



**CITY OF SAN ANTONIO**  
**TRANSPORTATION & CAPITAL IMPROVEMENTS**

**REQUEST FOR QUALIFICATIONS:**

**SPATIAL PROGRAMMING AND EFFICIENCY STUDY FOR  
THE FROST BANK TOWER**

**(RFQ – TCI003212016CG)**

**RFQ ISSUE DATE:**

**March 21, 2016**

**SUBMITTAL DEADLINE:**

**APRIL 19, 2016 AT 10:00 A.M. LOCAL TIME**

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**ATTACHMENTS**

<b>Form 1 – Respondent Submittal Cover / Signature Sheet</b>	RFQ Attachment 1
<b>Form 2 – Submittal Checklist and Table of Content</b>	RFQ Attachment 2
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<b>Form 5 – SBEDA: Subcontractor/Supplier Utilization Commitment Form</b>	RFQ Attachment 5
<b>Contract Document Template</b>	Exhibit A
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<b>City of San Antonio Departments Scheduled for Relocation</b>	Exhibit C
<b>HVAC Study</b>	Exhibit D

# CITY OF SAN ANTONIO SPATIAL PROGRAMMING AND EFFICIENCY STUDY FOR THE FROST BANK TOWER

## I. BACKGROUND

On June 4, 2015, Mayor Ivy R. Taylor and the San Antonio City Council unanimously approved a Public Private Partnership between the City of San Antonio (hereafter referred to as “the City” and/or “COSA”), Weston Urban and Frost Bank. This shall result in a consolidated office tower for City operations, help facilitate the development of 265 housing units in the Central Business District, and forever change downtown San Antonio’s skyline with the construction of the first new office tower in downtown San Antonio since 1989. In addition, the series of transactions shall allow the consolidation of existing City staff into one location, providing budget savings and more efficient service.

A Comprehensive Development Agreement was approved as part of six different ordinances. Pursuant to that Agreement, the City intends to sell the City-owned Municipal Plaza Building, as well as the 319 West Travis and 403 North Flores properties to Weston Urban. Under this plan, Frost will sell the Frost Bank Tower and Garage to the City; thereafter, Weston Urban shall construct a 400,000-square-foot office tower on the corner of Flores and Houston Street, which will serve as Frost Bank’s new corporate headquarters, with a scheduled completion date in 2019. Upon Frost Bank’s move into its newly constructed headquarters, its former tower building shall be renovated by the City of San Antonio for use by an estimated 1,300 City of San Antonio employees.

The City’s Transportation & Capital Improvements Department (hereafter referred to as “TCI”), on behalf of the City’s Center City Development and Operations Department, is seeking Requests for Qualifications (hereafter referred to as “RFQ”) from qualified firms to provide organizational analysis, an efficiencies study, cost assessment and analysis, and spatial programming services for the coordinated consolidation of City departments into the existing Frost Bank Tower building, located at 100 West Houston Street, San Antonio, TX 78205. The City intends to award a contract to a qualified firm to provide these listed services.

## II. SCOPE OF WORK

The City desires to engage the services of a professional space planning firm for the relocation of staff to the Frost Bank Tower building. Areas of responsibility shall include, but not necessarily be restricted to, conducting organizational analysis, efficiency studies, cost assessment and analysis, and spatial programming services. The selected Respondent shall be required to develop a workspace plan that is aligned with the City’s Core Values: Teamwork, Integrity, Innovation and Professionalism.

The Frost Bank Tower building consists of 22 floors, including a basement, which comprises approximately 445,600 square feet of usable office space. The City plans to occupy twelve floors, the entire basement level and some of the street level in the Frost Bank Tower building, utilizing approximately 367,000 square feet. The City desires a plan that creates a 90/10 open workspace to office space standard. Under the current plan, the City would have six floors and the remaining street level space for lease to third parties.

The City also is considering the option of relocating the Information Technology Services Department (hereafter referred to as “ITSD”), including staff and the data center currently located at 515 S. Frio, to the Frost Bank building, which then would require occupying an additional two floors in the building.

Refer to the **City of San Antonio Departments Scheduled for Relocation**, attached hereto, incorporated herein by reference and labeled as **RFQ Exhibit “C,”** for a list of City departments that shall relocate to the Frost Bank Tower.

The City has established workspace requirements related to multiple job classifications for each department and office that ultimately shall be housed in the Frost Bank Tower building. This information shall be provided to the successful Respondent.

The selected Respondent shall provide a preliminary cost estimate due by **September 30, 2016**. The selected Respondent is to provide the scope of services outlined below:

## PROJECT DELIVERABLES

- I. Organizational Analysis (including overlaps in services or activities)
  - Identify organizational efficiencies and provide recommendations to eliminate duplications of tasks, personnel and/or equipment and outline potential savings
  - Consolidation of administrative functions
  - Consolidation of internal and external customer-facing functions (e.g. print shop, City Clerk, Human Resources)
  - Consolidation of equipment (e.g. personal printers, multi-function devices, time clocks)
  
- II. Efficiency Studies

Possible shared areas; e.g.:

  - Meeting rooms
  - Break areas
  - Print/copy areas
  - Storage
  - Reception areas
  - “Office hoteling or hot desking” opportunities
  
- III. Cost Assessment and Analysis
  - Cost to relocate staff, IT hub and data service center located at 515 S. Frio
  - Lease areas determination to include which floors should be leased and which make more sense for COSA to occupy
  
- IV. Spatial Programming
  - Phase 1 (High-level)
    1. Offices/workstations per floor
    2. Adjacencies (Departments/Offices)
    3. Stacking diagram
    4. Lease space analysis and recommended locations
    5. Shared spaces/amenities analysis; e.g.
      - Cafeteria
      - On-site employee clinic
      - Employee wellness center
        - Employee gym/Fitness center
    6. Security and access to the building, floors, and offices, with implications on project design and on-going operations
    7. Infrastructure analysis
      - Information technology
      - Mechanical, electrical, plumbing (MEP)
      - Elevators and escalator
    8. High-level cost estimate
    9. Code analysis
    10. Verify existing information:
      - “City of San Antonio Departments Scheduled for Relocation” (Exhibit C)

- “HVAC Study” (Exhibit D)
- Phase 2 (Detailed)
  1. Detailed spatial programming
  2. Cost estimate

### III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this Project.

<b>Pre-Submittal Conference:</b>	<b>April 1, 2016</b>
<b>Deadline for Submission of Written Questions:</b>	<b>April 8, 2016</b>
<b>Responses Due:</b>	<b>April 19, 2016</b>
<b>Interviews of Short-Listed Firms (if necessary)</b>	<b>May 2016 (TBD)</b>
<b>Anticipated City Council Consideration</b>	<b>June 2016 (TBD)</b>

### IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference is scheduled to be held on **Friday, April 1, 2016 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 and posted on City’s website at <http://epay.sanantonio.gov/RFPListings/>.

The meeting place is accessible to disabled persons. The Municipal Plaza is wheelchair accessible. Accessible parking spaces are available. 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 Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses and posted on City’s website at <http://epay.sanantonio.gov/RFPListings/>. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of City shall not be binding on City.

### V. SUBMITTAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

City shall conduct a comprehensive, fair and impartial evaluation of all submittals received in response to this RFQ. City may appoint a selection committee to perform the evaluation. Each submittal shall be analyzed to determine overall responsiveness and qualifications under the RFQ. The selection committee may select all, some or none of the submitting 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 submittal shall include the following items in the following sequence:

1. EXECUTIVE SUMMARY – Respondent shall include a one-page Executive Summary for the Statement of Qualifications (“SOQ”). The summary shall state the number of years in business, number of years in business in the local office, local office address and number of employees employed in local office.

2. SUBMITTAL COVER / SIGNATURE PAGE (Form #1) – Respondent shall include the completed Submittal Cover/Signature Sheet with submittal, indexed or labeled as “**Tab 1**”. The Submittal Cover/Signature Sheet shall be signed by a person, or persons, authorized to bind the entity or entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures require signatures from all firms participating in the joint venture. Joint ventures are required to provide legal proof of the joint venture, such as a joint venture agreement, as an attachment to its submittal.
3. SUBMITTAL CHECKLIST AND TABLE OF CONTENTS (Form #2) – Respondent shall complete this form, which is to be used as the Table of Contents for its submittal. The checklist shall be indexed or labeled as “**Tab 2**” in submittal.
4. DISCRETIONARY CONTRACTS DISCLOSURE FORM (Form #3) – Respondent shall complete the form online at <https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>, print a copy of the completed form and submit the form as “**Tab 3**” in its **ORIGINAL SUBMITTAL ONLY**. If Respondent is proposing as a team or joint venture, each party/entity to that team or joint venture shall complete and submit a separate form with the submittal.
5. LITIGATION DISCLOSURE FORM (Form #4) – Respondent shall complete a Litigation Disclosure form, utilizing additional pages for explanation, if necessary, and submit the form indexed or labeled as “**Tab 4**” in submittal. If Respondent is proposing as a team or joint venture, then each party to that team or joint venture shall completed and submit a separate form with the submittal.
6. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (FORM 5) – Respondent shall submit a completed and signed Subcontractor/Supplier Utilization Commitment Form indicating that Respondent commits to satisfy a **sixteen percent (16%)** Small Business Enterprise (hereafter referred to as “SBE”) subcontracting goal for this solicitation. Absent a waiver granted by the City of San Antonio Economic Development Department, failure to submit a completed Subcontractor/Supplier Utilization Commitment Form in its response shall render Respondent’s submittal **NON-RESPONSIVE**. This form shall be indexed and labeled as “**Tab 5**” in the submittal.
7. CONTRACT TEMPLATE AND GENERAL CONDITIONS (Indexed and labeled as “**Tab 6**”) – Respondent is to review the City’s Contract Template and its General Conditions, attached hereto, incorporated herein by reference and labeled as RFQ **Exhibit A** and **Exhibit B**, and provide written comments and/or concerns regarding the Contract and General Conditions. If Respondent does not have any comments and/or concerns, Respondent shall indicate this in this Tab 6. If no objections are submitted by the Respondent, City shall presume that Respondent shall sign the agreement as presented, if a contract is awarded.
8. PROOF OF INSURABILITY (Indexed and labeled as “**Tab 7**”) – Respondent shall submit a copy of its current insurance certificate.
9. LETTERS OF REFERENCE (required) – Respondent shall provide a maximum of five (5) letters of reference. Letters of Reference shall be indexed and labeled as “**Tab 8**”.
10. CERTIFICATE OF INTERESTED PARTIES TEC FORM 1295 (Indexed and labeled as “Tab 9”) – Effective January 1, 2016, the City of San Antonio is required to comply with Texas Government Code, Chapter 2252, Subchapter Z, Section 2252.908 (hereafter referred to as “the Code”). The Code states the City shall not enter into a contract with a business entity unless and until the business entity has submitted a Certificate of Interested Parties (hereafter referred to as “Form 1295”) to the City for filing with the Texas Ethics Commission (hereafter referred to as “TEC”). The Form 1295 requirement imposed upon the City applies to ALL contracts:
  - having a value greater than \$50,000;
  - requiring San Antonio City Council approval; and/or

- renewals, extensions or amendments that must be approved by the San Antonio City Council.

TEC has made available on its website the new filing application that must be used by Respondent to file its Form 1295 with the City. Respondent shall use TEC's application to enter the required information on Form 1295 and print a copy of the form containing a unique certification number for that response.

An authorized agent of Respondent then must sign the printed copy of the form and have the Form 1295 notarized. The notarized completed Form 1295 containing the unique certification number then must be submitted with Respondent's submittal to the City, pursuant to this solicitation, to ensure the City and Respondent meet the Code requirements.

Form 1295 must be completed on-line by the business entity. It is accessible at:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

As a result of this new requirement imposed upon the City by the Code, the City is requiring **all** Respondents submitting on **each** project to complete Form 1295, print a copy showing the unique Certification Number and Date Filed in the Certification of Filing box at the upper right corner of Form 1295 for that submittal, sign it, have it notarized and submit it with its submitted proposal.

The City shall review Form 1295 as part of the Minimum Requirements Review performed upon all proposals received. Deficiencies in or missing Form 1295 shall not be a disqualifying error. Instead, the City shall notify a Respondent of any requirements to cure the deficiency and/or to submit/re-submit Form 1295 within two (2) days of notice to remain eligible to be considered for a contract award. The City shall include the selected Respondent's Form 1295 in its package prepared for the San Antonio City Council's consideration for contract award.

11. **STATEMENT OF QUALIFICATIONS** – Respondent's SOQ should be submitted in a concise format with a description of Respondent's ability to meet the requirements of this RFQ. Emphasis should be on the completeness and clarity of the requested information below:

**A. Experience and Qualifications of Respondent's Firm/Team, Key Personnel and Key Sub-Consultants (45 Points)**

- i. **Experience: (indexed and labeled as "Tab 10")** – Provide a narrative, in three (3) pages or less, describing Respondent's team's qualifications as they relate to the Project. Include a history of how Respondent's team experience with its work in and around San Antonio, if Respondent's team has worked on past City projects and how Respondent's proposed team has worked together on past similar projects, include the number of years working as a team.
- ii. **Proposed Key Personnel/Organizational Chart (indexed and labeled as "Tab 11")** – Respondent's key personnel included in this section are expected to be the same personnel that shall be assigned to the Project, if awarded. Respondent shall provide a detailed organizational chart of its firm, identifying key personnel who shall be committed to work on the various tasks for this Project. In addition, Respondent shall provide a narrative description of its organization chart, describing the proposed assignments, roles and responsibilities, lines of authority and communication for each team member to be directly involved with this Project.
- iii. **Resumes (indexed and labeled as "Tab 12")** – Respondent shall submit one-page resumes for, at minimum, each of its key team members listed under Tab 11. Resumes should link to project sheets and also may include additional previously completed relevant projects not highlighted in the project sheets. Submitted resumes also shall include the license type (if applicable), number of years with his/her firm, number of years of experience in the proposed role.

iv. **Project Sheets (indexed and labeled as “Tab 13”** – Respondent shall provide project sheets for three (3) successfully completed projects of similar size and scope in the past seven (7) years. For each highlighted project, the project sheet shall include the following:

- The owner’s name and the name of the representative (if different) who served as the day-to-day liaison for the construction phase of the project in the following format:

Name of Owner: \_\_\_\_\_  
Name of Owner’s representative: \_\_\_\_\_  
Representative’s Phone Number: \_\_\_\_\_  
Representative’s E-mail: \_\_\_\_\_

**B. Proposed Project Delivery Plan (35 Points)** - Respondent shall submit a narrative, limited to a maximum of ten (10) pages, indexed and labeled as “**Tab 14**”, clearly and concisely describing Respondent’s approach to delivering the four (4) elements outlined in the Scope of Work. Respondent shall include a timeline and highlight major tasks, including its plan to achieve the preliminary cost estimate milestone date, September 30, 2016 and to successfully deliver the following:

- Organizational Analysis
- Efficiency Studies
- Cost Assessment and Analysis
- Spatial Programming

**C. SBEDA – SBE and M/WBE Prime Contract Program (Maximum 20 points)**

**SBEDA - SBE Prime Contract Program – 10 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 Subconsultant) shall receive ten (10) evaluation criteria percentage points, and

**SBEDA – M/WBE Prime Contract Program – 10 points**

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

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

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

<b>Evaluation Criteria:</b>	<b>Maximum Points</b>
<b>A. Background, Experience and Qualifications of Prime Firm, Key Personnel and Key Sub-Consultants, including Co-Respondent, Joint Venture Party or Partner</b>	<b>45 points</b>
<b>B. Proposed Project Delivery Plan</b>	<b>35 points</b>
<b>C. SBEDA</b> <b>SBE Prime Contract Program – 10 points</b> <b>MWBE Prime Contract Program – 10 points</b>	<b>20 points</b>
<b>TOTAL</b>	<b>100 points</b>

**VI. SUBMISSION INSTRUCTIONS**

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

Respondent shall submit a total of **seven (7)** Qualification Statements, which shall include one (1) original unbound Qualification Statement, signed in ink, and **six (6)** additional printed copies, as well as one (1) copy of the entire submittal in an Adobe PDF format on a compact disk (CD) or flash-drive in a sealed package, clearly marked on the front of the package **“RFQ: SPATIAL PROGRAMMING AND EFFICIENCY STUDY FOR THE FROST BANK TOWER.”** All submittals must be received in the City Clerk’s Office at **NO LATER THAN 10:00 A.M. on TUESDAY, APRIL 19, 2016** the address indicated below. Any submittal received after this time shall not be considered.

Physical Address:  
City Clerk’s Office  
Attn: Transportation and Capital Improvements Department  
100 Military Plaza  
City Hall, 1<sup>st</sup> Floor,  
San Antonio, Texas 78205

Submittals sent by facsimile or email shall not be accepted.

Responses to this solicitation should be complete and well organized. Adherence to the maximum page criterion is critical; each page side (maximum 8 1/2” x 11”) with criteria information shall be counted. Respondent shall adhere to the page limitations for each section, as stated herein. Pages which have project photos, charts, and graphs shall be counted towards the maximum number of pages. Front and back covers, Table of Contents pages and tabbed divider pages shall not be counted if they do not contain submittal information. The use of recycled paper is encouraged. Three-ring binders are **NOT** permitted. With regard to other types of binding, plastic (not metal) spiral or “comb” binding is highly recommended. Unnecessarily elaborate brochures, artwork, bindings, visual aides, expensive paper or other materials beyond which is sufficient to present a complete and effective submission are not required. All pages shall be numbered. Margins shall be no less than 1” around the perimeter of each page.

Electronic files, websites or URLs shall not be included as part of the proposal, other than the CD specified above. Each submittal must include the sections and attachments in the sequence listed in the RFQ Section V., Submittal Document Requirements, and each section must be divided by tabs and indexed as indicated in this RFQ. Failure to meet the above conditions may result in disqualification of the proposal.

Respondents who submit responses to this RFQ shall reveal, disclose and state the true and correct legal 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 nick-names, abbreviations (unless part of the legal title), shortened, short-hand, or local "handles" shall be accepted in lieu of the full, true and correct legal name of the entity. 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 on the signature page of its Proposal.

## VII. AMENDMENTS TO THE RFQ

Changes, amendments or written responses to questions received in compliance with **Section VIII, Restrictions on Communication** may be posted by the City on the 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 Respondent's submission of its proposal. A Respondent who does not have access to the Internet must notify the City, in accordance with **Section VIII, Restrictions on Communication**, Respondent wishes to receive copies of changes, amendments or written responses to questions by mail or facsimile.

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

## VIII. RESTRICTION ON COMMUNICATION

Once this RFQ is released, Respondent is prohibited from communicating with City staff regarding this RFQ or its Submittal, with the following exceptions:

Respondent is prohibited from communicating with elected City officials and their staff regarding this RFQ or Respondent's submittal from the time this RFQ has been released until the contract is posted as a City Council agenda item. Respondent is prohibited from communicating with City employees from the time this RFQ has been released until the contract is awarded. These restrictions on communications extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of this RFQ and/or Respondent's submittal. Violation of this provision by Respondent, its agent(s), representative(s) and/or employee(s) may lead to disqualification of Respondent's submittal 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 TCI Contract Services Staff contact listed below until **4:00 p.m. on Friday, April 8, 2016**. Questions received after this stated deadline shall not be answered. It is suggested that all questions be sent by electronic mail or by fax.

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

Carisa Gamez, Contract Coordinator

City of San Antonio, Transportation and Capital Improvements Department  
Contract Services Division  
114 W. Commerce Street, 9<sup>th</sup> Floor, Room 909  
San Antonio, TX 78205  
Carisa.Gamez@sanantonio.gov  
Fax: 210-207-4034

3. Respondent and/or its agents are encouraged to contact Carisa Gamez 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 forms. **This exception to the restriction on communication does not apply and there shall be no contact permitted regarding this solicitation, after the solicitation closing date.**
4. Respondent shall provide responses to questions asked of it by the TCI Contract Services staff after responses are received and opened. During interviews, if any, verbal questions and explanations shall be permitted. If interviews are conducted, Respondent shall not bring lobbyists. The City reserves the right to exclude any persons from such selection committee meetings it deems in its best interests.

#### **IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS**

It is the intent of the City of San Antonio to award a contract or contracts to the Respondent/team whose services provide the best value for the City, based on the selection criteria set out in this RFQ, in this first phase of the solicitation process. In second phase of the solicitation, the City may consider the relative importance of price, capability and other published evaluation criteria in determining the best value to the City. The City reserves the right to adopt the most advantageous interpretation of the SOQ and additional information it is presented.

1. The contract, if awarded, shall be awarded to the Respondent Firm whose submittal is deemed most qualified and of the best value to City, as determined by the selection committee and subject to approval of the San Antonio City Council.
2. The City may accept any submittal in whole or in part. If subsequent negotiations are conducted, those negotiations shall not constitute a rejection or alternate solicitation on the part of the City. However, final selection of a firm is subject to San Antonio City Council approval.
3. The City reserves the right to accept one or more submittals or reject any or all submittals received, in response to this RFQ and the subsequent interview process, and to waive informalities and irregularities in submittals received. The City further reserves the right to terminate this solicitation for the Projects listed, reissue a subsequent solicitation and/or remedy technical errors in the process.
4. The City shall require the selected Respondent to execute a contract with City in substantially the same form as the contract attached to this solicitation, prior to City Council award. No work shall commence until the City signs the contract document(s) and the selected Respondent provides the necessary evidence of insurance as required in the contract. Contract documents are not binding on the City until approved by the City Attorney.
5. In the event the selected Respondent and the City cannot negotiate and execute a contract within the time specified by the City, the City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
6. This solicitation does neither commits the City to enter into a contract nor award any services related to this solicitation and this solicitation does not obligate the City to pay any costs incurred by Respondent in preparation or submission of a response or in anticipation of a contract.

7. The successful Respondent must be able to formally invoice City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by City. City administers its design and construction management through an internet-based management system. All vendors are required to comply with Specification 700 of City of San Antonio Standard Construction Specifications.
8. **Conflicts of Interest.** Respondent acknowledges that it is informed and aware the Charter of the City of San Antonio and the City of San Antonio 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 the City or any City agency, such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: City officer or employee; his 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 above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
9. 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 City’s Ethics Code. (Discretionary Contracts Disclosure – Form 3 in this RFQ).
10. **Independent Contractor.** Respondent accepts, agrees and understands, if selected, it and all persons designated by it to provide services in connection with a contract is/are and shall be deemed to be an independent contractor(s), responsible for its/their respective acts or omissions, the City shall in no way be responsible for Respondent’s actions and that none of the parties hereto shall have authority to bind the other or to hold out to third parties it has such authority.
11. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires 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 (hereafter referred as “CIQ”), with the San Antonio City Clerk not later than the seventh (7<sup>th</sup>) 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 proposal, offers, correspondence or another writing related to a potential agreement with the 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, the City requires individuals to submit a CIQ Addendum. The CIQ Addendum is available from the City of San Antonio at:

<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, 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

12. Respondent’s submittal and/or any portions thereof become the property of the 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, the 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.

13. Any cost or expense incurred by Respondent associated with the preparation of its submittal, the Pre-Submission Conference (if any) or during any phase of the selection process shall be borne solely by Respondent.
14. Subsequent to the issuance of this solicitation, TCI reserves the right to amend this solicitation, waive any requirement or irregularity therein and/or request modifications to a Respondent's submittal, providing all Respondents are treated equally, and/or reject any and all submittals for any reason. TCI further reserves the right to award one or more contracts for this Project, as deemed in the City's best interest, and to request changes in the composition of any Respondent's team.
15. **Solicitation Review Process.** Any Respondent desiring a review of the solicitation process must deliver a written request to the TCI Director within seven (7) calendar days from the date the notice of non-selection was sent by the City. When the TCI Director receives a timely written request, the TCI Director, or his/her designee, shall review both Respondents concerns and the solicitation process for legitimacy and procedural correctness. After performing a full review, the TCI Director shall notify Respondent in writing of his/her determination.
16. **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 TCI has identified historically "make or break" submissions. Providing this information prior to the due date of the Respondent's submittal provides an opportunity for Respondent to develop a better submission for this solicitation. As a result of this up-front effort, following the San Antonio City Council's award of a contract associated with this solicitation, Respondent is entitled to a debriefing (limited to one (1) debriefing per calendar year) regarding this solicitation if:
  - (a) Respondent is not the selected Respondent; and
  - (b) Respondent has not been debriefed since January 1, 2016.

Once a firm 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 submittal debriefing must 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.

## X. SBEDA ORDINANCE COMPLIANCE PROVISIONS

### A. Solicitation Response and Contract Requirements and Commitment

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

**Waiver Request** - Respondent may request, for good cause, a full or partial Waiver of a specified subcontracting goal included in this solicitation by submitting a *Respondent Subcontracting Waiver Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. Respondent's Waiver request fully must document Sub-Consultant unavailability despite 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 Sub-Consultants were contacted (along with Sub-Consultant phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests shall not be considered.**

**Exception Request** - Respondent may, for good cause, request an Exception to the application of the SBEDA Program if Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. 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 shall not be considered.**

#### B. SBEDA Program

The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to hereafter as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (hereafter referred to as “EDD”) website page and is also available in hard copy form upon request to the City. The SBEDA Ordinance Compliance Provisions contained herein 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 said Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual are effective as of the date of the execution of a City Agreement. Unless defined in a contrary manner herein, terms used herein 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 (hereafter referred to as “S/M/WBE”) Program tools and Solicitation Incentives 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)** – Refers to a mandatory electronic system wherein the City requires all prospective Respondents and Sub-Consultants ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that then is required for the purpose of submitting solicitation responses and invoices, as well as for receiving payments from the City. The CVR-assigned identifiers also are used by the City’s Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, as well as for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting/Sub-Consulting Goals.

**Certification or “Certified”** – Refers to the process by which the Small Business Office (hereafter referred to as “the SBO”) staff determines a firm to be a bona-fide small, minority-, women-owned or emerging small business enterprise. Emerging Small Business Enterprises (hereafter referred to as “ESBEs”) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications covering 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** – Refers to a S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of a 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 also must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, installing (where applicable) and paying for the material itself. To determine whether a 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, a 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 Respondent to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the City as fraudulent if Respondent 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, Respondent shall not be given credit for the participation of its S/M/WBE Sub-Consultant or joint venture partner towards attainment of S/M/WBE utilization goals, and Respondent and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

**Good Faith Efforts** – Refers to documentation of Respondent stating 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 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 sub-consulting/subcontracting 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 Consultant’s posting of a bond covering the work of SBE or M/WBE Subconsultants; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by Respondent; and documentation of consultations with trade associations and consultants representing the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Sub-Consultants.) The appropriate form and content of Respondent’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

**HUBZone Firm** – Refers to a business 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** – Refers to the required ownership of an SBE firm being 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 also must 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** – Refers to an adult person of legal majority age.

**Industry Categories** – Refers to 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 sometimes may be referred to as “business categories.”

**Minority/Women Business Enterprise (M/WBE)** – Refers to a firm certified as a Small Business Enterprise as well 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** – Refers to a listing of minority- and women-owned businesses certified for participation in the City's M/WBE Program APIs.

**Minority Business Enterprise (MBE)** – Refers to any legal entity, except a joint venture, organized to engage in for-profit transactions, certified a Small Business Enterprise, is at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members and is ready, willing and able to sell goods or services 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 (hereafter referred to as "WBEs").

**Minority Group Members** – Refers to 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 1/16<sup>th</sup> 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** – Refers to the City department or authorized representative of the City department issuing solicitations or the City department or authorized representative for which a solicitation is issued.

**Payment** – Refers to the dollars actually paid to Consultants, Sub-Consultants, Contractors, Subcontractors, Suppliers and/or vendors for City contracted goods and/or services.

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

**Prime Consultant** – Refers to the Consultant to whom a purchase order or contract is issued by the City for purposes of providing goods or services for/to the City. For purposes of this solicitation, this term refers to Respondent.

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

**Respondent** – Refers to a vendor, firm or entity submitting a bid, statement of qualifications or proposal in response to a solicitation issued by the City.

**Responsible** – Refers to a firm capable in all respects to fully perform the contract requirements and having the integrity and reliability to assure a good faith performance of contract specifications.

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

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

**SBE Directory** – Refers to a listing of small businesses 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 (1) year within the Relevant Marketplace, which is 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 regularly are 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)** – Refers to a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which Independently is 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 (hereafter referred to as “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)** – Refers to the office within the City’s Economic Development Department (hereafter referred to as “EDD”) primarily responsible for general oversight and administration of the S/M/WBE Program.

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

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

**Sub-Consultant** – Refers to any vendor, Consultant and/or Contractor providing goods or services to a Prime Consultant or Prime Contractor in furtherance of the Prime Consultant’s performance under a contract or purchase order with the City. A copy of each binding agreement between Respondent and its Consultants, Sub-Consultants, Contractors, Subcontractor and Suppliers shall be submitted to the City prior to Respondent’s execution of a contract agreement with the City and any contract modification agreement thereafter.

**Suspension** – Refers to 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 exceeding a certain dollar threshold, as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Respondent’s and/or S/M/WBE firm’s performance and payment under City contracts due to the City’s imposition of Penalties and Sanctions, as set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

**Sub-Consultant/Supplier Utilization Plan** – Refers to a binding part of Respondent’s contractual agreement stating Respondent’s commitment for the use of Joint Venture Partners and/or Sub-Consultants/Subcontractors/Suppliers in the performance of its contractual agreement, stating the name, scope of work and dollar value of work to be performed by each of Respondent’s Joint Venture partners and Sub-Consultants/Subcontractors/Suppliers in the course of the performance of its contractual agreement with the City, specifying the S/M/WBE Certification category for each Joint Venture partner and Sub-Consultant/Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Sub-Consultant/Subcontractor/Supplier names, scopes of work and/or dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or his/her designee.

**Women Business Enterprises (WBEs)** – Refers to any legal entity, except a joint venture:

1. organized to engage in for-profit transactions; and
2. certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise; and
3. at least fifty-one percent (51%) owned, managed and controlled by one or more non-minority women Individuals lawfully are residing in or are citizens of the United States or its territories; and
4. ready, willing and able to sell goods or services that are purchased by the City; and
5. meeting 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

Respondent hereby accepts and acknowledges 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, such terms are part of Respondent’s scope of work, as referenced in the City’s formal solicitation that formed the basis for a contract award and subsequent execution of a contractual agreement. Respondent further accepts and agrees these SBEDA Ordinance requirements, guidelines and procedures hereby are incorporated by reference into this solicitation and subsequently will be incorporated into a contractual agreement and are considered by both the City and Respondent to be material terms of this solicitation and subsequent contractual agreement. Respondent voluntarily agrees fully to comply with these SBEDA program terms as a condition for being awarded a contract by the City, pursuant to this solicitation. Without limitation, Respondent further accepts and agrees to the following terms as part of its compliance responsibilities under the SBEDA Program:

1. Respondent fully shall cooperate with the City’s Small Business Office and other City departments in their data collection and monitoring efforts regarding Respondent’s utilization and payment of Consultants, Sub-Consultants, S/M/WBE firms and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on the resulting 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 Consultants, Sub-Consultants, Contractors and Subcontractors with this term;

2. Respondent fully shall cooperate with any City or SBO investigation (and Respondent also shall respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Respondent or its Consultants, Sub-Consultants, Contractors, Subcontractors and/or suppliers;
3. Respondent shall permit the SBO, upon reasonable notice, to undertake inspections, as necessary, including, but not limited to, any contract-related correspondences, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview any of Respondent's Consultants, Sub-Consultants, Contractors, Subcontractors, Suppliers and workers to determine whether there has been a violation of the terms of its agreement with the City;
4. Respondent immediately shall notify the SBO, in writing on the Change to Utilization Plan form and through the Originating Department, of any and all proposed changes to Respondent's Sub-Consultant/Supplier Utilization Plan utilized for its contract with the City. Respondent shall include an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Respondent to replace the Sub-Consultant/Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Sub-Consultant/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Respondent of work previously designated for performance by a Consultant, Sub-Consultant, Contractor, Subcontractor or Supplier, substitutions of new Consultants, Sub-Consultants, Contractors or Subcontractors, terminations of previously designated Consultants, Sub-Consultants, Contractors or Subcontractors or reductions in the scope of work and value of work awarded to Consultants, Sub-Consultants, Contractors, Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. Respondent immediately shall 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. Respondent shall retain all records of its payments to any Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier, pursuant to its contract with the City, for a minimum of four (4) years or as required by state law, following the conclusion of its City contract or, in the event of litigation concerning said contract, for a minimum of four (4) 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 Respondent's Sub-Consultant/Supplier Utilization Plan, Respondent shall not be given credit for the participation of its S/M/WBE or HUBZone Consultants, Sub-Consultant(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and Respondent and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. Respondent acknowledges and accepts the City shall not execute a contract or issue a Notice to Proceed for the subject project until Respondent and each of its Consultants, Sub-Consultants, Contractors, Subcontractors and Suppliers for this Project have registered and/or maintained active status in the City's Centralized Vendor Registration System, and Respondent has represented to the City which primary commodity codes each registered Consultant, Sub-Consultant, Contractor, Subcontractor and Supplier shall be performing under, with regard to its City contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The City shall apply the following contract-specific Affirmative Procurement Initiatives to the contract generated from this solicitation. Respondent hereby acknowledges, accepts and agrees the selected API requirements also shall be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, Respondent's full compliance with the following API terms and conditions are material to its satisfactory performance under its contract with the City:

**SBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 3. (b), a contract shall be awarded to the successful Respondent pursuant to the SBE Prime Contract Program and, as such, Respondent, if selected, affirms if Respondent presently is certified as an SBE, it agrees not to subcontract more than 49% of the contract value to a non-SBE firm, **and**

**M/WBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 4. (b), a contract shall be awarded to the successful Respondent pursuant to the M/WBE Prime Contract Program and, as such, Respondent, if selected, affirms if Respondent presently is certified as an M/WBE (see *Minority/Women Business Enterprise* definition), it agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm, **and**

**SBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 3. (a), a contract shall be awarded to the successful Respondent pursuant to the SBE Subcontracting Program. Respondent agrees to subconsult at least **sixteen percent (16%)** of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the SAMSA. The Subcontractor/Supplier Utilization Plan which Respondent shall submit to City with its response to this solicitation (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of the resulting contract), containing the names of the certified SBE Consultants, Sub-Consultants, Contractors, Subcontractors and Suppliers to be used by Respondent on the awarded contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier and documentation including a description of each SBE Consultant's, Sub-Consultant's, Contractor's, Subcontractor's and Supplier's scope of work and confirmation of each SBE Consultant's, Sub-Consultant's, Contractor's, Subcontractor's and Supplier'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 Proposal.

In the absence of a waiver granted by the SBO, the failure of Respondent to attain this Consultant, Sub-Consultant, Contractor, Subcontractor and Supplier goal for SBE 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 its contract with the City and may result in debarment from performing future City contracts 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:** The City of San Antonio 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 Subcontract/Supplier Utilization Plan goal of **sixteen percent (16%)** established for this solicitation. While the relative availability of ready, willing and able firms within various ethnic and gender categories shall vary significantly from contract to contract and project to project, based upon the particular trades that are involved, overall in the San Antonio architecture and engineering industry, as reflected in the City's Centralized Vendor Registration system for the month of December 2015, African-American owned firms represent approximately 1.71% of available subcontractors, Hispanic-American firms represent approximately 11.25%, Asian-American firms represent approximately 1.71%, Native American firms represent approximately 0.43%, and Women-owned firms represent approximately 7.26% of available architecture and engineering Sub-Consultants.

#### F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into a contract with the City, Respondent represents and warrants it has complied, throughout the course of this solicitation, and shall continue to comply throughout the contract award process and this Project, the City of San Antonio's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such past and future compliance, Respondent has not and 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 Consultants, Sub-Consultants, Contractors, Subcontractors, Suppliers, vendors or commercial customers. Respondent represents and warrants it neither has retaliated nor shall it retaliate against any person for reporting instances of such discrimination. Respondent shall provide equal opportunity for Consultants, Sub-Consultants, Contractors, Subcontractors, Suppliers and vendors to participate in all of its public sector and private sector contracting, 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. Respondent understands and agrees a material violation of this Commercial Nondiscrimination Policy clause shall be considered a material breach of its contract with the City and may result in termination of its contract, disqualification of Respondent from participating in future City contracts or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Respondent's certification of its compliance with this Commercial Nondiscrimination Policy, as submitted to the City pursuant to the solicitation for a contract, hereby is incorporated into the material terms of this solicitation and resulting contract. Respondent shall incorporate this clause into each of its Consultant, Sub-Consultant, Contractor, Subcontractor and Supplier agreements entered into pursuant to any award of a City contract.

#### G. Prompt Payment

Upon execution of a contract with the City by Respondent, Respondent shall be required to submit to the City accurate progress payment information with each invoice regarding each of its Consultants, Sub-Consultants, Contractors, Subcontractors and Suppliers, including HUBZone Consultant's, Sub-Consultant's, Contractor's, Subcontractor's and Supplier's, to ensure that Respondent's reported subcontract participation is accurate. Respondent shall pay its Consultant's, Sub-Consultant's, Contractor's, Subcontractor's and Supplier's in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten (10) days of receipt of payment from the City. In the event of Respondent's noncompliance with these prompt payment provisions, no final retainage on the contract with the City shall be released to Respondent (if any is withheld), and no new City contracts shall be issued to the Respondent 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, Respondent acknowledges and agrees it is a violation of the SBEDA Ordinance and shall be a material breach of its resulting contract with the City 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 its 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 Respondent or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon San Antonio City Council approval).