



CITY OF SAN ANTONIO
TRANSPORTATION & CAPITAL IMPROVEMENTS

**REQUEST FOR COMPETITIVE SEALED PROPOSALS:
JOB ORDER CONTRACTING**

(RFCSP-TCI-10172014TN)

Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts. Under Section 2-309 of the San Antonio Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of the San Antonio City Council, candidate for the San Antonio City Council or political action committee that contributes to a San Antonio City Council election, from the tenth (10th) business day after a project solicitation has been released until thirty (30) calendar days after the project has been awarded by the San Antonio City Council (hereafter referred to as the "black out period"):

1. Legal signatory of a high-profile contract;
2. Any individual seeking a high-profile contract;
3. Any owner or officer of an entity seeking a high-profile contract;
4. The spouse of any of these individuals;
5. Any attorney, lobbyist or consultant retained to assist in seeking contract.

A high-profile contract cannot be awarded to an individual or entity if a prohibited contribution has been made by any of these above-listed individuals or entities during the established black out period for this solicitation.

RFCSP ISSUE DATE:
OCTOBER 17, 2014

PROPOSAL DEADLINE:
NOVEMBER 18, 2014 AT 2:00 P.M. LOCAL TIME

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CITY OF SAN ANTONIO JOB ORDER CONTRACTING

I. BACKGROUND

The City of San Antonio (hereafter referred to as "City"), Transportation & Capital Improvements Department (hereafter referred to as "TCI") is seeking qualifications and Request for Competitive Sealed Proposals (hereafter referred to as a "RFCSP") from qualified firms to provide Job Order Contracting (hereafter referred to as "JOC") for minor construction, repair, rehabilitation or alteration services at City-owned and leased facilities. It is City's intent to recommend the JOC contract award to multiple qualified firms.

Originally developed to support the project needs of military bases, JOC has become more widely accepted and utilized throughout the public sector. JOC is an innovative contracting technique created for facilities maintenance and construction-related services, to assist with obtaining greater contractor performance in relation to smaller projects in a cost effective and timely manner. The JOC Program utilizes Job Orders on an as-needed basis, under one or more indefinite quantity contracts with Job Order Contractors, to perform minor construction, repair, rehabilitation and/or alterations of City-owned facilities.

II. SCOPE OF WORK AND GENERAL REQUIREMENTS

City currently owns approximately 825 buildings, with an additional 56 leased office spaces, that may require a variety of minor construction, repair, rehabilitation or alteration services. As a facility need is identified, City may assign said project to a selected JOC contractor for negotiation. The selected JOC contractor shall review scope of work and provide an estimate and schedule(s) of work to be accomplished. If City accepts the JOC contractor's proposal, authorization shall be granted via a Task Order in PrimeLink, City's internet-based project management software for submitting and approving Task Orders. By submitting a Proposal, JOC contractor thereby agrees to perform the requested service(s) within the time stated in the proposed Task Order Request. In the event that the selected JOC Contractor fails to achieve Substantial Completion and/or Final Completion of the Project by the dates established in the Task Order, Liquidated damages shall be assessed.

Definitions:

Job Order Contracting or Job Order Contract: means a contract where the work is of a recurring nature but the delivery times are indefinite, as are the quantities, and orders are awarded substantially on the basis of pre-described and pre-priced tasks. Coefficients are applied to a unit price to price job orders. A Job Order Contract also involves the simultaneous accomplishment of multiple projects and may require the use of multiple subcontractors.

Minor Construction: may include the demolition and construction of workspace within an existing facility.

Repairs: means work that includes the reparation of broken or malfunctioning systems, components or sub-components of a building, such as doors, electrical outlets, plumbing, flooring, sheetrock, air conditioning systems, etc.

Rehabilitation: means work involving the restoration of an office, floor, system or component of a system in order to restore functionality.

Alteration: means work that involves extending a wall, upgrading lighting fixtures, installing a door where one did not exist, replacing flooring, etc.

General Information and Requirements:

Contract shall be for a fixed unit price, with an indefinite delivery and quantity regarding the performance of a broad range of construction services, to include, but not limited to, minor construction, repair, renovations, alterations and maintenance projects and professional supervision on an as-needed basis. A selected Respondent acknowledges and accepts it will not be guaranteed a minimum or maximum amount of work. Specific work requirements shall be identified in individual Job Orders as deemed necessary by City.

A selected Respondent shall be responsible for providing all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, insurance, subcontracts, bonds, supervision, management, reports, incidentals and quality control necessary to perform construction management and construction for each issued and accepted Job Order, unless otherwise authorized by City.

A contract awarded in response to this solicitation will not include professional services required by a licensed architect or engineer, as contemplated by Chapters 1051 and 1001 of the Texas Occupations Code.

A selected Respondent shall be responsible for complying with all federal, state, county, and city laws, codes and ordinances applicable to the performance of any work under the contract awarded in connection with this solicitation. Special attention is called to, but not limited to, local environmental ordinances. In addition, the selected Respondent must comply the Texas Government Code Chapters 2258 and 2253. Ignorance on the part of a selected Respondent will in no way relieve Respondent from responsibility under this clause. City may request to see all Subcontractor bids, and City may, at any time, participate in a bid opening and may audit Job Order bid documents.

To determine the maximum price for any work performed pursuant to the JOC, coefficients or multipliers shall be applied by utilizing [RSMMeans JOCWorks™](#) software. Therefore, before beginning work, City and the selected Respondent shall agree to a coefficient or multiplier to be applied to any line item from the [RSMMeans JOCWorks™](#) that will yield a maximum price inclusive of material, equipment and/or labor performed during normal working hours.

Also, before beginning work, City and a selected Respondent shall agree to a second coefficient or multiplier to be applied to any line item from the then current [RSMMeans JOCWorks™](#) that shall yield a maximum price inclusive of material, equipment, and/or labor performed during overtime working hours. The coefficient or multipliers shall be applied to the far right hand column of the [RSMMeans JOCWorks™](#), which is labeled "Total Including Overhead and Profit". After adjustment for the San Antonio, Texas Cost Index, this shall allow a maximum price calculation for combinations of material, equipment and/or labor for most tasks.

For those job items not listed in the specified [RSMMeans JOCWorks™](#), maximum pricing shall be determined by applying the same coefficient as utilized on the [RSMMeans JOCWorks™](#) to other applicable current R.S. Means publications. If the specific job item is not listed in any R.S. Means publications, then City and the Contractor will determine the appropriate price through market survey.

Job Orders

1. With the exception of emergencies, any work required by City shall be ordered through the issuance of a formal written job order containing the approved Job Order Proposal, along with a City issued Task Order.
2. Request for Job Order Proposals are to be submitted to City at no additional cost. In the event Job Order Contracts are awarded to multiple Respondents, City may elect and often will, at its own discretion, to solicit JOC Proposals from one or more of the awarded Respondents, depending upon the estimated value and/or complexity of the proposed project. Determination to solicit multiple proposals from the awarded Respondents or from only one awarded Respondent shall be on a case- by-case, as deemed in the best interest of City.
3. Upon review of the Job Order Proposal(s), City shall have the right to reject all proposals, cancel the proposed project, rebid the work under any permissible procedure or perform the work utilizing City

personnel. City shall not be responsible for payment or costs incurred by the awarded Respondent(s) for the preparation and submission of a Job Order Proposal, regardless of project outcome.

4. In the event design services, construction drawings and/or plans are required, City shall either obtain said professional design services from City resources or from a third party, as deemed in City's best interest.
5. The current [RSMeans JOCWorks™](#) and/or the RS Means Unit Price Book shall serve as a basis for establishing the maximum price and the value of work to be performed. Each selected Respondent's Job Order Proposal shall be submitted to City and negotiated under the contract agreement.

Scheduling of Work

1. The first day of performance shall be the effective date specified in the Job Order. Any preliminary work started, materials ordered or purchases made, prior to receipt of City's Job Order, shall be at the selected Respondent's risk and expense.
2. The selected Respondent shall meticulously prosecute the Work to completion within the time set forth in the Job Order. The period of performance shall include allowance for the mobilization, holidays, weekend days' inclement weather, and cleanup; therefore, claims for delay, based upon said elements, shall not be allowed.
3. When the selected Respondent considers the Work to be complete and ready for its intended use, the selected Respondent shall notify the Director of TCI, the Director's designee or the Departmental Representative representing the project. City then shall inspect the Work, to determine the status of completion. In the event City determines that the Work has been substantially completed, a Certificate of Substantial Completion shall be issued, listing remaining items to be completed and/or corrected prior to final payment of the Job Order. The selected Respondent promptly shall proceed to complete or correct items listed.
4. The selected Respondent shall ensure that the purchase, delivery and storage of materials and equipment shall be made without interference to City operations and personnel.
5. The selected Respondent shall be responsible for removing furniture and/or portable office equipment from the immediate work area, as well as replacing said furniture and/or potable office equipment to its original location upon work completion. In the event that said items cannot be replace within its original location, City shall designate alternate location(s) for placement.
6. The selected Respondent shall take all necessary precautions to ensure that no damage shall result from operations to private or public property. All damages must be repaired or replaced by the selected Respondent at no additional cost to City. The selected Respondent also shall be responsible for providing all necessary traffic control, to include, but not limited to, street blockages, traffic cones, flagmen, etc., as required for each Job Order. Proposed traffic control methods must be submitted to City for approval prior to the commencement of work.
7. The selected Respondent shall be responsible for obtaining all required permits applicable to performance under any single order placed against this contract. City shall be responsible for the cost of any and all required City permits.
8. The selected Respondent shall allow authorized City personnel to inspect and audit any books, documents, papers, data and records relating to Respondent's performance throughout the term of said JOC contact. City reserves the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by City to be incomplete or erroneous.

Safety Plan

The selected Respondent shall submit to City, within fifteen (15) calendar days following contract award, a Safety Plan. Said Safety Plan must address all aspects of the Contractor's safety procedures, including responsibility for OSHA compliance, drug testing, trend analysis, corrective action and interface with City inspectors. Failure to

submit the Safety Plan will result in City's non-issuance of Task Orders to that selected Respondent until said Safety Plan is submitted to City.

Project General Manager

The selected Respondent's Project General Manager shall be knowledgeable in multiple disciplines including, but not limited to, electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.

"Green Building" Policy

In an effort to conserve resources, as well as to preserve our environment, City is in the process of adopting a resolution supporting a "Green Building" policy for all new City-owned and City-funded facilities. A "green building," also known as a high performance building, shall include a structure or facility that is designed, built, renovated and operated in a resource-efficient and healthful manner. Green buildings are designed to meet certain objectives, such as conserving energy and water, optimizing the use of local and regional resources and reduce the overall impact of that new structure to the environment. The selected Respondent shall conform to all "Green Building" related requirements imposed on it by a Job Order.

Wage & Labor Standard Provisions & Prevailing Wage Rates

Selected Respondent shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Buildings Wage Determination in effect at the time the JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. Selected Respondent acknowledges it shall utilize the Buildings Wage Determination when determining prevailing wages for all issued Job Orders. If selected Respondent is required to pay the prevailing wage for a job classification not found on the cited Buildings Wage Determination, selected Respondent shall utilize the Heavy Highway Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Heavy Highway Wage Determination job classification from City.

Job Order Contract and General Conditions for City of San Antonio Construction Contracts

The Selected Respondent shall comply with the Job Order Contract template, provided hereto, incorporated by reference herein and labeled as "**RFCSP Exhibit A**" and General Conditions for City of San Antonio Construction Contracts, provided hereto, incorporated by reference herein and labeled as "**RFCSP Exhibit B**".

Funding Sources

City may use a variety of funding sources for the different Job Order(s) issued hereunder. Additional requirements may apply, depending on the funding source for a particular project. City shall notify the Selected Respondent at the time it seeks a proposal of the funding source and the particular requirements that must be complied with that Job Order. For Job Orders funded in whole or in part with funds made available from the American Department of Housing and Urban Development, additional requirements are attached hereto, incorporated by reference herein and labeled as "**Exhibit C**".

Liquidated Damages for Delay in Substantial Completion and Final Completion: Liquidated damages shall, at City's discretion, be issued with each task order. In the event the selected Respondent fails to achieve Substantial Completion and/or Final Completion of the Project by the dates established for Substantial Completion and/or Final Completion, Respondent hereby shall be assessed liquidated damages for each and every calendar day of unexcused delay in achieving Substantial Completion and/or Final Completion beyond the Scheduled Completion/Final Completion dates. Any sums due and payable hereunder to the selected Respondent by City shall be payable, not as a penalty, but as Liquidated Damages representing an estimate of delay damages sustained by City, estimated at the time of executing the Contract. Such Liquidated Damages shall apply regardless of whether Respondent has been terminated by City prior to Substantial Completion, so long as Respondent's actions or inactions contributed to the delay. Such Liquidated Damages shall be in addition to and not in preclusion of any recovery of actual damages resulting from other defects in Respondent's performance hereunder, for

matters other than delays in Substantial Completion/Final Completion. When City reasonably believes that Substantial Completion/Final Completion will be inexcusably delayed, City shall be entitled, but not required, to withhold from any amounts otherwise due to Respondent an amount then believed by City to be adequate to recover liquidated damages applicable to such delays. If and when Respondent overcomes the delay in achieving Substantial Completion and/or Final Completion or any part thereof, for which City has withheld payment, City promptly shall release to Respondent those funds withheld but no longer applicable as Liquidated Damages.

III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this project.

Pre-Submittal Conference:	October 29, 2014
Deadline for Submission of Written Questions:	November 6, 2014
Responses Due:	November 18, 2014
Interviews, if necessary	December 2014 - TBD
Anticipated City Council Consideration	January 2015

IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference is scheduled to be held on **October 29, 2014 at 10:00 A.M.** at the **Municipal Plaza Building, Plaza B Room, located at 114 W. Commerce, San Antonio, Texas 78205.** Attendance at the Pre-Submittal Conference is optional but strongly encouraged. Respondent is encouraged to prepare and submit its questions in writing three (3) calendar days in advance of the Pre-Submittal Conference, in order to expedite the proceedings.

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

This meeting place is accessible to disabled persons. The Municipal Plaza Building is wheelchair accessible. The Auxiliary aids and services are available upon request. Interpreters for the Deaf shall be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

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

V. PROPOSAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

City will conduct a comprehensive, fair and impartial evaluation of all proposals received in response to this RFCSP within forty five (45) days of receipt of the proposals. City may appoint a selection committee to perform the evaluation(s) of the received proposals. Each proposal received by City shall be analyzed to determine overall responsiveness and qualifications to the RFCSP. The selection committee may select all, some or none of the Respondents. If City elects to conduct interviews, Respondent may be interviewed and re-scored based upon these same criteria or other criteria, to be determined by the selection committee.

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

- A. EXECUTIVE SUMMARY – Respondent shall include a one (1) page Executive Summary with its submitted proposal. The summary shall state the number of years Respondent has been in business, number of years Respondent has been in business at its local office, Respondent's local office address and number of employees employed in Respondent's local office.

- B. SUBMITTAL COVER / SIGNATURE PAGE (Form #1) – Respondent shall include the completed Submittal Cover/Signature Sheet with its submittal, indexed and labeled as “**Tab 1**”. The Submittal Cover/Signature Sheet shall be signed by a person (or persons) authorized to bind the entity (or entities) submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures require signatures from all firms participating in the joint venture. Joint ventures are required to provide legal proof of the joint venture, such as a joint venture agreement, as an attachment to their submittal.
- C. PROPOSAL CHECKLIST AND TABLE OF CONTENTS (Form #2) – Respondent shall complete this form, which is to be used as the Table of Contents for its proposal. The checklist shall be indexed and labeled as “**Tab 2**” in its proposal.
- D. DISCRETIONARY CONTRACTS DISCLOSURE FORM (Form #3) – Respondent shall complete the form online at, <https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>, print a copy of Respondent’s completed form and submit the form with its proposal, labeled as “**Tab 3**” only with its ORIGINAL PROPOSAL. If Respondent is proposing as a team or joint venture, each party to the team or joint venture shall complete and submit a separate form with Respondent’s original proposal.
- E. LITIGATION DISCLOSURE FORM (Form #4) – Respondent shall complete a Litigation Disclosure form and utilize additional pages for explanation, if necessary, indexed and labeled as “**Tab 4**” in its proposal. If Respondent is proposing as a team or joint venture, each party to that team or joint venture shall completed and submit a separate form with its proposal.
- F. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (FORM 5) – Respondent shall submit a completed and signed Subcontractor/Supplier Commitment Form with its firms commitment to satisfy a **twenty-three (23%) M/WBE** Subcontracting goal and a **three (3%) AABE** subcontracting goal. Absent a waiver granted by the SBO, failure of Respondent to submit a completed Subcontractor/Supplier Utilization Commitment Form in its response shall render its response **NON-RESPONSIVE**. This form shall be indexed and labeled as “**Tab 5**” in the submitted proposal.
- G. COEFFICIENT PRICE PROPOSAL FORM (Form #6) – Respondent shall submit a completed and signed Coefficient Price Proposal Form and shall be indexed and labeled as “**Tab 6**” in Respondent’s submittal.
- H. JOB ORDER CONTRACT AND GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS (Indexed and labeled as “**Tab 7**”) – Respondent shall review the Job Order Contract template, provided hereto, incorporated by reference herein and labeled as “**RFCSPP Exhibit A**” and General Conditions for City of San Antonio Construction Contracts, provided hereto, incorporated by reference herein and labeled as “**RFCSPP Exhibit B**”, and provide written comments and/or concerns regarding said Job Order Contract Template and General Conditions. If Respondent does not have any comments and/or concerns, Respondent shall acknowledge its review of City’s Job Order Contract and General Conditions and indicate no comments or concerns this in this “**Tab 7**”. If no objections are submitted by the Respondent, City shall presume Respondent shall accept and sign the contract as presented, if selected.
- I. PROOF OF INSURABILITY (Indexed and labeled as “**Tab 8**”) – Respondent shall submit a copy of its current insurance certificate or a letter from its insurance carrier that if awarded the contract, insurance will be provided.
- J. LETTERS OF REFERENCE (required) – Respondent shall provide a maximum of five (5) letters of reference. Letters of Reference shall be indexed and labeled as “**Tab 9**”.
- K. STATEMENT OF QUALIFICATIONS – Respondent shall provide a narrative document that addresses all evaluation criteria in **Section II** herein of this RFCSPP solicitation. Sufficient information regarding past projects and key personnel’s experience shall be provided by Respondent, to indicate that Respondent has met or exceeded the minimum qualifications provided in **Section II** of this RFCSPP.

City shall conduct a comprehensive, fair and impartial evaluation of all proposals received, in response to this RFCSPP, within forty five (45) days of receipt of the proposals. It currently is anticipated City shall appoint and utilize a selection committee to perform said evaluation.

This RFCSP solicitation has been identified as high profile. In accordance with the Discretionary Contract Selection Process Guidelines, below are the proposed evaluation committee members:

- Peter Zanoni, Deputy City Manager, TCI
- Loyce Clark, Assistant Director, Aviation
- Carol Warkoczewski, City Architect, TCI
- Sandy Jenkins, Project Manager, Parks and Recreation
- Rich Walker, Library Capital Projects Manager, Library
- Luis Borrero, Assistant Director, Building and Equipment Services

Refer to **Section VIII** of this RFCSP solicitation for details on Respondent's restriction on communications, with regard to this solicitation.

Each proposal shall be analyzed, to determine overall responsiveness, and consideration shall be given to a combination of price and other factors, such that City may determine which Respondents' proposal will provide the best value to City. If City elects to conduct interviews of one or more Respondents, in connection with this solicitation, Respondent(s) shall be notified in writing and an interview date shall be scheduled.

The Evaluation Committee, when scoring, shall take into consideration Respondent's experience with the information outlined below:

A. Respondent Experience, to include Subcontractors and/or Key personnel with similar Job Order Contracting Projects (40 points)

Respondent shall respond to the following items, as they relate to Scope of Services:

1. Experience (Indexed and Labeled as "Tab 10") – City shall consider the relevance of past experience of Respondent. Respondent shall provide a two (2) page narrative describing the Respondent's qualifications, as they relate to the referenced scope of services in this solicitation. For all Subcontractors listed as part of Respondent's proposal, include information as to how the Subcontractors shall function within Respondent's organization. In addition, provide a narrative description of the proposed roles of Respondent and each Subcontractor, to include assignments, roles and responsibilities, lines of authority and communication among the members.

2. Project Sheets (Indexed and Labeled as "Tab 11") – Respondent's proposal shall include a maximum of three (3) project sheets, limited to one (1) page for each project included, which shall describe similar JOC projects Respondent has completed within the last five (5) years. Each project sheet shall include the following:

1. Name and Description of the completed project, including and similarity to the Project defined in this solicitation;
2. Year(s) of work on the cited project;
3. Respondent's role in the cited project;
4. Project Manager;
5. Superintendent;
6. Cited project's original and final construction contract amounts (explain inconsistencies);
7. Cited project's proposed completion date and the actual completion date achieved (explain inconsistencies);
8. Cited project's owner's name and the name of the representative (if different) who served as the day-to-day liaison for the cited project, in the following format:
 - a. Name of Owner: _____
 - b. Name of Owner's representative: _____
 - c. Representative's Phone Number: _____
 - d. Representative's E-mail: _____

3. Proposed Key Personnel/Organizational Chart (Indexed and Labeled as “Tab 12”) – Respondent shall provide a detailed organizational chart, identifying key personnel who shall be committed to work on the various tasks of a Project.

Label assignments as:

- Project Manager
- Superintendent
- Safety Manager

4. Resumes (Indexed and Labeled as “Tab 13”) – Respondent shall submit one (1) page resumes for all of its key organization members. Resumes should link to project sheets and also may include additional previously-completed relevant projects not highlighted in Respondent’s included project sheets.

Resumes also shall include:

- the license type (if applicable) and number of years licensed,
- Number of years employed with his/her firm
- Number of years experience in his/her proposed role, corresponding to the assignments included in the organizational chart
- City of residence

B. Understanding of the JOC Program and Proposed Management Plan (20 points)

Respondent shall describe its understanding of the JOC Program and specific issues and challenges Respondent likely sees shall be involved, as well as the availability of labor resources (Respondent’s capacity to perform) in executing the required services. Respondent shall submit information in a brief narrative plan clearly and concisely describing the challenges it foresees and its approach to managing the JOC contract.

1. Understanding of the JOC Program – (indexed and labeled at “Tab 14”)

Respondent shall its response to the following items to one (1) page:

- Describe Respondent’s understanding of the primary objectives of the JOC Program; and
- Describe the constraints and technical challenges Respondent foresees and Respondent’s approach to addressing each.

2. Proposed Management Plan – (indexed and labeled at “Tab 15”)

Respondent shall limit its response to the following items to a total of two (2) pages:

- Describe Respondent’s project management approach and organizational approach for the JOC Program and services outlined in this solicitation;
- Describe Respondent’s Quality Control/Quality Assurance process, approach and capabilities to maintain quality control;
- Describe Respondent’s approach to managing the quality of Subcontractors;
- Describe Respondents ability to coordinate work with all Project stakeholders;
- Describe Respondent’s approach to assuring timely completion of construction, including methods for schedule recovery, if necessary.

C. Respondent’s Experience with San Antonio Region Issues and Past Experience with City of San Antonio Contracts (10 points)

1. City is interested in evaluating Respondent, its organization and key Sub-Consultant’s/Subcontractor’s experience with San Antonio issues, as may be evidenced by work in San Antonio and the surrounding area, during the past five (5) years. In narrative form, using a maximum of two total (2) pages, briefly describe Respondent’s experience in the following areas, referencing projects relating to that experience. (Note: Respondent may reference projects included in project sheets under **Criteria A** above or include other projects, but no additional

project sheets shall be provided for this criteria.) Respondent's experiences information shall be indexed and labeled as "Tab 16":

- Local area construction costs and practices;
- Local environmental community, conditions and constraints;
- Involvement in project development, as it relates to public awareness in the local area;
- Respondent's experience with public utilities within the San Antonio and/or surrounding area;
- Local site development; and
- Building code requirements.

2. Kindly be aware a portion of the scoring for this **Criteria C** may be based on City's Consultants'/Contractors' Scorecard, as well as other documentation and experience with City projects, generated by City staff and City Consultants on previous City projects. City shall consider Respondent's history of compliance with project programs, schedules and budgets on previous City projects. **No items shall be submitted by Respondent for portion of the scoring. Further, Respondent shall not be penalized if it has not done work on City of San Antonio projects.** Specific items that may be used for consideration under this portion may include, but are not limited to:

- Timely completion of City projects;
- Respondent's cooperative working relationship with City;
- Respondent's prompt payment of Sub-Consultants/Subcontractors at all levels;
- Respondent's compliance with other City contract terms;
- Respondent's compliance with City Ordinances on substitution/addition/deletion of Subcontractors;
- Respondent's provision of contracting opportunities for S/M/WBEs;
- Respondent's compliance with City standards;
- Respondent's conformance to City budget requirements.

D. Coefficient Price Proposal (25 Points) – Respondent shall complete the Coefficient Price Proposal Form (attached hereto and labeled as Form #6)
 City shall evaluate Respondent's **Coefficient Price Proposal Form** for Pre-Priced and Non-Pre-Priced items, to determine the best value for City.

Formula: Lowest Co-Efficient Average/Firm's Co-Efficient Average X 25 points = Score

Example:

RESPONDENT:	Coefficient Price Proposal Average	CALCULATION:	POINTS AWARDED:
A	.650	.650 / .650 x 25	25.00
B	.696	.650 / .696 x 25	23.35
C	.750	.650 / .750 x 25	21.67
D	.970	.650 / .970 x 25	16.75
E	1.20	.650 / 1.20 x 25	13.54

E. SBEDA - SBE Prime Contract Program – 15 points

Certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime Consultants proposing at least 51% SBE participation (Prime and/or Sub-Consultant) shall receive fifteen (15) evaluation criteria percentage points

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

Evaluation Criteria Summary	Maximum Points
A. Experience of Respondent, to include Subcontractors and/or Key personnel with similar Job Order Contracting Projects	30 Points
B. Respondent’s understanding of the JOC Program and Proposed Management Plan	20 Points
C. Respondent’s Experience with San Antonio Region Issues and Past Experience with City of San Antonio Contracts	10 Points
D. Respondent’s Coefficient Price Proposal	25 Points
E. SBEDA – SBE Prime Contract Program	15 Points
Total Maximum	100 Points

VI. SUBMISSION INSTRUCTIONS

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

Respondent shall submit a total of **eight (8)** proposals, which shall include one **(1)** original unbound Qualification signed in ink (which shall include the cited documents that only are to be included in Respondent’s original submission), and **seven (7)** reprinted copies of its proposal in a sealed package, clearly marked on the front of the package **“RFCSP: JOB ORDER CONTRACTING.”** All proposals shall be received in the Office of the City Clerk **NO LATER THAN 2:00 PM ON TUESDAY, NOVEMBER 18, 2014** at the address indicated below. Any proposal received after this time shall not be considered.

Physical Address:

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

Proposals sent by facsimile or email shall not be accepted.

Respondent’s response to this solicitation shall be complete and well organized. Adherence to the maximum page criterion is critical; each page side (maximum 8 1/2” x 11”) with criteria information shall be counted. Respondent shall adhere to the page limitations for each section, as stated herein. Pages which have project photos, charts, and graphs shall be counted towards the maximum number of pages. Front and back covers, Table of Contents pages and tabbed divider pages shall not be counted if these pages do not contain proposal information. The use

of recycled paper is encouraged. Three-ring binders are **NOT** permitted. With regards to other types of binding, plastic (not metal) spiral or “comb” binding is highly recommended. Unnecessarily elaborate brochures, artwork, bindings, visual aids, expensive paper or other materials, beyond that which is sufficient to present a complete and effective submission, are not required. All pages shall be numbered. Margins shall be no less than 1” around the perimeter of each submitted page. Electronic files, websites or URLs shall not be included as part of the proposal, other than the CD specified above. Each proposal shall include the sections and attachments in the sequence listed in the **RFCS Section V**, Proposal Document Requirements & Evaluation Criteria, and each section shall be divided by tabs and indexed as indicated in this RFCS. Failure to meet the above conditions may result in disqualification of the proposal.

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

VII. AMENDMENTS TO RFCS

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

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

VIII. RESTRICTION ON COMMUNICATIONS

Respondent is prohibited from communicating with elected City officials and their staffs regarding this RFCS or Respondent's proposal from the time this RFCS has been released until the contract is posted as a City Council agenda item. A person or entity who seeks or applies for a City contract, or any other person acting on behalf of such person or entity, is prohibited from contacting City Officials and/or employees, regarding such a contract after a request for proposal (RFP), request for qualification (RFQ), request for competitive sealed proposals (RFCS) or other discretionary solicitation has been released. This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If a contact is required with City Officials and/or employees, such contact shall be done in accordance with procedures incorporated into the solicitation document. Violation of this provision by Respondents or their agents may lead to disqualification of their offer from consideration. As used herein, City Official is defined as the Mayor; members of City Council; Municipal Court Judges and Magistrates; City Manager; Deputy City Manager; City Clerk; Deputy City Clerk; Assistant City Clerk; Assistant City Managers; Assistants to City Manager; all City department heads and assistant department heads; Internal Auditor and Assistant Internal Auditors; Compliance Auditor; Assistant to City Council; Assistants to City Council, including contract personnel; Assistant to Mayor; Assistants to the Mayor, including contract personnel; Executive Secretaries; Public Utilities Supervisor; members of bid committees; members of the Historic and Design Review Commission; Zoning Commission; and members of any board or commission that is more than advisory in nature.

These restrictions on communications extend to “thank you” letters, phone calls, emails and all other contact that results in the direct or indirect discussion of this RFCS and/or proposal submitted by Respondent. 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. Respondent may ask verbal questions concerning this RFCSP at the Project's Pre-Submittal Conference.
2. Respondent may submit written questions concerning this RFCSP to the Staff Contact Person listed in the address below until **4:00 PM on NOVEMBER 6, 2014**. Questions received after the stated deadline shall not be answered.

Questions may be sent via email or certified mail, return receipt requested, also shall be accepted and should be addressed to:

Tom Nixon, Senior Compliance Analyst
City of San Antonio, Transportation & Capital Improvements
Contract Services Division
Commerce Street, 9th floor, San Antonio, TX 78205
210-207-4034 (fax)
Thomas.Nixon@sanantonio.gov

It is highly encouraged that all questions be sent by electronic mail

3. Respondent and/or its agent(s) are encouraged to contact the TCI Small Business Office for assistance or clarification with issues specifically related to City's Small Business Economic Development Advocacy (hereafter referred to as "SBEDA") Program, City's SBEDA policy and/or completion of the SBEDA form, prior to Respondent's proposal of its bid/proposal. The SBEDA point of contact for this Project solicitation is Ruben A. Flores. Mr. Flores may be reached by telephone at (210) 207-3923 or by e-mail at ruben.a.flores@sanantonio.gov. Mr. Flores may designate other members of City staff to address issues raised or questions asked by Respondent. After the solicitation's closing date, no contact is permitted by Respondent to the TCI Small Business Office. City reserves the right to contact Respondent regarding SBEDA issues after the solicitation closing date.
4. Respondent shall provide responses to any questions asked of it by City's Staff Contact Person and/or his/her designee about City's SBEDA Program both before and after responses are received and opened. During the interview stage of this selection, if any, verbal questions to Respondent and Respondent's answers and explanations shall be permitted. If interviews are conducted, Respondent shall not bring lobbyists. City reserves the right to exclude any persons from such selection committee meetings/interviews as it deems in City's best interests.

IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

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

- A. A Contract, if awarded, shall be awarded to a Respondent whose proposal is deemed most advantageous to City, as determined by the selection committee and upon the approval by the San Antonio City Council.
- B. City may accept any proposal in whole or in part. If subsequent contract negotiations are conducted, such negotiations shall not constitute a rejection or alternate RFCSP on the part of City. However, final selection of a Respondent is subject to San Antonio City Council approval.
- C. City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFCSP and to waive informalities and irregularities in any proposal received. City also reserves the right to terminate this RFCSP, reissue a subsequent solicitation and/or remedy technical errors in the RFCSP process.
- D. City shall require the selected Respondent(s) to execute a contract with City in substantially the same form as attached, prior to City Council award. No work shall commence on the subject Project until City signs the contract document(s) and Respondent provides the necessary evidence of insurance required in this RFCSP and the contract. Contract documents are not binding on City until approved by City Attorney and City Council. In the event the parties cannot negotiate and execute a contract within the time specified by City, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.

- E. This RFCSP does not commit City to enter to an agreement or award any services related to this RFCSP, nor does it obligate City to pay any costs incurred by Respondent in the preparation or submission of a response or in anticipation of a contract.
- F. City administers its design and construction management through an Internet-based management system. All vendors shall be required to use City's system and submit Project schedules as City dictates.
- G. **Conflicts of Interest:** Respondent acknowledges that it is informed that the Charter of City 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 entered into with City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: City officer or employee; his/her parent, child or spouse; a business entity in which he/she or his/her parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; or a business entity in which any individual or entity listed by Respondent is a Subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- H. Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of City, as defined in Section 2-42 of City's Ethics Code. (Discretionary Contracts Disclosure) – Instructions and web-link to electronic form are included in Form 3 of RFCSP.

Independent Contractor: Respondent understands, accepts and agrees, if selected, it and all persons designated by it to provide services in connection with a contract, is/are and shall be deemed to be an Independent Contractor(s), responsible for its/their respective acts or omissions, that City shall in no way be responsible for Respondent's actions and that none of the parties to this award shall have authority to bind the other or to hold out to third parties that it has such authority.

- I. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons or their agents who seek to contract for the sale or purchase of property, goods or services with City shall file a completed Conflict of Interest Questionnaire (hereafter referred as "CIQ"), with City Clerk not later than the seventh (7th) business day after the date that the person:
 - (1) begins contract discussions or negotiations with City; or
 - (2) submits to City an application, response to a request for proposal, offers, correspondence or another writing related to a potential agreement with City. The CIQ form is available from the Texas Ethics Commission at:

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

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

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

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

- J. All proposals become the property of City upon receipt and shall not be returned. Any information deemed to be confidential by Respondent clearly should be noted on the page(s) where confidential information is contained; however, City cannot guarantee that it shall not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law or pursuant to a Court order.
- K. Any cost or expense incurred by the Respondent associated with the preparation of its proposal, the Pre-Submittal Conference or during any phase of the selection process, if any, shall be borne solely by Respondent.

- L. **Solicitation Process Review:** If Respondent desires a review of the solicitation process followed by City, Respondent shall deliver a written request to the Director of TCI within seven (7) calendar days from the date the Notice of Non-Selection was sent. When the TCI Director receives a timely written request, the TCI Director (or his/her designee) shall review Respondents concerns and City's solicitation process for legitimacy and procedural correctness. After performing a full review, the TCI Director shall notify Respondent in writing of his/her determination.
- M. **Debriefings:** In an effort to improve solicitation responses, TCI is making available on its web site a "Solicitation Response Tip List" that includes the top common items historically that "make or break" submissions to City. Providing this information prior to the due date of the proposal may provide Respondent with an opportunity to develop a better response for a solicitation. As a result of this up-front effort, each Respondent is entitled to one (1) debriefing per calendar year – available after the San Antonio City Council has made the award sought by Respondent – if Respondent:

(a) is not the selected Respondent; and

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

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

- N. City reserves the right to verify any and all information submitted by Respondents at anytime during the solicitation/evaluation process.
- O. Final approval of a selected firm(s) is subject to the action of the San Antonio City Council.
- P. City reserves the right to contact any Respondent to negotiate a contract, if such action is deemed desirable by City.

X. SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. Solicitation Response and Contract Requirements and Commitment

Respondent 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. In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response, through a fully-documented and signed SBO-promulgated Subcontractor/Supplier Commitment form, to satisfying the S/M/WBE subcontracting goal shall render its response NON-RESPONSIVE.

Waiver Request - A Respondent may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Respondent Subcontracting Waiver Request form* (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Waiver request must fully document Subcontractor unavailability despite the Respondent's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Respondent including, but not limited to, which Subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests will not be considered.**

Exception Request - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request form* (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

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

C. Definitions

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

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

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

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

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

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

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

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

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

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

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

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

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

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

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

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

Native Americans: Persons having no less than 1/16th 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 – City department or authorized representative of 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 City for purposes of providing goods or services for City. For purposes of this Agreement, this term refers to the Contractor.

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

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

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

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

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

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

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by Contractor may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

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

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

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

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

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

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

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

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

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

D. SBEDA Program Compliance – General Provisions

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

1. Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Contractor's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
2. Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers;
3. Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. Contractor shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Contractor's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.
6. Contractor shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor / Supplier Utilization Plan, the Contractor shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Contractor and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. Contractor acknowledges that City will not execute a contract or issue a Notice to Proceed for this project until the Contractor and each of its Subcontractors for this project have registered and/or maintained active status in City's Centralized Vendor Registration System, and Contractor has represented to City which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 1. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Contractor affirms that if it is presently certified as an SBE, Contractor agrees not to subcontract more than 49% of the contract value to a non-SBE firm, and

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Contractor agrees to subcontract at least **twenty-three percent (23%) the amount indicated in this solicitation and Commitment Form for this project** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Contractor submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law, and

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. Contractor agrees to subcontract at least **three percent (3%)** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This three percent (3%) subcontracting goal will also count toward the aforementioned twenty-three percent (23%) M/WBE subcontracting goal. The Subcontractor / Supplier Commitment form that Contractor submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified AABE Subcontractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each AABE Subcontractor, and documentation including a description of each AABE Subcontractor's scope of work and confirmation of each AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this subcontracting goal for AABE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon AABE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: City strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE subcontracting goal of 24%, M/WBE subcontracting goal of 20% and AABE subcontracting goal of 2% that have been established for this contract.

While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in City's Centralized Vendor Registration system as of October 2014, African-American owned firms represent approximately 2.65% of available subcontractors, Hispanic-American firms represent approximately 17.03%, Asian-American firms represent approximately 1.07%, Native American firms represent approximately 0.32%, and Women-owned firms represent approximately 4.86% of available construction subcontractors.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

G. Prompt Payment

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

H. Violations, Sanctions and Penalties

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

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

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

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