



CITY OF SAN ANTONIO
TRANSPORTATION & CAPITAL IMPROVEMENTS

REQUEST FOR PROPOSALS:
ON-CALL COMMERCIAL REAL ESTATE BROKERAGE SERVICES
(RFP-TCI-11182015CG)

RFP ISSUE DATE:
November 18, 2015

SUBMITTAL DEADLINE:
DECEMBER 15, 2015 AT 3:00 P.M. LOCAL TIME

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Contract Document Template	RFP Exhibit C
To be issued via Amendment at a later date	

**CITY OF SAN ANTONIO
ON-CALL COMMERCIAL REAL ESTATE BROKERAGE SERVICES
RFP11182015CG**

I. BACKGROUND

The City (hereafter referred to as “City”) seeks Proposals from qualified real estate brokers interested in providing Transportation and Capital Improvement (hereafter referred to as “TCI”) and other City departments a broad range of commercial real estate services on an as-needed basis. TCI is responsible for acquiring and selling property for City and, along with other City departments, provides a range of real estate services, including managing leases and negotiating the sale of City-owned property.

The selected Respondent shall assist City with its real estate needs related to a wide range of property types, to include office, retail, warehouse and undeveloped land. Services shall include activities such as property searches, property acquisition and disposition and lease negotiations. The selected Respondent shall assist City in realizing the following real estate services related goals: maximizing revenue to City, minimizing City liability and providing for the highest and best use of City assets and resources.

In addition to services to be provided on projects on an as needed basis, there are two specific high priority properties for which immediate services are required. The first is the 440-acre Southwest Business & Technology Park, located at U.S. Highway 90 and State Highway 151. This property includes a 384-acre master planned business and industrial park owned and developed by City. The remaining 56 acres of the Park have been subdivided and are ready to be marketed and sold. The second specific need is for the selected Respondent also shall be responsible for developing a marketing strategy and program, in the event City acquires the Frost Bank Tower located at 100 West Houston Street, to position the anticipated retail space to be developed upon acquisition, along with any office space that is surplus to City’s needs in the building.

II. SCOPE OF WORK

The scope of work shall include the requirement for Respondent to provide real estate services, to include:

1. marketing for sale or lease City-owned property in the Southwest Business and Technology Park and other lease spaces in City facilities suitable for retail or office use by private firms;
2. acquiring properties for City needs on both a fee purchase and leasehold interest; and
3. providing consultation services to assist City with marketing Public Private Partnership (hereafter referred to as “P3”) sales opportunities.

The selected Respondent shall be the primary liaison with City departments to provide leasing assistance and acquiring properties for City’s needs. Respondent shall be required to identify the needs of City departments, provide site searches based upon identified needs, develop and implement marketing plans to lease/sell City owned property, arrange inspection tours for prospective buildings/properties, prepare summaries of real estate market trends, negotiate contracts for tenant possession/buyer purchase, maintain complete records of all projects and prepare and submit quarterly reports.

The selected Respondent shall provide real estate services, to include, but not be limited to:

- marketing developable land parcels in the Southwest Business and Technology Park;
- marketing available retail and other lease space in City-owned facilities;
- working with Center City Development and Operations Department staff to assist it (as determined by the Department on an as needed basis) other City departments in leasing space and acquiring properties for a variety of City uses;
- marketing and coordinating the leasing of office and retail space deemed in excess of City’s needs, in the event the Frost Bank Tower is acquired by City;

- development and marketing of P3 strategies in accordance with existing State laws and in compliance with City's P3 Policy, said P3 Policy attached hereto, incorporated herein by reference and labeled as "**RFP Exhibit A**", for the disposition of City-owned property, to achieve a balance between return on value and the need to promote development of sustainable projects benefiting the community.
- providing information resources at no charge to City including:
 - two internet subscription-access licenses to Costar for the entire San Antonio market;
 - a license to access the Building Owner and Managers Association online database for operation expenses in the Austin and San Antonio markets for office, industrial and retail facilities;
 - the quarterly San Antonio Real Estate Journal's Commercial Real Estate Report;
 - the REOC Partners Quarterly Office and Retail reports for the entire San Antonio market;
 - any other published information that provides information on market trends, to assist City in real estate decision making.
- Respondent's ability to market residential properties directly or through a strategic partnership that shall allow, when appropriate, use of the San Antonio Board of Realtors Multiple Listing Service.

Other services Respondent shall provide to City as a Buyer, Tenant or Owner, in leasing space and purchasing/disposing of property, shall include, but not be limited to:

- A. **Identification of Needs** – For property to be procured by City, assist City with a needs assessment to determine requirements. Examples of needs to be assessed are location, amount and type of space, public transportation access and employee/public parking needs. For City-owned property to be marketed by the selected Respondent, assist City with developing space/property options that best meet the specific requirements of each property. For the development of the Frost Bank Tower Project, the selected Respondent shall provide input on planning and infrastructure development issues as they relate to future marketability of the project, with the intent of implementing a marketing and development program that positions the space to be offered in the building to achieve a maximum value in an aggressive time frame.
- B. **Site Searches** – Conduct site searches, based on identified needs, to locate and lease/purchase property which conforms to the established requirements and price parameters.
- C. **Marketing** – Develop and implement marketing plans to lease/sell City-owned property within reasonable timeframes on terms favorable to City. Provide necessary support to the developed and implemented marketing plan, to include appropriate staff, marketing materials, brochures, advertising, cold calling, etc.
- D. **Inspection** – Arrange tours to prospective buildings/properties. Arrange tours as City's representative for City-owned properties that are for sale or lease.
- E. **Market and Comparative Analysis** – For general information, prepare summaries of real estate market trends in San Antonio. For specific assignments, prepare matrices outlining the key economic and non-economic terms and conditions for each building/property, including net present value/comparable valuation system analysis.
- F. **Negotiations** – Solicit lease/purchase proposals for the prospective buildings/property. Initiate lease/purchase proposals for prospective tenants/buyers. Negotiate contracts required for tenant possession/buyer purchase (including any improvements to the facility). Negotiate contracts for owner leasing/sale of property/buildings. Provide assistance with post-contract due diligence requirements and closing.
- G. **Lease/Purchase Documentation** – Maintain complete records of all projects. At the completion of transactions, transfer all documentation to City.
- H. **Performance and Reporting** – Work to lease/sell property according to established goals for marketing activity and sales or lease up based on each assigned Project. Prepare and submit quarterly reports, or as requested, reflecting performance related to the established goals for each assigned Project.

Kindly note that the preceding Scope of Services is subject to change during the RFP solicitation period at the sole discretion of City. Changes, if any, shall be made in accordance with Section VII - Amendments to the RFP below.

III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this Project.

Pre-Submittal Conference:	December 4, 2015
Deadline for Submission of Written Questions:	December 7, 2015
Responses Due:	December 15, 2015
Interviews, if necessary	To Be Determined
Anticipated City Council Consideration	January 21, 2016

IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference is scheduled to be held on, **Friday, December 4, 2015 at 1:00 P.M.** at the **Municipal Plaza Building, TCI 9th Floor Conference, located at 114 W. Commerce St., San Antonio, Texas 78205.** Attendance at the Pre-Submittal Conference is optional but strongly encouraged. Respondent is encouraged to prepare and submit its questions in writing three (3) calendar days in advance of the Pre-Submittal Conference in order to expedite the proceedings. City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted on City's website at <http://epay.sanantonio.gov/RFPListings/>.

This meeting place is accessible to disabled persons. The Municipal Plaza Building is wheelchair accessible. The accessible entrance is located at 114 W. Commerce. Accessible parking spaces are located at City Hall, 100 Military Plaza. Auxiliary aids and services are available upon request. Interpreters for the Deaf shall be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses and posted on City's website at <http://epay.sanantonio.gov/RFPListings/>. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of City shall not be binding on City.

V. SUBMITTAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

City shall conduct a comprehensive, fair and impartial evaluation of all submittals received in response to this RFP. City may appoint a selection committee to perform the evaluation. Each submittal shall be analyzed to determine overall responsiveness and qualifications under the RFP. The selection committee may select all, some or none of the Respondents. If City elects to conduct interviews, the selected Respondent(s) shall be interviewed and re-scored based upon these same criteria or other criteria, to be determined by the selection committee.

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

- A. EXECUTIVE SUMMARY – Respondent shall include a two-page Executive Summary for the Statement of Qualifications ("SOQ"). The summary shall state the number of years in business for each member of Respondent's team, the number of years Respondent has been in business at its home office and at Respondent's San Antonio office (if different), Respondent's primary home office address and its local office address (if different) and the number of employees Respondent employs in its organization as a whole and in its local office.

- B. SUBMITTAL COVER / SIGNATURE PAGE (Form #1) – Respondent shall include the completed Submittal Cover/Signature Sheet with submittal, indexed or labeled as “**Tab 1**”. The Submittal Cover/Signature Sheet shall be signed by a person, or persons, authorized to bind the entity or entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures require signatures from all firms participating in the joint venture. Joint ventures are required to provide legal proof of the joint venture such as a joint venture agreement as an attachment to their submittal.
- C. SUBMITTAL CHECKLIST AND TABLE OF CONTENTS (Form #2) – Respondent shall complete this form, which is to be used as the Table of Contents for its submittal. The checklist shall be indexed or labeled as “**Tab 2**” in submittal.
- D. DISCRETIONARY CONTRACTS DISCLOSURE FORM (Form #3) – Respondent shall complete the form online at, <https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>, print a copy of the completed form and submit the form as “**Tab 3**” in its ORIGINAL SUBMITTAL ONLY. If Respondent is proposing as a team or joint venture, then each party to that team or joint venture shall complete and submit a separate form with the submittal.
- E. LITIGATION DISCLOSURE FORM (Form #4) – Respondent shall complete a Litigation Disclosure form, utilizing additional pages for explanation, if necessary, and submit the form indexed or labeled as “**Tab 4**” in submittal. If Respondent is proposing as a team or joint venture, then each party to that team or joint venture shall completed and submit a separate form with the submittal.
- F. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (Form #5) – Respondent shall submit a completed and signed Subcontractor/Supplier Utilization Commitment Form indicating that Respondent commits to that at least 51% of this contract shall be self-performed or shall be subcontracted to other certified S/M/WBEs with a Significant Business Presence within the San Antonio Metropolitan Statistical Area. Absent a waiver granted by the TCI Small Business Office and/or failure to submit a completed Subcontractor/Supplier Utilization Commitment Form in its response shall render Respondent’s submittal **NON-RESPONSIVE**. This form shall be indexed and labeled as “**Tab 5**” in the submittal.
- G. CONTRACT TEMPLATE (Indexed and labeled as “**Tab 6**”) – Respondent is to review City’s Contract Template, attached hereto, incorporated herein by reference and labeled as “**RFP Exhibit B**”, and provide written comments and/or concerns regarding the Contract. If Respondent does not have any comments and/or concerns, Respondent shall indicate this in this Tab 6. If no objections are submitted by the Respondent, City shall presume that Respondent shall sign the agreement as presented, if a contract is awarded.
- H. PROOF OF INSURABILITY (Indexed and labeled as “**Tab 7**”) – Respondent shall submit a copy of their current insurance certificate.
- I. LETTERS OF REFERENCE (required) – Respondent shall provide a maximum of five (5) letters of reference. Letters of Reference shall be indexed and labeled as “**Tab 8**”.
- J. STATEMENT OF QUALIFICATIONS – Respondent shall provide a narrative document addressing all evaluation criteria in Section II of this RFP. Sufficient information regarding Respondent’s past projects and key personnel’s experience shall be provided in Respondent’s submittal to indicate its team has met or exceeded the minimum qualifications cited in Section II of this RFP.

A. Background, Experience and Qualifications of Prime Firm, Key Personnel and Key Sub-consultants including Co-Respondent, Joint Venture Party or Partner (30 Points)

1. Experience: (Indexed and Labeled as “Tab 9”) – City shall consider the relevance of past experience for all parties proposed as a part of the team. Respondent shall provide a narrative, in three (3) pages or less, describing its team’s qualifications with the following:

- Depth of experience in commercial real estate brokerage services.
- Understanding of the San Antonio commercial real estate market.
- Track record of successful performance of commercial real estate services.
- Resources available to support this project.
- Understanding of the P3 process with a particular emphasis on why Respondent's firm is best qualified to assist City in development and implement a development strategy that maximizes value and delivers a real estate development that is beneficial to the surrounding community.
- Respondent's availability to begin work.

2. Proposed Key Personnel/Organizational Chart (Indexed and Labeled as "Tab 10") – Key personnel included in this section are expected to be the same personnel that shall be assigned to contract, if awarded. Respondent shall provide a detailed organizational chart of its team, identifying key personnel who shall be committed to work on the various tasks for this Project. The proposed key personnel shall consist of a licensed broker with a minimum of five (5) five years demonstrated commercial real estate brokerage experience.

Label key personnel assignments as:

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

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

4. Project Sheets (Indexed and Labeled as "Tab 12") – Respondent's submittal shall include a maximum of three (3) project sheets, limited to one (1) page for each project, describing similar brokerage services projects to the Southwest Business & Technology Park and the potential Frost Bank Tower marketing assignment anticipated to be 16,700 sf of first floor retail along Commerce, Main and Flores Streets along with up to 82,000 sf (5 full floors in the Tower Building) of office space along with any innovate marketing and sales strategy concepts that shall assist City in developing and selling potential P-3 sites that are owned by City. Respondent has completed within the last five (5) years. Each project sheet should include the following:

1. Name and Description of Respondent's cited project(s), along with a brief narrative that provides the reviewer with a clear concept of what the project was, its challenges and the eventual outcome.;
2. Scope of the project;
3. Project Principal and managers note whether this person shall work on this Project and his/her role planned for this Project clearly demonstrating the level of responsibility that the Respondent had in the overall project;
4. Budget for Respondent's cited project(s);
5. Cited project's proposed completion date and the actual completion date (explain inconsistencies);
6. The cited project's owner's name and the name of the cited project's representative (if different) who served as the day-to-day liaison for the project in the following format:
 Name of Owner: _____
 Name of Owner's representative: _____
 Representative's Phone Number: _____
 Representative's E-mail: _____

B. Proposed Marketing Plan (20 points)

As presently approved by City Council, City shall purchase the 445,000 square foot Frost Bank Tower on or before July 2017. After accounting for the time required to build a new facility for Frost Bank and to renovate the former Frost facilities purchased by City it is expected that sometime in 2020 City shall have fully consolidated its offices needs into the Frost Bank Tower Building. In concert with the selected Broker, City's expectation is a strategy shall be implemented to lease to non-City tenants any office space excess to its needs, projected to be about five full floors or 82,000 square feet in the Tower along with 15,000 to 20,000 square feet of retail space on the 1st floor of the adjacent garage building. In a four (4) page summary, **(Indexed and Labeled as "Tab 13")**, Respondent clearly shall define how it proposes to accomplish and perform services related to the lease of this office and retail property that shall be available in the event the Frost Bank Tower is acquired by City. Include a description of proposed tenant mix/target market, timelines for absorption of the space assuming that it shall be available to commence construction of any required improvements in January 2020, projected rents, types of collateral material, strategic elements and other relevant information about planned marketing activities. (Samples of marketing plans and collateral material prepared for similar properties shall be included here.)

C. Team's Experience with San Antonio Region Issues and past experience with City of San Antonio contracts (20 points)

City is interested in evaluating Respondent's experience with San Antonio issues, as may be evidenced by work in San Antonio and/or the surrounding area during the past five (5) years. In narrative form using a maximum of two (2) pages, **(Indexed and Labeled as "Tab 14")**, briefly describe Respondent's experience in the following areas, referencing projects relating to that experience:

- Describe Respondent's past experience and planned management approach to coordinate with stake holders, non-profit groups, state and federal entities;
- Local area sales/leasing accomplishments and practices;
- Local sales/leasing challenges and how those challenges were addressed; and
- Discuss how Respondent stays informed on issues/trends related to the San Antonio Commercial real estate market.

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

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

D. PROPOSED COMMISSION/FEE SCHEDULE (10 Points)

Proposed Commission /Fee Schedule (Indexed and Labeled as "Tab 15") – Completed Proposed Commission/Fee Schedule attached hereto and labeled as **"Exhibit C"** to the RFP. Respondent's Proposed Commission/Fee Schedule Form may reflect the maximum commissions/fees as shown in this Exhibit or you may choose to propose alternative, lower commissions/fees. In no case shall higher fees be considered.)

E. SBEDA – Prime Contract Program (20 points)

SBE Prime Contract Program – 10 pts.

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

No evaluation criteria percentage Points shall be awarded to non-ESBE Prime Consultants through subcontracting to certified SBE firms.

M/WBE Prime Contract Program – 10 pts.

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

No evaluation criteria percentage Points shall be awarded to non-M/WBE Prime Consultants through subcontracting to certified M/WBE firms.

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

Evaluation Criteria:	Maximum Points
A. Background, Experience and Qualifications of Prime Firm, Key Personnel and Key Sub-Consultants, including any Co-Respondent, Joint Venture Party or Partner	30 points
B. Proposed Marketing Plan	20 points
C. Team's Experience with San Antonio Region Issues & past experience with City contracts	20 points
D. Proposed Commission/Fee Schedule	10 points
E. SBEDA	
SBE Prime Contract Program – 10 points	20 points
MWBE Prime Contract Program –10 points	
TOTAL	100 points

VI. SUBMISSION INSTRUCTIONS

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

Respondent shall submit a total of **six (6)** Qualification Statements which shall include one **(1)** original unbound Qualification Statement, signed in ink, and five (5) printed copies of the submittal, as well as one **(1)** copy of the entire submittal in an Adobe PDF format on a compact disk (**CD**) or flash drive in a sealed package, clearly marked on the front of the package "**RFP: ON-CALL COMMERCIAL REAL ESTATE BROKERAGE SERVICES.**" All submittals shall be received in the Office of the City Clerk **NO LATER THAN 3:00 PM, TUESDAY, DECEMBER 15, 2015** at the address indicated below. Any submittal received after this time shall not be considered. Late submittals shall be rejected or shall be shredded without being opened. Late submittals shall be rejected or, if a submittal is received by City, shall not be returned and shall be shredded without being opened.

Mailing Address:

Office of the City Clerk, Attn: Transportation and Capital Improvements
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

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

Submittals sent by facsimile or email shall not be accepted.

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

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

VII. AMENDMENTS TO RFP

Changes, amendments, or written responses to questions received in compliance with Section VIII, Restrictions on Communication may be posted on City's website at <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. If Respondent does not have access to the Internet, Respondent shall notify City, in accordance with Section VIII, Restrictions on Communication, Respondent wishes to receive copies of changes, amendments, or written responses to questions by mail or facsimile.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only.

VIII. RESTRICTION ON COMMUNICATIONS

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

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

1. Respondent may ask verbal questions concerning this RFP at the Pre-Submittal Conference.
2. Respondent may submit written questions concerning this RFP to the Staff Contact Person listed in the address below until **4:00 PM on December 7, 2015**. Questions received after the stated deadline shall not be answered. It is suggested that all questions be sent by electronic mail:

Carisa Gamez, Contract Coordinator, 207-8325 or Carisa.Gamez@sanantonio.gov

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

Carisa Gamez, Contract Coordinator
City, Transportation and Capital Improvements
Contract Services Division
114 W. Commerce Street
Room 911
San Antonio, TX 78205

3. Respondent and/or its agent(s) are encouraged to contact City's Economic Development Department (EDD) for assistance or clarification with issues specifically related to City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form, prior to Respondent's submittal. The point of contact for this solicitation is Mr. David Rodriguez. David may be reached by telephone at (210) 207-0071 or by e-mail at David.Rodriguez3@sanantonio.gov. David may designate other members of City staff to address issues raised by Respondent. This exception to the restriction on communication does not apply and there is no contact permitted by Respondent to the Small Business Office regarding this solicitation after the solicitation closing date. City reserves the right to contact Respondent over SBEDA issues after the solicitation closing date.

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

IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

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

- A. A Contracts, if awarded, shall be awarded to the Respondent(s) whose submittal(s) is/are deemed most advantageous to City, as determined by the selection committee and upon approval by City Council.
- B. City may accept any submittal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Respondent is subject to City Council approval.
- C. City reserves the right to accept one or more submittals or reject any or all submittals received in response to this RFP and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFP, reissue a subsequent solicitation and/or remedy technical errors in the RFP process.
- D. City shall require the selected Respondent(s) to execute a contract with City in substantially the same form as the one attached, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFP and the contract. Contract documents are not binding until approved by the San Antonio City Attorney's office. In the event the parties cannot negotiate and execute a contract within the time specified by City, City reserves the right to terminate negotiations with that selected Respondent and commence negotiations with another Respondent.
- E. This RFP does not commit City to enter into a contract or award any services related to this RFP, nor does it obligate City to pay any costs incurred in preparation or submission of a response or in anticipation of a contract.
- F. City administers its design and construction management through an internet-based project management system. All vendors shall be required to use City's internet-based system and submit Project schedules.
- G. **Conflicts of Interest:** Respondent acknowledges that it is informed that the Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a Subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- H. Respondent is required to warrant and certify that it, its officers, employees and agents neither are officials or employees of City, as defined in Section 2-42 of City's Ethics Code. (Discretionary Contracts Disclosure) – Instructions and web-link to electronic form are included in Form 3 of RFP.
- I. **Independent Contractor:** Respondent agrees and understands, if selected, it and all persons designated by it to provide services in connection with a contract, is, are and shall be deemed to be an independent contractors, is/are responsible for its/their respective acts or omissions City shall in no way be responsible for Respondent's actions and none of the parties hereto shall have authority to bind the other(s) or to hold out to third parties that it/they has/have such authority.

J. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons or their agents, who seek to contract for the sale or purchase of property, goods or services with City, shall file a completed conflict of interest questionnaire with City Clerk not later than the seventh (7th) business day after the date the person:

(1) begins contract discussions or negotiations with City; or

(2) submits to City an application, response to a request for proposals or bids, correspondence or another writing related to a potential agreement with City. The conflict of interest questionnaire form is available from the Texas Ethics Commission by accessing either of the following web addresses:

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

or

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

Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of San Antonio City Clerk. If mailing a completed conflict of interest questionnaire, mail to:

Office of City Clerk
P.O. Box 839966
San Antonio, TX 78283-3966.

If delivering a completed conflict of interest questionnaire, deliver to:

Office of City Clerk
City Hall, 2nd floor
100 Military Plaza
San Antonio, TX 78205

Respondent should consult its own legal advisor with questions regarding the statute or form.

- K. All submittals become the property of City upon receipt and shall not be returned. Any information deemed to be confidential by Respondent should clearly be noted on the page(s) where confidential information is contained; however, City cannot guarantee that it shall not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law or pursuant to a Court order.
- L. Any cost or expense incurred by Respondent associated with the preparation of its submittal, attendance at the Pre-Submittal Conference, if any, or incurred during any phase of the selection process shall be borne solely by Respondent.
- M. **Solicitation Process Review:** If Respondent desires a review of the solicitation process, Respondent shall deliver a written request to the Director of TCI within seven (7) calendar days from the date the notice of non-selection was sent. When the TCI Director receives a timely written request, the TCI Director or his/her designee shall review Respondent's concerns and the solicitation process utilized for legitimacy and procedural correctness. After performing a full review, the TCI Director shall notify Respondent in writing of his/her determination of the solicitation process utilized.
- N. **Debriefings:** In an effort to improve solicitation responses, TCI is making available on its web site a "Solicitation Response Tip List" that includes the top common items that "make or break" submissions. Providing this information, prior to the due date of the submittal, provides Respondent an opportunity to develop a better response for each solicitation. As a result of this up-front effort, each Respondent is entitled to a one (1) debriefing per calendar year, to be conducted after the San Antonio City Council has made an award of a contract on a project, if:

(a) Respondent is not the selected Respondent for the project; and

(b) Respondent has not been debriefed since January 1, 2015.

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

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

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

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

X. SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. Solicitation Response and Contract Requirements and Commitment

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

B. SBEDA Program

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

C. Definitions

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

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

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

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

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

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

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business

must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

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

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

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

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

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

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

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

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

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

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

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

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

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

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

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

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

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

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

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

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

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

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

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

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

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

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

D. SBEDA Program Compliance – General Provisions

As Contractor acknowledges that the terms of the City’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the City’s SBEDA Policy & Procedure Manual are in furtherance of the City’s efforts at economic inclusion and, moreover, that such terms are part of Contractor’s scope of work as referenced in the City’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Contractor voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the City. Without limitation, Contractor further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Contractor’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
2. Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers;
3. Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. Contractor shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Contractor's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.
6. Contractor shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor / Supplier Utilization Plan, the Contractor shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Contractor and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. Contractor acknowledges that the City shall not execute a contract or issue a Notice to Proceed for this project until the Contractor and each of its Subcontractors for this project have registered and/or maintained active status in the City's Centralized Vendor Registration System, and Contractor has represented to City which primary commodity codes each registered Subcontractor shall be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Contractor affirms that if it is presently certified as an SBE, Contractor agrees not to subcontract more than **49%** of the contract value to a non-SBE firm; **and**

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, Contractor affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), Contractor agrees not to subcontract more than **49%** of the contract value to a non-M/WBE firm.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and shall continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin,

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

G. Prompt Payment

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

H. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;
2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of Contractor or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon City Council approval).