
CITY OF SAN ANTONIO PURCHASING & GENERAL SERVICES DEPARTMENT

Issued By: ATS
BID NO.: A1610-11 ATS

Date Issued: January 27, 2011

**INFORMAL INVITATION FOR BIDS
ANNUAL CONTRACT FOR PREVENTIVE MAINTENANCE SERVICE FOR INCINERATOR
SYSTEM**

Sealed bids in triplicate, subject to the Terms and Conditions of this Invitation for Bids and other contract provisions, will be received at the office of the Purchasing Department, Riverview Tower, 111 Soledad, Suite 1100 until 10:00 A.M. Central Time **February 11, 2011**.

The City of San Antonio Purchasing & General Services Department is willing to assist any bidder(s) in the interpretation of bid provisions or explanation of how bid forms are to be completed. Assistance may be received by visiting the Purchasing Office in the Riverview Tower, 111 Soledad, Suite 1100, or by calling (210) 207-7260.

This invitation includes the following:

Invitation for Bids
Terms and Conditions of Invitation for Bids

Specifications and General Requirements
Price Schedule

The undersigned, by his/her signature, represents that he/she is authorized to bind the Bidder to fully comply with the Specifications and General Requirements for the amount(s) shown on the accompanying bid sheet(s). By signing below, Bidder has read the entire document and agreed to the terms therein.

Signer's Name: _____ Firm Name: _____
(Please Print or Type)

Address: _____

Signature of Person Authorized to Sign Bid _____ City, State, Zip Code: _____

Email Address: _____ Telephone No.: _____

Fax No.: _____

Please complete the following:

Prompt Payment Discount: _____% _____ days. (If no discount is offered, Net 30 will apply.)

Please check the following blanks which apply to your company:

Ownership of firm (51% or more):

Non-minority Hispanic African-American Other Minority (specify) _____
 Female Owned Handicapped Owned Small Business (less than \$1 million annual receipts or 100 employees)
Indicate Status: Partnership Corporation Sole Proprietorship Other (specify) _____
Tax Identification Number: _____

FOR CITY USE ONLY

AWARD

Items Accepted:	Ordinance No:	Date:	Amount:
------------------------	----------------------	--------------	----------------

Approved: _____

CITY OF SAN ANTONIO

TERMS AND CONDITIONS OF INVITATION FOR BIDS

READ CAREFULLY

1. GENERAL CONDITIONS

Bidders (hereinafter “bidders”, “vendors” or “contractors”) are required to submit their bids upon the following expressed conditions:

- (a) Bidders shall thoroughly examine the drawings, specifications, schedule(s), instructions and all other contract documents.
- (b) Bidders shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the bid conditions. No plea of ignorance by the bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
- (c) Bidders are advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. Any bid, after being opened, becomes subject to the Public Information Act, Government Code Chapter 552; therefore bidders must clearly indicate any portion of the submitted bid that the bidder claims is not subject to public inspection under the Public Information Act.
- (d) No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service Board, San Antonio Water System, and all City boards and commissions other than those which are purely advisory. In this instance a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City’s ethics ordinance.

2. PREPARATION OF BIDS

Bids will be prepared in accordance with the following:

- (a) All information required by the bid form shall be furnished or the bid may be deemed non responsive. The bidder shall print or type name and manually sign the schedule.
- (b) Where there is an error in extension of price, the unit price shall govern. Any bid that is considered for award by each unit or line item, must include a price for each unit or line item for which the bidder wishes to be considered. Any ambiguity in the bid as a result of omission, error, unintelligible or illegible wording shall be construed in the favor of the City.

Any bid that is considered for award on an “all or none” basis must include a price quote for all units or line items. In an “All or None” bid, a unit price left blank shall be tabulated as a “zero”, and shall be deemed to be offered at no cost to the City.

- (c) Alternate bids may be allowed at the sole discretion of the City.
- (d) Proposed delivery time must be shown and shall include weekends and holidays, unless specified otherwise in this IFB.
- (e) Bidders will neither include federal taxes nor State of Texas limited sales excise and use taxes in bid prices since the City of San Antonio is exempt from payment of such taxes. An exemption certificate will be signed by City where applicable upon request by bidder.

3. DESCRIPTION OF SUPPLIES

Any catalog or manufacturer's reference used in describing an item is merely descriptive, and not restrictive, unless otherwise noted, and is used only to indicate type and quality of material. Each bid must clearly identify the proposed product, the quantity of the product, model, and type, as applicable. Prorata adjustments to packaging and pricing may be allowed at the sole discretion of the City.

4. ASSURANCE OF COMPLIANCE - EQUAL EMPLOYMENT OPPORTUNITY AND SMALL BUSINESS ECONOMIC DEVELOPMENT (SBEDA) PROGRAM

It is the policy of the City of San Antonio that Small, Minority, African-American and Women Business Enterprises shall have the maximum practicable opportunity to participate in the performance of public contracts. Bidder agrees that if this bid is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, bidder agrees, by submittal of this bid, that he/she will abide by all applicable terms and provisions of this Nondiscrimination Clause and the Small Business Economic Development Advocacy (SBEDA) Program Policy Ordinance. This clause and policy are available in the City Clerk's Office and the City's Economic Development Department.

5. SAMPLES, DEMONSTRATIONS AND TESTING

At the City's request and direction, bidder shall provide product samples and/or testing of items bid to ensure compliance with specifications. Samples, demonstrations and/or testing may be requested prior to award of the contract, upon delivery and/or at any point during the term of resulting contract. After notification, samples, demonstrations and/or testing must be provided within **ten** days. Failure to provide samples prior to award of contract will disqualify bidder from consideration. All samples (including return thereof), demonstrations and/or testing shall be at the expense of the bidder. Samples will be returned upon request; otherwise, samples will become property of the City of San Antonio, **ten** days after award of the contract.

6. SUBMISSION OF BIDS

- (a) **Sealed bids in triplicate** shall be enclosed in sealed envelopes addressed to the City Clerk, City of San Antonio. The name and address of bidder, the date and hour of the bid opening, bid number and title of the bid solicitation shall be marked on the outside of the envelope(s).
- (b) Bids must be submitted on the forms furnished. Bids, however, may be modified provided such modifications are sealed and received by the City Clerk prior to the time and date set for the bid opening. However, the City of San Antonio shall not be responsible for lost or misdirected bids or modifications.
- (c) By submittal of this bid, bidder certifies to the best of his/her knowledge that all information is true and correct.

7. REJECTION OF BIDS

- (a) The City may reject a bid if:
 - 1. The bidder misstates or conceals any material fact in the bid; or
 - 2. The bid does not strictly conform to law or the requirements of the bid;
 - 3. The bid is conditional, except that the bidder may qualify the bid for acceptance by the City on an "All or None" basis or a "Best Value Item" basis. An "All or None" basis bid must include all items upon which bids are invited.

- (b) In the event that a bidder is or subsequently becomes delinquent in the payment of his, her or its City taxes, including state and local sales taxes, such fact shall constitute grounds for rejection of the bid, or if awarded the bid, for cancellation of the contract. However, the City reserves the right to deduct any delinquent taxes from payments that the City may owe to the delinquent bidder as a result of such contract.
- (c) The City may, reject all bids whenever it is deemed in the best interest of the City to do so, and may reject any part of a bid unless the bid has been qualified as provided in Par. 7 (a) 3 above. The City at its sole discretion may also waive any minor informalities or irregularities in any bid, to include failure to submit sufficient bid copies, failure to submit literature or similar attachments, or business affiliation information.

8. WITHDRAWAL OF BIDS

Bids may not be withdrawn after the time set for the bid opening, unless approved by the City Council.

9. LATE BIDS OR MODIFICATIONS

Bids and modifications received after the time set for the bid opening will not be considered.

10. CLARIFICATION TO BID SPECIFICATIONS

- (a) If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of the specifications, other bid documents, or any part thereof, he/she may submit to the City Director of Purchasing and General Services, (Director) on or before seven calendar days prior to scheduled opening, a request for clarification. All such requests for information shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the bid, if made, will be made only by Addendum duly issued. A copy of such Addendum will be posted to the City's website at <http://epay.sanantonio.gov/RFPListings/>. It is the responsibility of a bidder to review this site and ascertain whether any amendments have been made prior to submission of a bid. The City will not be responsible for any other explanation or interpretation of the proposed bid made or given prior to the award of the contract. Any objections to the specifications and requirements as set forth in this bid must be filed in writing with the Director on or before **seven** calendar days prior to the scheduled opening.
- (b) The City reserves the right to request clarification to assist in evaluating the bidder's response when the bid response is unclear with respect to product pricing, packaging or other factors. The information provided is not intended to change the bid response in any fashion and such information must be provided within **two** days from request.

11. INVOICING, PAYMENT AND DISCOUNTS

- (a) Address for Invoices. All invoices must be sent to: City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976.
- (b) Information Required On Invoice.

All invoices must be in a form and content approved by the City. City may require modification of invoices if necessary in order to satisfy City that all billing is proper and pursuant to the terms of the contract. Invoices are required to show each City Purchase Order Number. Invoices must be legible. Items billed on invoices must be specific as to applicable stock, manufacturer, catalog or part number (if any). All invoices must show unit prices for each item being billed, the quantity of items being billed and the total for each item, as well as the total for all items on the invoice. If prices are based on list prices basis, then the list prices, the percentage discount or percentage surcharge, net unit prices, extensions and net total prices must be shown. Prompt payment discounts offered shall be shown separately on the invoice.

- (c) Payment by City. City shall have not less than 30 days to pay for goods or services. Time for payment, including payment under discount terms, will be computed from the later of: (1) the date the City receives conforming goods under the contract; (2) the date performance of the service under the contract is completed; or (3) the date the City receives a correct and valid invoice for the goods or services. Payment is deemed to be made on the date of mailing of the check. Payment is made in US dollars only.

This provision shall not apply where there is a bona fide dispute between the City and Vendor about the goods delivered or the service performed that causes the payment to be late, or where the invoice is not mailed to the address provided herein.

The payment amount due on invoices may not be manually altered by City personnel. Once disputed items are reconciled, Vendor must submit a corrected invoice, or a credit memorandum for the disputed amount, or the item must be issued by the vendor. City will not make partial payments on an invoice where there is a dispute.

- (d) **NECESSITY OF TIMELY INVOICE / WAIVER OF PAYMENT.** NOTWITHSTANDING THE FORGOING, THE CITY CANNOT PAY FOR ANY GOODS OR SERVICES WITHOUT AN INVOICE. VENDOR MUST INVOICE CITY NO LATER THAN 90 CALENDAR DAYS FROM THE DATE GOODS ARE DELIVERED OR SERVICES RENDERED. FAILURE TO SUBMIT AN INVOICE WITHIN SAID 90 DAY SHALL NEGATE ANY LIABILITY ON THE PART OF CITY AND CONSTITUTE A **WAIVER** BY VENDOR OF ANY AND ALL RIGHT OR CLAIMS TO COLLECT MONEYS THAT VENDOR MAY RIGHTFULLY BE OTHERWISE ENTITLED TO FOR GOODS OR SERVICES PERFORMED.
- (e) The total price for all goods and/or services is shown on the Price Schedule. No additional fees or expenses of Vendor shall be charged by Vendor nor be payable by City. The parties hereby agree that all compensable expenses of Vendor are shown on the Price Schedule. If there is a discrepancy on the Price Schedule between the unit price for an item, and the extended price, the unit price shall govern.
- (f) Tax Exemption. The City of San Antonio is exempt from payment of federal taxes, and State of Texas limited sales excise and use taxes. Bidders must not include such taxes in bid prices. An exemption certificate will be signed by City where applicable upon request by bidder after contract award.
- (g) Prompt Payment Discount. Provided Bidder meets the requirements stated herein, City shall take Bidder's offered prompt payment discount into consideration in determining who the low bidder is. The evaluation will not be based on the discount percentage alone, but rather the net price as determined by applying the discount to the bid price, either per line item or total bid amount. However, the City reserves the right to reject a discount if the percentage is too low to be of value to the City, all things considered. The City may also reject a discount if the percentage is so high as to create an overly large disparity between the price City would pay if it is able to take advantage of the discount and the price City would pay if it were unable to pay within the discount period. City may always reject the discount and pay within the 30 day period, at City's sole option.

The City will not consider discounts that provide fewer than 10 days to pay in order to receive the discount.

For example, payment terms of 2% 5, Net 30 will NOT be considered in bid evaluations or in the payment of invoices. However, payment terms of 2% 10, Net 30 will result in a two percent reduction in the bid price during bid evaluation, and the City will take the 2% discount if the invoice is paid within the 10 day time period.

12. AWARD OF CONTRACT

- (a) Per Section § 252.043 of the Texas Local Government Code, the contract will be awarded to the lowest responsible bidder.
- (b) The City reserves the right to accept any item or group of items on this bid, unless the bidder qualifies his/her bid by specific limitations, in accordance with Par.7 (a) 3 above.
- (c) A written award of acceptance and appropriation mailed or otherwise furnished to the successful bidder results in a binding contract without further action by either party.
- (d) The City of San Antonio reserves the right to utilize previous purchases as a basis for evaluation of bids when future usages are unable to be determined.
- (e) Breaking of tie bids shall be in accordance with the Texas Local Government Code § 271.901.

- (f) Although the information furnished to bidders specified the approximate quantities needed, based on the best available information where a contract is let on a unit price basis, payment shall be based on the actual quantities supplied. The City reserves the right to delete items, prior to the awarding of the contract, and purchase said items by other means; or after the awarding of the contract, to increase or decrease the quantities bid in accordance with § 252.048 of the Texas Local Government Code. No changes shall be made without written notification of the City.

13. BID PROTEST PROCEDURES

Any bidder who is adversely affected in connection with the solicitation, evaluation, or proposed award of a contract may file a protest with the Director of Purchasing & General Services and appeal any adverse decision to the City Manager of the City of San Antonio.

Vendor must deliver a written notice of protest to the Purchasing & General Services Director within seven (7) calendar days of the posting of the intent to award. If vendor does not file a written notice within this time; the vendor will have waived all rights to formally protest the intent to award. It is the vendor's responsibility to check the City's website posting.

14. DEBRIEFING

Debriefing of contract award is available upon request and after award of the Contract.

15. CONTRACT TERMINATION

TERMINATION-BREACH:

- (a) Should vendor fail to fulfill in a timely and proper manner, as determined solely by the Director, its obligations under this contract, or violate any of the terms of this contract, the City shall have the right to immediately terminate the contract, in whole or in part. Notice of termination shall be provided in writing to the contractor, effective upon the date set forth in the notice. Such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the vendor.

TERMINATION-NOTICE:

- (b) The City may terminate this contract, in whole or in part, without cause. The City shall be required to give the vendor notice **ten** days prior to the date of termination of the contract without cause.

TERMINATION-FUNDING:

- (c) City retains the right to terminate this contract, in whole or in part, at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

16. DELIVERY OF GOODS/SERVICES

- (a) All materials are to be delivered F.O.B., City of San Antonio's designated facility.
- (b) Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of the bid. Unless otherwise specified, delivery at the earliest date is required. The bidder will clearly state in the bid the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required", "as soon as possible" or "prompt" may result in disqualification of the bid.
- (c) Upon award of a contract, the vendor is obligated to deliver the goods to the destination specified in the Invitation for Bids or the Purchase Order and bears the risk of loss until delivery. If this Invitation for Bids or Purchase Order does not contain delivery instructions, bidders shall request instructions in writing from the Director. If the delivery instructions contained in the Invitation for Bids allocate delivery costs and risks in a manner contrary to this section, the provisions of this Invitation for Bids shall prevail.
- (d) When delivery is not met as provided for in the contract, the Purchasing Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in

addition to any other damages, direct or consequential, incurred by the City as a result thereof. In addition, failure of the vendor to meet the contract delivery dates will be cause for removal of the vendor from the City's list of eligible bidders as determined by the Purchasing & General Services Department.

17. PERFORMANCE DEPOSIT

- (a) The following provisions shall apply only when a performance deposit is specified as required in this Invitation for Bids.
- (b) The successful vendor must furnish the City of San Antonio with a performance deposit in the amount set forth in the Invitation For Bids. This deposit is not to be submitted with the bid, but must be presented to the Purchasing & General Services Department within **ten** days from request.
- (c) The City of San Antonio will not enter into a contract or issue a purchase order until the successful vendor has complied with the performance deposit provisions.
- (d) The performance deposit shall be in the form of a performance bond (in a form acceptable to the City Attorney), cashier's check, certified check upon a state or national bank or trust company, or a check on such bank or trust company signed by a duly authorized officer thereof (checks to be drawn payable to the City of San Antonio), or a Certificate of Deposit from such bank or trust company assigned to the City of San Antonio, or an irrevocable letter of credit from a state or national bank or trust company.
- (e) The performance deposit of the successful vendor shall be returned by the City upon completion of the contract and final acceptance of all items in accordance with conditions thereof.
- (f) Failure of successful vendor to perform any of the services required by this contract within **ten** days of receipt of written demand for performance from City, or failure of vendor to correct or replace defective goods or products within **ten** days from receipt of written demand therefore, shall constitute a total breach of this contract and shall cause this contract to terminate immediately upon the expiration of the ten day period. In the event of such termination, the performance deposit shall be retained by the City of San Antonio as liquidated damages, based upon mutual agreement and understanding between vendor and City at the time this bid is solicited, submitted and accepted, that the City of San Antonio is a governmental agency engaged in public projects, and that the measurement of damages, which might result from a breach of the terms and specifications herein is difficult or impossible to determine. However, the Director with the concurrence of the City Manager, may return all or part of the performance deposit to the vendor if the Director determines, in the Director's sole discretion, that the failure to perform the conditions of this contract was the result of acts or events over which the vendor had no control. The determination shall then be final and binding on all parties.

18. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful vendor as an independent 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 successful vendor under this contract and that the successful vendor has no authority to bind the City.

19. BID RESULT REQUEST

Any party who wishes to be provided documents relating to the bid results shall make a request in writing. Pursuant to state law, the City may assess a fee in order to recoup the cost related to providing the requested information.

20. PATENTS/COPYRIGHTS

The successful vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

21. INDEMNIFICATION

BIDDER 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 and 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 BIDDER'S activities under this contract, including any acts or omissions of BIDDER, any agent, officer, director, representative, employee, consultant or subcontractor of BIDDER, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this contract. 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 BIDDER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR 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 INDEMNITY 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. BIDDER shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or BIDDER known to BIDDER related to or arising out of BIDDER's activities under this contract, and shall see to the investigation and defense of such claim or demand at BIDDER's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving BIDDER of any of its obligations under this paragraph.

22. INSURANCE

If required, specific insurance provisions will be included in these bid specifications. An original, completed insurance certificate and all applicable endorsements, meeting the requirements set forth in these specifications, **must be submitted within 10 days of a request from the City.** The successful vendor must maintain, at all times during performance of the contract, the insurance detailed in these bid specifications. Failure to provide these documents may result in disqualification of the bid, or cancellation of the contract, after award.

23. ACCEPTANCE BY CITY

The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by vendor. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.

24. WARRANTY

The supplies or services furnished under this contract shall be covered by the most favorable commercial warranties given to any customer for same or similar supplies or services.

REJECTION OF DISCLAIMERS OF WARRANTIES & LIMITATIONS OF LIABILITY. ANY TERM OR CONDITION IN ANY DOCUMENT FURNISHED BY VENDOR, DISCLAIMING THE IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, OR ATTEMPTING TO LIMIT VENDOR'S LIABILITY SHALL BE OF NO FORCE OR EFFECT, AND SHALL BE STRICKEN FROM THE CONTRACT DOCUMENTS AS IF NEVER CONTAINED THEREIN.

25. CHANGE ORDERS

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders will be made in writing by the City of San Antonio Purchasing & General Services Department.

26. ASSIGNMENT

Except as otherwise stated herein, Vendor may not sell, assign, pledge, transfer or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services and provision of goods outlined in this contract in the event of default by the successor vendor, assignee, transferee or subcontractor. Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void and shall confer no rights upon any third person.

27. INTERLOCAL PARTICIPATION

- (a) The City may, from time to time, enter into Interlocal Cooperation Purchasing Agreements with other governmental entities or governmental cooperatives (hereafter collectively referred to as "Entity" or "Entities") to enhance the City's purchasing power. At the City's sole discretion and option, City may inform other Entities that they may acquire items listed in this Invitation for Bids (hereafter "IFB"). Such acquisition(s) shall be at the prices stated herein, and shall be subject to bidder's acceptance. Entities desiring to acquire items listed in this IFB shall be listed on a rider attached hereto, if known at the time of issuance of the IFB. City may issue subsequent riders after contract award setting forth additional Entities desiring to utilize this bid. VENDOR shall sign and return any subsequently issued riders within **ten** calendar days of receipt.
- (b) In no event shall City be considered a dealer, remarketer, agent or other representative of Vendor or Entity. Further, City shall not be considered and is not an agent; partner or representative of the Entity making purchases hereunder, and shall not be obligated or liable for any such order.
- (c) Entity purchase orders shall be submitted to Vendor by the Entity.
- (d) Vendor authorizes City's use of Vendor's name, trademarks and Vendor provided materials in City's presentations and promotions regarding the availability of use of this contract. The City makes no representation or guarantee as to any minimum amount being purchased by City or Entities, or whether Entity will purchase utilizing City's contract.

CITY WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY OBLIGATIONS, INCLUDING, BUT NOT LIMITED TO, PAYMENT, AND FOR ANY ITEM ORDERED BY AN ENTITY OTHER THAN CITY.

28. INTERNAL / EXTERNAL CATALOG

San Antonio e-Procurement

The City is using an “e-Procurement” system (SAePS) based on SAP’s Supplier Relationship Management (SRM) software. SAePS is a secure, web browser-based system that gives City employees the ability to shop for items from online catalogs and brings the items back automatically into SAePS. Online catalogs include both an SAePS internal catalog and externally hosted catalogs on supplier websites.

SAePS Electronic Catalog Options

Vendor shall furnish an electronic catalog that contains only the items awarded by City and displays pricing bid under this contract. Vendor may choose either Option 1 or Option 2 below as the method for furnishing the catalog.

Option 1. Punch Out Catalog. Vendor shall host an online catalog accessible from the City’s e-Procurement system that is Open Catalog Interface (OCI) enabled. Vendor shall provide a secure website link to its Punch Out Catalog. This Punch Out catalog shall have e-commerce functions, including, but not limited to, cataloging, searching and shopping cart functionality. This catalog must be integrated with City’s SAePS system to electronically submit data to City’s e-Procurement system.

Option 2. Internal Catalog. Vendor shall provide a list of products and services awarded under this contract for uploading into the COSA e-Procurement system as an MS Excel file in a format specified by the City.

Paper Catalog

If a Punch Out Catalog is not available and Vendor elects to provide an Internal Catalog, City, at its sole option, may require Vendor to provide its Internal Catalog in paper form in addition to the electronic form.

Catalog Content

All catalogs, regardless of the form in which they are provided, must include these elements, at a minimum.

- Your part number
- Short and long descriptions
- Units of measure
- Pricing, contract pricing, tiered pricing
- Classification of parts
- Manufacturer and Manufacturer part number
- Keywords, tags

Time to Provide Catalog

Catalogs required under this provision must be provided within 10 business days of request by City, and no later than 5 business days from the date of contract award.

29. QUESTIONS

Questions regarding interpretation of bids, bid results or bid awards should be directed to the Purchasing & General Services Department at (210) 207-7260.

SPECIFICATIONS AND GENERAL REQUIREMENTS

PERIOD OF CONTRACT: Contract shall begin upon the effective date of awarding contract and terminate on June 30, 2014.

At the City's option, this Contract may be renewed under the same terms and conditions for two (2) additional one (1) year periods. Renewals shall be in writing and signed by the City's Director of Purchasing & General Services or her designee, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefore.

City shall also have the right to extend this contract under the same terms and conditions beyond the original term or any renewal thereof, on a month to month basis, not to exceed 3 months. Said month to month extensions shall be in writing, signed by the City's Director of Purchasing & General Services or her designee, and shall not require City Council approval, subject to and contingent upon appropriation of funding therefore.

SCOPE: The successful contractor shall provide all skill, labor, material, and equipment for maintaining the pathological waste incinerator system, including, but not limited to, routine maintenance, service calls and parts and repairs related to the operations and assembly of the incinerator system. This incinerator shall be used by the City to dispose of animal carcasses.

STANDARD REQUIREMENTS:

1. Prospective bidders must prove beyond any doubt to the City Purchasing Administrator that they are duly qualified, capable, bondable, etc. to fulfill and abide by the specifications herein listed.
2. When contractor cannot abide by terms and conditions in fulfilling the contract, contractor must supply service or supplies from other sources at the contract price. If contractor delays in the above, the City reserves the right to purchase on the open market and charge contractor the difference between contract price and the purchase price.
3. The Annual Contract shall include the following terms and conditions:
 - a. An Annual Contract purchase order will not be issued for each City agency authorized to place orders against this annual contract. A contract purchase order will be issued per order. Vendor must have the Contract Purchase Order before making any delivery. Payment will be made by the City on a monthly basis.
 - b. All invoices must be submitted in duplicate and show each purchase order number and corresponding City agency. Invoices must be legible. Items billed on invoices must be specific as to applicable stock, manufacturer, catalog or part number (if any). All items must show unit prices or otherwise specified. If prices are based on discounts from list, then list prices, discounts in terms of percentage, and net prices must be shown. If prices are based on list prices basis, then the list prices, the "plus" in terms of percentage, and net unit prices, extensions and net total prices must be shown. In connection with any term discount offered, time will be computed from the first of the month following receipt of supplies or services, or a correct invoice. Payment is deemed to be made on the date of mailing of the check.
 - c. Bidders' facilities and equipment will be a determining factor in making the bid award. All bidders may be subject to inspection of their facilities and equipment.
4. Price must remain firm for the duration of the contract period.

STANDARD REQUIREMENTS:

1. Prospective Contractors must prove beyond any doubt to the City of San Antonio that they are duly qualified, capable, insurable, etc. to fulfill and abide by the specifications herein listed.
2. The preventive maintenance service of the incinerator will be located at the Animal Control Facility, 4710 State Hwy 151, and San Antonio, Texas.
3. The contractor is to be responsible for all required fees and permits and for the coordination of inspection with the authority having jurisdiction.
4. **SITE EXAMINATION:** The Contractor is advised to examine the location of the work and to inform himself fully as to its conditions; the character, quality and quantity of the products needed preliminary to and during the prosecution of the work; the general and local conditions and all other matters which can in any way affect the work to be done under the contract. Failure to examine the site will not relieve the successful Contractor of its obligation to furnish all products and labor necessary to carry out the provisions of his contract. The Contractor shall notify the City's Animal Care Services Department of the date and time proposed for examination and the location of the work. The Contractor shall confine his examination to the specific areas designated for the proposed project. The Contractor is solely responsible for any damages caused by his examination of the site.
5. Contractor shall complete the repairs and maintenance described herein within **7 calendar days** from the date of acceptance from the Animal Care Facility, Director. Time is of the essence in completing these services.
6. The City's Animal Care Facility Director or his designee must approve any maintenance or repairs necessary to restore to operational and functional status.
7. Contractor will be required to test and demonstrate that the incinerator is fully functional before acceptance by the Animal Care Facility, Director or Designee.
8. **Environmental Compliance:** The incinerator must meet the regulatory requirements for incinerators of this type to sustain license in the State of Texas and the applicable county or Municipality.
9. **Permits and Regulations:** The Contractor shall obtain any pay for any permits and licenses in order to execute proper maintenance and repairs necessary for the performance of the work. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work. The Contractor shall comply with all Local, State, and Federal laws, statutes, ordinances, rules and regulations applicable to furnishing and performance of the work.
10. **Warranty:** Equipment must include the maximum standard manufacturer's warranty on all components, with parts and service included. This City requires a minimum one-year warranty. If manufacturer's warranty exceeds this warranty, the manufacturer's warranty shall prevail.
11. **THE CITY OF SAN ANTONIO WILL MAKE AWARD TO ONE FIRM ONLY.**

Insurance Requirements: If selected to provide the services described in this Invitation for Bid, the successful bidder (contractor) shall be required to comply with the insurance requirements set forth below:

- A. Prior to the commencement of any work under this Agreement, the selected contractor shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City’s Purchasing & General Services Department, which shall be clearly labeled “***Preventive Maintenance Service for Incinerator System***” in the Description of Operations block of the Certificate. The 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 certificate(s) or form must have the agent’s signature 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 Purchasing & General Services Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

- B. 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.

- C. A Contractor’s financial integrity is of interest to the City; therefore, subject to contractor’s right to maintain reasonable deductibles in such amounts as are approved by the City, contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at contractor’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
D. 2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial Broad Form General Liability Insurance to include coverage for the following: t a. Premises operations h b. Independent Contractors e c. Products/completed operations y d. Personal Injury a e. Contractual Liability a f. XCU Coverage	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
P4. Business Automobile Liability P a. Owned/leased vehicles l b. Non-owned vehicles y c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

- D. As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto, 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). Contractor 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. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Purchasing & General Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- E. Contractor 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, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of the City.
 - Provide 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.
- F. 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.
- H. 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.
- I. It is agreed that contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- J. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- K. Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of contractor herein, and provide a certificate of insurance and endorsement that names the contractor and the CITY as additional insureds. Contractor shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk

Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

- L. Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

WORKERS' COMPENSATION

1. Definitions:

- A. Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - B. Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City.
 - C. Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- 2. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
 - 3. The contractor must provide a certificate of coverage to the City prior to being awarded the contract.
 - 4. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.
 - 5. The contractor shall obtain from each person providing services on a project, and provide to the City:
 - A. a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and

- B. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- 6. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- 7. The contractor shall notify the City in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 8. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Division, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 9. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - A. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - B. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - C. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - D. obtain from each other person with whom it contracts, and provide to the contractor:
 - (i) a certificate of coverage, prior to the other person beginning work on the project; and
 - (ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - E. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - F. notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - G. contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

- H. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the City that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Division's section of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- I. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the City to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the City.

SPECIFICATIONS:

Maintenance, service, parts and repairs required for the following unit listed below:

Multi-purpose Cremator Unit(s), Batch Animal Incineration System Model #C-75PH/ML-120 with RAM loader by Consutech Manufacture

The Preventive Maintenance service shall include a scheduled visit every (6) six months determined by the Animal Care Services, director and/or designee and mutually agreed upon by the contractor. Contractor may provide regularly scheduled support and unscheduled corrective support. Critical importance to the success of the operation and safety of the incinerator in regularly performing systems support checks, providing interim maintenance and following troubleshooting procedures outlined in the Operation and Maintenance Manual. The scheduled Preventive Maintenance service shall be performed when the system is not on line in order to provide a comprehensive inspection of both the interior and exterior. The following items should be a part of the comprehensive Preventive Maintenance scope of supply:

1. Inspect condition of all exterior components to include steel shell and stack
2. Inspect and lubricate all motors, linkages, latches and hinges.
3. Remove and inspect thermocouple assemblies for both chambers.
4. Remove, clean and adjust burner serviceable components to include flame detectors.
5. Inspect all door gaskets and sealing surfaces.
6. Inspect interior refractory lining and clear chamber obstructions.
7. Inspect and clear interior air supply ports.
8. Inspect control panels and motors for safety and proper conditions.
9. Place unit on line to determine proper operation of all components.
10. Confirm correct calibration and parameters for all devices.
11. Lubricate and adjust ram feeder if applicable.
12. Inspect ram feeder hydraulic fluid condition and level if applicable.

Incinerator system should maintain code capable of meeting Chapter 30 Texas Administrative Code 106.494, air quality permit-by-rule requirements.

General Warranty and Guarantee against Defective Work

1. The contractor shall warrant and guarantee the work required under this Contract for a period of twelve months from the date of Final Acceptance. The Contractor warrants and guarantees to the City, that materials and equipment furnished under the Contract shall be of good quality and new unless otherwise required or permitted by the Contract Documents, that all work will be in accordance with the Contract Documents, and that all work will be of good quality, free from faults and defects. Work not conforming to these specifications, including substitutions not properly approved and authorized, may be considered defective. If required by the Animal Care Services Department, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Contractor's obligation to perform and complete the work in a workmanlike manner, free from faults and defects and in accordance with the Contract Documents shall be absolute. The contractor shall remedy, at his own expense, and without additional cost the City, all defects arising from either workmanship or materials, as determined by the Animal Care Services Department. The obligations of the Contractor under this Paragraph shall not include normal wear and tear under normal usage.

PRICE SCHEDULE

<u>ITEM</u>	<u>DESCRIPTION</u>
1	PREVENTIVE MAINTNENANCE SERVICE
	1 (ONE) YEAR OPTION \$ _____
	2 (TWO) YEAR OPTION \$ _____
	3 (THREE) YEAR OPTION \$ _____

Statement:

“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 the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205.”

IMPORTANT MAILING INSTRUCTIONS:

MAIL TO: CITY OF SAN ANTONIO
PURCHASING & GENERAL SERVICES
P.O. BOX 839966
SAN ANTONIO, TX 78283-3966

PHYSICAL ADDRESS: PURCHASING & GENERAL SERVICES
RIVERVIEW TOWER
111 SOLEDAD, SUITE 1100
SAN ANTONIO, TEXAS 78205

MARK ENVELOPE: "BID TO FURNISH PREVENTIVE MAINTENANCE SERVICE FOR
INCINERATOR SYSTEM"
BIDS TO BE OPENED 10:00 A.M., February 11, 2011
BID NO.:A1610-11 ATS

REMARKS:

ATTACHEMENT A

Prevailing Wage Rates.

Contractor shall comply with the Wage and Labor Standard Provisions and prevailing wage rates attached hereto and incorporated herein for all purposes as Attachment No. 1 and Attachment No. 2, respectively.

After award of contract, Contractor shall contact the City's Labor Compliance office in order to obtain instructions for electronic submission of certified payrolls. This information may be provided at a pre-construction meeting, if one is arranged. Otherwise, it shall be Contractor's responsibility to obtain the necessary information.

City of San Antonio
Capital Improvements Management Services Department
Labor Compliance Office
114 W. Commerce, 9th Floor
San Antonio, Texas 78205
Attention: Thomas Nixon
Phone: (210) 207-8774 / Fax: (210) 207-5859
Cell: (210) 215-7033

Workers' Compensation Insurance Coverage.

(a) Definitions:

- (1) Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - (2) Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City.
 - (3) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (b) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- (c) The contractor must provide a certificate of coverage to the City prior to being awarded the contract.
- (d) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.
- (e) The contractor shall obtain from each person providing services on a project, and provide to the City:

- (1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (f) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (g) The contractor shall notify the City in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- (h) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Division, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (i) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (i) a certificate of coverage, prior to the other person beginning work on the project; and
 - (ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (j) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the City that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that

the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Division's section of Self-Insurance Regulation. Providing false or misleading

information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- (k) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the City to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the City.

WAGE AND LABOR STANDARD PROVISIONS

CITY OF SAN ANTONIO FUNDED CONSTRUCTION

Contents

1. GENERAL STATEMENT
2. LABOR COMPLIANCE OFFICE, CAPITAL IMPROVEMENTS MANAGEMENT SERVICES DEPARTMENT RESPONSIBILITIES
3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES
4. BREACH OF WAGE & LABOR STANDARDS PROVISIONS
5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION
6. MINIMUM WAGE
7. OVERTIME COMPENSATION
8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS
9. WORK CONDUCTED ON HOLIDAYS
10. UNDERPAYMENT OF PREVAILING WAGES OR SALARIES
11. DISPLAYING WAGE DETERMINATION DECISION/STATEMENT AND "NOTICE TO EMPLOYEES"
12. PAYROLLS & BASIC PAYROLL RECORDS
13. LABOR DISPUTES
14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES
15. EMPLOYEE INTERVIEWS TO ASSURE WAGE & LABOR STANDARD COMPLIANCE
16. "ANTI-KICKBACK" PROVISION
17. "FALSE INFORMATION" PROVISION
18. EMPLOYMENT OF APPRENTICES/TRAINEES
19. JOBSITE CONDITION
20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED
21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

1. GENERAL STATEMENT

For all City of San Antonio funded public works construction contracts, the City of San Antonio, in accordance with Texas Government Code Section 2258, requires that not less than the general prevailing wage rates (minimum hourly base pay and minimum hourly fringe benefit contribution) for work of similar character be paid to contractor and subcontractor employees. These wage rates are derived from the most current applicable federal prevailing wage rates as published by the United States Department of Labor, Dallas, Texas and authority of Ordinance Nos. 60110 and 71312 as amended and passed by the City Council of the City of San Antonio.

Any deviation from Wage and Labor Standard Provisions compliance shall be cause for City's withholding either periodic interim or final payment to the contractor until such deviations are properly corrected.

2. LABOR COMPLIANCE OFFICE RESPONSIBILITIES

The Labor Compliance Office, Capital Improvements Management Services Department, City of San Antonio, is primarily responsible for all Wage and Labor Standard Provisions investigation and enforcement and will monitor contractor/subcontractor practices to assure the Director of Capital Improvements Management Services Department that:

- a. Appropriate weekly compliance statements and payroll records are submitted to the City by the contractor/subcontractors and that such are reviewed for compliance with the Wage and Labor Standard Provisions.
- b. Apprentices/trainees working on the project are properly identified by the contractor/subcontractor on payroll records and documented as being included in programs currently sanctioned by appropriate federal or state regulatory agencies.
- c. Applicable Wage Determination Decisions, including any applicable modifications, and related statements must be posted at the work-site by the contractor and that proper job classification and commensurate minimum hourly base and fringe wage rates are paid.
- d. Employees are periodically interviewed (at random) to assurance of proper work classification and wage rates.
- e. The Labor Compliance Office will investigate all allegations that no person employed by contractor/subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.
- f. That any and all periodic administrative directives to the Labor Compliance Office from the Director of Capital Improvements are being implemented. For purpose of these Wage and Labor Standard Provisions, the Director of Capital Improvements Management Services means the Director, his successor, or his designee.

3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES

Claims and disputes not promptly and routinely settled by the contractor/subcontractor and employee pertaining to wage rates, or to job classifications of labor employed regarding the work covered by this contract, shall be reported by the employee in writing, within sixty (60) calendar days of employee's receipt of any allegedly incorrect classification, wage or benefit report, to the Labor Compliance Office, City of San Antonio for further investigation. Claims and disputes not reported by the employee to the City's Wage & Hour Office in writing within the sixty (60) calendar day period shall be deemed waived by the employee for the purposes of the City administering and enforcing the City's contract rights against the contractor on behalf of the employee. Waiver by the employee of this City intervention shall not constitute waiver by the City to independently pursue contractual rights it has against the contractor/subcontractor for breach of contract and other sanctions available to enforce the Wage and Labor Standard Provisions.

4. BREACH OF WAGE AND LABOR STANDARD PROVISIONS

The City of San Antonio reserves the right to terminate its contract for cause if the contractor/subcontractors shall for cause if the contractor/subcontractors shall knowingly and continuously breach, without timely restitution or cure, any of these governing Wage and Labor Standard Provisions. A knowing and unremedied proven violation of these Wage and Labor Standard Provisions may also be grounds for debarment of the contractor/subcontractor from future City of San Antonio contracts for lack of responsibility, as determined by the City of San Antonio. Recurrent violations, whether remedied or not, will be considered by the Director of Capital Improvements Management Services Department when assessing the responsibility history

of a potential contractor/subcontractor prior to competitive award of future Project Management Office projects. The general remedies stated in this paragraph 4. above,

are not exhaustive and not cumulative for the City reserves legal and contractual rights to other specific remedies outlined herein below and in other parts of this contract and as are allowed by applicable City of San Antonio ordinances, state and federal statutes.

5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION

In the event that a contractor/subcontractor discovers that construction of a particular work element requires a certain employee classification and skill that is not listed in the wage determinations decision the original contract documents, contractor/subcontractors will make prompt inquiry (before bidding, if possible) to the Labor Compliance Office identifying that class of laborer/mechanics not listed in the wage determination decision who are intended to be employed, or who are being employed, under the contract. Using his best judgment and information resources available to him at the time, and any similar prior decisions, the Director of Capital Improvements Management Services Department, City of San Antonio shall classify said laborers/mechanics by issuing a special local wage determination decision to the contractor/subcontractor, which shall be enforced by the Labor Compliance Office.

6. MINIMUM WAGE

All laborers/mechanics employed to construct the work governed by this contract shall be paid not less than weekly the full amount of wages due (minimum hourly base pay and minimum hourly fringe benefit contribution for all hours worked, including overtime) for the immediately preceding pay period computed at wage and fringe rates not less than those contained in the wage determination decision included in this contract. Only payroll deductions as are mandated by state or federal law and those legal deductions previously approved in writing by the employee, or as are otherwise permitted by state or federal law, may be withheld by the contractor/subcontractor.

Should the contractor/ subcontractor subscribe to fringe benefit programs for employees, such programs shall be fully approved by the City in adopting a previous U.S. Department of Labor (DOL) decision on such fringe benefit programs or by applying DOL criteria in rendering a local decision on the adequacy of the fringe benefit programs. The approved programs shall be in place at the time of City contract execution and provisions thereof disclosed to the Labor Compliance Office, City of San Antonio, for legal review prior to project commencement.

Regular contractor/subcontractor contributions made to, or costs incurred for, approved fringe benefit plans, funds or other benefit programs that cover periods of time greater than the one week payroll periods of time period (e.g. monthly or quarterly, etc.) shall be prorated by the contractor/subcontractor on weekly payroll records to reflect the equivalent value of the hourly and weekly summary of fringe benefits per employee.

7. OVERTIME COMPENSATION NON-FEDERALLY FUNDED PROJECTS

No contractor/subcontractor contracting for any part of the City of San Antonio funded contract work (except for worksite related security guard services) which may require or involve the employment of laborers/ mechanics shall require or permit any laborer/mechanic in any seven (7) calendar day work period in which he or she is employed on such work to work in excess of 40 hours in such work period unless said laborer/ mechanic receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of 40 hours in a seven (7) calendar day work period. Fringe benefits must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

The contractor/subcontractor is allowed to pay a minimum hourly cash equivalent of minimum hourly fringe benefits listed in the wage determination decision in lieu of the contribution of benefits to a permissible fringe benefit plan for all hours worked including overtime as described in paragraph 6 above. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the wage determination decision.

9. WORK CONDUCTED ON HOLIDAYS-NON-FEDERALLY FUNDED PROJECTS

If a laborer/mechanic is employed in the normal course and scope of his or her work on the jobsite on the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King, Jr. Day, or the calendar days observed as such in any given year, work performed shall be paid for at no less than one and one half (1 1/2) times the regular minimum hourly base pay regardless of the total number of the laborer/mechanic has accumulated during the pay period.

10. UNDERPAYMENT OF WAGES OR SALARIES

- a. When a "full investigation" (as called for in and as construed under Texas Government Code Section 2258, establishes underpayment of wages by contractor/subcontractor to its laborers/mechanics employed upon the work covered by its contract with the City of San Antonio, the City shall withhold an amount from the contractor, out of any payments (Interim progress and/or final) due the contractor, the City of San Antonio may consider necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages plus possible penalty (see b. below). The amount withheld, excluding any possible penalty to be retained by City, may be disbursed at an appropriate time after "full investigation" by the City of San Antonio, for and on behalf of the contractor/subcontractor (as may be appropriate), to the respective laborers/mechanics to whom the same is due or on their behalf to fringe benefit plans, funds or programs for any type of minimum fringe benefits prescribed in the applicable wage determination decision.
- b. Texas Government Code Section 2258, states that the contractor shall forfeit as a penalty to the City of San Antonio the sum of sixty dollars (\$60.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the said stipulated rate for any work done under this contract, whether by the contractor himself or by any subcontractor working under him. Pursuant to and supplemental to this statutory authority, the City of San Antonio and the contractor/subcontractor contractually acknowledge and agree that said sixty dollar (\$60.00) statutory penalty shall be construed by and between the City of San Antonio and the contractor/subcontractor as liquidated damages and will apply to any violations of paragraphs 6, 7, or 9 herein, resulting from contractor/subcontractor underpayment violations.
- c. If unpaid or underpaid workers cannot be located by the Contractor of the City after diligent efforts to accomplish same, the contractor report the wages as "unclaimed property" in accordance to Texas State law.

The City of San Antonio requires that the prime contractor send to the Labor Compliance Office a copy of the supporting documentation for the unclaimed property submitted to the State.

11. DISPLAYING WAGE DETERMINATION DECISIONS/AND NOTICE TO LABORERS/MECHANICS STATEMENT

The applicable wage determination decision as described in the "General Statement" (and as specifically included in each project contract), outlining the various worker classifications and mandatory minimum wages and minimum hourly fringe benefit deductions, if any, of laborers/mechanics employed and to be employed upon the work covered by this contract, shall be displayed by the contractor/ subcontractor at the site of work in a conspicuous and prominent public place readily and routinely accessible to workmen for the duration of the project. In addition, the contractor/subcontractor agrees with the contents of the following statement, and shall display same, in English and Spanish, near the display of the wage determination decision:

NOTICE TO LABORERS/MECHANICS

Both the City of San Antonio and the contractor/subcontractor agree that you must be compensated with not less than the minimum hourly base pay and minimum hourly fringe benefit contribution in accordance with the wage rates publicly posted at this jobsite and as are applicable to the classification of work you perform.

Additionally, you must be paid not less than one and one-half times your basic hourly

rate of pay for any hours worked over 40 in any seven (7) calendar day work period, and for any work conducted on the following holidays: New Year's Day, Memorial Day, Fourth of July; Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King Day or the calendar days observed as such in any given year.

Apprentice and trainee hourly wage rates and ratios apply only to apprentices and trainees recognized under approved Federal, or State, apprenticeship training program registered with the Bureau of Apprenticeship and Training, U.S. Dept. of Labor.

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must make direct inquiry to the employer and inquire in writing within sixty (60) calendar days of your receipt of any allegedly incorrect wage or benefit check or report, to the City of San Antonio Labor Compliance Office, Capital Improvements Management Services Department, P.O. Box 839966, San Antonio, Texas 78283-3966. It is mandatory that the worker promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the City of San Antonio, Labor Compliance Office within the sixty (60) calendar day period so that they do not waive your potential right of recovery under the provisions of the City of San Antonio Project Management Office contract that governs this project.

Both the City of San Antonio and the contractor/subcontractor agree that no laborer/mechanic who files a complaint or inquiry concerning alleged underpayment of wages or benefits shall be discharged by the employer or in any other manner be discriminated against by the employer for filing such complaint or inquiry.

12. PAYROLLS & BASIC PAYROLL RECORDS

- a. The contractor and each subcontractor shall prepare payroll reports in accordance with the "General Guidelines" instructions furnished by the Labor Compliance Office of the City of San Antonio such payroll submittals shall contain the name and address of each such employee, his correct labor classification, rate of pay, daily and weekly number of hours worked, any deductions made, and actual basic hourly and fringe benefits paid. The contractor shall submit payroll records each week, and no later than seven (7) working days following completion of the workweek being processed, to the Labor Compliance Office, City of San Antonio. These payroll records shall include certified copies of all payrolls of the contractor and of his subcontractors, it being understood that the contractor shall be responsible for the submission and general mathematical accuracy of payrolls from all his subcontractors. Each such payroll submittal shall be on forms deemed satisfactory to the City's Labor Compliance Office and shall contain a "Weekly Statement of Compliance*", as called for by the contract documents. Such payrolls will be forwarded to Capital Improvements Management Services, Labor Compliance Office, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.
- b. This contract is subject to contract compliance tracking, and the prime contractor and any subcontractors are required to provide any noted and/or requested contract compliance-related data electronically in the Labor Compliance Electronic Certified Payrolls System. The prime contractor and all subcontractors are responsible for responding by any noted response date or due date to any instructions or request for information, and to check the City of San Antonio Labor Compliance Electronic Certified Payrolls System on a regular basis to manage contract information and contract records. The prime contractor is responsible for ensuring all subcontractors have completed all requested items and that their contract information is accurate and up-to-date. The City of San Antonio Labor Compliance Office may require additional information related to the contract to be provided electronically through the system at any time before, during, or after contract award.
- c. Information related to contractor access of the system will be provided to a designated point of contact with each contractor upon award of the contract.
- d. Copies of payroll submittals and basic supporting payroll records of the contractor/subcontractors accounting for all laborers/mechanics employed under the work covered by this contract shall be maintained during the course of the work and preserved for a period of three (3) years after completion of the project. The contractors/subcontractors shall maintain records which demonstrate: any contractor

commitment to provide fringe benefits to employees as may be mandated by the applicable wage determination decision, that the plan or program is adjudged

financially responsible by the appropriate approving authority, (i.e. U. S. Department of Labor, U.S. Department of Treasury, etc.), and that the provisions, policies, certificates, and description of benefits of the plan or program as may be periodically amended, have been clearly communicated in a timely manner and in writing, to the laborers/mechanics affected prior to their performing work on the project.

- e. The contractor/subcontractor shall make the above records available for inspection, copying, or transcribing by authorized representatives of the City of San Antonio at reasonable times and locations forces of monitoring compliance with this contract.
- f. All certified payrolls submitted to the Labor Compliance Office are deemed true and accurate. If upon review of the certified payrolls, wage underpayment violations are identified and noted, restitution will be calculated and penalties will be issued to the prime contractor of the project. In order to refute a wage violation, the contractor/subcontractor must provide supporting documentation to the Labor Compliance Office for review and consideration.

13. LABOR DISPUTES

The contractor/subcontractor shall immediately notify the Project Management Office or designated representative of any actual or impending contractor/subcontractor labor dispute which may affect, or is affecting, the schedule's of the contractor's, or any other contractor's/subcontractor's work. In addition, the contractor/subcontractor shall consider all appropriate measures to eliminate or minimize the effect of such labor disputes on the schedule, including but not limited to such measures as: promptly seeking injunctive relief if appropriate; seeking appropriate legal or equitable actions or remedies; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other of supply or service; and any other measures that may be appropriately utilized to mitigate or eliminate the jobsite and scheduling effects of the labor dispute.

14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

No laborers/mechanics to whom the wage, salary, or other labor standard provisions of this contract are applicable shall be or in any other manner discriminated against by the contractor/subcontractors because such employee has filed any formal inquiry or complaint or instituted, or caused to be instituted, any legal or equitable proceeding or has testified, or is about to testify, in any such preceding under or relating to the wage and labor standards applicable under this contract.

15. EMPLOYEE INTERVIEWS TO ASSURE WAGE AND LABOR STANDARD COMPLIANCE

Contractor/subcontractors shall allow expeditious jobsite entry of City of San Antonio Labor Compliance representatives displaying and presenting proper identification credentials to the jobsite superintendent or his representative. While on the jobsite, the Labor Compliance representatives shall observe all jobsite rules and regulations concerning safety, internal security and fire prevention. Contractor/subcontractors shall allow project employees to be separately and confidentially interviewed at random for a reasonable duration by the Labor Compliance representatives to facilitate compliance determinations regarding adherence by the contractor/subcontractor to these Wage and Labor Standard Provisions.

16. "ANTI-KICKBACK" PROVISION

No person employed in the construction or repair of any City of San Antonio public work shall be induced, by any, to give up to any contractor/subcontractor or public official or employee any part of the hourly and/or fringe benefit compensation to which he is otherwise entitled.

17. "FALSE OR DECEPTIVE INFORMATION PROVISION"

Any person employed by the contractor/subcontractor in the construction or repair of any City of San Antonio public work, who is proven to have knowingly and willfully

falsified, concealed or covered up by any deceptive trick, scheme, or device a material fact, or made any false, fictitious or fraudulent statement or representation, or made or used any false writing or document knowing the same to contain any false, fictitious

or fraudulent statement or entry, shall be permanently removed from the jobsite by contractor/subcontractor. The City of San Antonio reserves the right to terminate its contract for cause as a result of serious and uncured violations of this provision.

18. EMPLOYMENT OF APPRENTICES/TRAINEES

a. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship & Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor/subcontractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below or is not registered or otherwise employed as stated above, shall be paid the wage rate for the classification of work he actually performs. The contractor/subcontractor is required to furnish to the Labor Compliance Office of the City of San Antonio, a copy of the certification, along with the payroll record that the employee is first listed on. The wage rate paid apprentices shall be not less than the specified rate in the registered program for the apprentice's level of progress expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination decision.

b. Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to an individually registered program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee wage rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the wage rate determined by the classification of work he actually performs. The contractor/subcontractor is required to furnish a copy of the trainee program certification, registration of employee-trainees, ratios and wage rates prescribed in the program, along with the payroll record that the employee is first listed on, to the Labor Compliance Office of the City of San Antonio. In the event the Employment and Training Administration withdraws approval of a training program, the contractor/subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved by the Employment and Training Administration.

c. Paragraphs above shall not operate to exclude training programs approved by the OFCCP, United States Department of Labor and as adopted by the Associated General Contractors (AGC) of Texas, Highway, Heavy, Utilities and Industrial Branch. Guidelines for these training programs shall be the same as those established for federally funded projects. This sub-paragraph shall not apply to those portions of a project deemed to be building construction.

d. The Ratio to Apprentice to Journeyman for this project shall be the same as the ratio permitted under the plan approved by the Employment and Training, Administration, Bureau of Apprenticeship and Training, U.S. Department of Labor, by Craft. A copy of the allowable Ratios is included with the applicable Wage Determination Decision in the specifications for this project.

When "full investigation" as called for in, and as construed under, Texas Government Code Section 2258, evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for contractor/subcontractor employees working on this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or other sections of its contract, shall withhold from the

contractor, out of any payments (interim progress and/or final) due the contractor, the liquidated damages sum of seventy-five dollars (\$75.00) for each calendar day, or portion thereof, for each certified Apprentice or Trainee employee assigned to a Journeyman that exceeds the maximum allowable Apprentice/ Trainee to Journeyman ratio

stipulated for any work done under this contract, whether by the contractor himself or by any subcontractor working under him.

19. JOBSITE CONDITIONS

Contractors/subcontractors shall not allow any person employed for the project to work in surroundings or under construction conditions which are unsanitary, unhealthy, hazardous, or dangerous as governed by industry standards and appropriate local, state and federal statutes, ordinances, and regulatory guidelines.

20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

- a. The contractor/subcontractor shall knowingly only employ persons of appropriate ages commensurate with the degree of required skill, strength, maturity and judgment associated with the activity to be engaged in, but not less than the age of fourteen (14) years, as governed by the Child Labor Law found at Chapter 51 of the Texas Labor Code "Child Labor" Texas Department of Labor and Standards rulings and interpretations associated with that statute. It is hereby noted that in some circumstances generally governed by this section, a federal statute (see: Fair Labor Standards Act, 29 USCS Section 212; Volume 6A of the Bureau of National Affairs Wage Hour Manual at Paragraph 96:1; "Child Labor Requirements in Nonagricultural Occupations" WH Publication 1330, July 1978 as may be amended), could pre-empt the Texas Statute and therefore be the controlling' law on this subject. The contractor/subcontractor should seek clarification from state and federal agencies and legal counsel when hiring adolescent employees for particular job classifications.
- b. Prohibited persons not to be employed are also those persons who, at the time of employment for this contract, are serving sentence in a penal or correctional institution except that prior approval by the Director of Capital Improvements Management Services is required to employ any person participating in a supervised work release or furlough program that is sanctioned by appropriate state or federal correctional agencies.
- c. The Contractor/subcontractors shall be responsible for compliance with the provisions of the "Immigration Reform and Control Act of 1986" Public Law 99-603, and any related State enabling or implementing statutes, especially as they in combination apply to the unlawful employment of aliens and unfair immigration-related employment practices affecting this contract.

21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

The contractor shall cause these Wage and Labor Standard Provisions, or reasonably similar contextual adaptations hereof, and any other appropriate state and federal labor provisions, to be inserted in all subcontracts relative to the work to bind subcontractors to the same Wage and Labor Standards as contained in these terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors or sub-subcontractors and to give the contractor similar, if not greater, general contractual authority over the subcontractor or subcontractors as the City of San Antonio may exercise over the contractor.

22. CONTRACTOR'S RESPONSIBILITY

The City of San Antonio will hold the prime contractor responsible for ensuring that his subcontractors comply with the Wage and Labor Standards Provisions.