

AN ORDINANCE 2008-06-12-0540

APPROVING A THREE YEAR CONTRACT WITH BOOTH RESEARCH GROUP, INC. AT A COST OF \$339,900.00 TO DEVELOP VALIDATED WRITTEN PROMOTIONAL EXAMINATIONS FOR ALL TESTED PROMOTIONAL RANKS OF THE SAN ANTONIO FIRE DEPARTMENT AND TO PREPARE, ADMINISTER AND SCORE PROMOTIONAL ASSESSMENT CENTERS FOR THE RANK OF DISTRICT FIRE CHIEF, AND PROVIDING FOR TWO ONE-YEAR EXTENSIONS AT THE CITY'S OPTION.

WHEREAS, Chapter 143 of the Texas Local Government Code requires the use of written examinations as part of the promotion process for firefighters employed by the San Antonio Fire Department; and

WHEREAS, it is necessary to contract with a consultant to develop and administer said promotional examinations; and

WHEREAS, after the submission of proposals in response to a request for proposals, Booth Research Group, Inc. was selected to provide this service; and

WHEREAS, the contract will have an initial term of three years and an option for two additional one-year extensions; and

WHEREAS, the cost of the initial term is \$339,000.00, and the cost of the first year of that term is \$119,050.00; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

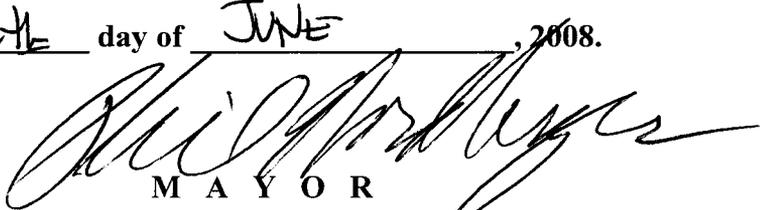
SECTION 1. The City Manager and her designee are hereby authorized to execute a three-year contract with Booth Research Group, Inc. at a cost of \$339,900.00 to develop validated written promotional examinations for the San Antonio Fire Department. A copy of said contract is attached hereto, and its terms and conditions are hereby approved.

SECTION 2. Funding for this operating portion of this ordinance is available in Fund 11001000 (General Fund), Cost Center 8002140001 (Assessment Fire Dept.), General Ledger 5201040 (Fees to Professional Contractors) as part of the FY08 budget. Payment not to exceed \$119,050.00 is authorized to Booth Research Group, Inc. and should be encumbered with a purchase order.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance shall take effect ten days from the date of passage.

PASSED AND APPROVED this 12th day of JUNE, 2008.


M A Y O R
PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 33

Name:	8, 9, 12, 14, 15, 18, 20, 22, 23, 24, 26, 27, 28A, 28B, 29A, 29B, 30, 31, 32, 33, 37, 38, 39A, 39B, 39C
Date:	06/12/2008
Time:	10:17:35 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a three year contract with Booth Research Group, Inc. at a cost of \$339,900.00 to develop validated written promotional examinations for all tested promotional ranks of the San Antonio Fire Department and to prepare, administer and score promotional Assessment Centers for the rank of District Fire Chief, and providing for two one-year extensions at the City's option. [Sharon De La Garza, Assistant City Manager; Edward Belmares, Director, Human Resources]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

**PROFESSIONAL SERVICES AGREEMENT
FOR
WRITTEN PROMOTIONAL EXAMINATIONS and PROMOTIONAL ASSESSMENT
CENTER for the SAN ANTONIO FIRE DEPARTMENT**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of June, 2008 and Booth Research Group, Inc. by and through its president, Walter S. Booth (hereinafter referred to as "Contractor"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

1.1 As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the "Human Resources Director".

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon signing and terminate on April 30, 2011.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV, Compensation.

3.2 WRITTEN PROMOTIONAL EXAMINATION

- A. **CONTRACTOR** shall complete a properly structured, updated, detailed job/task analysis for the positions of FAO, Fire Lieutenant, Fire Captain, and District Fire Chief, San Antonio Fire Department. Each written examination shall consist of questions relating to the duties of the classification of the position to be filled. The frequency of full job/task analyses and/or currency analyses will be done in accordance with generally accepted industry standards to ensure the content validity of the related written examinations.
- B. **CONTRACTOR** shall prepare a validated job-related written examination and make all reasonable effort to minimize discrimination against any candidate because of race, color, religion, national origin, gender, disability, sexual orientation, or age.
- C. **CONTRACTOR** shall prepare each examination in a manner that ensures compliance with all State and Federal guidelines related to testing and employee selection procedures, to include but not limited to, EEOC, ADA, and Department of Justice.

CONTRACTOR shall create an "A" and "B" exam for each test for each applicable rank. Each test will be similar in construction and material covered.

- D. **CONTRACTOR** shall prepare a master examination for each rank, with 100 questions per examination drawn from a pre-approved list of study materials, and answer keys for each of the examinations constructed. **CONTRACTOR SHALL DELIVER SAME TO THE Civil Service Director (Human Resources Director) no later than two (2) weeks prior to the date of each examination, a camera-ready master examination and an answer key. CONTRACTOR must have the capability to complete the process of developing and delivering a validated examination within a minimum of 45 days of receiving notification by the CITY.**
- E. **CONTRACTOR** shall develop questions that are unique to each particular examination.
- F. **CONTRACTOR** shall ensure primary and active involvement in all phases of the scope of work by a principal of the firm.

- G. **CONTRACTOR** shall prepare for the defense of, and defend, any examination questions which may be appealed during the five (5) day review period. This work will be compensated at a pre-determined hourly rate. **CONTRACTOR** shall correct any manifest errors.
- H. **CONTRACTOR** shall compile item analyses and other statistics for disparate impact and submission of statistical reports upon request.
- I. **CONTRACTOR** shall provide litigation consulting and expert testimony as and when needed, to be compensated at a pre-determined hourly rate.
- J. **CONTRACTOR** shall ensure compliance with Chapter 143 of the Local Government Code and the current Collective Bargaining Agreement between The City of San Antonio and Local 624 International Association of Fire Fighters.
- K. **CONTRACTOR** shall ensure that all services shall be performed to the satisfaction of the Human Resources Director, and the City of San Antonio shall have exclusive use of the examinations including all examination questions and scenarios developed for the CITY.
- L. **CONTRACTOR** shall prepare the examinations in a manner that ensures the strictest confidentiality regarding all aspects of the process. **CONTRACTOR** shall perform all services required and hereby represents that all its employees or associates are fully qualified to perform the services described herein. Such services shall be performed in accordance with the ordinary reasonable standard of care and due diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances.

3.3 PROMOTIONAL ASSESSMENT CENTER

- A. **CONTRACTOR** shall conduct a properly structured, updated, detailed job/task analysis for the position of District Fire Chief in the San Antonio Fire Department. The assessment center process shall be designed so that all exercises are related to the requirements of the position to be filled. The frequency of full job/task analyses and/or currency analyses will be done in accordance with generally accepted industry standards to ensure the content validity of the related assessment center.
- B. **CONTRACTOR** shall prepare, administer and score a validated job-related assessment center process and make all reasonable effort to minimize discrimination against any candidate because of race, color, religion, national origin, gender, disability, sexual orientation, or age.

- C. **CONTRACTOR** shall prepare, administer, and score each assessment center process in a manner that ensures compliance with all State and Federal guidelines related to testing and employee selection procedures, including but not limited to, EEOC, ADA, and Department of Justice.
- D. **CONTRACTOR** shall compile item analysis and other statistics for disparate impact and submission of statistical reports upon request.
- E. **CONTRACTOR** shall provide litigation consulting and expert testimony as and when needed, to be compensated at a pre-determined hourly rate.
- F. **CONTRACTOR** shall ensure compliance with the current Collective Bargaining Agreement between the City of San Antonio and Local 624 International Association of Fire Fighters, as applicable, with regard to the development and administration of the District Fire Chief assessment center process.
- G. **CONTRACTOR** shall perform all services required with active involvement in the scope of work a principal of the firm, and hereby represents that all its employees or associates are fully qualified to perform the services described herein. Such services will be performed in accordance with the ordinary reasonable standard of care and due diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances.
- H. **CONTRACTOR** shall ensure that all services are to be performed to the satisfaction of the Human Resources Director.

COORDINATION WITH THE CITY

3.4 The **CITY** agrees to provide sufficient cooperation with respect to any data collection steps during the job analysis and test development phases. The **CITY** will coordinate diverse subject matter expert (SME) panels, interview schedules and identify interview locations as necessary.

- A. The **CITY** agrees to prepare and post the examination announcements and registration lists.
- B. The **CITY** agrees to coordinate and acquire use of the facilities in which to hold the examination.
- C. The **CITY** agrees to administer and score the written promotional examinations.
- D. The **CITY** agrees to develop, approve and distribute the eligibility lists/written examination scores.

E. The CITY will coordinate the selection and availability of assessment board members in accordance with requirements established in the CBA with regard to District Fire Chief assessment centers.

3.5 **CONTRACTOR** shall hold periodic conferences with the **CITY** designee so that the project, as developed, shall have the full benefit of **CITY's** experience and knowledge of existing needs and facilities and be consistent with its current policies and standards.

3.6 **CITY** shall provide written notice to **CONTRACTOR** of any errors or omissions discovered in **CONTRACTOR's** services, or performance, or of any development that affects the scope or timing of **CONTRACTOR's** services.

3.7 All work performed by Contractor hereunder shall be performed to the satisfaction of Human Resources Director. The determination made by the Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to the Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed \$375,000.00 dollars as total compensation, to be paid to Contractor as follows:

PRICING SCHEDULE

	Year 1	Year 2	Year 3	Year 4	Year 5
Job/Task Analysis:					
Fire Apparatus Operator (per analysis performed)	\$ 7,000			\$ 8,000	
Fire Lieutenant (per analysis performed)	\$ 7,000			\$ 8,000	
Fire Captain (per analysis performed)	\$ 7,000			\$ 8,000	
District Fire Chief (per analysis performed)	\$ 7,000			\$ 8,000	
Updates to Job/Task Analysis:					
Fire Apparatus Operator (per update performed)		\$ 2,500	\$ 3,000		\$ 3,500
Fire Lieutenant (per update performed)		\$ 2,500	\$ 3,000		\$ 3,500
Fire Captain (per update performed)		\$ 2,500	\$ 3,000		\$ 3,500
District Fire Chief (per update performed)		\$ 2,500	\$ 3,000		\$ 3,500
Development of Written Examinations:					
Fire Apparatus Operator (Exam "A")	\$ 14,500	\$ 15,500	\$ 16,000	\$ 16,500	\$ 17,000
Fire Apparatus Operator (Exam "B")	\$ 4,350	\$ 4,650	\$ 4,800	\$ 4,950	\$ 5,100

Fire Lieutenant (Exam "A")	\$ 14,500	\$ 15,500	\$ 16,000	\$ 16,500	\$ 17,000
Fire Lieutenant (Exam "B")	\$ 4,350	\$ 4,650	\$ 4,800	\$ 4,950	\$ 5,100
Fire Captain (Exam "A")	\$ 14,500	\$ 15,500	\$ 16,000	\$ 16,500	\$ 17,000
Fire Captain (Exam "B")	\$ 4,350	\$ 4,650	\$ 4,800	\$ 4,950	\$ 5,100
District Fire Chief (Exam "A")	\$ 14,500	\$ 15,500	\$ 16,000	\$ 16,500	\$ 17,000
Assessment Center Development & Administration:					
District Fire Chief	\$ 20,000	\$ 21,500	\$ 23,000	\$ 24,000	\$ 25,000

Rate for Defense of Appealed Test Questions \$235 per hour
(Maximum compensation not to exceed nine (9) hours for each type of written examination)

Rate for Expert Testimony in the Event of Litigation \$235 per hour

4.2 CITY agrees to make payment to CONTRACTOR based upon work completed in the performance of this contract upon receipt of an itemized bill or statement, provided such work is approved by the Human Resources Director. Payment shall be made for services completed as to each item listed above at the respective rate indicated in the fee schedule.

4.3 Total payment to CONTRACTOR cannot exceed those amounts set forth above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an Ordinance therefore.

4.4 The CITY agrees to pay for expert testimony, as and when needed, to be compensated at the rate of \$235 per hour. CONTRACTOR'S travel costs will be billed at the lowest non-restrictive coach rate from Parker, Colorado or the nearest airport located near Parker, Colorado, plus lodging and per diem. Attendance at test question appeal hearings shall be compensated at \$235 per hour, not to exceed the amounts shown in the above fee schedule.

4.5 CONTRACTOR acknowledges and agrees that it shall provide services under this CONTRACT at a certain level with a certain degree of accuracy and timeliness. Therefore, CONTRACTOR agrees to the following performance standards and administrative fee adjustments:

4.6 The aggregate service fee for each examination or assessment center conducted under the terms of this CONTRACT will be reduced by 5% if necessary based on a performance audit of that examination or assessment center if time lines established for the completion and/or administration and scoring of written exams and assessment centers, as applicable, are not met. Fees will be separately reduced by 5% if more than two (2) questions are rejected by the San Antonio Fire and Police Civil Service Commission because either the question was not drawn from the specified study materials or the answer key was in error.

4.7 Nothing contained in this CONTRACT shall require CITY to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the

terms of this CONTRACT. CITY shall not be required to make any payments to CONTRACTOR at any time CONTRACTOR is in default under this CONTRACT.

4.8 Despite the CITY'S possible approval of an assignee or subcontractor, the CITY shall, in no event, be obligated to any third party, including any assignee or subcontractor of the CONTRACTOR, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of CONTRACT execution or extending beyond the expiration date of this CONTRACT.

4.9 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in section 4.1 above. Total payments to Contractor cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.10 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Contractor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention.

6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
- 7.4.2 Bankruptcy or selling substantially all of company's assets
- 7.4.3 Failing to perform or failing to comply with any covenant herein required
- 7.4.4 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Director
Human Resources Department
111 Plaza De Armas, Suite 260
San Antonio, TX 78205

If intended for Contractor, to:

Booth Research Group, Inc.
Attn: W. Booth
P.O. Box 1899
Parker, CO 80134

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Human Resources Department, which shall be clearly labeled "**Written Promotional Examinations & Promotional Assessment Centers for the Fire Department**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Human Resources Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation

binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Human Resources Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.7 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.8 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

10.9 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

XI. INDEMNIFICATION REQUIREMENTS

11.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, contractor or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONTRACTOR shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this Agreement.

11.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by City. City shall also have the

right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: none. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council (hereafter "City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor

from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and contractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XIV. SBEDA

14.1 Contractor hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

14.2 Contractor shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Agreement, thereby meeting the percentages for participation of those groups as submitted in its proposal. Contractor's SBEDA plan, as submitted with Contractor's proposal, is attached hereto and incorporated herein by reference as Exhibit _____. Contractor shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Agreement, and shall remain in compliance throughout the term of this Agreement. Contractor further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Agreement, as may be approved pursuant to this Agreement, which will meet the percentages submitted in its proposal.

14.3 Contractor shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to inspection by City or its authorized agent at all reasonable times. Should City find that Contractor is not in compliance with this article; City shall give notice of non-compliance to Contractor. Contractor shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies

within the time allotted shall be considered a material breach of this Agreement, for which this Agreement may be terminated in accordance with Article VII. Termination.

14.4 In all events, Contractor shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 2007-04-12-0396, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

XV. CONFLICT OF INTEREST

15.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

17.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or

provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

18.1 Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

19.1 Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

22.1 The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

23.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

24.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXV. INCORPORATION OF EXHIBITS

25.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

XXVI. ENTIRE AGREEMENT

26.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

XXVII. PROHIBITED CONTRIBUTIONS

27.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-risk" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Contractor understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

27.2 Contractor acknowledges that the City has identified this contract as high risk.

27.3 Contractor warrants and certifies, and this contract is made in reliance thereon, that the individual signing this contract has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this contract. Should the signor of this contract violate this provision, the City Council may, in its discretion, declare this contract void.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

CONTRACTOR

(Signature) _____

Printed Name: Sheryl Sculley

Title: City Manager

Date: _____

(Signature)  _____

Printed Name: Walter S. Booth

Title: President, Booth Research Group, Inc.

Date: 6/3/08

(Signature) _____

Printed Name: Edward Belmares

Title: Director, Human Resources

Date: _____

Approved as to Form:

Michael D. Bernard
City Attorney

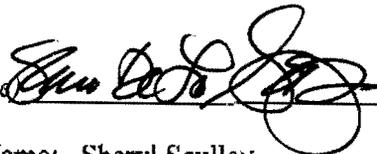
27.2 Contractor acknowledges that the City has identified this contract as high risk.

27.3 Contractor warrants and certifies, and this contract is made in reliance thereon, that the individual signing this contract has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this contract. Should the signor of this contract violate this provision, the City Council may, in its discretion, declare this contract void.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

CONTRACTOR

(Signature) 
Printed Name: Sheryl Sculley
Title: City Manager
Date: 7/2/08

(Signature) 
Printed Name: Walter S. Booth
Title: President, Booth Research Group, Inc.
Date: 6/3/08

(Signature) 
Printed Name: Edward Belmares
Title: Director, Human Resources
Date: 7/1/08

Approved as to Form:


Michael D. Bernard
City Attorney



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 33
Council Meeting Date: 6/12/2008
RFCA Tracking No: R-3410

DEPARTMENT: Human Resources

DEPARTMENT HEAD: Edward Belmares

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Fire Promotional Testing Contract

SUMMARY:

This action authorizes the City Manager, or her designee, to execute a three-year contract with the Booth Research Group, Inc, a test consulting firm, to prepare validated promotional written examinations for the positions of Fire Apparatus Operator, Fire Lieutenant, Fire Captain, and District Fire Chief and will prepare, administer and score promotional assessment centers for the rank of District Fire Chief. Consultants will perform all tasks associated with the testing process. The contract will be in effect for three years from the date of execution, and includes a provision allowing the City, at its option and through appropriate action of the City Council, to extend the term of the contract for two one-year periods. The primary three-year contract will be for a cost of \$339,900.00. The first year cost of this contract will be \$119,050.00.

BACKGROUND INFORMATION:

Texas Local Government Code, Chapter 143, known as the Texas Fire Fighters' and Police Officers' Civil Service Law, mandates the use of written examinations as part of the promotion process for Fire and Police classified (sworn) personnel. The previous contract for the preparation of the Fire Promotional exams, including an optional two-year extension period has been completed. A Request for Proposals (RFP) was issued April 20, 2008 to solicit proposals from qualified firms interested in the development of Fire promotional exams and promotional assessment centers for the City of San Antonio.

The RFP was posted on the City of San Antonio's Website from April 20, 2008 to May 20, 2008; advertised in the Legal Notices section of the San Antonio Express News; and mailed or e-mailed to test consulting firms maintained on a Human Resources Department mailing list. Three firms responded to the RFP. The proposal evaluation committee members included representatives from Human Resources, and the Fire and Police departments. The evaluation of the proposals was based on the respondents' Experience, Background and Qualifications; Proposed Work Plan; Proposed Fee Schedule; and Small Business Economic Development Advocacy (SBEDA) compliance. The SBEDA scores were submitted by Economic Development. The attached scoring matrix indicates the results of the review committee's evaluation.

ISSUE:

The City has previously contracted with professional testing consultants with the expertise to provide for the development of written Fire examinations, and their validation in accordance with applicable guidelines on employee promotion procedures. Use of outside testing consultants helps minimize the legal exposure of the City in administering its promotional Fire examinations.

ALTERNATIVES:

The civil service statute (Chapter 143 of the Local Government Code) requires written exams for promotions for Fire and Police positions. Additionally, utilizing third party preparation provides legally defensible validated tests. Taking no action to approve this contract would require the City to seek an alternative third party to develop the examinations

FISCAL IMPACT:

The first year cost of this contract will be \$119,050.00 for test development and updated job analyses which are part of the validation process. The second year cost will be \$107,450.00 for test development. The third year cost will be \$113,400.00 for the test development and final report for the three years of the primary contract. This is a thirty six month contract that crosses fiscal years, the FY 2008 cost will not exceed the remaining amount budgeted. Funds to cover the remaining portion of the contract are contingent upon City Council approval of future operating budgets.

RECOMMENDATION:

Staff recommends approval of the contract with the Booth Research Group, Inc., in order to maintain the Fire promotional examinations and promotional assessment centers utilizing professionally developed examinations.

The required Discretionary Contracts Disclosure Form is attached.

ATTACHMENT(S):

File Description	File Name
Signed contract	Booth Contract.pdf
Booth Discretionary Disclosure	Booth Discretionary Disclosure.pdf
Scoring matrix	scoring matrix.pdf
Voting Results	
Ordinance/Supplemental Documents	200806120540.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Nikki M Ramos Assistant Director Human Resources

APPROVED FOR COUNCIL CONSIDERATION:

Sharon De La Garza Assistant City Manager