



**CITY OF SAN ANTONIO**  
**TRANSPORTATION & CAPITAL IMPROVEMENTS**

**REQUEST FOR QUALIFICATIONS:  
ON-CALL REAL ESTATE APPRAISAL SERVICES  
(RFQ-120215EF)**

**RFQ ISSUE DATE:  
December 2, 2015**

**SUBMITTAL DEADLINE:  
JANUARY 5, 2016, 3:00 P.M., LOCAL TIME**

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## ATTACHMENTS

<b>Form 1 – Respondent Submittal Cover / Signature Sheet</b>	<b>RFQ Attachment 1</b>
<b>Form 2 – Submittal Checklist and Table of Content</b>	<b>RFQ Attachment 2</b>
<b>Form 3 – Discretionary Contracts Disclosure Form and Instructions</b>	<b>RFQ Attachment 3</b>
<b>Form 4 – Litigation Disclosure Form</b>	<b>RFQ Attachment 4</b>
<b>Form 5 – SBEDA: Utilization Plan</b>	<b>RFQ Attachment 5</b>
<b>Contract Document Template</b> ( <i>to be issued via Amendment at a later date</i> )	<b>Exhibit A</b>

**CITY OF SAN ANTONIO**  
**ON-CALL REAL ESTATE APPRAISAL SERVICES**  
**RFQ120215EF**

The City of San Antonio (hereafter referred to as “City”), Transportation and Capital Improvements Department (hereafter referred to as “TCI”) is posting this Request for Qualifications (hereafter referred to as “RFQ”) seeking Statements of Qualifications from qualified Professional Appraisers interested in providing On-Call Real Estate Appraisal Services on an as-needed basis throughout Bexar County, Texas. Property valuation categories may consist of residential, commercial/industrial, undeveloped land, temporary and permanent easements and miscellaneous valuations for partial or total acquisitions. City intends to select one or more qualified Respondents to be placed under a non-exclusive contract in accordance with the terms of this Request for Qualifications (RFQ).

All firms responding to this RFQ shall be qualified and have licensed, trained and/or certified personnel, in accordance with Federal, State and local regulations, to provide Real Estate Appraisal Services must joint venture or subcontract with a qualified firm to provide the Services proposed.

City anticipates the need for various Task Orders shall arise under City’s standby contract, resulting from this RFQ solicitation and, as a result, one or more On-Call contracts may be awarded in response to this RFQ solicitation. Upon City’s review of submittals received pursuant to this solicitation, highest competency shall be considered as the primary criterion for selection.

Work shall consist of providing Real Estate Appraisal Services for properties designated by City. Various City departments may fund the work conducted under the On-Call resultant standby agreement by requesting services through the Managing Department. The selected Respondent(s) shall be retained in a standby mode. As projects are identified and funded, work shall be authorized to the selected Respondent(s) through issued Task Orders by City.

The contract term is anticipated to commence in April, 2016 and shall be for a one (1) year term with City having the exclusive option to extend the contract for up to three (3) additional one (1) year periods under the same terms and conditions as the original contract.

The enabling Ordinance shall identify the total amount of money that may be expended annually (hereafter referred to as “the annual contract capacity”) under the On-Call contract awarded in connection with this RFQ. City does not guarantee that the annual contract capacity shall be spent under the agreement(s) or that any minimum amount of work shall be authorized following selection. Unless the specific project requirements are determined to preclude a specific Respondent from consideration, if more than one contract is awarded, City’s Managing Department shall attempt to allocate the work evenly among the selected Respondents, according to competency.

## **I. Background**

In April of 2011, City Council approved five (5) non-exclusive contracts with various firms to provide On-Call Real Estate Services. As part of the Department's continuing efforts to improve efficiency, TCI determined it is necessary to increase the number of On-Call contractors. All real estate transactions performed by City of San Antonio require due diligence work that includes real estate appraisals and various types of surveys, prior to the acquisition and/or sale of real estate.

TCI provides a variety of real estate services, to include but not limited to, property and facility management; real estate acquisition, negotiation and monitoring of leases and license agreements, closure of public right away, cell tower agreements, utility pipelines, the sale of surplus property and various in-house consulting services to include lease reviews and asset development. When engaged in projects involving property acquisitions, property reviews and infrastructure or real property dispositions, City may require professional real estate appraisal services to determine appropriate values.

Real Estate property types shall include, but are not limited to, the following:

- |                           |                       |
|---------------------------|-----------------------|
| a. Encroachment           | g. Right-of-way       |
| b. Flood zone             | h. Rural              |
| c. Environmental baseline | i. Boundary           |
| d. Platting               | j. Elevation          |
| e. Zone mapping           | k. Downtown and urban |
| f. Covenant               |                       |

Related Services also shall be required, in support of City property acquisitions and projects.

In addition to real estate, City also engages in land acquisitions, land dispositions, site expansions and environmental land baselines, as well as capital improvement projects on urban, rural and downtown locations, which also may require appraisal assessments to be provided.

## **II. Scope of Work**

### **General Information**

The selected Respondent(s) shall be required to provide On-Call appraisal services on all types of real estate property in conformance with the following:

1. Appraisal services must comply with all provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) and the USPAP Competency Rule, as well as all provisions of local, state and federal laws, ordinances and regulations.
2. Respondent must be licensed or certified in accordance with the Texas Appraiser Licensing and Certification Act, Occupation Code, Title 7 – Practices and Professions Related to Real Property and Housing, Subtitle A – Professions Related to Real Estate, Chapter 1103 – Real Estate Appraisers amended September 1, 2005.

3. Respondent shall maintain a sufficient level of staff by job type to services City requirements, to include but not be limited to: professional (e.g. attorneys, engineers); managerial, administrative and clerical.
4. Respondent shall designate a single point of contact within Respondent's organization to which City can look for timely resolution of any issues which arise related to Respondent's work in performance of assigned projects.
5. Respondent shall meet with City periodically, as agreed to by City and Respondent, subject to change and dependent upon the number and type of open projects assigned, to address concerns or issues, if any, and to review status of assigned projects.
6. Respondent shall accept no assigned Task Orders for which Respondent's principal(s) and/or employees, either directly or indirectly, has any financial or personal interest in any tract or parcel of land included within the scope of the Task Order requiring title services.
7. Respondent shall accept all assigned Task Orders for City, regardless of size or value of property concerned, and provide expeditious service to meet City requirements and timelines.
8. Respondent shall provide City electronic and hard copy documents disclosing fully the services rendered pursuant to an assigned Task Order.
9. Respondent shall provide City assistance on general requests, such as for affidavit forms, clarifications on commitments, etc.
10. Respondent shall provide bilingual services, as may be required by City on any issued Task Order.

### **Assignment of Work**

From the list of selected Respondents, City shall designate, assign and advise a selected Respondent when appraisal services are needed. Upon designation, City shall issue Respondent a Task Order request through *PRIMELink*, City's internet based project management system, fully outlining and describing the services requested by City. (Note all selected Respondents shall be required to obtain access and attend training on *PRIMELink*, as *PRIMELink* is utilized by TCI to process payment applications and all project-related correspondences and submittals.)

1. Upon acceptance of the Task Order request, the selected Respondent shall submit a written cost estimate to City, which shall include the number of hours required to complete the requested work, as well as the delivery date for the appraisal report.
2. Authorization to proceed shall be provided in form of a Task Order issued by City to Respondent. The Task Order shall detail the type of appraisal services required and a specific property description, as well as the required date for receiving finalized appraisal.

3. Upon receipt of City's Task Order, the selected Respondent fully shall inspect the assigned property, including all improvements, fixtures, structures, appurtenances and all other elements of value.
4. Respondent shall be responsible for ensuring that any and all items lying within the proposed property have been identified. Improvements and cost to cure items, such as fences, walls, signs, landscaping, drywells, backflow devices, etc., shall be addressed in the appraisal report.
5. Respondent's written report to City shall include, but not limited to:
  - a. factual information pertinent to the subject property;
  - b. prevailing trends affecting value;
  - c. analytical reasoning used in determining the subject property's highest and best use; and
  - d. support of a value conclusion.
6. Selected Respondent(s) shall prepare appraisal documentation utilizing the following forms:
  - Standard Freddie Mac Form 70,
  - Fannie Mae Form 1004, or a
  - Summary Appraisal report.
7. Respondent's finalized appraisal reports shall be submitted to City within twenty-one (21) calendar days from the date directed to proceed, unless otherwise noted on the issued Task Order.
8. Respondent's finalized appraisal report shall be submitted to City in an electronic PDF format plus hard copies, as outlined in the issued Task Order.
9. Respondent shall correct all incomplete, inaccurate or defective work within such time specified by City at no additional cost to City.
10. Respondent also may also be required to prepare documentation and testify in hearings during Eminent Domain proceedings and/or in jury trials on behalf of City when cases are appealed.
11. Task Order assignments shall be made at City's sole discretion; further, City shall not guarantee that selected Respondent(s) shall receive a particular volume or minimum number of assignments.
12. City may utilize appraisal services outside of said contract, when deemed in the best interest of City and approved by the Director of TCI or his/her authorized designee. Examples when an outside appraiser may be used are:
  - Selected Respondent(s) are unable to meet City's timeline requirement for specific Tasks;
  - A third party involved in a specific acquisition requires a particular type of appraiser that is not on City's approved list; or
  - The appraisal service is to be included as a negotiated term item for a sales agreement.

### III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this project.

<b>Pre-Submittal Conference:</b>	<b>December 10, 2015</b>
<b>Deadline for Submission of Written Questions:</b>	<b>December 15, 2015</b>
<b>Responses Due:</b>	<b>January 5, 2016</b>
<b>Interviews, if necessary</b>	<b>To Be Determined</b>
<b>Anticipated City Council Consideration</b>	<b>March 2016</b>

### IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference shall be held on **Thursday, December 10, 2015, at 10:00 A.M.** at the **Municipal Plaza Building, 9<sup>th</sup> Floor Conference Room, located at 114 West Commerce St., San Antonio, Texas 78205.** Attendance at the Pre-Submittal Conference is optional but strongly encouraged. Respondents are encouraged to prepare and submit their questions in writing three (3) calendar days in advance of the Pre-Submittal Conference in order to expedite the proceedings.

City's responses to questions received by the designated due date may be distributed at the Pre-Submittal Conference and posted on City's website at <http://epay.sanantonio.gov/RFPListings/>.

This meeting place is accessible to disabled persons. The Municipal Plaza Building is wheelchair accessible. The accessible entrance is located at 114 W. Commerce. Accessible parking spaces are located at City Hall, 100 Military Plaza. Auxiliary aids and services are available upon request. Interpreters for the Deaf shall 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 and posted on City's website at <http://epay.sanantonio.gov/RFPListings/>. 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 AND EVALUATION CRITERIA

City shall conduct a comprehensive, fair and impartial evaluation of all submittals received in response to this RFQ. City may appoint a selection committee to perform the evaluation. Each submittal shall be analyzed to determine overall responsiveness and qualifications under the RFQ. The selection committee may select all, some or none of the Respondents. If City elects to conduct interviews, Respondents may

be interviewed and re-scored based upon these same criteria, or other criteria to be determined by the selection committee.

Respondent's submittal shall include the following items in the following sequence:

- A. EXECUTIVE SUMMARY – Respondent shall include a one page Executive Summary with its Statement of Qualifications (“SOQ”). The summary shall state the number of years Respondent has been in business, number of years Respondent has been in business at its local office, Respondent’s local office address and number of employees employed in Respondent’s local office.
- B. SUBMITTAL COVER / SIGNATURE PAGE (Form #1) – Respondent shall include the completed Submittal Cover/Signature Sheet with its submittal, indexed and labeled as **Tab “1”**. The Submittal Cover/Signature Sheet shall be signed by a person (or persons) authorized to bind the entity (or 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 require signatures from all firms participating in the joint venture. Joint ventures are required to provide legal proof of the joint venture, such as a joint venture agreement, as an attachment to their submittal.
- C. SUBMITTAL CHECKLIST AND TABLE OF CONTENTS (Form #2) – Respondent shall complete this form, which is to be used as the Table of Contents for its submittal. The checklist shall be indexed and labeled as **Tab “2”** in its submittal.
- D. DISCRETIONARY CONTRACTS DISCLOSURE FORM (Form #3) – Respondent shall complete the form at, <https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>, print a copy of the completed form and submit as **Tab “3”** in its ORIGINAL SUBMITTAL ONLY. If Respondent is proposing as a team or joint venture, each party to the team or joint venture shall complete and submit a separate form with the submittal.
- E. LITIGATION DISCLOSURE FORM (Form #4) – Respondent shall complete a Litigation Disclosure form and utilize additional pages for explanation, if necessary, indexed and labeled as **Tab “4”** in its submittal. If Respondent is proposing as a team or joint venture, each party to that team or joint venture shall completed and submit a separate form with the submittal.
- F. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (FORM 5) – Respondent shall submit a completed and signed Subcontractor/Supplier Utilization Plan Form. This form shall be indexed and labeled as **Tab “5”** in the submittal.
- G. CONTRACT TEMPLATE (Indexed and labeled as **Tab “6”**) – Respondent shall review City’s Contract Template, provided as RFQ Exhibit A hereto, and provide written comments and/or concerns regarding the Contract. If Respondent does not have any comments and/or concerns, Respondent shall indicate this in this Tab 6. If no objections are submitted by Respondent, City shall presume that Respondent shall sign the agreement as presented, if a contract is awarded.
- H. PROOF OF INSURABILITY (Indexed and labeled as **Tab “7”**) – Respondent shall submit a copy of its current insurance certificate.

- I. 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 “8”**.
- J. STATEMENT OF QUALIFICATIONS – Respondent shall provide a narrative document that addresses all evaluation criteria in Section II of this RFQ. Sufficient information regarding past projects and key personnel’s experience should be provided to indicate Respondent’s team has met or exceeded the minimum qualifications provided in Section II of this RFQ in submittal.

**A. Background, Experience and Qualifications of Prime Firm, Key Personnel and Key Sub-Consultants, including Co-Respondent, Joint Venture Party or Partner (40 Points)**

**Experience: (Indexed and Labeled as Tab “9”)** Discuss the background and past performance, experience, and qualifications in providing the services as outlined in this RFQ. In six (6) pages or less, describe specific experience with public entity clients, especially large municipalities. Utilizing a project sheet, include the following information:

1. List the number of years/months firm has been providing real estate appraisal services;
2. List the type of appraisal services firm offers.
3. State the total number of appraisals firm has completed within the past two (2) years for which a fee or salary was received for each of the following categories:
  - Residential
  - Commercial
  - Industrial
  - Undeveloped
  - Special Purpose
  - Temporary Easements
  - Other (Identify)
4. Indicate the average number of days that your firm requires to complete an appraisal report for any given project within the following categories:
  - Residential
  - Commercial
  - Industrial
  - Undeveloped
  - Special Purpose
  - Temporary Easements
  - Other (Identify)
5. Describe the firms’ resources available to support contact to include the following:
  - Include the total number of employees (professional, technicians, administrative);
  - List location of firm to include branch offices as well as the address for each;
  - List address, telephone, and fax number of office that will perform the services;
  - List location and contact information of key personnel;
  - List Name, title and telephone of principal contact; and
  - List any additional resources available to support this contract.

**Proposed Key Personnel/Organizational Chart (Indexed and Labeled as Tab “10”)** Key personnel included in this section are expected to be the same personnel that shall be assigned to contract, if awarded. Respondent shall provide a detailed organizational chart of its firm,

identifying key personnel who shall be committed to working on the various tasks required under this contract. The Proposed Key Personnel shall consist of a Licensed Real Estate Appraiser with a minimum of five (5) five years demonstrated experience in real estate services.

Label key personnel assignments as:

- Principals of the prime firm
- Proposed Appraisers that shall be assigned to this contract;
- Any support staff from the prime firm that shall support this contract, and
- Sub-Consultant(s) (for all services deemed necessary to fulfill the duties of this contract).

**Resumes (Indexed and Labeled as Tab “11”)** – Respondent shall submit one-page resumes for all key team members. Resumes should link to the provided project sheets and also may include additional previously-completed relevant projects not highlighted in the provided project sheets. Resumes also shall include the license type (if applicable), number of years licensed, location of office, number of years experience in proposed role and experience with the Firm.

**B. Proposed Management Plan (25 points)**

**(indexed and labeled as Tab “12”)** In a four (4) page summary of less describe the following:

1. Project Management - Describe your firm’s project management approach and team organization in providing appraisal services by product type including associated turn-around times. Include a service plan detailing firm’s plan to address standard requests and to address priority requests that must be responded to in an expeditious manner.
2. Quality Assurance - provide a quality assurance plan and designation of a single point of contact vested with authority to resolve City’s issues or concerns and to periodically meet with the City to discuss status of each project;
3. Dispute Resolution – briefly describe the firm or team members’ experience with dispute resolution and provide an example from previous project experience where project issues were satisfactorily resolved;
4. Safety Management – provide a plan for safety management on this project site. Provide the firm’s safety record for the past three years.
5. Service Plan – Indicate the office hours for each location and provide a list of holidays on which offices will be closed.

**C. Team’s Experience with San Antonio Region Issues and past experience with City of San Antonio contracts (15 points)**

City is interested in evaluating Respondent’s experience with San Antonio issues, as may be evidenced by work in San Antonio and/or the surrounding area during the past five (5) years. In narrative form, using a maximum of two (2) pages, briefly describe Respondent’s experience (if any) in the following areas, referencing projects relating to that experience. This information shall

be indexed and labeled as **Tab “13”**. Briefly describe Respondent’s experience in the following areas, referencing projects relating to that experience:

- Describe Respondent’s past experience approach to coordinate with stake holders;
- Local area appraisal accomplishments and practices;
- Local appraisal challenges and how those challenges were addressed; and
- Discuss how Respondent stays informed on issues/trends related to the San Antonio Commercial appraisal market.

A portion of the scoring for these criteria may be based on City’s Respondents’ Scorecard, other documentation and/or experience with City projects. City may consider the history of the firm in complying with project programs, schedules and budgets on previous City of San Antonio projects. **No items shall be submitted by Respondent for this portion of the criterion. Respondent shall not be penalized if it has not done work on City of San Antonio projects.** Specific items for consideration may include, but are not limited to, the following:

- Timely completion of City projects;
- Cooperative working relationship with City;
- Prompt response to communications
- Prompt payment of Subcontractors at all levels;
- Compliance with other contract terms;
- Compliance with City Ordinances on substitution/addition/deletion of Subcontractors;
- Compliance with City standards;
- Conformance to City budget requirements.

#### **D. SBEDA –Prime Contract Program (20 points)**

##### **SBEDA - SBE Prime Contract Program – 10 points**

Certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime Contractors proposing at least 51% SBE participation (Prime and/or Subcontractor) shall receive ten (10) evaluation criteria percentage points, and

##### **SBEDA - MWBE Prime Contract Program – 10 points**

Certified M/WBE firms (see *Minority/Women Business Enterprise* definition) headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime Contractors proposing at least 51% M/WBE participation (Prime and/or Subcontractor) shall receive ten (10) evaluation criteria percentage points.

No evaluation criteria percentage Points shall be awarded to non-SBE or non-MWBE Prime Contractors through subcontracting to certified SBE or MWBE firms.

Respondent is expected to examine this RFQ 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 Respondent's submittal being deemed non-responsive and, therefore, disqualified from consideration by City.

<b>Evaluation Criteria:</b>	<b>Maximum Points</b>
<b>A. Background, Experience and Qualifications of Prime Firm, Key Personnel and Key Sub-Consultants, including Co-Respondent, Joint Venture Party or Partner</b>	<b>40 points</b>
<b>B. Proposed Management Plan</b>	<b>25 points</b>
<b>C. Team's Experience with San Antonio Region Issues &amp; past experience with City of San Antonio contracts</b>	<b>15 points</b>
<b>D. SBEDA</b> <b>SBE Prime Contract Program – 10 points</b> <b>MWBE Prime Contract Program – 10 points</b>	<b>20 points</b>
<b>TOTAL</b>	<b>100 points</b>

## VI. SUBMISSION INSTRUCTIONS

When submitting a Statement of Qualifications in person, visitors to City Hall shall allow time for security measures. Visitors to City Hall shall be required to enter through the east side of the building. The public shall pass through a metal detector and x-ray machine located in City Hall lobby. All packages, purses and carried items shall be scanned during City's regular business hours of 7:45 a.m. to 4:30 p.m. After members of the public proceed through the metal detector, they shall 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 City Hall (Dolorosa side). Security shall meet the ramp user in the basement with a hand scanner.

Respondent shall submit a total of six (6) Qualification Statements, which shall include one (1) original unbound Qualification Statement, signed in ink, and five (5) reprinted copies of its 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 "**RFQ: ON-CALL REAL ESTATE APPRAISAL SERVICES**". All submittals shall be received in the Office of City Clerk **NO LATER THAN 3:00 PM, January 5, 2016** at the address indicated below. Any submittal received after this time shall not be considered.

Physical Address:

Office of City Clerk, Attn: Transportation and Capital Improvements  
 100 Military Plaza  
 City Hall, 2<sup>nd</sup> Floor,  
 San Antonio, Texas 78205

Mailing Address:

City Clerk's Office  
ATTN: TCI Contract Services  
On-Call Real Estate Appraisal Services  
100 Military Plaza  
City Hall – 2<sup>nd</sup> Floor  
San Antonio, Texas 78205

Submittals sent by facsimile or email shall not be accepted.

The response 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 shall be counted. Respondent shall adhere to the page limitations for each section, as stated herein. Pages which have project photos, charts, and graphs shall be counted towards the maximum number of pages. Front and back covers, Table of Contents pages and tabbed divider pages shall not be counted if these pages 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 that which is sufficient to present a complete and effective submission, are not required. All pages shall be numbered. Margins shall be no less than 1" around the perimeter of each submitted page. Electronic files, websites or URLs shall not be included as part of the proposal, other than the CD specified above. Each submittal shall include the sections and attachments in the sequence listed in the **RFQ Section V** herein, Submittal Document Requirements & Evaluation Criteria, and each section shall be divided by tabs and indexed as indicated in this RFQ. Failure to meet the above conditions may result in disqualification of the proposal.

A Respondent who submits a response to this RFQ correctly shall reveal, disclose and state the true and correct names of the individual, proprietorship, corporation and/or partnership of Respondent, 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" shall be accepted in lieu of the full, true and correct legal name of an entity. These provided 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. A Corporate Respondent and a Respondent Limited Liability Company shall include the 11-digit Comptroller's Taxpayer Number on the signature page of Respondent's submitted Proposal.

## **VII. AMENDMENTS TO RFQ**

Changes, amendments or written responses to questions received in compliance with Section VIII, Restrictions on Communication herein, 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 submission of its proposal. If Respondent does not have access to the Internet, Respondent shall notify City, in accordance with Section VIII,

Restrictions on Communication, it 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 this RFQ and all changes to this RFQ – if any – shall be made in writing only.

### VIII. RESTRICTION ON COMMUNICATIONS

Once this RFQ has been released, Respondent is prohibited from communicating with City staff regarding the RFQ or Submittals, with the following exceptions:

Respondent is prohibited from communicating with elected City officials and their staffs regarding this RFQ or Respondent's submittal from the time this RFQ has been released until the contract is posted as a City Council agenda item. Respondent is prohibited from communicating with City employees regarding this RFQ from the time this RFQ has been released until the contract is awarded. These restrictions extend to "thank you" letters, phone calls, emails and all other contact that results in the direct or indirect discussion of this RFQ and/or submittal submitted by Respondent. 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. Respondent may ask verbal questions concerning this RFQ at the Project's Pre-Submittal Conference.
2. Respondent may submit written questions concerning this RFQ to the Staff Contact Person listed in the address below until **4:00 PM on December 15, 2015**. Questions received after the stated deadline shall not be answered. It is suggested that all questions be sent by electronic mail:

Elvia Fernandez, Management Analyst, 210-207-4033 or [Elvia.Fernandez@sanantonio.gov](mailto:Elvia.Fernandez@sanantonio.gov)

However, questions sent by certified mail, return receipt requested, shall also be accepted and should be addressed to:

Elvia Fernandez, Management Analyst  
City of San Antonio, Transportation and Capital Improvements  
Contract Services Division  
114 Commerce Street  
Room 918  
115San Antonio, TX 78205

3. Respondent and/or its agent(s) are encouraged to contact Small Business Office of the Economic Development Department (EDD) for assistance or clarification with issues specifically related to City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form, prior to Respondent's submittal. The point of contact for this solicitation is Mr. David Rodriguez. David may be reached by telephone at (210) 207-0071 or by e-mail at [David.Rodriguez3@sanantonio.gov](mailto:David.Rodriguez3@sanantonio.gov) David may designate other members of City staff to

address issues raised by Respondent. *This exception to the restriction on communication does not apply, and there is no contact permitted by Respondent to the Small Business Office regarding this solicitation, after the solicitation closing date. City reserves the right to contract Respondent over SBEDA issues after the solicitation closing date.*

4. Respondent shall provide responses to any questions asked of it by City's Staff Contact Person and/or his designee about City's SBEDA Program, both before and after responses are received and opened. During interviews, if any, verbal questions addressed to Respondent and its explanations shall be permitted. If interviews are conducted, the selected Respondent(s) shall not bring lobbyists. City reserves the right to exclude any persons from such selection committee meetings/interviews as it deems in City's best interests.

## **IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS**

City reserves the right to award one, more than one or no contract(s) in response to this RFQ.

- A. A Contract, if awarded, shall be awarded to a Respondent whose submittal is deemed most advantageous to City, as determined by the selection committee and upon the approval by the San Antonio City Council.
- B. City may accept any submittal in whole or in part. If subsequent contract negotiations are conducted, such negotiations shall not constitute a rejection or alternate RFQ on the part of City. However, final selection of a Respondent is subject to City Council approval.
- C. City reserves the right to accept one or more submittals or reject any or all submittals received in response to this RFQ and to waive informalities and irregularities in any submittal received. City also reserves the right to terminate this RFQ, reissue a subsequent solicitation and/or remedy technical errors in the RFQ process.
- D. City shall require the selected Respondent(s) to execute a contract with City in substantially the same form as attached, prior to City Council award. No work shall commence on the subject Project until City signs the contract document(s) and Respondent provides the necessary evidence of insurance required in this RFQ and the contract. Contract documents are not binding on City until approved by City Attorney and City Council. 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.
- E. This RFQ does not commit City to enter into a Contract or award any services related to this RFQ, nor does it obligate City to pay any costs incurred by Respondent in the preparation or submission of a response or in anticipation of a contract.
- F. City administers its design and construction management through an Internet-based management system. All vendors shall be required to use City's system and submit Project schedules as City dictates.

- G. **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 individual(s) or entities is a party to the contract or sale: City officer or employee; his/her parent, child or spouse; a business entity in which he/she or his/her parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; or a business entity in which any individual or entity listed by Respondent is a Subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- H. 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) – Instructions and web-link to electronic form are included in Form 3 of RFQ.
- I. **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, that City shall in no way be responsible for Respondent’s actions and that none of the parties hereto shall have authority to bind the other or to hold out to third parties that it has such authority.
- J. 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 seventh (7<sup>th</sup>) business day after the date that the person: (1) begins contract discussions or negotiations with City; or (2) submits to City an application, response to a request for proposal, offers, correspondence or another writing related to a potential agreement with City. The CIQ form is available from the Texas Ethics Commission at:

<http://www.ethics.state.tx.us/forms/CIQ.pdf>.

In addition to the CIQ form, City requires individuals to submit a CIQ Addendum. The CIQ Addendum is available from City of San Antonio at:

<http://www.sanantonio.gov/atty/ethics/pdf/OCC-CIQ-Addendum.pdf>.

Completed CIQ forms and CIQ addendum forms may delivered by hand to the Office of City Clerk at City Hall, 2<sup>nd</sup> floor, 100 Military Plaza, San Antonio, TX 78205 or may be mailed to the Office of City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. Respondent shall consult its own legal advisor if it has any questions regarding the statute, CIQ form or CIQ Addendum.

- K. All submittals become the property of City upon receipt and shall not be returned. Any information deemed to be confidential by Respondent clearly should be noted on the page(s) where confidential information is contained; however, City cannot guarantee that it shall 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.

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

M. **Solicitation Process Review:** If Respondent desires a review of the solicitation process followed by City, Respondent shall deliver a written request to the Director of TCI within seven (7) calendar days from the date the Notice of Non-Selection was sent. When the TCI Director receives a timely written request, the TCI Director (or his/her designee) shall review Respondents concerns and City's solicitation process for legitimacy and procedural correctness. After performing a full review, the TCI Director shall notify Respondent in writing of his/her determination.

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

(a) is not the selected respondent; and

(b) has not been debriefed since January 1, 2014.

Once Respondent has been debriefed, it shall not be eligible for future debriefings within that calendar year. Any Respondent meeting the above criteria that desires an individual submittal debriefing shall deliver a written request to the TCI Contract Services Division within seven (7) calendar days from the date a Notice of Non-Selection was sent.

O. City reserves the right to verify any and all information submitted by Respondents at anytime during the solicitation/evaluation process.

P. Final approval of a selected firm is subject to the action of the San Antonio City Council.

Q. City reserves the right to contact any Respondent to negotiate a contract, if such action is deemed desirable by City.

## **X. SBEDA ORDINANCE COMPLIANCE PROVISIONS**

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

Respondent (also referenced as "Respondent" herein) 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.

**Exception Request** – A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. 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 shall 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 City’s Economic Development (EDD) website page and is also available in hard copy form upon request to 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 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.)

**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, 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.

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system wherein City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to 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 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.

**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 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 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 City 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 consultants 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 City 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 City.

**M/WBE Directory** – a listing of minority- and women-owned businesses that have been certified for participation in 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 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<sup>th</sup> 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** – City department or authorized representative of 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 City for purposes of providing goods or services for 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 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 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 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 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 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 City. A copy of each binding agreement between the Contractor and its subcontractors shall be submitted to 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 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 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 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 City’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in City’s SBEDA Policy & Procedure Manual are in furtherance of City’s efforts at economic inclusion and, moreover, that such terms are part of Contractor’s scope of work as referenced in 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 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 City, as well as any transfer or change in its ownership or business structure.
6. Contractor shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
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 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 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 Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Contractor affirms that if it is presently certified as an SBE, Contractor agrees not to subcontract more than 49% of the contract value to a non-SBE firm; **and**

**M/WBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, Contractor

affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), Contractor agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

#### 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, 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 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 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 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 City for a period not to exceed two years (upon City Council approval).