

CITY OF SAN ANTONIO
Office of Environmental Policy



REQUEST FOR QUALIFICATIONS
("RFQ")

for

Community-Based Organization(s) to Conduct Residential Energy Efficiency Outreach
(RFQ 11-042)

Release Date: March 18, 2011
Proposals Due: April 29, 2011

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I. BACKGROUND

The City of San Antonio Office of Environmental Policy is seeking community-based organizations to provide community outreach and programming for its “BetterBuildings” Residential Energy Efficiency Program.

The BetterBuildings program is a market-based system which will provide low-cost financing options for individual homeowners and businesses to perform energy efficiency upgrades to their property and to expand energy audit and evaluation programs. The residential component, addressed in this RFQ, will provide CPS Energy utility customers in the CPS Service area with the opportunity to buy and install cost-effective resource efficiency and renewable energy measures in their homes. By overcoming the market barriers that have inhibited customer purchase of energy efficiency measures, San Antonio’s BetterBuildings Program will establish a more robust market for resource efficiency and renewables in the City by providing energy savings, electric demand reduction, greenhouse gas emission reductions and demonstration of a model that can be replicated across the country.

One goal of the BetterBuildings Program is to initiate a process to help homeowners identify energy efficiency measures that will reduce their energy costs, both for low-cost/no-cost efficiency measures as well as efficiency measures that require a capital investment. The residential component of the Better Buildings Program will consist of three levels of evaluating potential projects that will lead to increased energy efficiency for homes. The first involves a self assessment survey, the second is a home energy assessment conducted by trained professionals, and the third is a technical home energy audit. The Better Buildings Program also includes increased education, awareness, and action associated with the benefits of implementing energy efficiency measures, as well as providing financing options for program participants.

This program is funded by the Department of Energy (DOE) under the BetterBuildings Program. Projects under this announcement will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act’s purposes are to stimulate the economy and to create and retain jobs.

II. SCOPE OF SERVICES

The City of San Antonio (COSA) BetterBuildings Program is seeking a contract with non-profit or for profit community-based organizations (organizations) to provide support for community outreach and workshop presentation associated with the COSA BetterBuildings Program. The contract period will be a one-year term with one (1) one-year option for review and renewal upon mutual agreement by COSA and the organization(s). The organization(s) selected will be responsible for the following:

1. Organization(s) will be responsible for coordinating with COSA, CPS Energy, and Alamo Colleges staff on BetterBuildings programming efforts including but not limited to events, rebate programs and education programs.
2. Organization(s) will be responsible for providing a coordinator to recruit, train, and inform targeted homeowners in BetterBuildings programs and events.

3. Organization(s) will follow guidelines to develop training programs and a support network for participants. Training will include education of energy efficiency-related topics such as efficient lighting, appliances, heating and cooling systems, building envelope and water efficiency. The support network will provide comprehensive contact information and printed resource material.

4. Organization(s) will be required at a minimum to participate in the following programs for the duration of the contract:

(a). Conducting Public Workshops:

Conduct a minimum of four (4) special programs or workshops annually. Programs should be scheduled for times determined jointly between the contracted organization and COSA as the most convenient to the public even if different from posted hours of operation. Topics must be pre-approved in writing by COSA for COSA payment. The organization is responsible for all aspects of workshop planning and execution of workshops including audiovisual equipment for presentations. Substitute activities may be used to fulfill this requirement with pre-approval from COSA.

(b) Program Advertising:

Include all scheduled workshops in all possible free/non-fee local "Event" calendars. This is including but not limited to the San Antonio Express News calendar, the Current, and local media including radio and television calendars. The organization will notify COSA staff of calendar placement.

(c). Events:

The selected organization will participate in special events as determined by COSA, CPS Energy and Alamo Colleges.

5. Organization(s) shall have a contact person available during regular business hours to facilitate communication among COSA, CPS Energy and Alamo Colleges. The organization(s)' contact will also be obligated to be available after hours at the number provided to COSA. The organization(s) shall notify COSA in writing of any changes to the person or number to use for emergency contact.

6. Other Requirements: There are numerous opportunities to participate in a variety of community programs and a variety of topics. The selected organization(s) should indicate a willingness to participate in new program opportunities as they arise. It is understood that some opportunities will be extensive enough to require a contract; whereas other opportunities may be in line with the organization(s)' mission, such that the organization would participate as full partner(s) rather than on a contractor basis.

COSA Compensation:

1. *Program Administration Services* - In consideration for the Services, COSA agrees to pay to selected organization(s) a monthly program administration fee in the amount of \$800.00 per month. Such payments shall be made on a monthly basis.
2. *Conducting Public Workshops* - COSA will pay the organization(s) for Workshops conducted pursuant to Item 4a above. Workshops will be billed to COSA on a monthly invoice. Workshop participation for payment must be pre-approved in writing by COSA. Organization shall complete a workshop report and include it as back up material with the monthly invoice. Payment shall be made on the basis of the number of Workshops actually held for the public, the length of the

Community-Based Organizations to Conduct Residential Energy Efficiency Outreach

Workshop, and the number of people (members of the public not including organization(s)' staff or volunteers) in attendance at the Workshops at the following rates:

General Public Workshops:

Base rate: \$ 50.00

Workshops, 1 to 2 hours and 59 minutes: \$100.00

Workshops, 3-6 hours: \$200.00

Attendance, 1-10 people: \$ 25.00

Attendance, 1-20 people: \$ 50.00

Attendance, over 20 people: \$ 3.00 per additional person not to exceed \$300.00

Example I: A 2-hour Workshop with 13 people in attendance would be paid \$200.00 (\$50.00 base rate, plus \$100.00 hourly rate, plus \$50.00 attendance rate).

Example II: A 1-hour Workshop with 75 people in attendance would be paid \$365.00 (\$50.00 base rate, plus \$100.00 hourly rate, plus \$215.00 attendance rate @ \$50.00 for first 20 people and \$3.00 per each person above 20 (55) in attendance).

Example III: A 4-hour Workshop with 22 people in attendance would be paid \$306.00 (\$50.00 base rate, plus \$200.00 hourly rate, plus \$56.00 attendance rate- \$50.00 for the first 20 people and \$3.00 each for two additional people).

Example IV: A 3-hour Workshop with 150 people in attendance would be paid \$600.00 (\$50.00 base rate, plus \$200.00 hourly rate, plus \$350.00 for attendance - \$50 for first 20 and \$300.00 for additional 130 people at \$3.00 each with the \$300 maximum cap). COSA may assist in the advertising and have staff participation on a case-by-case basis in the Workshops.

3. *Special Events* - COSA will pay the organization(s) \$200.00 for each special event where the organization(s) provides at least two staff or volunteers to distribute COSA BetterBuildings material and provide information on energy conservation and other topics approved by COSA. Events will be billed to COSA on a monthly invoice. Event participation for payment must be pre-approved in writing by COSA. Organization shall complete an event report and include it as back up material with the monthly invoice.

Proposed Program Budget:

| Budget Item | Quantity Per Unit | Sub Total |
|---|---|---------------------|
| Program Administration Services (up to 10 contracted organization(s)) | \$800 per month | \$96,000.00 |
| Conducting Public Workshops (up to 10 contracted organization(s)) | \$250 per workshop 4 times per contract year | \$10,000.00 |
| Special Events (up to 10 contracted organization(s)) | \$200 per special event up to (2) event for each of the (10) contracted organization(s) | \$ 4,000.00 |
| Total Program | | \$110,000.00 |

III. OWNERSHIP AND LICENSES

In accordance with Texas law, Respondent acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Respondent pursuant to this Contract shall be the subject of any copyright or proprietary claim by Respondent.

The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic. Regardless also of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Respondent acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFQ, will belong to and be the property of City. Respondent, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Respondent, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any organization without City's written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Respondent, if selected, agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

IV. INTELLECTUAL PROPERTY

If selected, Respondent agrees to abide by the following regarding intellectual property rights:

Respondent shall pay all royalties and licensing fees. Respondent shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Respondent has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Respondent will immediately:

1. Either:
 - a) obtain, at Respondent 's sole expense, the necessary license(s) or rights that would allow the

City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,

- b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

2. Respondent further agrees to:

- a) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

1. Respondent is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Respondent agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
2. the Software or the equipment is used by the City in the form, state, or condition as delivered by Respondent or as modified without the permission of Respondent, so long as such modification is not the source of the infringement claim,
3. the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Respondent with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Respondent assumes responsibility under this section.

V. TERM OF CONTRACT

A contract awarded in response to this RFQ will be for a (1) one-year term upon City Council Approval.

VI. PRE-SUBMITTAL CONFERENCE

Two (2) Pre-Submittal Conferences will be held at City of San Antonio, Office of Environmental Policy Department, Riverview Towers, 111 Soledad, 9th Floor Green Room, San Antonio, Texas 78205, at the following times:

- 1) 9:30 a.m., Local Time, on Friday, March 25, 2011; and
- 2) 9:30 a.m., Local Time, on Friday, April 1, 2011.

Respondents are encouraged to prepare and submit their questions in writing three (3) calendar days in advance of the Pre-Submittal Conferences 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 the City's website at <http://www.sanantonio.gov/rfplistsings/>. Attendance at the Pre-Submittal Conference is optional, but highly recommended. Respondents who are not able to attend in person may participate by Conference Call. Respondents may call the toll free number listed below and enter the access code to participate the day of the conference.

Toll Free Dial In Number: (877) 226-9790 Access Code: 6803495

Auxiliary aids and services are available upon request. Interpreters for the Deaf must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conferences shall be preliminary. A written summary of the Pre-Submittal Conferences shall contain official responses, if any. Any oral response given at the Pre-Submittal Conferences that is not confirmed in the written summary of the Pre-Submittal Conferences or by a subsequent addendum shall not be official or binding on the City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of the City shall not be binding on the City. Respondents are encouraged to resubmit their questions in writing, to the City Staff person identified in Section XII – Restrictions on Communication, after the conclusion of the Pre-Submittal Conference. You may obtain a copy of the meeting attendees by contacting the Small Business Division of the International and Economic Development Department at phone number 210-207-3900 or email: grace.luna@sanantonio.gov.

VII. ARRA PROVISIONS

Source of Funds – American Recovery & Reinvestment Act: Funds for this contract come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (“ARRA”). Respondent and any subcontractors, as subrecipients of ARRA funds, must comply with all terms, conditions and requirements of the Act as it currently exists and as they may be changed or supplemented during the term of this contract. Respondent and any subcontractors shall comply with all special provisions as specified in the Act and current and future Department of Energy guidance.

Job Creation and Retention: Pursuant to section 1512c of the ARRA, not later than 5 days after the end of each calendar quarter, you must submit a report to the City that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work. “Jobs created” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter. “Jobs retained” means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions

established in the United States and outlying areas. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Access to Contractor Records: Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and the City, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract, and for four years after the expiration or termination of this contract. You shall permit inspection and copying of such documents to these parties and the City at no cost.

Anti-discrimination and Equal Opportunity Provisions: All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

VIII. RESERVED

IX. RESPONSE REQUIREMENTS

Respondent’s Proposal shall include the following items in the following sequence:

A. RESPONDENT PROPOSAL: Complete and submit Response Attachment A.

TAB A – TABLE OF CONTENTS

TAB B- EXECUTIVE SUMMARY: The summary shall include a statement of the work to be accomplished, how Respondent proposes to accomplish and perform each specific service and unique problems perceived by Respondent and their solutions.

TAB C – GENERAL INFORMATION

TAB D – REFERENCES

TAB E – EXPERIENCE, BACKGROUND & QUALIFICATIONS

TAB F – PROPOSED PLAN

TAB G – MISCELLANEOUS INFORMATION

- B. DISCRETIONARY CONTRACTS DISCLOSURE: Response Attachment B, Discretionary Contracts Disclosure Form is posted as a separate document and may also be downloaded at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>. Complete online, print form and place copy as Tab H within Respondent’s proposal submittal. After successfully printing the completed form, click on the “Submit” button to file electronically.
- C. LITIGATION DISCLOSURE: Complete and submit Response Attachment C, Litigation Disclosure Form. If Respondent is proposing as a team or joint venture, then all persons or organization(s) who will be parties to the contract (if awarded) shall complete and return this form as Tab I within Respondent’s submittal.
- D. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) ORDINANCE COMPLIANCE PROVISIONS: Complete, sign and submit the SBEDA form and contained in Response Attachment D. Place as Tab J within Respondent’s submittal. Subcontractor/Supplier Utilization Plan Form will be located on Website as Attachment A.
- E. PROOF OF INSURABILITY: Submit a letter from insurance provider stating provider’s commitment to insure the Respondent for the types of coverages and at the levels specified in this RFQ if awarded a contract in response to this RFQ. Respondent shall also submit a copy of their current insurance certificate. Place both documents as Tab K within Respondent’s ORIGINAL proposal submittal. Additional copies are not required.
- F. FINANCIAL INFORMATION:
Submit a copy of Respondent’s (3) three most recent annual financial statements, prepared in accordance with Generally Accepted Accounting principles, audited by an independent Certified Public Accountant. The City reserves the right to obtain, at no cost to the Respondent, a Dun and Bradstreet financial report, or other credit report, on Respondent and its partners, affiliates and subtenants, if any, to facilitate its financial evaluation of the proposal. Place documents as Tab L within Respondent’s ORIGINAL submittal. Additional copies are not required.
- G. SIGNATURE PAGE: Respondent must complete, sign and submit the Signature Page found in Response Attachment G. The Signature Page must be signed by a person, or persons, authorized to bind the organization, or organization(s), submitting the proposal. Proposals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Place document as Tab M within Respondent’s submittal.
- H. ADDENDUMS: Bidder shall sign and submit all Addendums (if any) issued for this RFQ. Changes to the RFQ will be posted to the City of San Antonio’s Bidding & Contract Opportunities Website, <http://www.sanantonio.gov/rfp listings/>. It is Bidder’s responsibility to review this site and ascertain whether amendments or revisions have been made prior to submission of a proposal response. Place Addendums, if any, as Tab N within Respondent’s proposal.
- I. PROPOSAL CHECKLIST: Complete and submit the Proposal Checklist found in Response Attachment H as Tab O within Respondent’s submittal.

Respondent is expected to examine this RFQ carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE PROPOSAL REQUIREMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

X. AMENDMENTS TO RFQ

Amendment to the RFQ, including written responses to questions received in compliance with Section XII, Restrictions on Communication, may be posted as addendums on the City's website at <http://www.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. A Respondent who does not have access to the Internet, must notify City in accordance with Section XII, Restrictions on Communication, that Respondent wishes to receive copies of addendums by mail or fax. No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFQ, and changes to the RFQ – if any – shall be made in writing only.

XI. SUBMISSION OF PROPOSALS

- A. Respondent shall submit: One (1) original, signed in ink, seven (7) copies of the proposal, and one (1) compact disk (CD) containing an Adobe PDF version of the entire proposal. Respondent shall submit these items in a sealed package, clearly marked on the front of the package:

Community-Based Organization(s) to Conduct Residential Energy Efficiency Outreach (RFQ 11-042)

All proposals must be received in the City Clerk's Office no later than **2:00 pm, Local Time on Friday, April 29 2011** to the address below. Proposals submitted prior to the above time and date may be modified provided such modifications are sealed and received by the City Clerk's Office prior to the time and date set for submission of proposals. Any proposal or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should note that delivery to the P.O. Box address in a timely manner does not guarantee its receipt in the City Clerk's Office by the deadline for submission. Therefore, Respondents should strive for early submission to avoid the possibility of rejection for late arrival.

Mailing Address:

City Clerk's Office
Attn: Office of Environmental Policy
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office
Attn: Office of Environmental Policy
100 Military Plaza 2nd Floor, City Hall
San Antonio, Texas 78205

Proposals sent by facsimile or email will not be accepted.

- B. Proposal Format: Each proposal shall be typewritten, single spaced and submitted on 8 ½” x 11” white paper with original placed inside a three ring binder and each copy to be securely bond in a more economical fashion (i.e. – heat bond, spiral bond, etc.). The use of recycled paper and materials is encouraged. Unnecessarily elaborate brochures, artwork, bindings, visual aides, expensive paper or other materials beyond that sufficient to present a complete and effective submission are not required. Font size shall be no less than 12-point type. All pages shall be numbered and printed two-sided. Margins shall be no less than 1” around the perimeter of each page. A proposal may not exceed 40 pages in length, not including appendices. The page count requirement is not applicable to the Financial Information Tab L and Addendums Tab N. Electronic files, websites, or URLs shall not be submitted in lieu of the proposal, other than the CD specified above.

Each proposal must include the sections and attachments in the sequence listed in the RFQ Section IX, Response Requirements, and each section and attachment must be indexed and divided by tabs and indexed in a Table of Contents (Page 2) Failure to meet the above conditions may result in disqualification of the proposal or may negatively affect scoring.

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

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on their proposal's Respondent Questionnaire, the Director of the Office of Environmental Policy shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

- D. All provisions in Respondent's proposal, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.
- E. All proposals become the property of COSA upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- F. Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, the Pre-Submittal conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

- G. Respondents must note that the award of this contract is contingent upon COSA receiving the grant award.

XII. RESTRICTIONS ON COMMUNICATION

- A. Respondents are prohibited from communicating with: 1) elected City officials and their staff regarding the RFQ or Proposals from the time the RFQ has been released until the contract is posted as a City Council agenda item; and 2) City employees from the time the RFQ 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 RFQ and/or Proposal submitted by Respondents. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent’s proposal from consideration.

Exceptions to the Restrictions on Communication with City employees include:

1. Respondents may ask verbal questions concerning this RFQ at the Pre-Submittal Conference.
2. Respondents may submit written questions concerning this RFQ to the Staff Contact Person listed in the address below until Friday, April 21, 4:00 pm, Local Time. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by email or by fax to:

Debra Stevens, Contract Coordinator
City of San Antonio, Purchasing & General Services
debra.stevens@sanantonio.gov or to fax # (210) 207-7814

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

Debra Stevens, Contract Coordinator
City of San Antonio, Purchasing & General Services
P.O. Box 839966
San Antonio, TX 78283-3966

Questions submitted and the City’s responses will be posted in the form of an Addendum to the City's web site at <http://www.sanantonio.gov/rfplistsings/>.

3. Respondents and/or their agents are encouraged to contact the Small Business Outreach Office of the Economic Development Department for assistance or clarification with issues specifically related to the City’s Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact is Ms. Marissa Newman. Ms. Newman may be reached by telephone at (210) 207-3962 or by e-mail at marissa.newman@sanantonio.gov. Contacting her or her office regarding this RFQ after the proposal due date is not permitted.

4. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. The City reserves the right to exclude any persons from such selection committee meetings as it deems in its best interests.
 5. Upon completion of the evaluation process, Respondents shall receive a notification letter indicating the recommended firm and anticipated City Council agenda date. Respondents desiring a review of the solicitation process may submit a written request to the Department Director no later than seven (7) calendar days from the date letter was sent.
- B. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City. The City reserves the right to award to none, one, or more than one Respondent.

XIII. EVALUATION CRITERIA

The City will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFQ. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFQ. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon the same criteria. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council.

Evaluation criteria:

- A. Experience, Background, Qualifications (45 points)
- B. Proposed Plan (35 points)
- C. Financial Capability (15 points)
- D. References (5 points)

XIV. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

- A. City reserves the right to award one, more than one or no contract(s) in response to this RFQ.
- B. The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.
- C. City may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFQ on the part of City. However, final selection of a Respondent is subject to City Council approval.

- D. City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFQ, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFQ, and reissue a subsequent solicitation, and/or remedy technical errors in the RFQ process.
- E. City will require the selected Respondent(s) to execute a contract with the City, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFQ and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- F. This RFQ does not commit City to enter into a Contract, award any services related to this RFQ, nor does it obligate City to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.
- H. The successful Respondent must be able to formally invoice the City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by the City.
- I. Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in 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 organization(s) is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; 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.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City’s Ethics Code. (Discretionary Contracts Disclosure – Response Attachment D)

- J. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be an independent contractors, responsible for their respective acts or omissions, and that City shall in no way be responsible for Respondent’s actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- K. 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 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. Respondent should consult its own legal advisor for answers to questions regarding the statute or form.

XV. SCHEDULE OF EVENTS

Following is a list of **projected dates/times** with respect to this RFQ:

| | |
|----------------------------------|---|
| RFQ Release Date | Friday, March 18, 2011 |
| Pre-Submittal Conferences | 1) Friday, March 25, 2011 9:30 a.m. 2) Friday, April 1, 2011 9:30 a.m. |
| Final Questions Accepted | Friday, April 22, 2011 4:00 p.m. |
| Proposals Due | Friday, April 29, 2011 2:00 p.m. |
| Interviews, if any | May-2011 |
| City Council Date | May-2011 |

RESPONSE ATTACHMENT A.

RESPONDENT PROPOSAL

Instructions: Prepare and submit narrative responses to address the following items. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture. Respondent's proposals should be organized and submitted in the following manner and order, with each section tabbed and noted with the appropriate heading indicated.

TAB A – TABLE OF CONTENTS

EXECUTIVE SUMMARY

To be submitted with Respondents' Proposal as TAB B

Provide a maximum two (2)-page summary of Respondent's Proposal to include at a minimum:

1. Highlights of major components of Respondent's Proposal.
2. Description of the Respondent's current business, business philosophy regarding operations and client relationships, and Respondent's general approach to energy efficiency systems and services.
3. Statement of understanding concerning the City's needs and Respondent's approach to this project, knowledge of the elements involved, and specific approach for the services requested, including a statement of work to be accomplished, how Respondent proposes to accomplish and perform each specific service, and unique problems perceived by Respondent and their solutions.

GENERAL INFORMATION

To be submitted with Respondents' Proposal as TAB C

1. Respondent Information: Provide the following information regarding the Respondent.

(NOTE: Co-Respondents are two or more organization(s) proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: _____

(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Website address: _____

Year established: _____

Provide the number of years in business under present name: _____

Social Security Number or Federal Employer Identification Number: _____

Texas Comptroller's Taxpayer Number, if applicable: _____

(NOTE: This 11-digit number is sometimes referred to as the Comptroller's TIN or TID.)

DUNS NUMBER: _____

Business Structure: Check the box that indicates the business structure of the Respondent.

Individual or Sole Proprietorship If checked, list Assumed Name, if any: _____

Partnership

Corporation If checked, check one: For-Profit Nonprofit

Also, check one: Domestic Foreign

Other If checked, list business structure: _____

Printed Name of Contract Signatory: _____

Job Title: _____

(NOTE: This RFQ solicits proposals to provide services under a contract which has been identified as "High Profile". Therefore, Respondent must provide the name of person that will sign the contract for the Respondent, if awarded.)

Provide any other names under which Respondent has operated within the last 10 years and length of time under for each: _____

Community-Based Organizations to Conduct Residential Energy Efficiency Outreach

Provide address of office from which this project would be managed: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Annual Revenue: \$ _____

Total Number of Employees: _____

Total Number of Current Clients/Customers: _____

Briefly describe other lines of business that the company is directly or indirectly affiliated with:

List Related Companies: _____

2. **Contact Information:** List the one person who the City may contact concerning your proposal or setting dates for meetings.

Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

3. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes No

4. Is Respondent authorized and/or licensed to do business in Texas?

Yes No If "Yes", list authorizations/licenses.

5. Where is the Respondent's corporate headquarters located? _____

6. **Local/County Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes No If "Yes", respond to a and b below:

a. How long has the Respondent conducted business from its San Antonio office?

Years _____ Months _____

b. State the number of full-time employees at the San Antonio office. _____

If "No", indicate if Respondent has an office located within Bexar County, Texas:

Yes No If "Yes", respond to c and d below:

c. How long has the Respondent conducted business from its Bexar County office?

Years _____ Months _____

d. State the number of full-time employees at the Bexar County office. _____

7. **Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes No If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

8. **Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes No If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

9. **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes No If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

10. **Disciplinary Action:** Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations? If “Yes”, state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

11. **Previous Contracts:**

a. Has the Respondent ever failed to complete any contract awarded?

Yes No If “Yes”, state the name of the organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

b. Has any officer or partner proposed for this assignment ever been an officer or partner of some other organization that failed to complete a contract?

Yes No If “Yes”, state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

c. Has any officer or partner proposed for this assignment ever failed to complete a contract handled in his or her own name?

Yes No If “Yes”, state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

REFERENCES

To be submitted with Respondents' Proposal as Tab D

Provide three (3) references, that Respondent has provided similar and relevant services to within the past three (3) years. The contact person named should be familiar with the day-to-day management of the contract and **be willing to respond to questions** regarding the type, level, and quality of service provided.

Reference No. 1:

Firm/Company Name: _____
Contact Name: _____ Title: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone No. _____ Fax No: _____
Email: _____
Date and Type of Service(s) Provided: _____

Reference No. 2:

Firm/Company Name: _____
Contact Name: _____ Title: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone No. _____ Fax No: _____
Email: _____
Date and Type of Service(s) Provided: _____

Reference No. 3:

Firm/Company Name: _____
Contact Name: _____ Title: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone No. _____ Fax No: _____
Email: _____
Date and Type of Service(s) Provided: _____

EXPERIENCE, BACKGROUND, QUALIFICATIONS

To be submitted with Respondents' Proposal as Tab E

Prepare and submit narrative responses to address the following items. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

1. Describe Respondent's experience relevant to the Scope of Services requested by this RFQ. List and describe relevant projects of similar size and scope performed over the past four years. Identify associated results or impacts of the project/work performed.
2. Describe Respondent's specific experience with public organization(s)' clients, especially large municipalities. If Respondent has provided services for the City in the past, identify the name of the project and the department for which Respondent provided those services.
3. List other resources, including total number of employees, number and location of offices, number and types of equipment available to support this project. It is a goal of the program to retain and use local personnel and/or companies to provide services.
4. If Respondent is proposing as a team or joint venture or has included sub-contractors, describe the rationale for selecting the team and the extent to which the team, joint venturers and/or sub-contractors have worked together in the past.
5. Identify the number and professional qualifications (to include licenses, certifications, associations) of staff to be assigned to the project and relevant experience on projects of similar size and scope.
6. State the primary work assignment and the percentage of time key personnel will devote to the project if awarded the contract.
7. State the ability to scale, schedule, and deliver direct energy efficiency services to the commercial sector within a calendar year.
8. Describe Respondent's track record for facilitating and/or assisting implementation marketing programs, promoting other existing and future energy efficiency and conservation programs, and building coalitions within communities to help market program and educate their constituents.
9. Describe Respondent's quality assurance program that ensures energy savings and demand reduction estimates are realized and customers are satisfied.
10. Describe Respondent's experience with managing multiple funding sources for various measures.
11. Additional Information. Identify any additional skills, experiences, qualifications, and/or other relevant information about the Respondent's qualifications.

PROPOSED PLAN

To be submitted with Respondents' Proposal as TAB F

Prepare and submit the following items.

1. **Operating Plan** – Describe the proposed plan to engage with community residents and offer workshops and educational events, including specific tasks, staff assigned and schedule of events. Include a description of who your targeted audience will be.
2. **Reporting Plan** – Describe how the workshops will be organized and how participation will be monitored and verified and how those results will be communicated to COSA and its partners throughout term of the contract. Identify proposed tasks and schedule.
3. **Marketing Plan** – Describe how you will conduct outreach, advertising and marketing to community residents in the targeted zones to inform them of the program and convince them to agree to participate.
4. **Additional Information.** Provide any additional plans and/or relevant information about Respondent's approach to providing the required services.
5. A principal goal and priority of the assistance under this opportunity is to promote job creation and/or preservation. Please demonstrate in your proposal how your business plan will:
 - Preserve and/or create jobs and promote economic recovery;
 - Maximize job creation and economic benefit;
 - Be commenced as quickly as possible consistent with prudent management.
 - Track, measure, and report on the recipient's progress towards achieving the Recovery Act priorities.

MISCELLANEOUS INFORMATION

To be submitted with Respondents' Proposal as TAB G

Include brochures and other relevant information about Respondent you wish the City to consider in its selection.

RESPONSE ATTACHMENT B.

DISCRETIONARY CONTRACTS DISCLOSURE FORM

DISCRETIONARY CONTRACTS DISCLOSURE FORM

To be submitted with Respondents' Proposal as Tab H

Discretionary Contracts Disclosure Form is posted as a separate document or may be downloaded at:
<https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.

Instructions for completing the Discretionary Contracts Disclosure form are listed below:

1. Download form and complete all fields.
2. Click on the "Print" button and place the copy in proposal response, as Tab H, as indicated in the Proposal Checklist.

RESPONSE ATTACHMENT C.

LITIGATION DISCLOSURE FORM

To be submitted with Respondents' Proposal as TAB I

LITIGATION DISCLOSURE

Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes No

2. Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes No

3. Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes No

If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

RESPONSE ATTACHMENT D.

**SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN
(Attachment A)**

To be submitted with Respondents' Proposal as TAB J

RESPONSE ATTACHMENT E.

SIGNATURE PAGE

To be submitted with Respondents' Proposal as TAB M

SIGNATURE PAGE

The undersigned certifies that (s)he is authorized to submit this proposal on behalf of the entity named below:

Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

(NOTE: If proposal is submitted by Co-Respondents, an authorized signature from a representative of each Co-Respondent is required. Add additional signature blocks as required.)

Co-Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

By signature(s) above, Respondent(s) agrees to the following:

1. If awarded a contract in response to this RFQ, Respondent will be able and willing to execute a contract with the understanding that the scope and compensation provisions will be negotiated and included in the final document.
2. If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.
3. If awarded a contract in response to this RFQ, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in RFQ Exhibits B & C.
4. If awarded a contract in response to this RFQ, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's proposal and during Proposal process.
5. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
6. Respondent agrees to fully and truthfully submit a Respondent Questionnaire and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.
7. To comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is posted as a City Council agenda item.

|

RESPONSE ATTACHMENT F.

PROPOSAL CHECKLIST

To be submitted with Respondents' Proposal as TAB O

PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and that they are properly tabbed and appear in the correct order.

| Tab in Proposal | Document | Initial to Indicate Document is Attached to Proposal |
|-----------------|---|--|
| | Respondent Proposal (Response Attachment A) | |
| Tab A | <ul style="list-style-type: none"> • Table of Contents | |
| Tab B | <ul style="list-style-type: none"> • Executive Summary | |
| Tab C | <ul style="list-style-type: none"> • General Information | |
| Tab D | <ul style="list-style-type: none"> • References | |
| Tab E | <ul style="list-style-type: none"> • Experience, Background & Qualifications | |
| Tab F | <ul style="list-style-type: none"> • Proposed Plan | |
| Tab G | <ul style="list-style-type: none"> • Miscellaneous Information | |
| Tab H | *Discretionary Contracts Disclosure (Response Attachment B) <i>Provide with ORIGINAL only</i> | |
| Tab I | Litigation Disclosure (Response Attachment C) <i>Provide with ORIGINAL only</i> | |
| Tab J | * SBEDA Form (Response Attachment D); and <ul style="list-style-type: none"> • Associated Certificates, if applicable • Subcontractor/Supplier Utilization Plan <i>Provide with ORIGINAL only</i> | |
| Tab K | Proof of Insurability <ul style="list-style-type: none"> • Insurance Provider’s Letter • Copy of Current Certificate of Insurance <i>Provide with ORIGINAL only</i> | |
| Tab L | Financial Information <i>Provide with ORIGINAL only.</i> | |
| Tab M | *Signature Page (Response Attachment E) <i>Provide with ORIGINAL only</i> | |
| Tab N | *All Addendums issued (if any) for this RFQ. <i>Provide with ORIGINAL only</i> | |
| Tab O | Proposal Checklist (Response Attachment F) <i>Provide with ORIGINAL only</i> | |
| | One (1) Original, 7 Copies, and one (1) CD of entire proposal in PDF format. | |

***Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**

RFQ EXHIBIT A.

**SMALL BUSINESS ECONOMIC DEVELOPMENT
ADVOCACY (SBEDA) ORDINANCE COMPLIANCE PROVISIONS**

I. 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, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s International and Economic Development (IEDD) 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.)

Annual Aspirational Goal – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) on an annual basis based upon relative M/WBE availability data to be collected by the City through its Centralized Vendor Registration (“CVR”) system. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract. The M/WBE Annual Aspirational Goals for 2011 are:

Construction – 29%

Architecture and Engineering – 34%

Professional Services – 45%
Other Services – 30%
Goods and Supplies - 23%

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

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

Good Faith Efforts – documentation of the CONTRACTOR’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San

Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and 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.

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

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

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

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

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

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified 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 CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

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

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

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

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

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

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

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's

performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

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

Small Business Office (SBO) – the office within the International and Economic Development Department (IEDD) 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 IEDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

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

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

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

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the IEDD 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 at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

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

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

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

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. 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.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract:

None. There are no Affirmative Procurement Initiatives being applied to this contract.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that

have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby attached and incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

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

H. Violations, Sanctions and Penalties

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

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

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

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

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

RFQ EXHIBIT B.

INSURANCE REQUIREMENTS

If selected to provide the services described in this RFQ, Respondent shall be required to comply with the insurance requirements set forth below:

INSURANCE

- A) Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City’s Office of Environmental Policy, which shall be clearly labeled “Green Retrofit Ramp-Up Program” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Office of Environmental Policy. 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 Respondent’s financial integrity is of interest to the City; therefore, subject to Respondent’s right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

| TYPE | AMOUNTS |
|---|--|
| Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability | For <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage |

- D) Respondent 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 insured 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;
 - General 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.
- E) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent'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.
- F) In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.
- G) Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.
- H) It is agreed that Respondent'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.
- I) 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.
- J) Respondent and any Subcontractors are responsible for all damage to their own equipment and/or property.

RFQ EXHIBIT C.

INDEMNIFICATION REQUIREMENTS

If selected to provide the services described in this RFQ, Respondent shall be required to comply with the indemnification requirements set forth below:

INDEMNIFICATION

RESPONDENT 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 RESPONDENT'S activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, consultant or subcontractor of RESPONDENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RESPONDENT 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. RESPONDENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT known to RESPONDENT related to or arising out of RESPONDENT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at RESPONDENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by RESPONDENT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. RESPONDENT shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If RESPONDENT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and RESPONDENT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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