CITY OF SAN ANTONIO
CAPITAL IMPROVEMENTS
MANAGEMENT SERVICES

# REQUEST FOR PROPOSAL ("RFP")

## FOR CONSTRUCTION MANAGER AT RISK SERVICES FOR THE EASTSIDE EDUCATIONAL EXCELLENCE CENTER

**(RFP# CIMS07122013AM)**
**(REVISED)**

**Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts**. Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10th business day after a contract solicitation has been released until 30 calendar days after the contract has been awarded:

1. legal signatory of a high-profile contract;
2. any individual seeking a high-profile contract;
3. any owner or officer of an entity seeking a high-profile contract;
4. the spouse of any of these individuals;
5. any attorney, lobbyist or consultant retained to assist in seeking contract.

**A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the "black out" period.**

## ISSUE DATE:
## JULY 12, 2013

## SUBMITTAL DEADLINE:
## FRIDAY, AUGUST 2, 2013, 10:00 AM., Local Time

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## I. BACKGROUND/OVERVIEW

The City of San Antonio (hereafter referred to as "City"), Capital Improvements Management Services (hereafter referred to as "CIMS"), seeks Statements of Qualifications (hereafter referred to as "SOQs") from general contractors (hereafter referred to as "Respondents") interested in providing pre-construction and construction-phase services through the Construction Manager at Risk (hereafter referred to as "CM@RISK") delivery method for the Eastside Educational Excellence Center Project (hereafter referred to as "the Project"). The selected Respondent shall be required to demonstrate the ability and resources necessary to perform the scope of services requested.

In 2011, Mayor Julián Castro convened a blue ribbon task-force of Chief Executive Officers, Superintendents and education professionals to identify the most effective method for improving the quality of education in San Antonio. The Brainpower Taskforce recommended the development of a program focused on high-quality pre-kindergarten services for four-year-old children.

Research shows high-quality pre-kindergarten has the most impact in improving overall education outcomes for a community and helps children to learn and read on grade-level, making the participants less likely to fall behind their classmates and more likely to graduate and attend college.

The San Antonio Early Childhood Education Municipal Development Corporation (hereafter referred to as "the Corporation") is breaking new ground with its Pre-K initiative and expects to offer dramatically enhanced early childhood education, to ensure future vitality and long-term economic health for San Antonio. On November 6, 2012, San Antonio residents approved a 1/8 cent sales to support the Pre-K 4 SA initiative. This initiative will provide four year olds a high-quality pre-kindergarten education through:

- Four (4) model education centers, serving up to 500 students each, with full-day pre-kindergarten instruction;
- Competitive grant awards to local independent school districts and other educational providers to educate 1,700 children annually; and
- Professional development for pre-kindergarten through 3rd grade educators.

The North and South facilities currently are being renovated and will be ready to open in August 2013 The Eastside Educational Excellence Center will provide a site for full-day pre-kindergarten programming for eligible four year olds in San Antonio. Additionally, the Eastside Educational Excellence Center will contain learning labs to be used for professional development activities for San Antonio educators, including but not limited to pre-kindergarden through third grade teachers and school leaders.

## II. SCOPE OF WORK

The scope of services entails the preconstruction and construction phase services for the Eastside Educational Excellence Center. This Center will be designed and built for school to open in August 2014. The Project includes a new building of approximately 48,000 GSF, 14,000 SF of outdoor play areas and additional SF for parking. This Project calls for a reception lobby, 25 classrooms to accommodate a total of 500 children, one child's restroom between every two classrooms, large training rooms, offices, meeting rooms, motor skills rooms, storage rooms, workrooms, speech therapy room, nurse's office, warming kitchen, lounge areas and support areas.

Site improvements shall include parking for approximately 200 vehicles, sidewalks, access drives, vehicular drop off areas, site utilities, walking paths, landscaping and enclosed outdoor playgrounds.
The City currently is finalizing the site for this center. The exact location for this facility will be determined at a later time.

The selected Respondent shall enter into a CM@RISK contract with City for construction of the Project. Prior to construction, the selected Respondent shall assume the risk of delivering the Project through a Guaranteed Maximum Price (hereafter referred to as "GMP") contract. Prior to construction, the selected Respondent shall provide preconstruction services in a collaborative effort, working with the design team and City to develop construction cost estimates with increasing level of detail for each design phase. At or near the completion of detailed design documents and/or upon City's request, the selected Respondent shall prepare and submit a GMP to City for approval.

The selected Respondent shall be responsible for construction means and methods, construction site safety and the management of all other aspects related to the construction of this Project. The selected Respondent may self-perform work for which it is qualified, contingent upon it submitting a bid in conformance with Section 2267.255 of the State of Texas Government Code and upon approval by City.

**Preconstruction Phase**

The selected Respondent shall work cooperatively with City and the design team throughout the Preconstruction stage. The selected Respondent shall report and assist in remedying all discrepancies, errors and omissions in the Design Documents during the Preconstruction Phase.

Preconstruction phase services by the selected Respondent shall include, but are not limited to:

- Constructability reviews. (Constructability, as herein used, refers to the optimum use of construction knowledge and experience in planning, design, procurement and field operations to achieve overall Project objectives);
- Compliance reviews;
- Collaborative efforts with the City and the City-selected design team to reconcile cost or design concerns;
- Budgeting services;
- Detailed cost estimating and value engineering analysis;
- Construction phase scheduling;
- Detailed Project scheduling;
- Development of a detailed critical path method (hereafter referred to as "CPM") schedule, identifying all design activities, permits and other activities required to be completed before construction activities can begin, along with a preliminary construction schedule. Primavera shall be used for reporting all Project scheduling submitted to City;
- Identifying and scheduling early work items;
- Project construction phasing;
- Presentations to stakeholders, as needed and determined by City;
- Preconstruction planning throughout the Preconstruction stages, to include participation in the prequalification and qualification of each of the CM@Risk Subcontractors, as defined by law;
- Submittal of a proposed Rough Order of Magnitude (hereafter referred to as "ROM") is anticipated at the completion of design of schematic documents;

- Submittal of a proposed GMP, anticipated at or near the completion of design development documents (City reserves the right to request and receive a GMP at any point in the development of the Project design);
- Leading and managing the Subcontractor prequalification and bidding process, along with bidding, awarding and the management of all construction-related contracts, in compliance with City's solicitation requirements, including its Small Business Economic Development Advocacy Policy.

**Guaranteed Maximum Price (GMP)**

At a time to be determined solely by City (anticipated, at this time, to be near the completion of DD's on this Project), City shall request the Project's GMP from the CM@RISK. Contingent upon City approval of the GMP, the parties shall enter into an amendment to the CM@RISK Agreement, establishing the final negotiated GMP. The final negotiated GMP shall not exceed the Project's established construction budget. The Project's estimated construction budget is $8.2 million.

**Construction Phase**

During the construction phase, the selected Respondent shall solicit, award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the work. The selected Respondent shall comply with the construction services outlined in City's General Conditions (attached hereto and labeled as **Exhibit "B"**) and the CM@RISK Agreement template (attached hereto and labeled as **Exhibit "A")**. The selected Respondent shall provide on-site construction management, to include:

(1) attendance at progress meetings;
(2) written daily reports; and
(3) on-site representation, comprised of the selected Respondent and its consultant staff involved in the Project, all having relevant and appropriate types of construction management experience.

City reserves the right to perform work related to the Project and to award separate contracts for work related to the Project.

The selected Respondent shall construct the Project pursuant to the construction documents and in accordance with the schedule requirements. The selected Respondent shall hold all subcontracts and fully shall be responsible for the means and methods of construction, Project safety, Project completion within the schedule agreed upon in the Preconstruction phase, compliance with all applicable codes, laws and regulations (including monitoring compliance with all equal employment and prevailing wage requirements) and submitting monthly reports of these activities to City. City reserves the right to approve and/or reject the selected Respondent's selection of Subcontractors and any terms included in CM@RISK's subcontracting agreement.

Construction phase services by the selected Respondent shall include, but are not limited to:

- Construction of the facility, as outlined above;
- Coordination with City, Consultants and Stakeholders;
- Arrangement for the procurement of materials and equipment;
- Construction staging and post-construction activities;
- Scheduling and management of site operations;

- Quality control;
- Bonding and insurance of the construction;
- Maintaining a safe work site for all project participants;

## III. TENTATIVE SCHEDULE OF EVENTS

| | |
|---|---|
| Pre-Submittal Conference | Friday, July 19, 2013 at 10:00 a.m. |
| Deadline for Submittal of Written Questions | Wednesday, July 24, 2013 at 4:00 p.m. |
| RFP Responses Due | Friday, August 2, 2013 at 10:00 a.m. |
| Interview, if necessary | August, 2013 |
| Anticipated Early Childhood Education Municipal Development Corporation Board Consideration | August/September 2013 |

## IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference is scheduled to be held on **Friday, July 19, 2013 at 10:00 A.M.** at the **Municipal Plaza Building, 1st Floor, Conference Room B, located at 114 West Commerce St., San Antonio, Texas 78205**. Respondents are encouraged to prepare and submit their questions in writing to the staff contact person listed in **Article IX** of this RFP at minimum three (3) calendar days in advance of the Pre-Submittal Conference, in order to expedite the proceedings (such that staff may review the questions received and be able to respond verbally during the Pre-Submittal conference). City's responses to questions received by the due date may be distributed at the Pre-Submittal Conference and posted on City's website at http://epay.sanantonio.gov/RFPListings/. Attendance at the Pre-Submittal Conference is optional, but strongly is encouraged.

The meeting place is accessible to disabled persons. The International Center is wheelchair accessible. Accessible parking spaces are available. Auxiliary aids and services are available upon request. Interpreters for the Deaf must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses, if any. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of City shall not be binding on City.

## V. SUBMITTAL DOCUMENT REQUIREMENTS FOR SOLICITATION

This RFP is part of a **one-part** solicitation process. City will appoint a selection committee to perform the evaluations and will conduct a comprehensive, fair and impartial evaluation of all Statements of Qualifications received in response to this RFP and shall rank each submittal received in response to this RFP using the criteria set forth herein. **Based on the evaluation process, the selection committee shall select and recommend a Respondent for award.**

Respondent's Submittal should include the required items in the following sequence:

1. COVER LETTER - Respondents shall include a two-page Cover Letter for the SOQ. The letter shall include Respondent's numbers of years in business, its number of years in business in the local office, its local office address and the number of employees employed in the local office. In addition, Respondent should highlight its experience related to educational center projects, working with municipalities and working with government agencies, including work with the City of San Antonio.

2. SUBMITTAL COVER/SIGNATURE PAGE (FORM 1): Respondent must complete, sign and include the Submittal Cover/Signature Page, as found in the RFP Attachment 1, with its Submittal. The Submittal Cover/Signature Page must be signed by a person/persons authorized to bind the entity/entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures submittals require signatures from **all** firms participating in the joint venture. Submitting joint ventures are required to provide legal proof of the joint venture, such as a joint venture agreement, as an attachment to Respondent's submittal. The Cover Page/Signature Page shall be indexed and labeled as **"Tab 1"** in the submittal.

3. SUBMITTAL CHECKLIST AND TABLE OF CONTENTS (FORM 2): Respondent shall complete and utilize this form, as found in RFP Attachment 2. Submittal Checklist and Table of Contents shall be indexed and labeled as **"Tab 2"** in the submittal.

4. DISCRETIONARY CONTRACTS DISCLOSURE FORM (FORM 3): All Respondents seeking to contract with City shall complete and return this form online at: http://www.sanantonio.ove/eforms/atty/DiscretionaryContractsDisclosure.pdf If a Respondent is proposing as a team or joint venture, then each team member or joint venturer shall complete this form. A copy of this form shall be indexed and labeled as **"Tab "3"** in the submittal.

5. LITIGATION DISCLOSURE FORM (FORM 4) – Respondent shall complete the Litigation Disclosure form, as found in RFP Attachment 4 and additional pages for explanation, if necessary. If a Respondent is proposing as a team or joint venture, then each team member or joint venturer shall complete this form. This form shall be indexed and labeled as **"Tab 4"** in the submittal.

6. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (FORM 5): Submit a completed and signed Subcontractor/Supplier Utilization Commitment Form indicated that your firm commits to satisfy a thirty percent **(30%) SBE** goal **and** a twenty percent **(20%) M/WBE** goal for this solicitation. During the first phase of this solicitation, absent a waiver granted by the SBO, failure of Respondent to submit a completed Subcontractor/Supplier Utilization Commitment Form in its response shall render its response **NON-RESPONSIVE**. This form shall be indexed and labeled as **"Tab 5"** in the submittal.

7. PROOF OF INSURABILITY AND BONDABILITY : Respondent shall submit a letter from insurance provider stating provider's commitment to insure the Respondent for the types of coverage and at the levels specified in the attached General Conditions for City of San Antonio Building Contracts (attached hereto and labeled as RFP **Exhibit "B"**) if awarded a contract in response to this solicitation process. Respondent shall also submit a copy of their current insurance certificate and a letter of intent from their Surety stating, in specific terms, that the Surety is prepared to issue both payment and performance bonds to the full value of the proposal tendered for project awarded in response to this solicitation. All bonds required by the Contract shall be obtained from solvent surety companies that are duly licensed by the State of Texas and authorized to issue bond policies for the limits and coverage required by the Contract. The bonds shall be issued by a Surety which complies with the requirement of Article 7.19-1, Texas

Insurance Code (1997). Proof of Insurability and Bondability shall be indexed and labeled as **"Tab 6"**.

8. LETTERS OF REFERENCE (required): Respondent shall provide a maximum of five (5) letters of reference. Letters of Reference shall be indexed and labeled as **"Tab 7".**

9. CONSTRUCTION MANAGER AT RISK AGREEMENT TEMPLATE AND GENERAL CONDITIONS: Respondent shall review the City of San Antonio CM@RISK Agreement template (attached hereto and labeled as **Exhibit "A"**) and General Conditions (attached hereto and labeled as **Exhibit "B"**) and provide written comments, objections and/or concerns regarding the Agreement and General Conditions with its submittal. If Respondent does not have any comments, objections and/or concerns, Respondent must indicate that in this tab. If no comments, objections and/or concerns are submitted by the Respondent, City will presume that Respondent will sign the CM@RISK Agreement as presented, if selected. Respondent shall index and label this information as **"Tab 8"**.

10. STATEMENT OF QUALIFICATIONS – Respondent shall provide narrative documentation, as outlined in this Statement of Qualification below, addressing all evaluation criteria in Section II. Scope of Services of this RFP. Sufficient information regarding past projects and key personnel's experience must be provided to indicate that Respondent's team has met or exceeded the minimum qualifications provided in Section II of this RFP in submittal.

## A. Experience and Qualifications of Prime Firm, Key Sub-Consultants and Key Personnel (30 Points)

Respondent shall respond to the following items as they relate to Section II. Scope of Services

**1. Experience (Indexed and Labeled as "Tab 9")** – City will consider the relevance of past experience for all parties proposed as a part of the team. Provide a narrative in three (3) pages or less that describes the team's qualifications as they relate to the referenced scope of services in this RFP. Include how the proposed team has worked together on past similar projects and include the number of years working as a team. For any Sub-Consultants listed as part of the team, include information on how they shall function within the team's organization. In addition, provide a narrative description of the proposed roles of Respondent and each Sub-Consultant to include assignments, roles and responsibilities, lines of authority and communication among team members.

**2. Project Sheets (Indexed and Labeled as "Tab 10")** – Respondent's submittal shall include a maximum of three (3) project sheets, limited to one (1) page for each project included, which shall describe similar projects Respondent has completed within the last five (5) years. Each project sheet shall include the following:

1. Name and Description of the project, including similarity to the Project defined in this RFP;
2. Year of project;
3. Respondent's role in the project;
4. Project Manager;
5. Superintendent;
6. Project's original and final construction contract amounts (explain inconsistencies);

7. Project's proposed completion date and actual completion date achieved (explain inconsistencies);
8. LEED status of the project (if any);
9. Project owner's name and the name of the representative (if different) who served as the day-to-day liaison for the project in the following format:
    a. Name of Owner: _____
    b. Name of Owner's representative: _____
    c. Representative's Phone Number: _____
    d. Representative's E-mail: _____

3. **Proposed Key Personnel/Organizational Chart (Indexed and Labeled as "Tab 11")** – Provide a detailed organizational chart of your firm identifying key personnel who will be committed to work on the various tasks for this contract. The Proposed Key Personnel shall include a Licensed Architect and/or Licensed Landscape Architect, and Licensed Engineer with demonstrated experience in San Antonio or the South Texas Region with the activities normally associated with the scope of work listed.

   Label assignments as:
   - Project Manager
   - Superintendent
   - Chief Estimator
   - Project Engineer
   - Safety Manager

4. **Resumes (Indexed and Labeled as "Tab 12")** – Respondent shall submit one (1) page resumes for all its key team members. Resumes should link to project sheets and also may include additional previously-completed relevant projects not highlighted in the project sheets.

   Resumes also shall include:

   - the license type (if applicable) and number of years licensed,
   - Number of years employed with the Firm
   - Number of years experience in proposed role corresponding to the assignments included in the organizational chart
   - City of residence

## B. Team's Experience with San Antonio Region Issues and Past Experience with City of San Antonio Contracts (15 points)

1. City is interested in evaluating Respondent's and key Sub-Consultant's experience with San Antonio issues, as may be evidenced by work in San Antonio and the surrounding area, during the past five (5) years. In narrative form, using a maximum of two (2) pages, briefly describe Respondent's experience in the following areas and reference projects relating to that experience. (Note: you may reference projects included in project sheets under **Criteria A** above or include other projects, but no additional project sheets shall be provided for this criteria.) This information shall be indexed and labeled as **"Tab 13":**

- Local area construction costs and practices;

- Local environmental community, conditions and constraints;
- Involvement in project development, as it relates to public awareness in the local area;
- Respondent's experience with public utilities within the San Antonio and/or surrounding area;
- Local site development; and
- Building code requirements.

2. Note that a portion of the scoring for these criteria may be based on City's Consultants' Scorecard, other documentation and experience with City projects, generated by City staff and previous City consultants. City will consider the history of the firm in complying with project programs, schedules and budgets on previous City projects. **No items shall be submitted by the respondent for this criterion.** Specific items that may be used for consideration may include, but are not limited to:

- Timely completion of City projects;
- Cooperative working relationship with City;
- Prompt payment of Subcontractors at all levels;
- Compliance with other City contract terms;
- Compliance with City Ordinances on substitution/addition/deletion of Subcontractors;
- Provision of contracting opportunities for S/M/WBEs;
- Compliance with City standards;
- Conformance to City budget requirements.

## C. Understanding of the Project and Proposed Management Plan (25 total points)

Respondent shall describe its understanding of the project and specific issues and challenges likely to be involved, as well as the availability of labor resources (Respondent's capacity to perform) in executing the scope of work. Respondent shall submit information in a brief narrative plan that clearly and concisely describes the challenges it foresees and its approach to managing the project.

**1. <u>Project Understanding (10 points)</u> – (indexed and labeled as Tab "14")**

Limit your response to the following items to three (3) pages:

-Describe Respondent's understanding of the primary objectives of the project; and
-Describe the constraints and technical challenges related to design and construction Respondent foresees and Respondent's approach to addressing each.

**2. <u>Pre-Construction Management (10 points)</u> – (Indexed and labeled as Tab "15")**

Limit your response to the following items to three (3) pages:

- Describe Respondent's project management approach and team organization for the provision of the services outlined in this RFP;
- Describe Respondent's Quality Control/Quality Assurance Process, approach and capabilities to maintain quality control of the construction documents and construction;

- Describe your cost estimating methodology and approach to construction documents and bid phase management; and
- Describe Respondent's approach to maintaining the Project budget and providing options based on bid results.

**3. <u>Construction Phase Services (5 points)</u> – (Indexed and labeled as Tab "16")**

Limit your response to the following items to two (2) pages:

- Describe Respondent's approach to managing the quality of Subcontractors
- Describe Respondents ability to coordinate work with all Project stakeholders;
- Describe Respondent's approach to assuring timely completion of construction, including methods for schedule recovery, if necessary.
- Describe your proposed Safety Program
- Describe Respondent's mechanism to track and respond to:
    - requests for information;
    - review of change orders;
    - coordinating construction progress meetings;
    - preparing and distributing meeting minutes;
    - reviewing schedules; and
    - other construction phase issues

## D. Proposed Costing Methodology (10 Points)

1. In a one-page summary, describe your team's processes, software or other tools that will be used to generate estimates, analyze alternatives, control, monitor and report cost performance throughout the Project's duration to stay on time and within budget. This information shall be indexed and labeled as "**Tab 17**".

2. In a two-page summary, describe your methodology and process for working with the Project Architect/Engineer and their consultants to deliver a Guaranteed Maximum Price (GMP) and to maintain the GMP throughout the design and construction phase. Describe your policies on Subcontractor mark-up and your cost control methods during construction. Describe how you procure qualified Subcontractors. This information shall be indexed and labeled as "**Tab 18**".

## E. Proposed Fees for General Conditions and Construction Manager at Risk Proposed Fee (20 points)

Provide Respondent's proposed fees for **General Conditions and Construction Manager at Risk Proposed Fee using the Exhibit E form. This form** shall be indexed and labeled as "**Tab 19**".

Reference Exhibit C for a description of General Conditions Costs.

| ONE-STEP EVALUATION CRITERIA SUMMARY: | MAXIMUM POINTS |
|---|---|
| **A. Experience and Qualifications of Prime Firm, Key Sub-Consultants and Key Personnel** | **30 Points** |
| **B. Team's Experience with San Antonio Region Issues and Past Experience with City of San Antonio Contracts** | **15 Points** |
| **C. Understanding of the Project and Proposed Management Plan** | **25 Points** |
| **D. Proposed Costing Methodology** | **10 Points** |
| **E. Proposed Fees for General Conditions and Construction Manager at Risk Proposed Fee** | **20 Points** |
| **Total Maximum** | **100 Points** |

Respondent is expected to examine this RFP carefully, and understand the terms and conditions for providing the services listed herein and respond completely. Failure to complete and provide any of the above-referenced documents may result in the Respondent's submittal being deemed non-responsive and, therefore, disqualified from consideration.

## VI. RESERVED

## VII. PHASE I SUBMITTAL INSTRUCTIONS

**When submitting a Statement of Qualifications in person to the City Clerk's Office, visitors to City Hall must allow time for security measures. Visitors to City Hall will be required to enter through the east side of the building. The public will pass through a metal detector and x-ray machine located in the lobby. All packages, purses and carried items will be scanned during regular business hours of 7:45 a.m. to 4:30 p.m. After the public proceeds through the metal detector, they will sign in and receive a visitor's badge. For those that might require the use of a ramp, entry is available on the south side of the building (Dolorosa side). Security will meet the visitor in the basement with a hand scanner.**

Respondent shall submit a total of **eight (8)** Qualification Statements which shall include one (**1**) original unbound Qualification Statement, signed in ink and **seven (7)** printed copies of the submittal, as well as one (**1**) copy of the entire submittal in an Adobe PDF format on a compact disk (**CD**) in a sealed package, clearly marked on the front of the package "**RFP: REQUEST FOR PROPOSAL ("RFP") FOR CONSTRUCTION MANAGER AT RISK SERVICES FOR THE EASTSIDE EDUCATIONAL EXCELLENCE CENTER"** All submittals must be received in the City Clerk's Office at **NO LATER THAN 10:00 AM ON FRIDAY, AUGUST 2, 2013** the address indicated below. Any submittal received after this time shall not be considered. Respondent's Proposed Fees for General Conditions and Construction Manager at Risk Proposed Fees will be read aloud at the City Clerk's Office immediately after the submittal deadline.

Mailing Address:
Office of the City Clerk, Attn: Capital Improvement Management Services Department
P.O. Box 839966

San Antonio, Texas 78283-3966

Physical Address:
Office of the City Clerk, Attn: Capital Improvement Management Services Department
100 Military Plaza
City Hall, 2nd Floor,
San Antonio, Texas 78205

Submittals sent by facsimile or email will not be accepted.

Responses to the solicitation should be complete and well organized. Adherence to the maximum page criterion is critical; each page side (maximum 8 1/2" x 11") with criteria information will be counted. Respondent shall adhere to the page limitations for each section as stated herein. Pages which have project photos, charts, and graphs will be counted towards the maximum number of pages. Front and back covers, Table of Contents pages and tabbed divider pages will not be counted if they do not contain submittal information. The use of recycled paper is encouraged. Three-ring binders are **NOT** permitted. With regards to other types of binding, plastic (not metal) spiral or "comb" binding is highly recommended. Unnecessarily elaborate brochures, artwork, bindings, visual aids, expensive paper or other materials beyond which is sufficient to present a complete and effective submittal are not required. All pages shall be numbered. Margins shall be no less than 1" around the perimeter of each page. Electronic files, websites or URLs shall not be included as part of the proposal, other than the CD specified above. Each submittal must include the sections and attachments in the sequence listed in the RFP Section VI, Submittal Document Requirements for Phase I of the Solicitation, and each section must be divided by tabs and indexed as indicated in this RFP. Failure to meet the above conditions may result in disqualification of the proposal.

Respondents who submit responses to this RFP shall correctly reveal, disclose and state the true and correct name of the individual, proprietorship, corporation and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nick-names, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the Proposal.

## VIII. AMENDMENTS TO THE RFP

Changes, amendments, or written responses to questions received in compliance with Section IX, Restrictions on Communication may be posted on City's website at http://epay.sanantonio.gov/RFPListings/. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submittal of a proposal. A Respondent who does not have access to the Internet, must notify City in accordance with Section IX, Restrictions on Communication, that Respondent wishes to receive copies of changes, amendments, or written responses to questions by mail or facsimile. No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only.

## IX. RESTRICTION ON COMMUNICATION

Once this RFP has been released, Respondents are prohibited from communicating with City staff regarding the RFP or Submittals, with the following exceptions:

Respondents are prohibited from communicating with elected City officials and their staff regarding the RFP or submittal from the time the RFP has been released until the contract is posted as a City Council agenda item. Respondents are prohibited from communicating with City employees from the time the RFP has been released until the contract is awarded. These restrictions extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or submittal submitted by Respondents. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's submittal from consideration. Exceptions to the restrictions on communication with City employees include:

1. Respondents may ask verbal questions concerning this RFP at the Pre-Submittal Conference.
2. Respondents may submit written questions concerning this RFP to the Staff Contact Person listed in the address below until **4:00 P.M. on Wednesday, July 24, 2013**. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by electronic mail or by fax.

   Questions sent by certified mail, return receipt requested, will also be accepted and should be addressed to:

   Angelica Mata, Contract Coordinator
   City of San Antonio
   Capital Improvements Management Services Department
   Contract Services Division
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3. Respondents and/or their agents are encouraged to contact the Small Business Office of the Economic Development Department for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact is **Ruben Flores**. Mr. Flores may be reached by telephone at **(210) 207-3923** or by e-mail at **ruben.a.flores@sanantonio.gov**. *This exception to the restriction on communication does not apply, and there is no contact permitted to the Small Business Office regarding this solicitation, after the solicitation closing date*

4. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. City reserves the right to exclude any persons from such selection committee meetings as it deems in its best interests.

## X. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

It is the intent of City of San Antonio to award this contract to the firm(s)/team(s) whose services provide the best value for City based on the selection criteria set out in this RFP, which is phase one of the solicitation process, and in the second phase of the solicitation, as determined when considering the relative importance of price, capability and other published evaluation criteria. City reserves the right to adopt the most advantageous interpretation of the SOQ, additional information presented and the subsequent Costing Methodology. City is not bound to accept the lowest priced Costing Methodology that is not in the best interest of City, as determined solely by City.

The SOQs submitted in response to this RFP together with the subsequent additional information and Costing Methodology submitted by qualified Respondents in Phase Two of the solicitation will be analyzed based on the published criteria by City in determining which Firm will provide the best value to City.

1. The contract, if awarded, will be awarded to the Firm whose submittal is deemed most qualified to City, as determined by the selection committee, and subject to approval of City Council.

2. City may accept any submittal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate solicitation on the part of City. However, final selection of Firm is subject to City Council approval.

3. City reserves the right to accept one or more submittals or reject any or all submittals received in response to this RFP and the subsequent interview process, and to waive informalities and irregularities in the submittals received. City also reserves the right to terminate this solicitation, and reissue a subsequent solicitation, and/or remedy technical errors in the process.

4. City will require the selected Firm to execute a contract in substantially the form as attached with City, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in the contract. Contract documents are not binding on City until approved by City Attorney.

5. In the event the parties cannot negotiate and execute a contract within the time specified by City, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.

6. This solicitation does not commit City to enter into a contract, award any services related to this solicitation, nor does it obligate City to pay any costs incurred in preparation or submittal of a response or in anticipation of a contract.

7. The successful Firm must be able to formally invoice City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by City. City administers its design and construction management through an Internet-based management system. All vendors are required to comply with Specification 700 of City of San Antonio Standard Construction Specifications.

8. Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land materials, supplies or service, if any of the following

9. Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of City, as defined in Section 2-42 of City's Ethics Code. (Discretionary Contracts Disclosure – Form 3 in this RFP).

10. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

11. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with City , shall file a completed conflict of interest questionnaire with City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with City ; or (2) submits to City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with City. The conflict of interest questionnaire form is available from the Texas Ethics Commission by accessing either of the following web addresses:

    http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm
    http://www.ethics.state.tx.us/forms/CIQ.pdf.

    Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of City Clerk, if mailing a completed conflict of interest questionnaire, mail to Office of City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Respondent should consult its own legal advisor with questions regarding the statute or form.

12. All submittals and/or any portions thereof become the property of City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained. However, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a court order.

13. Any cost or expense incurred by the Respondent that is associated with the preparation of the submittal, the Pre-Submittal Conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

14. All provisions in Respondent's submittal including any estimated or projected costs, shall remain valid for one hundred twenty (120) days following the deadline date for submittals or, if a Proposal is accepted, throughout the entire term of the contract.

15. Subsequent to the issuance of this solicitation, the CIMS Department of City reserves the right to amend it, waive any requirement or irregularity, request modifications to submittals, providing all teams are treated equally, and reject any and all submittals for any reason. The CIMS Department further reserves the right to award one or more contracts for these projects as deemed in its best interest, and to request changes in the composition of any team.

16. Solicitation Review Process: Any respondent desiring a review of the solicitation process must deliver a written request to the Director of CIMS within 7 calendar days from the date the notice of non-selection was sent. When the CIMS Director receives a timely written request, the CIMS Director, or designee, shall review the respondents concerns and the solicitation process for legitimacy and procedural correctness. After performing a full review, the CIMS Director will notify the respondent in writing of his determination.

17. Debriefings: In an effort to improve solicitation responses, CIMS is making available on its web site a "Solicitation Response Tip List" that includes the top common items that "make or break" submittals. Providing this information prior to the due date of the submittal provides Respondents with an opportunity to develop a better response for each solicitation. As a result of this up-front effort, each Respondent is entitled to a one (1) debriefing per calendar year after the San Antonio City Council has made an award if:

    (a) they are not the selected respondent; and

    (b) they have not been debriefed since January 1, 2013.

    Once a firm has been debriefed, it will not be eligible for future debriefings within that calendar year. Any Respondent meeting the above criteria that desires an individual submittal debriefing must deliver a written request to the CIMS Contract Services Division within seven (7) calendar days from the date a notice of non-selection was sent.

## XI. SBEDA ORDINANCE COMPLIANCE PROVISIONS

### A. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements.

**Waiver Request** - A Respondent may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Respondent Subcontracting Waiver Request* form *(available at http://www.sanantonio.gov/SBO/Forms.aspx)* with its solicitation response. The Respondent's Waiver request must fully document Subcontractor unavailability despite the Respondent's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Respondent including, but not limited to, which Subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests will not be considered.**

**Exception Request** - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request*

form *(available at http://www.sanantonio.gov/SBO/Forms.aspx)* with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the $50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

C. Definitions

**Affirmative Procurement Initiatives (API)** – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance).

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

**Certification or "Certified"** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

**Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To

perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Contractor to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the City as fraudulent if Contractor attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the Contractor shall not be given credit for the participation of its S/M/WBE Subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the Contractor and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

**Evaluation Preference** – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Contractors or Respondents.

**Good Faith Efforts** – documentation of the Contractor's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and Contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Contractor's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

**HUBZone Firm** − a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside

in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

**Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

**Individual** – an adult person that is of legal majority age.

**Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

**Minority/Women Business Enterprise (M/WBE)** – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

**M/WBE Directory** – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

**Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

> African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
>
> Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
>
> Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
>
> Native Americans: Persons having no less than 1/16$^{th}$ percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

**Payment** – dollars actually paid to Contractor and/or Subcontractors and vendors for City contracted goods and/or services.

**Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

**Prime Contractor** – the vendor or Contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the Contractor.

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

**Respondent –** a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, Contractor is the Respondent.

**Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

**Responsive** – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

**San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**SBE Directory** - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

**Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small

Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

**Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

**Small Business Office Manager** – the Assistant Director of the EDD of the City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of Contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

**Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

**Subcontractor** – any vendor or Contractor that is providing goods or services to a Prime Contractor or Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the Contractor and its Subcontractors shall be submitted to the City prior to execution of this contract agreement and any contract modification agreement.

**Suspension** – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Contractor's and/or S/M/WBE firm's performance and payment under City contracts due to the City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

**Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the Contractor's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Contractor's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

**Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As Contractor acknowledges that the terms of the City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the City's SBEDA Policy & Procedure Manual are in furtherance of the City's efforts at economic inclusion and, moreover, that such terms are part of

Contractor's scope of work as referenced in the City's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Contractor voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the City. Without limitation, Contractor further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Contractor's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers;

3. Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. Contractor shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Contractor's Subcontractor/Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.

6. Contract shall retain all records of its Subcontractor payments for this

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor/Supplier Utilization Plan, the Contractor shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Contractor and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. Contractor acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Contractor and each of its Subcontractors for this project have registered and/or maintained active status in the City's Centralized Vendor Registration System, and Contractor has represented to City which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. Contractor hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

**SBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is also being awarded pursuant to the SBE Subcontracting Program. Contractor agrees to subcontract at least **thirty percent (30%)** of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor/Supplier Utilization Plan which Contractor submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this Subcontractor goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law, **and**

**M/WBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is also being awarded pursuant to the M/WBE Subcontracting Program. Contractor agrees to

subcontract at least **twenty percent (20%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor/Supplier Utilization Plan which Contractor submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this Subcontractor goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

G. Prompt Payment

Upon execution of this contract by Contractor, Contractor shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Contractor's reported subcontract participation is accurate. Contractor shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Contractor's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Contractor and no new City contracts shall be issued to the Contractor until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, Contractor acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of Contractor or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).