abstractly about problems as paramount to solving them.

Public managers act in a pluralistic environment by serving a diverse population with varying needs. Not surprising, the scope of problems faced by public managers is vast. The pluralistic tenet of pragmatism takes into account the challenges associated with human complexities and values (Shields 2008), and provides that public managers be equipped with multiple tools to address these multiple problems. William James (1907) illustrates this through the use of a hotel hallway metaphor.

In the metaphor, public managers *own* problems as they advance through the hallway looking for means of resolution. Behind each door of the hallway lie theories, or tools, which can be combined and used to address the problem (James 1907; Shields 1996)³⁴. Evans (2000) believes that consideration of these multiple theories helps to bring leverage to the problematic situation by organizing and sorting out the many possible actions. Interestingly, there is a strong link between the pluralistic and practical tenets for it is only through inquiry and discussion of experience that these multiple perspectives come to fruition.

Tenet 3: Participatory Orientation

Referring back momentarily to the elephant example highlighted before, crucial to the understanding of the problem was the need for the blind men to share their empirical evidence and experiences through dialogue. One of the key insights of pragmatism is that “community and participation facilitate a fuller and deeper understanding of the

³⁴ Shields reexamines this metaphor in her article, *Rediscovering the Taproot: Is Classical Pragmatism the Route to Renew Public Administration* (2008).

problematic situation” (Shields 2008, 205). Because it is the nature of democracy to be inclusive and participatory, it should be no surprise that pragmatism, founded on democratic ideals, also encourages participation. The founders of pragmatism each stress the importance of incorporating others in the process of inquiry and experience.

We are learning that a standard of social ethics is not attained by traveling a sequestered byway, but by mixing on the thronged and common road where all must turn out for one another, and at least see the size of one another’s burdens.

Jane Addams (1902, 6)

Shields (2003) identifies participation as the third fundamental piece of the community of inquiry. “The community as participatory democracy is both the simplest and the most profound component of the community of inquiry for public administration practice” (Shields 2003, 522). Thus, as a community sorts out a problematic situation, acts to address the situation, and considers the consequences (scientific attitude), input from members is valued – participation is encouraged. It is through this fundamental process that the values of freedom and inclusiveness – values central to public administration – are exhibited. A sense of community is essential to identifying the parameters of the problematic situation and shaping the approaches to its resolution (Shields 2003).

Dewey saw the community of inquiry as a cooperative experiment prompted by mutual respect, toleration, and the collective efforts to achieve the common good (Shields 2003). The community of inquiry attempts to solve problems through togetherness.

Campbell (1998) even suggests that emerging from the collective efforts to problem-solve, it is togetherness rather than solution that is the primary result³⁵.

In an ideal sense, the participatory jurisdiction is limitless with membership extended to all³⁶. Evans (2005, 250-51) reverberates the belief of Dewey that “all affected by the outcome of inquiry should be able to participate in inquiry.” For Dewey (1954, 151), association is physical, “while communal life is moral, that is emotionally, intellectually, consciously sustained.”

The participatory element of pragmatism also values all opinions without placing wholesale emphasis on those of experts. While expert opinion is valuable, it is not privileged over the opinions of others in Dewey’s sense of policy formation (Evans 2000)³⁷. For Garrison (2000), quality of conversation is the most important thing in democratic society. Ensuring free, open and diverse conversation ensures society’s prosperity. It also encourages public administrators to participate and engage citizen input, thus leveling the playing field and strengthening communal bonds. Garrison (2000, 475) sums up this theme well by stating, “[a]ny democracy in which public administrators use their expertise to govern for the people without encouraging communicative democracy by the people is oppressive.”

Under this tenet, public administration is obliged to include honest and accessible participation by all those affected by the decision. Public administrators must, as challenged by Evans (2000, 322), “encourage the collective intelligence of citizens.” For

³⁵ Jane Addams (1902) would also take this position. For more reading on participatory democracy, see Addams (1902) and Shields (2003).

³⁶ In reality, participation is limited by the nature of the problematic situation. There is a self-limiting aspect to the community of inquiry based on who is affected by the problematic situation – scope of problem. Shields (2003) highlights this through an example of detectives at a crime scene.

³⁷ See also shoemaker example in Shields (2003).

administrators to act pragmatically, they should welcome diversity and facilitate inclusion by being pluralistic and participatory in their mentalities, and in this way foster the common good through collaboration.

Tenet 4: Provisional Orientation

At the heart of classical pragmatism lies the appreciation for and ability to accommodate change. Dewey and other founders of this philosophy recognized that the world is contingent and ever-evolving – that it is a process, not an object (Evans 2000). Therefore, problem-solving itself is and will remain an ongoing process. As new problems arise, new solutions must be crafted. In the same sense, old solutions may be amended as new experiences reshape previous assumptions and understandings.

Important to the fundamentals of classical pragmatism is that solutions are not end-of-quest oriented, but are instead provisional works in progress (Stolcis 2004, Shields 2003). Dewey held that the goal of classical pragmatism's empirical approach was not to find absolutes, but to reduce uncertainty in problematic situations (Evans 2005). Therefore, solutions are malleable ameliorations to a problem that can be retailored as problems dictate. Stolcis (2004, 367) articulated this point well from the perspective of public administration by suggesting that “practitioners do not design final solutions; instead, we try to construct useful approaches that can be implemented to tackle the problems we face. As the problems inevitably reemerge, we reconceptualize them using our accumulated practice wisdom and experience.”

Expanding on Stolcis' point, public administrators are faced daily with complex and ever-changing challenges. Pragmatism is driven by action. Yet some actions result in unintended or unanticipated consequences. While decisions are made using the best

information available at the time, changing circumstances can yield new information and perhaps more effective ways to address problems. Therefore, the process for resolving problems is never perfect or finished. As such, public administrators must be willing to adapt to the unforeseen by reflecting on new experiences and evaluating methods for dealing with change (Shields 2008). They must also recognize their own fallibility in decision making, be open to criticism, and be willing to admit their own doubt. Adding to previously discussed tenets, this will in turn encourage more openness and the discovery of new ideas and experiences to be used in solving future problems (Shields 2008).

Brendel's (2006) four tenets clearly demonstrate how pragmatism can be applied to the field and study of public administration. As discussed in the early part of this chapter, public administrators are responsible for providing public services. Knowing the appropriate method for providing the right services is critical to an administrator's success and the continued wellbeing of his or her community. Contracting has been used increasingly over the past several decades as a means to provide important public services. Yet, review of the literature has shown little to no discussion of contracting from the perspective of classical pragmatism. The next section draws on Brendel's (2006) four tenets to develop a framework to analyze contracting.

Contracting Through the Lens of Classical Pragmatism

This section employs Brendel's four tenets of pragmatism to develop a conceptual framework that can be used to analyze contracting. To fully explore this framework, however, requires an appropriate setting. The City of Austin, Texas is used as the contextual backdrop for this conceptual framework and the remainder of this research.

Setting: Austin, Texas

Why the City of Austin? As discussed by Hefetz and Warner (2004), municipal governments and their public managers have long used contracting as a means of providing important public services in a more efficient manner. Public managers in the City of Austin are no different as they often engage in service contracting as a means to increase efficiency and reduce costs. With a population of over 700,000 citizens (City of Austin 2009) in its immediate jurisdiction, the City of Austin is home to an ethnically diverse community with an equally diverse range of needs. Thus, it provides an interesting perspective in the larger discussion of contracting.

Like most, if not all growing municipalities, Austin and its public officials are challenged constantly with seeking a balance in providing public services in a responsible and pragmatic, yet cost-sensitive and budget-sensitive manner³⁸. Contracting is one tool used in achieving this balance. Currently, the city manages contracts worth several million dollars for a variety of services. To put this in context, during its regularly scheduled meeting on February 12, 2009, the Austin City Council heard and took action on seventy-three items. Of these, ten were related to purchasing and awarding of contracts. The total dollar amount associated with the awarded contracts on this day alone was nearly \$260 Million (City of Austin 2009).

With resources becoming fewer and more expensive, contracting with private firms is and will remain a viable means of addressing the provision of public services for Austin. However, to be successful, the City of Austin must be systematic and more importantly, pragmatic, in its contracting endeavors. Through the development of a

³⁸ The city's FY 2008-09 Operating Budget is \$2.63 billion (City of Austin 2009).

conceptual framework, the following section examines the City of Austin’s contracting practices focusing on elements of classical pragmatism.

Conceptual Framework: Pillar Questions

Building on a review of scholarly literature, a conceptual framework using four pillar questions is used to analyze municipal contracting. Pillar questions were selected as the framework because this research is largely exploratory and to a great degree introductory, or preliminary, in nature. The pillar questions developed for this research purpose are listed below in Table 2.1.

Table 2.1: Pillar Questions

Pillar Question 1:	What evidence is there of a <i>practical orientation</i> to contracting in the City of Austin?
Pillar Question 2:	What evidence is there of a <i>pluralistic orientation</i> to contracting in the City of Austin?
Pillar Question 3:	What evidence is there of a <i>participatory orientation</i> to contracting in the City of Austin?
Pillar Question 4:	What evidence is there of a <i>provisional orientation</i> to contracting in the City of Austin?

Reflecting the “four Ps” framework developed by David Brendel (2006), these pillar questions are compelling because they incorporate many of the decision making concepts discussed in the contracting and pragmatism literature. Public managers must thoroughly evaluate these concepts in their efforts to provide services that best meet the needs and interests of their community. The pillar questions are explained in greater detail below.

Pillar Question 1: Practical Orientation

Reemphasizing an earlier point, pragmatism maintains that problematic situations must be addressed by practical solutions – those that have been experienced and tested in practice (Shields 2008). Faced daily with complex challenges, administrators are tested by their ability to resolve problems. Resolving problems should be seen as a process of beginning in the middle of a problematic situation (Hildebrand 2005). Prefaced by circumstances that led to the problem and looking forward to achieve a resolution, public administrators are positioned between the experiences of the past and expectations of the future. For administrators to be successful in their endeavors, they must have a sense of before and after. This is achieved by encouraging inquiry and learning from collective past experiences. This ultimately equips public administrators with data and facts necessary to arrive at appropriate solutions.

Applying this practical perspective to contracting in the City of Austin, the problematic situation transitions from decisions of “should we contract?” to more thorough decisions of “if we contract, how do we ensure all are appropriately served; how do we achieve contracting in the most accountable manner?” This practical approach can better explore the relations between contractors, public administrators, and citizens.

Pillar Question 2: Pluralistic Orientation

The field of public administration is complex and difficult to navigate. Its very being is made up of both stability and change simultaneously, which continually challenges public administrators with unforeseen and unfamiliar situations. The pluralistic tenet of pragmatism provides administrators with the mindset for dealing with

these unique challenges. In the spirit of pluralism, public administrators should be willing to consider a diversity of approaches and perspectives in their attempts to make sense of and address the many problems they face (Shields 2008; Garrison 2000). Public administrators in the City of Austin are no different. In the face of numerous challenges, public administrators must think abstractly and remain accommodating to a diversity of views in approaches to resolution.

Pillar Question 3: Participatory Orientation

Pluralism and participation are interdependent. Only through active participation can public administrators uncover the many varying views and experiences needed to solve the problems they face. Drawing from the discussion of the participatory tenet above, public administrators should open inquiry and discussion of ideas to all affected by the policy decision (Evans 2005). As Garrison (2000) pointed out, free and open dialogue ensures society's ultimate prosperity.

Applying this to contracting in the City of Austin, public administrators should facilitate an open, transparent process that informs and encourages involvement from all walks of the community. This can include collecting input from various service vendors, department officials, elected city council members, and the public themselves. As noted from the literature, such participatory efforts must not only cater to expert opinion, but rather incorporate a balance of perspectives from experts and non-experts alike. This ensures the participatory orientation heralded by classical pragmatism.

Pillar Question 4: Provisional Orientation

The work of public administrators is never finished. Followers of Deweyan pragmatism recognize the world as contingent – an ever-changing process (Evans 2000).

They understand solutions are not absolutes, but rather temporary resolutions to a problematic situation (Stolcis 2004; Shields 2003). Aaron Wildavsky (1979) holds that past solutions turn into future problems and that rather than focus on permanent solutions, public managers must incorporate new and expansive solutions to permanent problems.

Problems arise from uncertainty; and resolving problems requires public administrators to reduce this uncertainty. For example, the public may feel uncertain about safety in their parks. One way of resolving this may be to increase police presence, thereby making the parks safer and reducing the public's uncertainty. Remembering that what works now may not always work, public administrators should remain keenly aware of changing conditions and act in accordance to these changes. As in this example, perhaps increased police presence over time creates the public perception that parks are unsafe – otherwise, there would not be so much emphasis on security. Now the public administrator must figure out a way to achieve a balance in effective police presence while not harvesting a perception that parks are unsafe. In this case, the public administrator must rethink the available options given these new circumstances.

New information begets new experiences and prompts new ways of understanding. Therefore, the public administrator's view of the world is never finite. Instead, it is fallible and subject to reinterpretation. For this reason, public administrators should remain open to changes and institute them willingly. Furthermore, they should focus on inquiry, which leads to new discovery and ideas (Shields 2008), and ultimately more effective problem-solving.

A Conceptual Framework table (Table 2.2) is included to demonstrate the linkage between these exploratory pillar concepts and the scholarly literature.

Table 2.2: Conceptual Framework

Conceptual Framework: Pillar Questions	
Pillar Question	Sources
Tenet 1: Practical Orientation	
PQ1: What evidence is there of a practical orientation to contracting in the City of Austin?	Brendel 2006; Carver 1989; Evans 2000; Evans 2005; Ewoh 1999; Garrison 2000; Haque 2001; Hildebrand 2005; James 1907; Kellogg 2007; Nightingale and Pindus 1997; Shields 1996; Shields 2003; Shields 2004; Shields 2008; Siegel 1999; Stever 2000; Stolcis 2004; Watt 2005
Tenet 2: Pluralistic Orientation	
PQ2: What evidence is there of a pluralistic orientation to contracting in the City of Austin?	Brendel 2006; Evans 2000; Evans 2005; Garrison 2000; Hildebrand 2005; James 1907; Leroux and Carr 2007; Savas 2000; Shields 1996; Shields 2003; Shields 2004; Shields 2008; Stever 2000; Stolcis 2004; Warner and Hefetz 2002a; Warner and Hefetz 2002b
Tenet 3: Participatory Orientation	
PQ3: What evidence is there of a participatory orientation to contracting in the City of Austin?	Box 1999; Brendel 2006; DeHoog 1990; Dicke 2002; Evans 2000; Evans 2005; Ewoh 1999; Frederickson 1999; Garrison 2000; Hildebrand 2005; Shields 1996; Shields 2003; Shields 2004; Shields 2008; Stever 2000; Stolcis 2004; Terry 1993
Tenet 4: Provisional Orientation	
PQ4: What evidence is there of a provisional orientation to contracting in the City of Austin?	Box 1999; Brendel 2006; Evans 2000; Evans 2005; Frederickson 1999; Garrison 2000; Hefetz and Warner 2004; Hildebrand 2005; Hirsch 1995; Hirsch and Osborne 2000; Kettl 1993; Shields 1996; Shields 2003; Shields 2004; Shields 2008; Stever 2000; Stolcis 2004

At the heart of public administration is the desire and intent to achieve the common good. Public administrators, while constantly faced with difficult challenges, strive to achieve this common good by ensuring the health and prosperity of their communities. This includes providing the public services that citizens value and hold most dear. As this chapter has demonstrated, contracting in the City of Austin is one very important method for providing important public services and assuring the needs of the

Austin community are met. Using the philosophies of classical pragmatism and the “four Ps” framework developed by Brendel (2006), it is clear contracting can be achieved pragmatically – holding to the core values of public administration. With a greater understanding of contracting through the lens of classical pragmatism now obtained, the following chapter elaborates on the methodology used in this study.

Chapter III: Research Methodology

Statement of Purpose

This chapter describes the research methods used to assess contracting in the City of Austin. Through operationalization of the conceptual framework, this chapter establishes a link between each of the four pillar questions and their respective research method(s).

Case Study

This research is a case study analyzing the contracting practices currently employed by the City of Austin³⁹. According to Yin (2003), a case study is the preferred research method when the focus of investigation is on a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and when multiple sources of evidence are used. To facilitate this study, two distinct data collection methods are used: focus interviews and document analysis. The following sections demonstrate the operationalization of the conceptual framework using these case study methods and follow with a discussion of their respective strengths and weaknesses.

Operationalization of the Conceptual Framework

Conceptual frameworks serve as steering mechanisms for the larger thinking process behind the research endeavor. Thus, they are the tools that guide and structure the research. They are, however, high-level by nature and require a breakdown into further detail to be of use. An operationalization table is a useful way to achieve this

³⁹ For other Texas State Applied Research Projects dealing with the City of Austin see Howard-Watkins (2006), Johnson (2008), and Marlin (2008).

detailed breakdown. It connects the conceptual framework to the identified research methods (Shields and Tajalli 2006). Table 3.1 operationalizes the pillar questions developed in the conceptual framework by linking them to the research method, data source, and expected evidence.

Table 3.1: Operationalization Table

Operationalization of the Conceptual Framework			
Pillar Question	Method	Source	Evidence
Tenet 1: Practical Orientation			
PQ1: What evidence is there of a practical orientation to contracting in the City of Austin?	<ul style="list-style-type: none"> • Interview 	<ul style="list-style-type: none"> • COA Purchasing Staff (Q: 1-12)* 	Verification of a practical orientation in the contracting process through interviews.
Tenet 2: Pluralistic Orientation			
PQ2: What evidence is there of a pluralistic orientation to contracting in the City of Austin?	<ul style="list-style-type: none"> • Interview 	<ul style="list-style-type: none"> • COA Purchasing Staff (Q: 2-4; 8-10) 	Verification of a pluralistic orientation in the contracting process through interviews.
Tenet 3: Participatory Orientation			
PQ3: What evidence is there of a participatory orientation to contracting in the City of Austin?	<ul style="list-style-type: none"> • Interview • Documents 	<ul style="list-style-type: none"> • COA Purchasing Staff (Q: 4-7) • Vendor Source Guide • Purch. Terms and Cond. • Solicitation Instructions • Conflict of Interest Questionnaire 	Verification of a participatory orientation in the contracting process through interview and review of documents.
Tenet 4: Provisional Orientation			
PQ4: What evidence is there of a provisional orientation to contracting in the City of Austin?	<ul style="list-style-type: none"> • Interview 	<ul style="list-style-type: none"> • COA Purchasing Staff (Q: 8-11) 	Verification of a provisional orientation in the contracting process through interviews.

*Q = Questions from Appendix A

Focus Interviews

As discussed earlier, this research is a case study analyzing contracting practices in the City of Austin. Such research requires the use of multiple data collection methods (Yin 2003). The first and primary research method used in this study is focus interviews with current City of Austin purchasing officials. Babbie (2004) suggests this qualitative research is effective for collecting thorough and nuanced information. Through direct interaction with the interview subject, more specialized information is obtained and clarification of detail achieved. Babbie points out a limitation of interviews by noting that their personal nature may make them less reliable over time or with different interviewers (Babbie 2004; Este 2007). Yet, even under these limitations, focus interviews are strong in their validity and remain important data collection tools.

The sample used for this interview research includes four current employees from the City of Austin purchasing office⁴⁰. They are listed as follows:

- Byron Johnson, Purchasing Officer
- Urcha Dunbar-Crespo, Deputy Purchasing Officer
- Melinda Horitski, Buyer II
- Aiden Cohen, Sustainability Senior Buyer

The reasons for selecting these individuals are many. First, these individuals have collectively given many years of service to the City of Austin and are deeply familiar with its uniqueness as a community and the many challenges it faces both culturally and economically. Furthermore, each of them provides valuable insight and input that is used by City Management and/or the City Council when evaluating contract purchasing decisions. Finally, because they are so familiar with Austin's unique culture and diverse

⁴⁰ Use of a larger interview sample could enhance future research. This sample could include contractors, elected officials, and citizens.

set of needs, they provide a perspective and level of expertise that could only be achieved in their working capacity.

Each interviewee was asked twelve questions (Appendix A) to which they could elaborate and expand. These interview questions are uniquely important in assessing the practical, pluralistic, participatory, and provisional aspects of the city's contracting efforts. The first pillar question is guided by the exploration of a practical orientation in the City of Austin's contracting practices. As such, there should be evidence from the interview process that inquiry and exchange of experiences are stimulated by the problematic situations that surround the contracting process. Evidence of this orientation is addressed in interview questions 1 thru 12 (Appendix A), each of which elicit a discussion of the interviewees' experiences brought on by problematic situations.

The second pillar question focuses on whether or not the City of Austin's approach to contracting incorporates pluralism through an analysis of the ways Austin incorporates diversity and multiple perspectives in its contract administration efforts. Evidence of a pluralistic orientation is addressed in interview questions 2 thru 4 and 8 thru 10 (Appendix A), which examine the city's efforts in incorporating the ideas and input of others. To the extent the city incorporates a multitude of views and perspectives in its contracting process, it is meeting the pluralistic orientation of classical pragmatism.

The third pillar question explores the participatory element of contracting in the City of Austin. As discussed in chapter two, participation encourages an equitable process. Pillar question three examines how the city encourages active participation by those affected by the contracting decision. Evidence of a participatory orientation is sought through interview questions 4 thru 7 (Appendix A). To the extent the city keeps

citizens and affected groups regularly informed through openness and transparency, it is meeting the participatory orientation of classical pragmatism.

Finally, the fourth pillar question explores the provisional orientation of contracting in the City of Austin through an exploration of how the city approaches problems from a tentative and contingent perspective rather than fixed ideologies. Evidence of a provisional orientation in the contracting process is addressed in interview questions 8 thru 11 (Appendix A). The city meets the provisional orientation of classical pragmatism to the extent it nurtures communities of inquiry and encourages the fruition of new perspectives. Furthermore, a provisional orientation is achieved to the extent the city welcomes and implements procedural change willingly.

Document Analysis

The second data collection method used in this study is the review and analysis of existing public documents. According to Babbie (2004), document analysis is an important qualitative research tool providing the ability to examine data and information over time. One of the limitations to this type of analysis is its confines to recorded communication. Thus, the reliability and validity of the research can be called into question (Babbie 2004; Este 2007).

Still, many of the documents analyzed in this research are current and active documents. They not only help to examine what the City of Austin has done in the past, but also highlight its current methods. Furthermore, these documents help to substantiate the information obtained through the focus interview process. Some of the documents included in this analysis are as follows:

- Vendor Source Guide
- Purchasing Office Standard Purchase Terms and Conditions

- Purchasing Office Solicitation Instructions
- Purchasing Office Standard Purchase Definitions
- Conflict of Interest Questionnaire
- Contract Monitoring Guide

Each of these documents is included as separate appendixes to this research.

Some are particularly useful in validating the information collected in the participatory element of the interview process. The Vendor Source Guide (2009), Standard Purchase Terms and Conditions (Appendix B), Purchasing Office Solicitation Instructions (Appendix C), and Conflict of Interest Questionnaire (Appendix E) each demonstrate various ways by the city to encourage participation and openness in the exchange of information. Collectively, these documents help to assess the pragmatic nature of contracting practices by providing accurate and valuable insight to the circumstances and contracting environment specific to Austin.

Human Subjects Protection

As discussed earlier, this research includes and relies heavily on information obtained through focused interviews with public officials. Because this research does require the participation of human subjects, some ethical concerns must be addressed.

First, it is important to note that each individual selected to participate in the interview process has been interviewed in their formal capacity as public employees. The only identification information used in the research presentation is the participants' names and job titles. Any and all questions to which they responded are relevant to their official job functions as public employees and strictly related to content matter subject to public record through state statute. In addition, because the participants acted in their official capacities as public employees, there is no expectation of benefit based on their participation in the interview process.

However, in an effort to fully ensure there is no risk or discomfort to the participants, each interviewee was made aware at the onset of the interview their participation is strictly voluntary and that refusal to participate will involve no penalty. If the interviewee preferred their identity be left confidential, all reasonable efforts were made to accommodate their wishes, including but not limited to the retention of the interviewee's identity records only by the researcher and not made available publicly. Furthermore, each interviewee was advised they may discontinue the interview process at any time. Finally, each interviewee was given information about the research and appropriate contact information should they have questions or concerns.

This chapter discussed the research methods used to analyze contracting in the City of Austin; and through linking these methods with the pillar questions, operationalized the conceptual framework. The strengths, weaknesses, and applicability of these methods to the greater research scheme were also explored. With a firmer grasp of the objectives associated with the research methods now in hand, the following chapter examines the findings as a result of their implementation.

Chapter IV: Results

Statement of Purpose

One of the purposes behind this research is to assess the contracting practices in the City of Austin using the four tenets of classical pragmatism. Through the use of interviews and document analysis, evidence was collected to support this endeavor. The purpose of this chapter is to explain the findings produced by the collected evidence, thereby achieving the assessment objective⁴¹.

Tenet 1: Practical Orientation

Pillar Question 1: What evidence is there of a practical orientation to contracting in the City of Austin?

Chapter two explained that a practical orientation is derived from government's ambition to get things done and its "willingness to tackle the problem" (Shields 2003, 511). Thus, practicality is embedded in action. Being practical in the problem-solving objective requires many things. A communal discussion welcoming both scientific inquiry and the exploration of experiences and ideas must be established. Only through uninhibited discussion are perspectives compared, data considered, hypotheses formed, proposed solutions tested, and action-oriented solutions achieved.

To gain a sense of the practical orientation, if any, in the City of Austin, several questions were asked in a series of interviews with four key City of Austin purchasing staff. These questions focused on the staff members' experiences with the city's

⁴¹ Note: All findings in this research are provisional. A weakness of this study is that only four individuals from the city purchasing office were interviewed. Future studies could include interviews with contractors, elected officials, and citizens for a more inclusive perspective. Also, records maintained by the contractors could be included for a more thorough document analysis.

commitment to solving problems. Based on these interviews, evidence supporting a practical orientation in the City of Austin's contracting practices is strong.

An interview conducted on February 19, 2009 with Byron Johnson, Purchasing Officer, provides substantial support of a practical approach to problem solving in the City of Austin. Prior to Mr. Johnson's arrival, many problems existed in the city's contracting process. According to Mr. Johnson, contracts were traditionally implemented by departments with very little involvement from the city's purchasing office. This often resulted in relative chaos as contracts were poorly specified and greatly mismanaged. The purchasing office was normally brought into the process only after a problem had become so severe it required a scope of expertise outside that of the department. In this sense, the role of the purchasing office was very reactive rather than proactive – a trait more aligned with pragmatism. In addition, departments often contracted for similar services, creating overlaps in bidding and convoluting the delivery of services.

Since his arrival, however, Mr. Johnson has taken a number of measures to ensure more efficient service delivery. For example, Mr. Johnson and his staff have been proactive in making sure departments and vendors are educated and well-trained in the city's contracting and purchasing procedures. An interview on February 20, 2009 with Urcha Dunbar-Crespo, Deputy Purchasing Officer, mirrored this point. Ms. Dunbar-Crespo explained the city's increased emphasis on this type of training and discussed some of the various resources available to city employees and the public alike.

One of the city's primary resource and education tools is the City of Austin Vendor Source Guide (2009)⁴². Aside from explaining the process for becoming a

⁴² Other educational documents used by the city include the Standard Purchase Terms and Conditions (Appendix B), Solicitation Instructions (Appendix C), and Standard Purchase Definitions (Appendix D).

registered city vendor, this document provides a brief overview of the city’s purchasing procedures and guidelines. It also discusses the roles and responsibilities of both the city and potential vendors. To further enhance an understanding of this process, classes are provided to department officials and vendors. These classes ensure everyone operates by the same standards. Through this cohesive development, consistency is born and uncertainty reduced. Actively reducing this uncertainty demonstrates the pragmatic and practical approach by which the city addresses problems.

Another example of the city’s practical orientation is the actual role of the purchasing office. While departments remain responsible for executing and monitoring contracts⁴³, purchasing staff are committed to working more with departments at the onset of the contracting process to ensure the department’s needs are specified clearly. This also helps to facilitate a stronger working relationship between the departments and vendors. As Mr. Johnson described, the role of the purchasing office in many instances is to “find a happy medium between departments and contractors.” This win/win perspective championed by the City of Austin provides substantial evidence of a practical and pragmatic approach.

Furthermore, all four interviewees agreed the city places great importance on being action-oriented – proactive in its approach to problem solving. An interview with Aiden Cohen on March 6, 2009 revealed the city is very forward-thinking and innovative in its contracting endeavors. Being the Sustainability Senior Buyer for the city, Mr. Cohen leads the city’s sustainability efforts. Much of his role, as he explains, involves getting buy-in from multiple groups through collaboration and the development of a cooperative approach to solving the environmental problems in which everyone –

⁴³ The City of Austin Contract Monitoring Guide is included as Appendix F.

governments, vendors, and the public alike – have a vested interest. Currently, the City of Austin is working with other municipalities, including Seattle, Washington in exploring new technologies for dealing with the inevitable challenges of climate change and other environmental matters.

Finally, the City of Austin demonstrates the value of being proactive through its dealings with the public. During their interviews, both Byron Johnson and Melinda Horitski emphasized the importance in working closely with the citizens. Mr. Johnson explains that a community's needs are met only to the extent they are understood. The more the city actively works with the community, the better it can understand concerns and prepare solutions.

To achieve this understanding, Mr. Johnson has encouraged all city departments to be more engaged with the community in their decision-making processes. These efforts, including the holding of public meetings and forums, are meant to incorporate citizen input and establish dialogue in the contracting process. Such efforts also allow the public to see what is happening and ensures the city's fiduciary responsibilities are being upheld.

Through these efforts of inclusion, the city promotes the collaboration that is necessary for sharing experiences and developing a working network of inquiry. It is through this exchange of dialogue and ideas that the most crucial problems are exposed and the best solutions given a chance to thrive.

Tenet 2: Pluralistic Orientation

Pillar Question 2: What evidence is there of a pluralistic orientation to contracting in the City of Austin?

Chapter two describes pluralistic orientation as accommodating a multitude of perspectives in the problem solving process. This is effective because it ensures problems are approached from many views, relieving fixations on individual ideologies. Evidence provides strong support of a practical orientation in the case of Austin.

A common finding from all interviews conducted in this research is that the City of Austin regularly works with other government agencies when addressing issues brought on by contracting. While Austin is unique in many respects, it does not refrain from actively learning from the experiences of other communities. Its government officials are involved with those of other cities, establishing dialogue and gaining different perspectives in ways to maximize their own problem-solving efforts. Mr. Johnson supports this notion of pluralism in his comments about the city manager, whom he describes as being open to all possible options and understands there are no “sacred cows” in the purchasing process. The following example provided by Ms. Dunbar-Crespo further illustrates this pluralistic approach.

The city’s Fleet Department, which oversees the maintenance and repair of all city vehicles, was in need of creating a service contract for the repairs of its hydraulic equipment. After a great deal of discussion, the contract specifications were outlined and the contract was opened for bidding. Unfortunately, after three different attempts, the city was still unsuccessful in obtaining any vendor responses. Believing there may be a problem in the scope of the contract, city purchasing officials contacted those in Dallas, San Antonio, and Houston to inquire about their methods of developing contract

specifications. These cities had prior success in developing contracts for these services and stood to offer some helpful insight for Austin.

This remains a current and ongoing project. However, much has already been learned. The City of Austin realized there was a problem with its pricing structure because vendors were not able to establish price lists for certain products. As a result, their ability to bid on the contract was impaired. From this finding, the city learned how to structure bids in a more usable format where this information is not necessary. While additional work remains in tailoring the process, the city hopes to open a new bid incorporating these more flexible changes by the end of March 2009 with anticipation of greater vendor response.

From this example, Austin clearly saw the need for approaching the problematic situation from a different perspective. Learning from the experiences of other cities, Austin was able to enhance its contracting process by widening the scope and making specifications more feasible for potential vendors. This experience ultimately helped give Austin officials a better angle from which to address problems, thus better equipping them for future challenges.

Another example demonstrating Austin's pluralistic approach to problem-solving is its inclusion of staff perspectives. The interviews of Mr. Johnson and Ms. Dunbar-Crespo indicate the City of Austin values the collective wealth of experience and information of its employees. As mentioned in the beginning of this chapter under the *practical orientation* section, previous practices of Austin did little to incorporate any views outside of the department creating the contract. Upon his arrival, however, Mr. Johnson made it clear he wanted more people involved in the discussion process.

To achieve greater staff engagement, he made the role of the purchasing office significantly more prominent by getting it involved at the beginning of the contracting process. This allowed the various department directors to tap the expertise of purchasing staff, helping to develop a stronger, more cohesive contract.

Ms. Dunbar-Crespo and Ms. Horitski also discussed this dialogue as a crucial component of the contract evaluation teams. These teams are assembled in situations where contracts are awarded based on best value rather than lowest bid – situations that allow staff members to review a much wider array of discretionary selection variables. Consisting of various staff members from the purchasing office and department initiating the contract, these teams are responsible for reviewing contract specifications and selecting the most appropriate vendor. Their effectiveness and competency rests on their ability to discuss perceived strengths and weaknesses of the contract and vendor in an open and honest environment. Ultimately, this process ensures more effective services for the Austin community.

Finally, Austin has realized the value of using various tools to address contracting. For many years, much emphasis was placed on awarding contracts based solely on lowest bid. This is a price-based system used to ensure fair and equal competition. However, Mr. Johnson and Mr. Cohen both expressed concern for relying on this method as a primary means to achieve services because such an approach does little to evaluate or even consider value factors outside of price.

As a result, Austin has shifted focus to using multiple means for contracting, including *best value* bidding⁴⁴. Often, the elements of a service most valuable to citizens can not be captured in cost figures alone. Quite frequently, other variables must also be taken into account to ensure the contract achieves the most good. As Mr. Johnson explained during his interview, part of a city administrator's fiduciary responsibility is working to get the "best service to the taxpayer at a reasonable price without suffering quality loss." Best value bidding helps to achieve this. Under best value bidding, the evaluation teams assess a greater degree of information and criteria other than pricing. This system also allows for more negotiation of expectations between the city and potential vendors. Only in place for three years, best value bidding has proven to be remarkably successful in obtaining services that are not only efficient, but also effective from the perspective of creating overall value to the community.

Tenet 3: Participatory Orientation

Pillar Question 3: What evidence is there of a participatory orientation to contracting in the City of Austin?

Review of the literature explains participation as a critical component of classical pragmatism. To be participatory in nature is to encourage inclusion and involvement from those affected by the problem at hand. In the case of contracting in Austin, a participatory orientation is achieved if those affected by the decision to contract are actively involved, or at least given the opportunity to participate in the decision process.

⁴⁴ Best value bidding is different from a competitive low-bid process in the sense it is not solely based on price. Rather, the municipality has more discretion in choosing from potential vendors based on their overall competencies and qualifications. Best value bidding however, is not used for all services. Thus far, the City of Austin has primarily used this system for larger projects with higher dollar amounts and where greater discretion is necessary. Smaller and more routine services still often undergo a competitive, low-bid process.

Based on information collected through interviews, there is strong supporting evidence that the City of Austin, while faced with some constraints, is participatory in its contracting efforts.

As previously mentioned, Austin is a dynamic community with equally dynamic needs and values. One of the more noticeable attributes of the Austin community is its vocal demand for open government and transparency. Citizens of Austin are heavily invested in ensuring the fiduciary responsibilities of its government officials are met appropriately. This is particularly true in the city's purchasing of services, where use of taxpayer money is highly visible and scrutinized by all walks of the public.

To facilitate such openness, officials in the City of Austin work diligently to continuously educate the public of their actions and keep citizens well-informed⁴⁵. According to Melinda Horitski, the city's purchasing office regularly updates its website with the most current contracting information, including recent contracts adopted by the city council, selected vendor and bid tab information, and ethical and monitoring standards.

Furthermore, Ms. Horitski explains the city works closely with customers in completing all open records requests pursuant to the Texas Public Information Act. She indicates, however, that while the city makes every attempt to provide citizens with requested information, some circumstances preclude the release of information for proprietary reasons. The evidence suggests this as one of the more significant barriers to the city's efforts of transparency and participation. Otherwise, the citizenry is actually quite privy to a wide range of useful information.

⁴⁵ Adding to the city's efforts of transparency are evidenced in many of its conflict of interest documents, including the Conflict of Interest Questionnaire (Appendix E).

Aiden Cohen also notes in his interview of March 6, 2009 the increased level of bidding activity from small minority- and women-owned businesses. Once seen as groups victimized by discrimination in contract bidding, their increased involvement provides further indication that the City of Austin is progressing toward and promoting a more participatory environment. Mr. Cohen even suggests the city is making a more conscious effort to encourage the participation of these groups and many others. To aid in this endeavor, the city has a Small and Minority Business Resource Center responsible for providing said groups with equal assistance and accessibility to information.

Finally, a participatory orientation is evident by the city's efforts to include citizen input and feedback in the contracting process. All interview participants agreed that while citizens are not necessarily permitted to decide on every contract specification or vendor, their input is important nonetheless. This is particularly true given an increase in public meetings and forums designed by departments to generate dialogue and gauge citizen input on specific issues. A summation of points made by Mr. Cohen concludes that while not everyone decides, everyone is allowed to participate. This not only helps to protect a fair and equitable process, but also helps build productive relationships with the community and stakeholders.

Not all contracts are created equal. In many instances, particularly for routine contracts with low dollar amounts, departments generally decide to move forward based on their experience, expertise, and understanding of community needs. In these cases, citizen input is of minimal effect. There are, however, opportunities when contracts must

be approved by the city council⁴⁶. In these circumstances, citizen input plays a more noticeable role.

In order to facilitate this input process, citizens are provided the opportunity to address the city council during a segment of every meeting known as *Citizen Communication*. This provides any interested community members the opportunity to share their matters of concern with their elected officials. While these opportunities are not always successful in changing the outcome of a contract, they do present an opportunity to have the public's voices heard – an element essential to any progressive democratic society.

Notable from this research is that the city's methods to ensure participation are not perfect⁴⁷. Like any governmental body, the City of Austin faces many challenges in its attempts to ensure participation in its decision-making process. As part of its fiduciary responsibilities, the city must protect both the interests of its citizens and those of potential vendors. At times, those interests are at odds. With this in mind, Austin can not achieve a type of participatory orientation that is all-inclusive all of the time.

What Austin can and has achieved is a participatory system welcoming of all points of view – incorporating them as reasonability and appropriateness dictate. As the interviewees explained, the city continues to work to strike an equal balance in accommodating multiple interests while satisfying the needs of all parties – a mark of participatory orientation.

⁴⁶ By Texas State Law, the city council must approve contracts priced at \$50,000 and above.

⁴⁷ The Four Ps (Brendel 2006) serve as a kind of ideal, but may manifest differently in practice.

Tenet 4: Provisional Orientation

Pillar Question 4: What evidence is there of a provisional orientation to contracting in the City of Austin?

Recalling from Chapter two, a provisional orientation is one that takes into account and embraces the need for change. It is an orientation appreciative of the world as contingent and makes plans accordingly. A provisional orientation does not confine itself to ideologies, but accommodates flexibility as circumstances require. The information collected in the interviews of this research demonstrates a strong provisional orientation in the City of Austin. This evidence is not as directly forthcoming as the evidence from the previous three tenets. Rather, the best way to assess the provisional orientation of Austin is through review of the previously discussed tenets.

Derived from Austin's pluralistic orientation is its sense of growth through learning. The City of Austin is always in a learning mode. For example, the evidence provides that officials in Austin routinely communicate with other municipalities to gauge its practices and make adjustments where necessary. To more clearly understand this, one may refer back to the hydraulic repair example discussed earlier in the chapter. Mr. Cohen also touched on this in noting the collaboration with Seattle and other cities on leading sustainability efforts. This use of benchmarking keeps Austin aware of change and enhances its adaptability to future challenges.

In addition, the City of Austin has learned from its own successes and failures. As the interview with Mr. Johnson revealed, a key weakness in the city's previous contracting practices was its lack of involvement from the purchasing office at the onset of contract development. Purchasing staff were used reactively to step in when needed.

To remedy this, purchasing staff began to work more closely with departments, educating them on the city's contracting standards and preparing their staff to identify and address potential challenges. While this had not been done in the past, it was a necessary change. Ultimately, this change made the city's contracting process more effective and able to enhance service delivery to the community.

The interview with Ms. Dunbar-Crespo also revealed an example of Austin's provisional nature. For many years, the city contracted its janitorial services at the libraries. This was done with the intent of saving taxpayer dollars by reducing salary and benefit expenditures. It soon became evident that labor standards of the contractor did not coincide with those of the city, leading to a necessary procedural change.

When problems requiring an immediate response (i.e. inoperable restroom facilities, floor spills) arose, the city site supervisor could not make a direct clean-up request of the contracted janitorial staff⁴⁸. Instead, any request of these contracted employees had to be made through the management structure of the contractor. This proved to be grossly inefficient as problems could not be immediately addressed, leaving the public to suffer. As a result, the city reevaluated its service needs and decided to retain these services in house as a core function. From this example, the city recognized a clear need to amend its practices in order to better meet the needs of the public – demonstrating a conscious endeavor to be more provisional.

A summary of these findings is provided in Table 4.1 on the following page.

⁴⁸ By law, the contracted employee could only report to their direct supervisor (contractor). They could not report to the city staff.

Table 4.1: Summary of Findings

Summary of Findings	
Pillar Question	Findings (City of Austin)
Tenet 1: Practical Orientation	
PQ1: What evidence is there of a practical orientation to contracting in the City of Austin?	<ul style="list-style-type: none"> • More proactive in education and training • Purchasing office involved at onset • City more action-oriented
Tenet 2: Pluralistic Orientation	
PQ2: What evidence is there of a pluralistic orientation to contracting in the City of Austin?	<ul style="list-style-type: none"> • Communicate and learn from other cities • Approach problems from different perspectives • Include perspectives from other staff • Implement various contracting tools/methods
Tenet 3: Participatory Orientation	
PQ3: What evidence is there of a participatory orientation to contracting in the City of Austin?	<ul style="list-style-type: none"> • Efforts of transparency and openness • Inclusive bidding process • Citizen input and feedback
Tenet 4: Provisional Orientation	
PQ4: What evidence is there of a provisional orientation to contracting in the City of Austin?	<ul style="list-style-type: none"> • Communicate and learn from other cities • Make adjustments to practices when necessary • Learn from successes and failures • Open to feedback

From these findings, a clearer understanding of Austin’s pragmatic approach to problem solving is attained. Through its efforts, the City of Austin excels in all four tenets of classical pragmatism. The following chapter incorporates these findings into the exploration of possible recommendations and statement of conclusions.

Chapter V: Recommendations and Conclusion

Recommendations

Thus far, this research has explored extensively the use of contracting in municipal government drawing from concepts of classical pragmatism. Furthermore, following the tenets of pragmatism identified in the literature, it has analyzed the contracting practices currently implemented in the City of Austin, reporting significant findings. The third objective of this research project is to provide recommendations for improving contracting practices in the City of Austin based on the analysis conducted.

The previous chapter ascertained that the City of Austin demonstrates a remarkably pragmatic approach to contracting. Its awareness of the importance of collective problem solving and concern for creating value for the citizens is indicative of that pragmatic consciousness. However, there are some areas where focused attention could enhance the city's already effective efforts. The following section identifies some useful recommendations for consideration.

Education

One of the problems identified in Austin's earlier approaches to contracting was the lack of education among individual departments on the city's purchasing and procurement procedures. As pointed out in the interview with Mr. Johnson, this created significant difficulties for the city, including chaotic bidding and mismanaged contracts. As a result, service delivery to the citizens was less than satisfactory. Austin officials soon saw that a more proactive approach to training was an effective means for improving the state of its contracting practices.

Learning from past tribulations, the city now provides periodic training to both city officials and outside vendors – training that focuses on its purchasing and procurement standards. This has proved helpful as it maintains a sense of consistency among departments and cohesiveness between the city and its vendors. Drawing from this success, the City of Austin should continue its training and education efforts, and perhaps consider broadening training workshops to include the general public. Keeping departments and vendors actively informed not only leads to less potential for error, but also promotes a sustainable continued learning environment. Furthermore, by opening training workshops to the public, a greater level of information sharing and transparency is achieved, thus facilitating greater relationship building among these often adversarial groups and encouraging the notion of *good government*. Finally, providing opportunities for education to all affected parties makes for a more efficient process, ultimately resulting in a higher level of service delivery – something in which all parties involved have a vested interest.

Procedure

In conducting the various interviews, it became evident there are several procedural aspects of the city's contracting practices that if changed, could further enhance its service delivery efforts. It is important to note some of these changes may be restricted by state and/or federal statutes. Thus, the recommendations presented here should be balanced in light of all applicable laws and only serve as thoughts for further consideration.

In many instances, contracts are established so that delivery of products is done through one or multiple suppliers⁴⁹. Contracts typically are not established directly with manufactures, unless they themselves are the supplier. This is seldom. As a result, wholesale prices are marked up by suppliers, raising costs to the city, and ultimately the taxpayers. In addition, since the manufacturer must go through a supplier, its return on the contract is often less, resulting in a smaller pool of manufactures interested in participating in the contracting process.

Advantageous for Austin would be a mechanism in its contracting procedures that allows for contracting directly with manufactures. Perhaps this level of change would be best warranted for larger projects requiring greater capital investments. By establishing these relationships, however, the city can significantly cut its costs, achieving a greater level of efficiency in its service delivery.

Another aspect where procedural change may be of value rests within restrictions of the contract itself. Currently, when contracts are executed, they leave no leeway for revision during the life of the contract. All things agreed to at signing must then be performed accordingly or otherwise risk breach of contract. Understandably, a contract is a binding document. As such, stipulations of the contract must be specific and adhered to the letter.

Circumstances may arise which alter the needs of the city. Perhaps it is learned only after the contract is executed that the city needs a higher level of a particular service. In such circumstances, it may be of benefit to both the city and vendor to allow for needed amendments to the contract. Otherwise, both parties must wait until a new

⁴⁹ While this mostly pertains to contracting for products, it can also have a significant impact on service delivery, especially if services are influenced by or require a product.

contract opportunity arises to make necessary adjustments. During the interim, the public is left to bear any consequences. Allowing for amendments during the contract duration provides an opportunity for the city and vendor to work collectively in solving unanticipated problems. In addition, the needs of the citizens are addressed in a quicker, more proactive manner.

Finally, implementing an acquisition planning process would be a valuable asset to the city and its planning endeavors⁵⁰. As it stands, planning for contracts is greatly influenced by historical contexts and a basic understanding of the city's current needs. While a significant level of planning and forecasting is involved in contracting decisions, a more formal acquisition plan would help anticipate and supervise multiple contracting needs simultaneously.

Ideally, this plan would be in the form of a spreadsheet indicating service needs and timeframes for multiple contracts. In essence, it would serve as a planning device tracking all contract projects from their inception to completion. This would, in turn, make the city's management and delivery of services more efficient. It would also result in more forward-thinking by the city, thus achieving a pragmatic approach to planning and problem-solving.

Best Value

One of the most important takeaways from the interview process was the City of Austin's increased emphasis on evaluating contracts based on best value rather than low

⁵⁰ Mindy Horitski discussed acquisition planning as a tool currently used by the federal government. This process has helped the federal government achieve greater efficiency and approach contracting with a better sense of forecasting.

bid. As this new way of thinking generates success, the city should consider the value in assessing all contracts in this manner.

A common argument for approaching contracting from a low-bid perspective is that it guarantees the city pays the lowest dollar amount possible, thus reducing costs and enhancing efficiency. What is often overlooked, however, is the long-term costs associated with mitigating any effects resulting from poor service quality. While low-bid guarantees lowest price, it does not guarantee high, or even sufficient, quality. It should be noted this portion of the research does not argue the point that higher prices always guarantee higher quality. However, paying higher prices to achieve higher quality is a notable endeavor. It is also a more practical and prudent method for investing in the public's wellbeing. As part of their fiduciary responsibility, public administrators must ensure taxpayer money is spent responsibly. This does not always mean spending as little of it as possible.

Conclusion

This research sought to achieve three primary objectives. First, the research was tasked with exploring the use of contracting in municipal government drawing on concepts presented in classical pragmatism. This was achieved through a detailed review of scholarly literature and introduction of a conceptual framework model. The second purpose of this research was to assess current contracting practices in the City of Austin using the tenets of classical pragmatism as a theoretical foundation. The research achieved this objective through the operationalization of the conceptual framework, using interviews and document analysis as the primary research tools. A case study using the City of Austin was performed, yielding significant results. Finally, based on this

assessment, several recommendations were presented for improving contracting efforts in the City of Austin. These recommendations were described in the preceding section.

What can one ultimately take away from this?

The City of Austin is very pragmatic in its approach to contracting and should serve as a model of pragmatism for other municipalities. From the information obtained, it is evident the city places great importance on providing its citizens with the most efficient and effective services. While some challenges certainly remain, Austin is rapidly advancing itself to the next tier of public service excellence.

Contracting to provide public services is an enormous and daunting undertaking for any municipality. There is no way to achieve a perfect contracting process, as each situation is unique. Every community is different with differing needs and values. Communities themselves evolve overtime, turning a once relevant issue into something of the past. If nothing else is taken away from the teachings of classical pragmatists, it should, at the very least, be understood that problems are not best resolved when addressed from an ideological, one-size-fits-all approach.

Rather, public administrators must address these unique challenges head-on, dealing with each nuance from a collective motive assembled of inquiry and experience. To be pragmatic is to be forward-thinking – placing stock in the input of others, encouraging active participation, and recognizing that procedural change is not only imminent, but also necessary.

The City of Austin has been successful because of its ability to remain vigilant of its practices, learn from its mistakes, and adapt in accordance to changing environments. Doing so has served it well in both meeting the needs of its citizens and growing as a

community. Yet, to remain successful, the City of Austin must continue these pragmatic efforts in asserting the interests of the public. Pragmatism has taught that public administration is an evolving process with an organic end in view. What remains constant, however, is the administrator's responsibility of stewardship and obligation to act always in the best interest of those they serve.

Appendix A: Interview Questions

Interview Questions

- 1) From your perspective, what has been the City of Austin's experience with contracting and what has been learned from these experiences?
- 2) What societal forces (i.e. cultural, political) have impacted the city's attitude toward contracting?
- 3) Are experiences and input of other cities or individuals taken into account in the decision to contract?
- 4) Who do you consider when making contracting decisions?
- 5) How does the city encourage participation in the contracting process?
- 6) Who is allowed to participate in the contracting decision process?
- 7) What limitations, if any, does the city impose on participation?
- 8) What examples can you identify where the city has moved away from contracting and toward more in-house service delivery; and vice versa?
- 9) What circumstances led to this change?
- 10) How does the city evaluate its success with contracting?
- 11) From your experiences and patterns you've observed over time, what is your perspective on the future of contracting in Austin?
- 12) What are the city's goals when using contracting as a means to provide public services?

Appendix B: Standard Purchase Terms and Conditions

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

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

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.
10. **WORKFORCE**
 - A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
 - B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
 - C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
12. **INVOICES:**
 - A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

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

13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of one percent per month or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.

- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
 - F. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
14. **TRAVEL EXPENSES:** All travel and lodging expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:
- http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_B ASIC
- No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.
15. **FINAL PAYMENT AND CLOSE-OUT:**
- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
 - B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.
16. **SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for

the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. **RIGHT TO AUDIT:**

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

18. **SUBCONTRACTORS:**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation and the Contractor has identified Subcontractors, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.
- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
- C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne

exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

- D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
- E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

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

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from acceptance of the services. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY:**

A. Definitions:

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

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

32. **INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Applicable to Contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to City facilities by the Contractor personnel). (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract

execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

Attn: (Add Buyer's Name)

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiv. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

- 33. **CLAIMS**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
- 35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.
- 36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title

to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.
- A. **Patents**. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights**. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall

negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION**:
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall

include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

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

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

52. **HOLIDAYS:** The following holidays are observed by the City:

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

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

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

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

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

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

A. Definitions. As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States;
or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

Appendix C: Solicitation Instructions

**CITY OF AUSTIN
PURCHASING OFFICE
SOLICITATION INSTRUCTIONS**

1. **VENDOR REGISTRATION**

All Vendors, Contractors, Subcontractors, Consultants, and Subconsultants desiring to sell to the City must be registered to do business with the City prior to submitting an Offer to a City solicitation. Prime Contractors/Consultants are responsible for ensuring that their Subcontractors/Subconsultants are registered. Registration can be done through the City's on-line vendor registration system. [Log onto https://www.cityofaustin.org/purchase](https://www.cityofaustin.org/purchase) and follow the directions.

2. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Offerors shall sign and return with their Offer, the Non-Discrimination Certification contained in the Solicitation.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

3. **MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM**

All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C, and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts. Goals for MBE/WBE participation are stated in each Solicitation and differ from contract to contract based on the type of contract, the availability of MBEs/WBEs to perform the functions of the contract, and other factors. Information on achieving the goals or documenting good faith efforts to achieve the goals are contained in the MBE/WBE Program Package contained in Section 0900 of the Solicitation. When goals are established, Offerors are required to complete and return the MBE/WBE Compliance Plan with their Offer. If no goals are established, Offerors are required to submit the No Goals Utilization Plan. If a Compliance Plan or No Goals Utilization Plan is not submitted prior to the date and time set forth in the Solicitation, the Offer will not be accepted for consideration.

4. **SOLICITATION**

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

- B. **Location of Documents:** Solicitations are issued by the Purchasing Office. The location and phone number for the Purchasing Office are specified in the advertisement and in the Solicitation.

5. **WRITTEN EXPLANATIONS OR CLARIFICATIONS**

Any material information given to one Offeror concerning a Solicitation will be furnished as an Addendum to all Offerors who have been issued a Solicitation. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding. Requests for explanations, clarifications or interpretations may be faxed to the City at (512) 974-2388. The fax must clearly identify the buyer's name and solicitation number.

6. **PRE-BID / PROPOSAL / RESPONSE CONFERENCE**

If a Pre-Bid/Proposal/Response conference is mandatory, the time, place and mandatory nature of the conference will be specified on the cover page of the Solicitation. If a Pre-Bid/Proposal/Response Conference is mandatory and is not attended by an Offeror, their Offer will be rejected.

7. **PREPARATION OF OFFERS**

- A. **Alternate Offers:** Alternate Offers will be rejected unless the Solicitation authorizes the submission of Alternates.
- B. **Bid Preparation Costs:** All costs associated with preparing a Bid in response to a Solicitation shall be borne by the Bidder.
- C. **Bid / Proposal / Response Guaranty or Bond:** When required by the Solicitation, an Offer must be accompanied by a Bid/Proposal/Response Guaranty or a Bid/Proposal/Response Bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to the City.
- D. **Brand Name or Equal:** If the Solicitation indicates brand name or "equal" products are acceptable, the Offeror may propose an "equal" product but must be prepared to demonstrate those features that render it equal. Final determination of a product as an "equal" remains with the City.
- E. **Delivery Time:** Delivery time, if stated as a number of days, will be based on calendar days. Time is of the essence in any City purchase. If the indicated date cannot be met or the date is not indicated, the Offeror shall state its best delivery time.
- F. **Exceptions:** Exceptions that are taken to any portion of the Solicitation may jeopardize acceptance of the Offer.
- G. **Free on Board (FOB) Point:** The Offeror should quote its lowest and best price, with the goods delivered to the place specified, at the Offeror's expense and risk, and there tender delivery to the City.
- H. **Payment:** Payment terms shall be net 30 days.

- I. **Prices:** Offers shall be firm unless otherwise specified. Pricing shall be entered on the Bid/Quote Sheet (if applicable) in ink. Totals shall be entered in the "Total Price" column of the Bid/Quote Sheet. In the event of a discrepancy between unit price and extended price, the unit price shall govern.
- J. **Proposal Preparation Costs:** All costs directly or indirectly related to preparation of a Response to an RFP or any oral presentation required to supplement and/or clarify a Proposal which may be required by the City shall be the sole responsibility of the Proposer.
- K. **Proprietary Information:**
 - i. All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt.
 - ii. If an Offeror does not desire proprietary information in the Offer to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General.
 - iii. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.
- L. **Signature:** The Offeror must sign each document in the Solicitation requiring a signature in ink. Any change made to the Offer must be initialed in ink by the Offeror.
- M. **Taxes:** Purchases of Goods or Services for City use are usually exempt from City, State, and most Federal Taxes. Offers should not include exempted taxes. The successful Offeror should request a Tax Exemption Certificate from the Purchasing Office. Under no circumstances shall the City be liable to pay exempt taxes under any Contract.
- N. **Anti-Lobbying and Procurement.** Article 6, Chapter 2-7, City Code, prohibits lobbying activities or representations by Offerors between the date that the Solicitation is issued and the date a Contract is executed.
 - i. Definitions
 - (1) Authorized Contact Person - the person designated in the Solicitation as the contact for questions and comments regarding the Solicitation.
 - (2) No-Contact Period - the period of time from the date of issuance of the Solicitation until a Contract is executed. If the City withdraws the Solicitation or rejects all Offers with the stated intention to reissue the same or similar Solicitation for the same or similar project, the no-contact period continues during the time period between the withdrawal and reissue.
 - (3) Offer - a complete signed response to a Solicitation including, but not limited to, a Bid, a Proposal, a Qualifications Statement, or a Quote.

- (4) Offeror - a person, firm, or entity that submits an Offer in response to a City Solicitation. Includes Bidders, Proposers, Quoters, Contractors and Consultant.
- (5) Representation - a communication related to a response to a council member, official, employee, or agent of the City which provides information about an Offer, advances the interests of the Offeror, discredits the Offer of any other Offeror, encourages the City to withdraw the Solicitation, encourages the City to reject all of the Offers, or conveys a complaint about a particular Solicitation.

ii. Restrictions on Contacts:

- (1) During a no-contact period, an Offeror shall communicate only through the authorized contact person.
- (2) If, during the no-contact period, an Offeror makes a representation with a member of the City Council, a member of a City board, or any other official, employee, or agent of the City, other than to the authorized contact person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the paragraph below. This prohibition also applies to a vendor that communicates and then becomes an Offeror.
- (3) The prohibition of representation during the no-contact period applies to a representation initiated by an Offeror, and to a representation made in response to a representation initiated by a member of the City Council, member of a City board, or any other official, employee, or agent of the City other than the Authorized Contact Person.
- (4) If the City withdraws a Solicitation or rejects all Offers with a stated intention to reissue the same or similar Solicitation for the same or similar project, the no-contact period shall expire after the sixtieth day after the date the Solicitation is withdrawn or all Offers are rejected if the Solicitation has not been reissued during the 60-day period.
- (5) This section does not apply to a representation:
 - (i) made at the pre-Bid/Proposal/Response conference or any other meeting convened by the Authorized Contact Person;
 - (ii) required by Financial Services Department protest procedures for Offerors;
 - (iii) made at a Financial Services Department protest hearing;
 - (iv) provided to the Small & Minority Business Resources Department in order to achieve compliance with Chapter 2-9 of the MBE/WBE Procurement Program;
 - (iv) made to the City Risk Management coordinator about insurance requirements for an Offer; and
 - (vi) made in public at a meeting held under the Texas Open Meetings Act.

- iii. Allowed Representation
 - (1) If an Offeror desires to make a representation to a City official, employee, or agent during the no-contact period, the Offeror shall submit the representation in writing only to the authorized contact person. The contact person will then distribute the written representation in accordance with the terms of the Solicitation. An Offeror cannot amend or add information to an Offer after the Due Date
 - (2) If an Offeror wishes to make a complaint about a particular Solicitation to a City Council member or City board member, the Offeror should submit the written complaint to the authorized contact person. The contact person will then distribute the complaint to members of the City Council or members of the City board, to the Purchasing Officer and to all Offerors on the Solicitation.
 - (3) If an Offeror submits a written inquiry regarding a Solicitation, the authorized contact person will provide a written answer and distribute both the inquiry and answer to all Offerors on the Solicitation.
 - (4) If an Offeror does not receive a response from the authorized contact person, the Offeror may contact the Purchasing Officer.
- iv. Contract Voidable. If a contract is awarded to an Offeror who has violated these Anti-Lobbying & Procurement provisions, the contract is voidable by the City.
- v. Debarment. If an Offeror violates these provisions more than once in a three (3) year period, the Purchasing Officer shall debar the Offeror from the sale of goods or services to the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.

8. **SUBMISSION OF OFFERS**

Offerors are required to submit an executed original and copies of the Offer as specified on the Cover page of the Solicitation.

- A. **Documents required with Offer:** The following documents must be submitted with each Offer, as applicable, prior to the Due Date (**SEE SECTIONS 0400, 0500 and 0600 IN THE SOLICITATION FOR ADDITIONAL REQUIRED INFORMATION**):

- i. Cover Page, Offer Sheet;
- ii. Section 0600, Bid/Quote Sheet or Offer, as applicable
- iii. Section 0700, Reference Sheet, as applicable
- iv. Sections 0800– 0835, Certifications and Affidavits (return all applicable Sections);
- v. Section 0900, MBE/WBE Procurement Program Package or No Goals Utilization Plan
- vi. Bid/Proposal Guaranty; and
- vii. any other document included in the Solicitation requiring completion or execution by the Offeror;

All other pages in the Solicitation should be retained by the Offeror.

- B. **Mailing:** Offers and Compliance Plans (when required by the Solicitation), must be returned in a sealed envelope or container marked on the outside with the:

Offeror's name & address
Solicitation number
Due date and time.

- i. If a MBE/WBE Compliance Plan is required, it may be submitted with the sealed Offer or in a separate sealed envelope. If the Compliance Plan is included with the Offer, the outside of the envelope must indicate that the Compliance Plan is included. If the Compliance Plan is submitted in a separate envelope, the outside of the envelope must identify the contents as the "Compliance Plan" and must also include the Offeror's name & address, the Solicitation number, and the Due Date and time. If a Compliance Plan is required but is not submitted prior to the time set forth in the Solicitation, the Offer will not be accepted for consideration.
- ii. When sending an Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin
Purchasing Office	Purchasing Office
P.O. Box 1088	Municipal Building
Austin, Texas 78767-8845	124 W. 8 th St., 3 rd Floor, Rm 310
	Austin, Texas 78701
	Phone: (512) 974-2500

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

- iii. Unless authorized in the Solicitation, telegraphic, facsimile, or electronic Offers will not be accepted.
- C. **Addendum:** Receipt of an Addendum must be acknowledged by signing and returning the Addendum with the Offer or under separate cover prior to the Due Date. The Addendum must be returned in a sealed envelope marked on the outside with the Offeror's name, address, the Solicitation number, and the Due Date and time.
- D. **Late Offers:** Offers must be received in the Purchasing Office prior to the Due Date and time. All Offers received after the Due Date and time are considered late and will be returned to the Offeror unopened. The time stamp clock on the receptionist's desk in the Purchasing Office is the time of record and is verified daily with the local time service at (512) 476-7744. It is the sole responsibility of the Offeror to ensure timely delivery of the Offer. The City will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Offeror.

9. **MODIFICATION OR WITHDRAWAL OF OFFERS**

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

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

10. **OPENING OF BIDS**

The Purchasing Office representative responsible for opening Bids shall confirm the time and announce the Bid opening. The representative shall then personally and publicly open all Bids timely received, reading each Bid aloud.

11. **OPENING OF PROPOSALS / QUALIFICATIONS STATEMENTS AND RELEASE OF INFORMATION**

Proposals/Qualifications Statements will be opened in a manner that avoids disclosure of the contents. At its sole discretion, the City may release to the public information that is contained in an opened Proposals/Qualifications Statement after City staff review, except as prescribed by State law, including Texas Government Code Chapter 552 and Local Government Code Chapter 252, provided that the City determines that the disclosure will not create a competitive disadvantage for the City.

12. **EVALUATION FACTORS AND AWARD FOR QUOTES AND BIDS**

- A. **Evaluation:** Offerors may furnish pricing for all or any portion of the Solicitation (unless otherwise specified). However, the City may evaluate and award the Contract for any item or group of items shown on the Solicitation, or any combination deemed most advantageous to the City. Offers that specify an "all or none" award may be considered if a single award is advantageous. An Offer containing prices significantly lower than all other Offeror's prices for an item will present a rebuttable presumption of irresponsibility.
- B. **Award:** Request for Quotations and Invitations for Bids will be awarded to the Lowest Responsible Offeror. Request for Quotations - Sale and Invitation for Bids - Sale will be awarded to the Highest Responsible Offeror.
- C. **Acceptance of Quote/Bid:** Acceptance of a Quote/Bid for an open market purchase or supply or service Master Agreement will be by a Purchase Order or a Contract as appropriate. Subsequent Delivery Orders may be issued as appropriate. The contents of a Quote/Bid shall become a part of the Purchase Order/Contract. Under no circumstances will the City be responsible for Goods or Services provided without an acceptance signed by or authorized by an Authorized City Representative.

13. **EVALUATION FACTORS AND AWARD FOR PROPOSALS AND RESPONSES**

Competitive Selection: *This procurement will comply with applicable City of Austin Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Section 0600 of the Solicitation shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the successful Proposer. Award of a*

*contract may be made without discussion with Proposers after proposals are received.
Proposals should, therefore, be submitted on the most favorable terms.*

14. **RESERVATIONS**

The City expressly reserves the right to:

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

15. **NEGOTIATIONS OF PROPOSALS**

The City reserves the right to negotiate all elements which comprise the Offeror's Proposal to ensure that the best possible consideration be afforded to all concerned.

16. **CONTRACT INCORPORATION**

Offeror should be aware that the contents of the successful Offer will become a part of the subsequent contractual documents. Failure of the successful Offeror to accept this obligation may result in the cancellation of any award. Any damages accruing to the City as a result of the successful Offeror's failure to contract may be recovered from the successful Offeror.

17. **OPPORTUNITY TO PROTEST**

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

- A. **Prior to Offer Due Date:** If you are a prospective Offeror and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Due Date for receipt of Offers, you must notify the City in writing of the alleged deficiency before that date, giving the City an opportunity to resolve the situation prior to the Offer Due Date.

- B. **After Offer Due Date:** If you submit an Offer to the City and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:
- i. You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
 - ii. You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Offer has been closed. If you know of the facts before those dates, you must notify the City as stated above.
 - iii. You must submit your protest in writing and must include the following information:
 - (1) your name, address, telephone, and fax number;
 - (2) the solicitation number and the CIP number, if applicable;
 - (3) a detailed statement of the factual grounds for the protest, including copies of any relevant documents.
 - iv. Your protest must be concise and presented logically and factually to help with the City's review.
 - v. When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
 - vi. The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.
 - vii. A decision will usually be made within fifteen (15) calendar days after the hearing.
 - viii. The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
 - ix. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that:
 - (1) the City urgently requires the supplies or services to be purchased, or
 - (2) failure to make an award promptly will unduly delay delivery or performance.

In those instances, the City will notify you and make every effort to resolve your protest before the award.

18. **POST OFFER DOCUMENTS REQUIRED FROM SUCCESSFUL OFFEROR**

- A. **Letters of Intent:** When a MBE/WBE Compliance Plan is required, the successful Offeror must submit to the Purchasing Officer the Letters of Intent to subcontract required by the Compliance Plan within three (3) business days after

notification. Failure to submit the required letters will be grounds for rejection of the Offer.

- B. **Certificates of Insurance:** When insurance is required, the Offeror must provide proof of coverage prior to execution of a Contract. The Offeror shall provide Certificates of Insurance in the amounts and for the coverages required to the Purchasing Office within 14 calendar days after written request from the City (See also "Insurance" in Section 0400, Supplement Purchase Provisions, of the Solicitation).
- C. **Bonds:** When Bonds are required, the Offeror must provide the bonds, in the amounts and on the conditions required, within 14 calendar days after notification of award, or as otherwise required by the Solicitation.
- D. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.ci.austin.tx.us/cityclerk/coi.htm>

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

Appendix D: Standard Purchase Definitions

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE DEFINITIONS**

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

1. **Addendum** - a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. **Alternate Offers** - multiple Offers with substantive variations from the same Offeror in response to a Solicitation.
3. **Appropriate, Appropriated, or Appropriation** - the adoption by the City Council of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. **Authorized City Representative** - a person designated by the City Manager to act for the Contract Awarding Authority.
5. **Best Offer** - the best evaluated Offer in response to a Request for Proposals or Request for Qualification Statements.
6. **Best Offeror** - the Offeror submitting the Best Offer.
7. **Bid** - a complete, properly signed response to an Invitation for Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
8. **Bidder** - a person, firm, or entity that submits a Bid in response to an Invitation for Bid. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **Bid Guaranty** – a form of security assuring that the bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
10. **Bid Sheet** - a document, signed and dated by a Bidder, containing unit and extended bid prices for all goods and/or services, identified by item numbers and descriptions, for which Bids are being submitted.
11. **Central Purchase Order (CT)** - a financial system document issued by the Contract Awarding Authority to encumber funds to pay for the deliverables identified in a Contract.
12. **City** - the City of Austin, a Texas home-rule municipal corporation.
13. **Compliance Plan** - is defined in chapter 2-9 of the City Code.
14. **Construction** - the construction, repair, rehabilitation, alteration, conversion or extension of buildings, parks, utilities, streets or other improvements or alterations to real property.

15. **Contract** - a binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - A. any exceptions to the Offer accepted in writing by the City
 - B. the Supplemental Purchase Terms and Conditions
 - C. the Standard Purchase Terms and Conditions
 - D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
16. **Contract Awarding Authority** - a City department authorized to enter into Contracts on behalf of the City.
17. **Contractor/Consultant** - a person, firm or entity that supplies or provides goods and/or services to the City by Contract.
18. **Deliverables** - the goods, products, materials, and/or services to be provided to the City under a Purchase Order, Contract, or Master Agreement.
19. **Delivery Order** - a release against a Master Agreement authorizing delivery of goods and/or performance of services. A financial system document issued by the Department to encumber funds to pay for the deliverables.
20. **Disadvantaged Business Enterprise** - is defined in 49 Code of Federal Regulation Part 26 or other applicable federal regulations.
21. **Due Date** - the date and time specified for receipt of Bids, Proposals, Qualification Statements, Quotations, Responses, Submittals and Compliance Plans.
22. **Goods** - supplies, materials, or equipment.
23. **Highest Responsible Offer** - the highest Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid-Sale or Request for Quotation-Sale.
24. **Highest Responsible Offeror** - the Offeror submitting the "Highest Responsible Offer."
25. **Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or on the Internet.
26. **Late Offer** - a Bid, Proposal, Quote, Response, or Submittal that is received after the Due Date and time specified in the Solicitation.
27. **Lowest Responsible Offer** - the Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid or Request for Quotation resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Vendor to perform the Contract, past performance of the Vendor, and compliance with all City ordinances concerning the purchasing process.

28. **Lowest Responsible Offeror** - the Offeror submitting the Lowest Responsible Offer.
29. **Master Agreement** - a term contract that is used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits with deliveries on demand. A Master Agreement does not create a financial obligation.
30. **Minority-Owned Business** - is defined in chapter 2-9 of the City Code.
31. **Non-Professional Services** - services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** - a complete signed response to a Solicitation including, but not limited to, an Invitation for Bid, a Request for Proposal, a Request for Qualification Statements, or a Request for Quotation.
33. **Offeror** - a person, firm, or entity that submits an Offer in response to a City Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. Includes Bidders, Proposers, Quoters, Contractors and Consultants.
34. **Pre-Bid / Proposal / Quote / Response / Submittal Conference** - a conference conducted by the Contract Awarding Authority, held in order to allow Offerors and Vendors to ask questions about the proposed Contract and particularly the Contract specifications.
35. **Professional Services** - services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
36. **Proposal** - a complete, properly signed response to a Request for Proposals, which if accepted, would bind the Proposer to perform the resultant Contract.
37. **Proposal Guaranty** - a form of security assuring that the Proposer (a) will not withdraw the Proposal within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Proposer upon execution of a Contract.
38. **Proposer** - a person, firm or entity that submits a Proposal in response to a Request for Proposals. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
39. **Purchase Order (PO)** - an order placed by a City department for the purchase of Goods and/or Services written on the City's standard Purchase Order form and which, when accepted by the Vendor becomes a Contract. The Purchase Order is the Vendor's authority to deliver and invoice the City for Goods and/or Services specified, and the City's commitment to accept the Goods and/or Services for an agreed upon price.
40. **Purchasing Office** - refers to the Purchasing Office in the Financial and Administrative Services Department of the City.

41. **Quote** - a complete, properly signed response to a Request for Quotation, which if accepted, would bind the Offeror to perform the resultant Contract.
42. **Quoter** - a person, firm or entity that submits a Quote in response to a Request for Quotations. Any Quoter may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
43. **Request for Information (RFI)** - a solicitation used to obtain "state of the art" information on goods and/or services for informational purposes only.
44. **Request for Interest (RFINT)** - a solicitation used to identify interest in a City requirement.
45. **Request for Proposal (RFP)** - a solicitation used to acquire goods and/or services when a clearly defined scope of work or specification is not available.
46. **Request for Qualification Statements (RFQS)** - a solicitation used to acquire professional services as defined by the State of Texas Government Code, Chapter 2254.
47. **Request for Quotation (RFQ)** - a solicitation used to acquire goods and/or services with a total dollar value less than the State of Texas competitive bidding amount.
48. **Resident Bidder** - a person, firm, or entity whose principal place of business is in the State of Texas, including a Contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
49. **Response** - a complete signed reply to a Solicitation including, but not limited to a Request for Information and/or a Request for Interest.
50. **Response Guaranty** – a form of security assuring that the Offeror (a) will not withdraw the Offer within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Offeror upon execution of a Contract.
51. **Responsible** - refers to the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.
52. **Responsive** - meeting all the requirements of a Solicitation.
53. **Services** - include all work or labor performed for the City on an independent Contractor basis other than construction.
54. **Solicitation** - as applicable, includes Invitation for Bid, Invitation for Bid - Sale, Request for Proposal, Request for Qualification Statements, Request for Quotation, Request for Quotation – Sale, Request for Information, Request for Interest, or such other request as defined by the City.
55. **Subcontractor/Subconsultant** - a person, firm, or entity providing goods and/or services to a prime Contractor / Consultant to be used in the performance of the prime Contractor/Consultant's obligations under a Contract.

56. **Unbalanced Offer** - an Offer that is based on prices which are significantly less than cost for some items and significantly more than cost for others.
57. **Vendor** - a person, firm, or entity that sells Goods and/or Services.
58. **Woman-Owned Business** - is defined in chapter 2-9 of the City Code.

Appendix E: Conflict of Interest Questionnaire

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person 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 person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

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

OFFICE USE ONLY

Date Received

1 Name of person 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 the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

Adopted 06/29/2007

Appendix F: City of Austin Contract Monitoring Guide

(Note: This appendix is an excerpt of an original city document and does not include attachments. The original document may be obtained by contacting the City of Austin Purchasing Office at P.O. Box 1088, Austin, Texas, 78767.)



City of Austin

Contract Monitoring Guide

July 2008

Financial and Administrative Services Department
Corporate Internal Audit Office

For the City's purposes, in many cases, the monitoring staff discussed in this document may be the contract manager or administrator, but, if possible, having dedicated monitoring staff is optimal for those departments that have numerous contracts to monitor.

Development of the Contract Monitoring Guide was an assistance project carried out by the City's Corporate Internal Audit Office. As such, we are not providing assurance on the adequacy and effectiveness of the City's contract monitoring activities utilizing this guide at this time. Corporate Internal Audit has developed this tool in a strictly advisory capacity, and its use is optional. City management is ultimately responsible for implementing any policies and procedures or control activities regarding contract administration.

Note: This document was adapted from the U.S. Department of Housing's monitoring plan and guidance.

For more information on their monitoring practices, visit their website at:

<http://www.hud.gov/offices/cpd/affordablehousing/training/web/checkup/monitoring/index.cfm>

Contract Monitoring Guide

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Contract Monitoring Guide

Developing a Monitoring Plan

Effective monitoring is not a one-time event, but an ongoing process of planning, implementation, communication, and follow-up. As a result, contract monitoring activities are most effective when distributed throughout the year. Monitoring involves many people and requires detailed information, reports, meetings, and documentation. Not only must departments monitor organizations they have contracted with, but they should also conduct internal monitoring to ensure the contract management is being administered correctly. Many of the monitoring methods can be used for both types of monitoring activities.

To organize all of its monitoring efforts, a department should develop an annual monitoring plan that can serve as a readily accessible guide for the people and organizations involved. A written monitoring plan can facilitate the wisest use of limited resources.

Some contracts are funded by state or federal grants, or another outside source, and the monitoring activities are defined by the granting/funding entity. For those contracts where monitoring is dictated by an outside source, the process discussed in this guide should not supplant those other requirements, but may be used to supplement other monitoring activities, should the department determine to do so.

Elements of an Annual Monitoring Plan

An annual monitoring plan should articulate the department's strategy for conducting a thorough review to determine that all activities are meeting contractual requirements. The plan should be practical and allow the department to monitor successfully with the staff and time resources available.

The annual monitoring plan should address a number of areas:

- **Monitoring Objectives and Strategy.** The plan should identify the department's monitoring goals and strategies, highlighting areas to which staff should pay special attention during the monitoring year.
- **Ongoing Monitoring.** The plan should clearly identify the check-points that ensure a minimum level of review for all activities during the year and the scope and frequency of those reviews. This component should identify specific reports to be generated and reviews to be conducted, as well as establishing the frequency and timing of such reviews.
- **Monitoring Staff and Schedule.** The plan should include a schedule of when monitoring reviews will be performed and by whom. To the extent that staff other than the monitoring staff is responsible for any particular reviews, this should be articulated.

- In-Depth Monitoring. The plan should also identify the program areas and partners that will be subject to in-depth, on-site reviews during the coming monitoring year. (The process of selecting entities for on-site reviews is discussed as part of this subject.)
- Follow-Up Activities. The plan should detail procedures for communicating the results of reviews with internal and external (other organizations being monitored) staff and the methods for obtaining and incorporating their feedback.
- Coordination. Finally, the plan should describe the necessary coordination between department staff and the staff of other organizations. The plan should also describe the procedures that monitoring staff will follow when informing others about compliance problems.

Identify Monitoring Objectives & Develop a Strategy

An annual monitoring plan should identify the department's monitoring goals and strategies, highlighting areas that staff wants to pay special attention to during the monitoring year.

A department's monitoring efforts should be guided by its responsibilities of stewardship of public funds. These monitoring efforts may include:

- Identifying and tracking program and project results;
- Identifying technical assistance needs of contractors;
- Ensuring timely expenditure of funds;
- Documenting compliance with contract requirements;
- Preventing fraud and abuse; and
- Identifying innovative tools and techniques that support contract goals.

While all of these objectives are important, the emphasis on one or more of them may shift from year to year. For example, department monitoring staff may wish to give special attention to the technical assistance needs of contractors. Often, it will be necessary for departments to prioritize monitoring goals based on the availability of staff and resources.

Well-designed monitoring strategies help department staff use the appropriate level of effort to ensure performance and compliance in each focus area. In general, a comprehensive department monitoring strategy involves a two-pronged approach.

Ongoing Monitoring

A sufficient level of monitoring should be built into the department's service delivery system and be performed throughout the year. This will involve an examination of both routine and special reports from contractors. This information enables the monitor to assess performance and identify any compliance problems. The annual monitoring plan should identify the format and frequency with which contractors and/or department staff will prepare project or program-related reports.

For similar contracts, based on the data submitted, monitoring staff may generate internal reports on the status of those contracts. For example, information of similar contracts such as, number of citizens served, administrative costs, and/or direct services costs, could be tracked. If questions or concerns arise, monitoring staff should request additional information from the appropriate source.

In-depth Monitoring

In addition to the ongoing monitoring they perform for all activities, departments usually select certain contracts for in-depth monitoring each year. On-site monitoring involves a visit to the contractor to gather specific information and observe actual contract-related elements. On-site monitoring is especially appropriate if there is a strong likelihood of problems, or if a lengthy time period has elapsed since the last visit. During an on-site review, monitors evaluate overall performance and determine if compliance problems exist. Site visits often enable the monitor to identify aspects of the contract that is contributing to a problematic situation. Monitoring staff must prepare and distribute a report summarizing the results of the review, and describe any required follow-up activity.

By using this two-pronged approach, departments can define the scope of their monitoring based on the circumstances of individual contracts. The oversight performed as part of its ongoing monitoring can identify potential problems early, prevent compliance violations and help improve performance. On-site monitoring usually provides the most comprehensive review because it allows access to actual contractor records, staff, and clients.

Use Risk Factors to Set Priorities

With limited staff and time resources, most departments cannot perform on-site reviews of all contracts. Therefore, it is critical to carefully determine which contracts should receive the investment of staff time and attention required by an on-site review. A sound basis for making this decision is a risk assessment, in which department and contract management staff evaluate the likelihood that a contractor has violated applicable regulations, failed to comply with contract requirements, or is open to fraud and abuse. This evaluation may also focus on activities that carry performance risk, such as poor service delivery; a low number of citizens assisted, or slow expenditures.

More about how organizational and contract risk can be used to help develop the annual monitoring plan are discussed in the following areas:

- Risk factors to consider
- Assessing risk

Risk Factors to Consider

When developing annual monitoring plans, it is critical for departments to carefully determine which contracts warrant on-site reviews. The likelihood that a contractor will encounter compliance or performance problems can be based on an assessment of risk factors. This approach enables staff to identify "high-risk" areas where on-site monitoring, technical assistance, or intervention from City Management may be required.

To assess risk, department monitoring staff should look at three broad areas:

- **Compliance** - the likelihood that the contractor may violate applicable regulations, fail to comply with contract requirements, or be open to fraud and abuse.
- **Performance** - the likelihood that, even without actual compliance violations, the results of the activity may not be in proportion to the contract funds allocated. For example, performance risk might include poor service delivery, a low number of citizens assisted, or slow expenditures under a contract.
- **Environment** – the likelihood that contract compliance may be difficult to assess or to enforce because of the nature of the contract or due to particular status the vendor may have with special interest groups.

This risk analysis should be an objective assessment of risk based upon information from a variety of sources, including:

- Recent desk reviews;
- Input from contract administrator or other department staff;
- Information from other local sources;
- Results of previous on-site reviews and follow-up activities; and
- Contract information.

Department monitoring staff should develop a list of specific "signs" of risk, also called risk factors, to help assess risk.

To begin with, if applicable, all risk factors previously used by the department should be reviewed. If a previous set of indicators worked well, it may be appropriate to use them again. If performance or compliance problems were missed, or if there have

been changes in conditions, the factors may need to be revised or updated. There are several groups of risk factors that typically apply to contracts, including:

1. Previous Monitoring Results / Recurring monitoring findings;
 - Inability to clear outstanding issues;
 - Implementation of actions to correct past findings; and
 - Not monitored last year.
2. Recent Problems
 - Letters of complaint;
 - Inaccurate/ incomplete/ late project submissions or progress reports;
 - Audit findings or no audit;
 - Failure to meet agreed-upon schedules;
 - Failure to comply with contract provisions; and
 - Poor performance/compliance in other contracts administered by the department with this contractor.
3. Contract Specific Factors
 - Large number of services;
 - Inexperienced contractor; and
 - Multiple funding sources.
4. Contractor Performance/Capacity
 - No previous experience with a certain type of activity;
 - Past difficulties in carrying out a certain type of activity;
 - Low productivity or unusually high productivity without explanation;
 - Low-quality program documentation;
 - Lack of progress in spending funds;
 - Staff turnover/ inexperienced staff;
 - Change in contractor leadership;
 - Significant change in goals and direction of contractor; and
 - Poor quality business plan.
5. Contract Complexity
 - Large amount of funds awarded;
 - Large number of products/services;
 - Use of several sub-contractors;
 - Projects involving multiple transactions and several parties; and
 - Contracts that add a number of conditions or preferences.
6. Environment
 - Contractor relationships with special interest groups that may limit the **department's ability** to enforce contract compliance; and
 - Pressure or influence to ignore or make exceptions for non-compliance or problems with contractor.

7. Other Contractor Information

- Board member roster and experience;
- Organization chart;
- Accreditation;
- Tax-exempt status;
- Tax returns; and
- Annual financial statements/financial audits.

Assessing Risk

Once a list of specific risk factors has been determined, department monitoring staff should decide which (if any) factors carry greater or lesser weight relative to the others. For example, is staff turnover at a contractor comparatively equal to a large amount of funds awarded?

Based on a consensus, weights should be assigned to each of the risk factors in the list. The weight assigned to any particular factor may change from year to year, or a risk factor may disappear entirely from the list. The weighted list should then be completed for each contract subject to monitoring by the department, using a scale from 1 (low risk) to 5 (high risk) to assign a risk rating for the contractor on each factor. Using the risk assessment template available in appendix A as a guide can help structure the risk assessment.

The steps for using such a risk rating system are:

- Assign a risk rating to each risk factor.
- Multiply the risk rating by the factor's weight to get a factor score.
- Add the factor scores for all risk factors to get a total score for each organization.
- Rank the organizations by their total scores.

After selecting the contractors to receive on-site reviews, monitoring staff should then identify the contract areas to examine during the review. Indicators for which the organization was rated as a high risk can be used to identify areas to review.

- Contractors that typically carry out several types of activities will generally need a thorough review of most, if not all, aspects of the contract.
- In contrast, an experienced entity that is only providing a single service, and has had no trouble since its last review, may only need a basic review to confirm that it is continuing to comply with contract requirements.

Risk Analysis Example

A department contracts with two contractors for the same service. While both contractors had satisfactory compliance with contract requirements during the past year, both have recently lost key staff people. However, contractor #1 has already identified a highly skilled replacement, while contractor #2 does not yet have a job description available.

The risk analysis might be:

	Staff Turnover	Weight	Risk Rating	Factor Score
Contractor #1		20 points	3	60
Contractor #2		20 points	5	100

- If staff turnover was the only pertinent risk factor, Contractor #2 would be a higher monitoring priority.

Ongoing Monitoring of Contracts

Ongoing monitoring should occur for all contracts each year. Basic ongoing monitoring involves conducting periodic reviews of activities to:

- Ensure contract compliance; and
- Track performance.

Monitoring requirements may differ based upon how a contract is funded. If the contract is funded with federal or state grants, then the department is almost always required to perform specified monitoring as outlined in the grant guidelines. If the contract is funded from the general fund or another source, then the monitoring requirements might not be as rigorous.

For all contractors:

- The contractor should be required to submit periodic progress reports to department staff about its activities.
- **The department's annual monitoring plan** should identify the format and frequency of contract-related reports.
- Department monitoring staff should follow the progress of the contractor to ensure that deadlines are being met and that funds are being dispersed according to contract terms.

General Data

Based on the data submitted, department monitoring staff should generate regular reports on the status of contracted activities, as well as contractor data such as the number of citizens assisted and the on-going expenditure of contract funds. If

questions or concerns arise, department monitoring staff should call or request additional documentation from contractors.

Desk Reviews

Desk reviews are an important part of ongoing monitoring, and are performed **throughout the year at the department's offices** by department monitoring staff.

If staffing levels do not allow for monthly desk reviews for every contract, an assessment should be made to determine which contracts need monthly desk reviews and which ones can have desk reviews less often.

Desk reviews typically encompass an examination of both routine and special reports provided by:

- Contractors
- Sub-contractors
- Other department staff

This information enables the monitor to assess performance and identify any compliance problems. For example, monitors may find valuable information in a **contractor's audit conducted by an independent auditor**. Using the desk review checklist available in appendix B as a guide can help structure the review.

Monitoring Staff & Schedule

Once departments have used risk factors or other methods to identify contracts that will undergo more extensive on-site reviews, staff members must be assigned and the reviews scheduled. Every effort should be made to economize on time and resources without limiting the scope of the review.

In order to do so, the following factors should be considered:

Risk Factor Score: It is important to schedule on-site visits to contractors that received high risk scores before visits to those receiving lower scores.

Experience of the Organization: When scheduling on-site reviews of a new contractor, the monitoring visit should allow the organization time to get their contract-related activities up and running, but not be so late as to allow serious problems to develop.

Staff Relationships: Typically, department monitoring staff is assigned based on the contractors with which they have experience and technical knowledge. In cases where a new perspective is warranted, an experienced staff person with no previous relationship to the organization or program may add value to the monitoring process.

In-depth Monitoring & On-site Reviews

In-depth monitoring seeks to closely examine whether performance or compliance problems exist and identify the aspects of the contractor performance that are contributing to the adverse situation. The department may use a risk factor analysis or alternative method to target certain contractors for in-depth monitoring each year.

In-depth reviews include all the activities of a desk review, but add an on-site visit to the contractor to gather specific information and observe actual contract-related elements. Using the on-site monitoring checklist available in appendix C can help structure the on-site review.

During an on-site review, monitoring staff:

- Identify aspects of the contract where the contractor is performing well and poorly;
- Assess compliance with contract requirements;
- Determine whether record keeping is adequate;
- Prepare a report summarizing the results of the review; and
- Describe any required follow-up activity.

Scheduling and Notification

Department monitoring staff should contact the entity being monitored at least two weeks prior to the planned date of the on-site visit in order to schedule the monitoring review. Once the entity has been contacted and the actual dates are scheduled, monitoring staff should send a letter to the entity that confirms:

- The date and time of the visit;
- The names of the department staff conducting the site visit;
- The elements of the contract that will be monitored;
- The files and records that will be reviewed; and
- The contractor personnel who should be available for interviews.

File Review

Before conducting the on-site visit, department monitoring staff should review the contractor's:

- Contract;
- Recent status reports;
- Financial reports;
- Any previous correspondence; and
- Reports from past on-site monitoring reviews.

These items should be reviewed to:

- Assess progress;
- Examine changes in activities;
- Identify existing or potential problems; and
- Determine the elements of the contract to be given priority during the on-site review.

Site Visit

Department monitoring staff should gather information from a variety of sources and complete the following steps during the on-site review.

1. Conduct an initial meeting with the executive director, program director, or other official to explain the purpose and schedule for the review;
2. Interview members of the contractor's staff to gather information about activities and performance;
3. Review additional materials provided by the contractor to obtain more detailed information about the program or project;
4. Examine a sampling of files to verify the existence of required documentation and the accuracy of reports being sent to the department;
5. Visit a sampling of contractor sites, if applicable, to confirm information contained in contract files; this may also include interviewing recipients of services;
6. Meet with sub-contractors (if applicable); and
7. Conduct an exit conference with appropriate senior staff to discuss the preliminary conclusions of the review and identify any follow-up actions necessary.

Completion of the Site Visit

After visiting the project site, department monitoring staff should complete the following steps:

1. Properly record the results of the review.
2. Fill out all applicable checklists and document with clear notes.
3. Attach to the checklists all documentation required to support conclusions from the review.

4. Place the checklists and documentation in the department monitoring file for that contractor.
5. Meet with department staff to review the findings of the monitoring visit and agree on a course of action.

Responsibility can then be assigned for following up on the review, depending on the nature of the findings.

Follow-up Activities

The Monitoring Report

After an in-depth review, department monitoring staff must prepare and send to the contractors a report describing the results of the review. It is important that the monitoring report include the reasons underlying all conclusions.

A comprehensive follow-up report should include the following elements:

- The contract number;
- Names of the department staff person(s) who performed the review;
- Elements of the contract examined during the monitoring review;
- Conclusions for each element that was monitored and the facts supporting each conclusion;
- A description of areas showing strong performance and areas in need of improvement;
- Specific actions that the contractor must take to correct non-compliance or weaknesses, and the deadlines for completing these corrective actions;
- The method for communicating the results of the corrective actions; and
- Recommended actions the entity could take to improve overall performance.

Coordination

Effective monitoring, rather than being a one-time event, is an on-going process of planning, implementation, communication, and follow-up. As a result, a department should plan on contract monitoring activities being distributed throughout its program year.

Because the monitoring process involves people from inside and outside the department, as well as a variety of reports, meetings, and documentation, departments should develop and maintain the relationships necessary to coordinate the monitoring process throughout the year.

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