



# Solicitation COVER SHEET

# RFP

## IDENTIFICATION

Number	RFP 2024DD-02
Title	Art in Public Spaces
Summary	The City of Kyle Arts and Cultural Board is seeking professional services for design and installation of a piece of Artwork in the City of Kyle, TX.
Type	Request for Proposals (RFP)

## AUTHORIZED CONTACT PERSONS

Primary	Dan Dellemonache, Purchasing Supervisor; (512) 779-3874; KylePurchasing@cityofkyle.com
Notes	See Solicitation Instructions, 2.1 Authorized Contact Persons.

## IMPORTANT DATES

### OFFERS DUE

Date and Time	6/12/2024 at 3:00 pm Local Time
Notes	See Solicitation Instructions, 4 Offer Submission.

### QUESTIONS DUE

Date and Time	5/29/2024 at 5:00 pm Local Time
Submission Method	Email Only
Notes	See Solicitation Instructions, 2.2 Questions.

### PRE-OFFER CONFERENCE

Conference (Yes/No)	No
Mandatory (Yes/No)	N/A
Date and Time	N/A

Location	N/A
Notes	N/A

**PUBLISHED**

Date	5/2/2024
Available Online	<a href="https://www.cityofkyle.com/rfps">https://www.cityofkyle.com/rfps</a>
Available Hardcopy	100 W. Center Street, Kyle, TX 78640

**SOLICITATION DOCUMENTS**

Document name	Pages	Date
<b><u>Solicitation Packet – RFP 2024DD-02 Includes the following:</u></b>		
<b><u>Solicitation Cover Sheet</u></b>	2	5/2/2024
<b><u>Solicitation Instructions</u></b>	6	5/2/2024
<b><u>Terms and Conditions</u></b>	5	5/2/2024
<b><u>Insurance Requirements</u></b>	3	5/2/2024
<b><u>Scope of Work</u></b>	2	5/2/2024
<b><u>Proposed Art Locations</u></b>	1	5/2/2024
<b><u>Offer and Certifications – RFP 2024DD-02 – Complete and return</u></b>	4	5/2/2024

**When submitting a sealed Offer, use the address shown below:**

Submission Address
City of Kyle – Attn. Daniel Dellemonache
Purchasing Office-Response Enclosed for Solicitation # RFP 2024DD-02
100 W. Center Street
Kyle, Texas 78640

**NOTE: Offers must be received prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives to the time and date indicated. Arrival at a mail terminal, or post office box will not constitute the Offer arriving on time.**

**All Offers that are not submitted in a sealed envelope or container will not be considered.**

**SUBMIT 1 ORIGINAL AND 1 ELECTRONIC COPY (USB FLASH DRIVE) OF YOUR RESPONSE**



# Solicitation INSTRUCTIONS

# RFP

## 1 REQUEST FOR PROPOSALS

- 1.1 Invitation.** The City of Kyle invites all Responsible Offerors to submit Proposals to provide the services described in this Solicitation.
- 1.2 Documents.** This Request for Proposals (“RFP” or “Solicitation”) is composed of all documents listed in the Attachments section of the Solicitation Cover Sheet.
- 1.3 Process.** The process described in this RFP is the Competitive Sealed Proposals process. This process is procedurally compliant with the competitive proposal processes prescribed by Texas Local Government Code Ch. 252 and Ch. 271.
- 1.4 Changes.** The City may change or revise any of the contents of this Solicitation through the issuance of a written Addendum. Any Addenda issued will be added to the Attachments section of the Solicitation Cover Sheet. The Version number displayed in the Solicitation Cover Sheet will indicate the number of Addenda issued. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation, or change. Oral explanations or instructions given before the award of the Contract are not binding.
- 1.5 Review of Documents.** Offerors shall review the entire Solicitation, as revised. Offerors shall notify the Authorized Contact Person(s) listed on the Solicitation Cover Sheet in writing of any omissions, ambiguities, inconsistencies or errors in the Solicitation prior to the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. Offerors shall also notify the City of any Solicitation contents the Offeror believes may be unreasonably restrictive.
- 1.6 Cancellation.** The City reserves the right to cancel this Solicitation at any time for any reason and to resolicit the goods and services included in this Solicitation.

## 2 COMMUNICATIONS AND MEETINGS

- 2.1 Authorized Contact Persons.** The names and contact information for the authorized contact persons for this Solicitation are displayed in the Solicitation Cover Sheet.
- 2.2 Questions.** Offerors shall submit any questions concerning this Solicitation in writing via e-mail to the Authorized Contact Persons displayed on the Solicitation Cover Sheet. The City will respond to all questions received by the Questions Due Date and Time displayed on the Solicitation Cover Sheet. The City will publish one or more Addenda displaying all timely received questions and the City’s responses to each for any information not already contained in the solicitation.
- 2.3 Pre-Offer Conferences.** The City may hold one or more pre-offer conferences to review the Solicitation and to receive verbal questions. The Solicitation Cover Sheet will display if a Pre-Offer Conference is being held and if attendance at this meeting is mandatory. If a Pre-Offer Conference is planned, the date, location, time, and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Pre-Offer Conference will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing. (See Solicitation Instructions, 2.2 Questions.)

**2.4 Site Visits.** The City may hold one or more site visits to allow prospective Offerors to inspect the location(s) where work under any resulting contract will be performed and to receive verbal questions. The Solicitation Cover Sheet will display if a Site Visit is being held and if attendance at this meeting is mandatory. If a Site Visit is planned, the date, location, time, and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Site Visit will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing. (See Solicitation Instructions, 3.2 Questions.)

### 3 OFFER PREPARATION

**3.1 Offer Submittals.** Offerors intending to respond to this Solicitation shall download and complete each of the Submittal documents listed in the Solicitation Cover Sheet. Submittal documents will include additional Solicitation instructions specific to its contents. Offerors will complete each Submittal in accordance with the instructions in the submittal. At a minimum, submittals will include a Price Offer, a Technical Offer, and an Offer and Certifications submittal.

**3.2 Offer Acceptance Period.** All Offers are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal.

**3.3 Proprietary and Confidential Information.** All Offers received and opened by the City are subject to the Texas Government Code, Ch. 552, and will be made available to the public. Offerors seeking to keep any portions of their Offer confidential shall mark each such portion as "Proprietary." The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The City may request a review and determination from the Attorney General's Office of the State of Texas, of any Proposal contents marked as "Proprietary." A copyright notice or symbol is insufficient to identify proprietary or confidential information.

**3.4 Cost of Offer Preparation and Participation.** Offerors are responsible for all costs related to the preparation of their Offer and incurred while participating in this Solicitation process.

### 4 OFFER SUBMISSION

**4.1 Hardcopies.** All Offers in response to this solicitation shall be submitted by hand, mailed, or courier service to 100 W. Center Street, Kyle, Texas 78640. For any questions or problems submitting the offer, please contact the authorized contact listed on the Cover Sheet.

**4.2 Due Date and Time for Offers.** Offers in response to this Solicitation shall be submitted via section 4.1 by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet.

**4.3 Withdrawing Offers.** Offers submitted in response to this Solicitation may be withdrawn, revised, and resubmitted any time prior to the Solicitation's Due Date and Time. Withdrawn offers may be resubmitted, with or without modifications, up to the Solicitation's Due Date and Time.

**4.4 Late Offers.** Offers submitted past the Solicitation's Due Date and Time will not be accepted.

### 5 OFFER EVALUATION

**5.1 Basis of Competition.** The City may compare Offers based on groups or categories and will choose the basis of competition that best meets the City's needs for the resulting contracts. The basis of competition for each RFP will be described in section 10, Evaluation of Offers below.

**5.2 Minimum Responsiveness.** Proposals are Minimally Responsive when they include all of the Submittals listed in this Solicitation, completed and with sufficient detail in each to evaluate the Proposal in accordance with the

Solicitation's Instructions. Proposals that are not Minimally Responsive may be deemed non-responsive and rejected.

- 5.3 Responsibility.** An Offeror is responsible if they have the financial and practical ability, resources, expertise, past performance, and positive compliance history with all City ordinances. An Offer may be rejected if an Offeror is determined to not be responsible.
- 5.4 Clarifications.** Any time after the opening of Proposals, the City may contact Offerors to ask questions about their Proposal's contents in order to better understand these contents as-written. Responses to clarification questions, whether done verbally or submitted in writing, do not change the Proposal's contents. Clarifications are not to be confused with Discussions as described herein.
- 5.5 Evaluation.** Proposals that are Minimally Responsive will be evaluated based on the Evaluation Factors listed in Section 10.1 of the Solicitation Instructions. Evaluation Factors correspond to their specified Submittals and shall indicate their respective weighting next to each. Proposal submittals not identified as Evaluation Factors will be evaluated on a pass / fail basis in accordance with the Solicitation's Instructions and any further instructions within each Solicitation. Although minimum responses are required in all Submittals, the Submittals identified as Evaluation Factors will be used to differentiate the Proposals and to identify which Proposal(s) represent the Best Value to the City. The City's evaluation may be made without Clarifications or Discussions with Offerors. Proposals should, therefore, include the Offeror's most favorable terms.
- 5.6 Interviews/Presentations.** The City may require that one or more Offeror submitting the highest rated Proposals participate in interviews and/or presentations.

## 6 CONTRACT AWARD AND EXECUTION

- 6.1 Award Determination.** City staff will recommend Contract award to the Offeror(s) submitting the highest rated Proposal(s) based on the Evaluation Factors set forth in this Solicitation. The Award Determination will be published and notice will be sent to all Offerors subscribed to the Solicitation.
- 6.2 Multiple Awards.** If the City determines that multiple contracts are needed, the City will award one or more additional contracts to the Offeror(s) submitting the next highest rated Proposal(s).
- 6.3 Contract Execution.** Contracts within the City Manager's authority will be awarded and executed simultaneously. Contracts above the City Manager's authority will be executed following their authorization by the Kyle City Council.

## 7 ADMINISTRATIVE MATTERS

- 7.1 Solicitation File.** All documents included in this Solicitation, and all timely received Offers in response to this Solicitation, except for Offer contents deemed by Offerors to be proprietary and confidential, will be available for public inspections upon the execution of the contract.
- 7.2 Reservations.** The City reserves the right to: (i) specify approximate quantities in the Solicitation; (ii) extend the Solicitation due date and time; (iii) add additional terms or modify existing terms in the Solicitation; (iv) reject an Offer containing exceptions, additions, qualifications or conditions not called for in the Solicitation; (v) reject an Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vi) reject an Offer that contains fraudulent information; (vii) reject an Offer that has material omissions; (viii) reject any or all Offers; (ix) procure any goods or services included in this Solicitation by other means; (x) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; (xi) reject an Offer if prices in the Offer are unbalanced (some prices are significantly high and other prices are significantly low) and/or (xii) waive any minor informality in any Offer or procedure so long as the deviation does not affect the competitiveness of the Solicitation process.

an Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vi) reject an Offer that contains fraudulent information; (vii) reject an Offer that has material omissions; (viii) reject any or all Offers; (ix) procure any goods or services included in this Solicitation by other means; (x) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; (xi) reject an Offer if prices in the Offer are unbalanced (some prices are significantly high and other prices are significantly low) and/or (xii) waive any minor informality in any Offer or procedure so long as the deviation does not affect the competitiveness of the Solicitation process.

**7.3 Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 “Certificate of Interested Parties” as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the “Certificate of Interested Parties” to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the Offerors and local officials remain in place. Link to Texas Ethics Commission Form 1295 process and procedures below: <https://www.ethics.state.tx.us/File/>

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

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

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

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

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

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

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

“**Request for Proposal**” means all documents utilized for soliciting proposals.

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

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

“**Solicitation**” means this Request for Qualification or RFQ.

## 9 PROPOSAL SUBMITTALS.

**9.1 Letter of Interest.** Provide a Letter of Interest that summarizes your RFP response and confirms you will comply with the requirements, provisions, terms, and conditions specified in this solicitation. The Executive Summary should be in the form of a standard business letter on official business letterhead and signed by an authorized

representative of Offeror. Include the complete name and address of your firm, telephone number, and email address of the person the City of Kyle should contact regarding your firm's response.

**9.2 Authorized Negotiator:** Include name, address, email, and telephone number of a person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

**9.3 Concept (50 points).**

**9.3.1** Artistic merit of the design and ability as evidenced in images submitted.

**9.3.2** Originality of the design.

**9.3.3** Concept promotes themes stated in project scope and goals.

**9.3.4** Appropriateness of the design for the location, including the scale, content, color, and design in relation to the site.

**9.4 Price Proposal (20 points).** Whichever Offeror offers the City the most competitive price will be awarded the maximum amount of points. Remaining points will be distributed on a pro-rated basis.

**9.4.1** Existing artwork for purchase or optional general design concept for new sculpture(s).

**9.4.2** The Artist(s) shall provide the purchase price for existing artwork or the proposed budget amount for new artwork, if proposed.

**9.4.3** Pricing should be all inclusive and itemized in terms of artwork creation, delivery, installation, and travel. The City is amenable to some flexibility on this item.

**9.5 Offeror Experience (20 points).** Offerors shall provide a description of their qualifications to assume the responsibilities required for this opportunity, including:

**9.5.1 Artist's qualifications.**

**9.5.2 Previous experience in the development and installation of similar art projects.**

**9.5.3 Proven ability to work on similar projects.**

**9.5.4 Experience working with materials suited or adaptable to an outdoor environment.**

**9.5.5 Three references who can speak to the artist's experience and past public art projects.**

**9.5.5.1** Names

**9.5.5.2** Professional titles

9.5.5.3 Phone numbers

9.5.5.4 Email addresses

**9.6 Completeness of Proposal (10 points).**

9.6.1 Demonstrated ability to meet project deadlines and to produce work in a timely and professional manner.

9.6.2 Quality and completeness of the submission

**10 EVALUATION OF OFFERS**

**10.1 Evaluation Criteria**

RFP Evaluation Factors	Maximum Points
Concept	50
Price	20
Offeror Experience	20
Completeness of Proposal	10
<b>Total</b>	<b>Up to 100</b>

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

**10.3 Selection Process.** Submissions are expected to be reviewed and evaluated by the Arts and Cultural Board at the Board’s June 2024 meeting. The finalist will be notified in accordance with the timeline provided below. For artwork proposed at the Kyle Public Library or a city-owned park, the proposal may also be considered by the Library Board or Parks Board for approval. Once a finalist is selected, the contract will be considered by the City Council for final approval.





# SERVICE AGREEMENT TERMS AND CONDITIONS

# RFP

1. **Scope.** Contractor will provide Art in Public Spaces (“Services”) in accordance with the attached Scope of Work, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
  
2. **Term.**
  - (A) The Term of this Agreement is 1 year beginning on the date provided in the Notice to Proceed from the Contract Administrator or the City’s Procurement Division. The Parties may mutually extend the term of this Agreement for up to four additional one-year periods (“Option Period(s)”), provided, the Parties do so in writing prior to the expiration of the original term or the then-current Option Period.
  
  - (B) At the end of the Term of this Agreement or the final Option Period, the Agreement may, upon written agreement of the Parties, continue on a month-to-month basis for up to six months with compensation set based on the amount listed in the RFP submittal for the Term or the final Option Period. During the month-to-month term, either Party may terminate the Agreement upon 30 days’ written notice to the other Party.
  
3. **Compensation and Payment.** This Agreement is for an amount not to exceed the RFP submittal, subject to approved extensions and changes. Payment will be made for Services performed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the Bid/Pricing Schedule, submitted in the RFP, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City’s discretion, be allocated for use in the next Option Period.

Invoices must be mailed to the following address with a copy provided to the Contract Administrator:

City of Kyle  
Attn: Accounts Payable  
100 W. Center Street  
Kyle, Texas 78640

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City’s Contract Administrator for this Agreement is as follows:

Amber  
Schmeits  
Assistant City Manager  
[ASchmeits@cityofkyle.com](mailto:ASchmeits@cityofkyle.com)

5. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance (“COI”), as proof of the required insurance coverages, to the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days’ advance written notice of

cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Contract, further, must require that any subcontractors provide a COI to Contractor evidencing the same required insurance coverages, including all required endorsements.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

**6. Inspection and Acceptance.** City may inspect all Services and products supplied before acceptance. Any Services or products that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City. If immediate correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any costs incurred, including additional costs over the item's bid/proposal price, must be paid by the Contractor within 30 days of receipt of City's invoice.

**7. Warranty.**

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

(C) Contractor warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services. Contractor will correctly reperform any substandard Services at no cost to the City if the City notifies Contractor within six months after the completion of the substandard Services.

**8. Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30<sup>th</sup> annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

**9. Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.

10. **Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or in an Attachment to this Agreement, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work. The City may, at the City's sole discretion, choose not to accept Services performed by a subcontractor that was not approved in accordance with this paragraph.
11. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
12. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
13. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
14. **Notice.** Any notice required under this Agreement must be given by hand delivery, or certified mail, postage prepaid, and is deemed received on the day hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

**IF TO CITY:**

City of Kyle  
Attn: Amber Schmeits  
Assistant City Manager  
100 W. Center Street, Kyle TX 78640

**IF TO CONTRACTOR:**

Company Name  
Attn: Name  
Title  
Address  
Phone:

15. ***Contractor shall fully indemnify, hold harmless and defend the City of Kyle and its officers, employees and agents ("Indemnitees") from an against any and all liability, loss, claims, demands, suits, and causes of action of whatever nature, character, or description on account of personal injuries, property loss, or damage, or any other kind of injury, loss, or damage, including all expenses of litigation, court costs, attorneys' fees and expert witness fees, which arise out of or in connection with a breach of this Agreement or the performance of this Agreement by the Contractor or result from the***

***negligent act, omission, misconduct, or fault of the Contractor or its employees or agents. Contractor must, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend all actions based thereon with counsel satisfactory to the City Attorney, and pay all charges of attorneys and all other costs and expenses of any kind arising or resulting from any said liability, damage, loss, claims, demands, suits, or actions. The indemnification obligations of Contractor under this section shall survive the expiration or earlier termination of this Agreement.***

**16. Termination.**

(A) The City may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The City must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City may terminate this Agreement immediately thereafter.

(B) Alternatively, the City may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

**17. Owner's Manual and Preventative Maintenance.** Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such equipment and prior to receipt of the final payment by the City.

**18. Limitation of Liability.** The City's maximum liability under this Agreement is limited to the total amount of compensation listed in Section 3 of this Agreement. In no event shall the City be liable for incidental, consequential or special damages.

**19. Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager, or designee, first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

**20. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.

**21. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

A. this Agreement (excluding attachments and exhibits);

- B. its attachments;
- C. the bid/proposal solicitation document including any addenda (Exhibit 1); then,
- D. the Contractor's bid/proposal response (Exhibit 2).

- 22. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 23. Governing Law.** Contractor agrees to comply with all applicable laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Hays County, Texas.
- 24. Verification of Compliance with Laws.**
- (A) For purposes of compliance with Chapter 2271.002 of the Texas Government Code, and subject to applicable Federal law, Contractor verifies that it does not boycott Israel and will not boycott Israel while this Agreement is in effect. The term "boycott Israel" as used in this paragraph shall have the meaning assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.
  - (B) For purposes of compliance with Section 2274.002, Texas Government Code, and subject to applicable Federal law, Contractor verifies that it does not boycott energy companies and will not boycott energy companies while this Agreement is in effect. The phrase "Boycott Energy Companies" as used in this paragraph shall have the meaning assigned to the phrase "Boycott Energy Company" in Section 809.001 of the Texas Government Code, as amended.
  - (C) For purposes of compliance with Section 2274.002, Texas Government Code, and subject to applicable Federal law, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association while this Agreement is in effect. The phrase "Discriminates Against a Firearm Entity or Firearm Trade Association" as used in this paragraph shall have the meaning assigned to the phrase "Discriminate Against a Firearm Entity or Firearm Trade Association" in Section 2274.001(3) of the Texas Government Code, as amended.
- 25. Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 26. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.



## INSURANCE REQUIREMENTS

# RFP

1.1 Contractor must not commence work under this agreement until all required insurance has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.

1.2 Contractor must furnish to the City Attorney a copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City’s City Attorney. **The City must be listed as an additional insured on the General liability and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
<b>30-written day notice of cancellation, required on all certificates or by applicable policy endorsements</b>	<b>Bodily Injury and Property Damage</b> Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS’ COMPENSATION	Statutory Requirements
EMPLOYER’S LIABILITY	\$500,000/\$500,000/\$500,000
PROFESSIONAL LIABILITY	\$1,000,000 Per Claim

(Errors and Omissions)	If claims made policy, retro date must be prior to inception of agreement, have 3-year reporting period provisions and identify any limitations regarding who is insured.
------------------------	---

1.3 In the event of accidents of any kind related to this agreement, Contractor must furnish the City with copies of all reports of any accidents within 10 days of the accident.

1.4 Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, with the exception of professional liability, which may be on a per claims made basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII. **Contractor is required to provide City with renewal Certificates.**

1.5 Contractor is required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Kyle  
Attn: City Attorney  
1700 Kohlers Crossing  
Kyle, TX 78640

1.6 **Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**

1.6.1 List the City and its officers, officials, employees and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City with the exception of the professional liability/Errors & Omissions policy;

1.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of Kyle where the City is an additional insured shown on the policy;

- 1.6.3 Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 1.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- 1.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- 1.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.
- 1.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Kyle for liability arising out of operations under this agreement.
- 1.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.





## SCOPE OF WORK

# RFP



### **Call to Artists**

#### **Request for Proposals for Art in Public Spaces**

CITY OF KYLE

Kyle, Texas

The City of Kyle Arts and Cultural Board is seeking professional services for design and installation of a piece of artwork in the City of Kyle, TX.

### **Background**

The City of Kyle Arts and Cultural Board has a strong desire to develop a program for Public Arts. To spearhead this program, the Board is seeking a unique, one-of-a-kind piece of artwork to be placed at a location that is to be determined by the artist. The Board is looking for a unique, one-of-a-kind, large-scale piece of artwork such as a sculpture or monument that is appropriate for its proposed placement. The Board's vision is an art piece that is contemporary in style and visually striking. If moving parts are included, the Board's visions would be for these parts to utilize a natural energy source such as wind or solar power. Texas-based artists and artist-led teams are invited to submit proposals to be considered for design, fabrication, and installation of a unique art piece that meets the criteria outlined in this Request For Proposals (RFP).

### **Project Location & Artwork Specifications**

#### ***General Specifications***

- The artwork must be durable and have no points or sharp edges that can pose a hazard to pedestrians.
- The artwork must be made of durable materials suitable for outdoors that can withstand Texas summer heat.
- The artwork shall be mounted on a concrete pad unless an alternative is provided within the design concept or recommended by the artist.



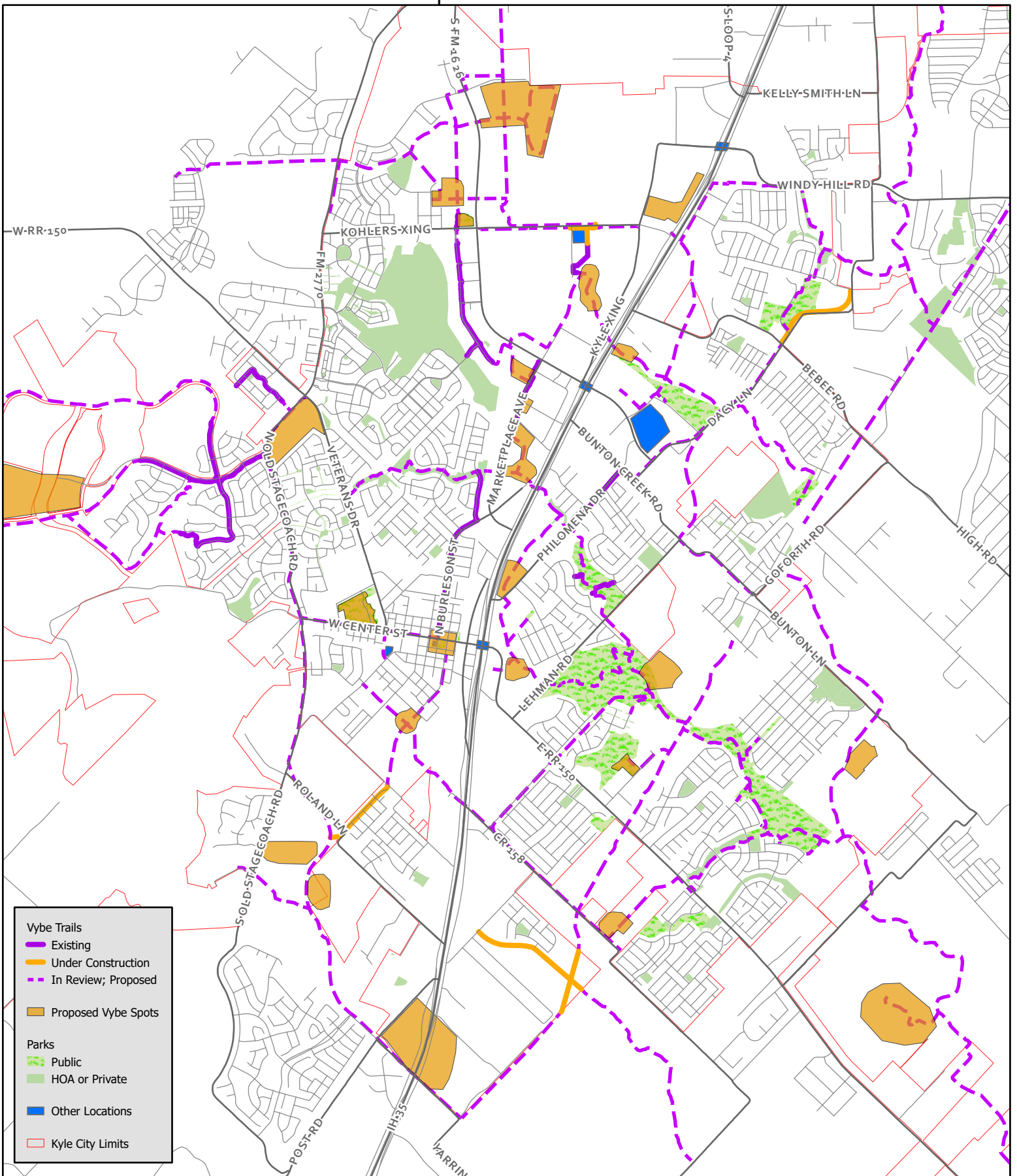
## SCOPE OF WORK

# RFP

### *Location*

- The location shall be determined by the artist. A map with potential locations is provided as an exhibit to this RFP as a point of reference only.
- If the selected location is not on City-owned property, it shall be the artist's responsibility to receive written permission from the property owner and coordinate any agreements required by the City. If selected, the City will assist as necessary.

# Proposed Art Locations



## Potential Areas for Art in Public Places

1. City Parks
2. Library
3. Vybe Spots
4. 104 S Burleson property
5. Public Safety Center
6. Roundabouts
7. 'Park' in front of Texican/La Ola
8. Bridges
9. Train Depot
10. Hospital and corner of Kyle Pkwy/Seton Pkwy



## OFFER AND CERTIFICATIONS

# RFP

OFFER SHEET

SOLICITATION RFP 2024DD-02

**By signing below, I represent and certify that I am submitting a binding Offer and am authorized to bind the Offeror to fully comply with the Solicitation to which I submit this Offer. I acknowledge that I have received, read, and understood the entire solicitation document packet sections, including any addenda issued, and agree to be bound by its terms.**

**By submitting this Offer, I certify the following statements are true now and will be for the term of any resulting contract:**

1. That my firm and its principals (collectively “we” or “us”) are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.
2. That we have not in any way directly or indirectly:
  - a. colluded, conspired, or agreed with any other person, firm, corporation, Proposer or potential Proposer to the amount of this Proposal or the terms or conditions of this Proposal.
  - b. paid or agreed to pay any other person, firm, corporation Proposer or potential Proposer any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Proposal or the Proposal of any other Proposer.
3. That we have not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, we have not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Proposers, so as to have an unfair advantage over other Proposers, provided that we may have provided relevant product or process information to a consultant in the normal course of its business.
4. That we have not participated in the evaluation of Proposals or other decision making process for this Solicitation and, if we are awarded a Contract, no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with us, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that we may have provided relevant product or process information to a consultant in the normal course of its business.
5. In accordance with Chapter 176 of the Texas Local Government Code, that we:
  - a. do not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income

- b. have not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and
  - c. do not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.
- 6. Pursuant to Texas Government Code §2271.002, we verify that we do not boycott Israel and will not boycott Israel during the term of the resulting contract.
- 7. Pursuant to Texas Government Code Chapter 2275, we verify that if we have remote or direct access to communication infrastructure systems, cybersecurity systems, the electric grid, hazardous waste treatment systems, or water treatment facilities as a result of any City contract, that we are not owned by or the majority of stock or other ownership interest of our firm is not held or controlled by:
  - a. individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
  - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
  - c. headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.
- 8. Pursuant to Texas Government Code Chapter 2274, we verify that, if we have 10 or more full-time employees: (1) we do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the resulting contract against a firearm entity or firearm trade association.
- 9. Pursuant to Texas Government Code Chapter 2276, we certify that, if we have 10 or more full-time employees: (1) we do not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

City Vendor Registration No.: \_\_\_\_\_

Printed Name of Officer or Authorized Representative: \_\_\_\_\_

Title of Officer or Authorized Representative: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature of Officer or Authorized Representative: \_\_\_\_\_ X

Date: \_\_\_\_\_

### ACCEPTANCE BY THE CITY

**For City Staff only.** The City will complete and sign this section only if the City accepts the Offer.

Contract Number: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Printed Name of City's Authorized Procurement Staff: \_\_\_\_\_

Title of City's Authorized Procurement Staff: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

**ACCEPTANCE:** The Offer is hereby accepted. Contractor is now bound to sell the materials or services specified in the Contract.

**NONRESIDENT BIDDER PROVISIONS**

**Instruction.** Offerors shall read and check the applicable boxes in response to both certifications below.

---

**OFFEROR HEREBY CERTIFIES**

(Check One)

**YES**  **NO** Offeror **IS (YES)** or **IS NOT (NO)** a Non-resident Bidder in accordance with Texas Government Code Ch. 2252.002.

If "YES" is checked, provide the name of the State where Nonresident Bidder's Principle Place of Business is located.

**(State)**

**OFFEROR HEREBY CERTIFIES**

(Check One)

**YES**  **NO** Offer **INCLUDES (YES)** or **DOES NOT INCLUDE (NO)** Equipment, Supplies and/or Materials in accordance with Texas Government Code Ch. 2252.002

If "YES" is checked, provide the name of the State where majority of the Equipment, Supplies and/or Materials were manufactured.

**(State)**

---

**Reciprocal Preference.** In accordance with Texas Government Code Ch. 2252.002 (see below), the City must apply a reciprocal preference to a Nonresident Bidder's offer, consistent with the applicable preference granted by the state of the Nonresident Bidder's principal place of business. The City will also apply a reciprocal preference to a Resident Bidder or Nonresident Bidder's offer, consistent with the applicable preference granted by the state where the majority of the equipment, supplies and/or materials were manufactured.

**Resident bidder.** An Offeror whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

**Nonresident Bidder.** An Offeror that is not a Resident Bidder.

**Statute:** <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm>