

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



**REQUEST FOR QUALIFICATIONS:**  
**ON-CALL CONSTRUCTION INSPECTION SERVICES FOR FEDERALLY**  
**FUNDED PROJECTS**  
**(RFQ1132017DV)**

**RFQ ISSUE DATE:**  
**January 13, 2016**

**SUBMITTAL DEADLINE:**  
**FEBRUARY 10, 2017 AT 10:00 A.M. LOCAL TIME**

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## ATTACHMENTS

Form 1 – Respondent Submittal Cover/Signature Sheet	RFQ Attachment 1
Form 2 – Submittal Checklist and Table of Content	RFQ Attachment 2
Form 3 – Discretionary Contracts Disclosure Form and Instructions	RFQ Attachment 3
Form 4 – Litigation Disclosure Form	RFQ Attachment 4
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Contract Document Template	Exhibit A
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**CITY OF SAN ANTONIO  
ON-CALL CONSTRUCTION INSPECTION SERVICES FOR FEDERALLY FUNDED  
PROJECTS**

**I. BACKGROUND**

The City of San Antonio is issuing this request for qualifications (RFQ) in an effort to obtain qualified, professional- service related, construction inspection services (CIS) for federally funded projects. The City anticipates awarding a minimum of one (1) contract for professional services. All firms proposing to provide CIS for the City of San Antonio must have an established construction inspection staff which is capable of providing the in-house services indicated in the basic services section.

The City seeks Statement of Qualifications (SOQ) from firms interested in providing the services as described in this RFQ.

**II. SCOPE OF WORK**

The selected firm(s) should provide onsite construction inspection personnel available for the duration of construction on an as-needed basis, for a one-year term with an option to renew for one (1) additional one (1) year option period. The construction inspectors will work as part of the Owner's construction administration team and may be asked to represent the Owner, when applicable. The construction inspector provides skilled, professional construction project quality assurance to ensure compliance with contract documents, including assisting and reporting to the Owner's project manager during the Construction Phase by inspecting the contractor's work in accordance with the construction documents and City of San Antonio's Standard Specifications and Details.

**RESPONSIBILITIES:**

1. Monitor and document job site safety.
2. Monitor and document the Storm Water Pollution Prevention Plan (SWPPP) best management practices and posted notifications.
3. Attend pre-construction meetings and regular on-site construction meetings.
4. Coordinate with the COSA PM for traffic control requirements.
5. Conduct daily observation of construction work for compliance with approved contract drawings/plans, specifications, requests for information, change order proposals, approved submittals and shop drawings.
6. Review contractor submittals and coordinate Owner comments (including resolving conflicts).

7. Issue observation reports, noting conditions of non-compliance, with proper references to detailed drawings/plans and specifications sections.
8. Attend early morning, evening or after-hours installations requiring Owner representation.
9. Maintain and organize on-site project documentation.
10. Review and approve monthly contractor payment application, including survey construction progress to confirm percent complete by trades.
11. Provide documentation ensuring all labors and mechanics, prime and subcontractors, working on federally funded adhere to the Davis Bacon Act and all Related Acts by:
  - a.) Monitoring for compliance and ensuring contractors are paying the prevailing wage rates by utilizing the City's monitoring web-based application;
  - b.) Conducting a minimum of three employee interviews per quarter and on an as needed basis when issues exist;
  - c.) Providing digital photo documentation of interviews of work being performed by the worker; and
  - d.) Ensuring the assigned prevailing wage determination and the "Notice to Laborers and Mechanics" with City of San Antonio contact information is posted at the project site in a prominent and accessible place where it may be easily seen by the workers.
12. Coordinate and monitor material testing.
13. Monitor deficiency logs to assure follow up of re-testing.
14. Assist the project manager in resolving construction issues.
15. Issue field directives and field orders when needed to expedite work and document direction given to contractor.
16. Attend pre-construction meetings between the contractor and Owner prior to start of the project.
17. Monitor punch lists for Substantial Completion inspections, and confirm completion of deficiencies.
18. Stay current in codes and regulations applicable to design and construction.
19. Interface with, and provide support to Owners Representatives, Users operations, design professionals, contractors, utilities, and regulatory agencies to assist with resolution of construction phase conflicts.

- 20. Monitor project close-out procedures, including O&M manuals, as-builts, punch lists and warranty walk- through.
- 21. Assist the project manager in the 1-year warranty process.

It is requested that specific construction inspectors are available who have expertise, as evidenced by appropriate credentials, in the following specialties:

Underground utilities and site preparation Concrete (structural and flatwork) Structural Steel

The estimated fee per project will vary, with a maximum contract amount of \$450,000 per year.

### III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this project.

<b>Pre-Submittal Conference:</b>	<b>January 23, 2017</b>
<b>Deadline for Submission of Written Questions:</b>	<b>January 27, 2017</b>
<b>Responses Due:</b>	<b>February 10, 2017</b>
<b>Interviews, if necessary</b>	<b>February 2017 - TBD</b>
<b>Anticipated City Council Consideration</b>	<b>March 2017- TBD</b>

### IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference will be held on **January 23, 2017 at 9:30 A.M.** at the **Municipal Plaza Building, B Conference Room, located at 114 West Commerce St., San Antonio, Texas 78205.** Attendance at the Pre-Submittal Conference is optional but strongly encouraged. Respondents are encouraged to prepare and submit their questions in writing three (3) calendar days in advance of the Pre-Submittal Conference in order to expedite the proceedings.

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

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

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses and posted on City's website at <http://epay.sanantonio.gov/RFPListings/>. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal

Conference or by a subsequent addendum shall not be official or binding on City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of City shall not be binding on City.

## V. SUBMITTAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

City will 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 will be analyzed to determine overall responsiveness and qualifications under the RFQ. The selection committee may select all, some or none of the Respondents. If City elects to conduct interviews, Respondents 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:

- A. EXECUTIVE SUMMARY – Respondents 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.
- B. SUBMITTAL COVER / SIGNATURE PAGE (Form #1) – Respondent shall include the completed Submittal Cover/Signature Sheet with submittal, indexed or labeled as **Tab “1”**. The Submittal Cover/Signature Sheet shall be signed by a person, or persons, authorized to bind the entity or entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures require signatures from all firms participating in the joint venture. Joint ventures are required to provide legal proof of the joint venture such as a joint venture agreement as an attachment to their submittal.
- C. SUBMITTAL CHECKLIST AND TABLE OF CONTENTS (Form #2) – Respondent shall complete this form, which is to be used as the Table of Contents for its submittal. The checklist shall be indexed or labeled as **Tab “2”** in submittal.
- D. DISCRETIONARY CONTRACTS DISCLOSURE FORM (Form #3) – Respondents shall complete the form online at, <https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>, print a copy of the completed form and submit as **Tab “3”** in its ORIGINAL SUBMITTAL ONLY. If Respondent is proposing as a team or joint venture, then each party to that team or joint venture shall complete and submit a separate form with the submittal.
- E. LITIGATION DISCLOSURE FORM (Form #4) – Complete Litigation Disclosure form and additional pages for explanation, if necessary, index or label as **Tab “4”** in submittal. If Respondent is proposing as a team or joint venture, then each party to that team or joint venture shall completed and submit a separate form with the submittal.

- F. SECTION 3 UTILIZATION PLAN (FORM 5) – Submit a completed and signed Section 3 Utilization Plan, indexed and labeled as **Tab “5”**.
- G. SBEDA UTILIZATION PLAN (FORM 6) – Submit a completed and signed SBEDA Utilization Plan, indexed and labeled as **Tab “6”**.
- H. CONTRACT TEMPLATE AND GENERAL CONDITIONS (Indexed and labeled as **Tab “7”**) – Respondents are to review the Contract Template and General Conditions provided as RFQ Exhibit A and B and provide written comments and/or concerns regarding the Contract and General Conditions. If Respondents do not have any comments and/or concerns, Respondent shall indicate this in this tab. If no objections are submitted by the Respondent, City will presume that Respondent will sign the agreement as presented, if a contract is awarded.
- I. PROOF OF INSURABILITY (Indexed and labeled as **Tab “8”**.) – Respondent shall submit a copy of their current insurance certificate.
- 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. CERTIFICATE OF INTERESTED PARTIES TEC FORM 1295 (Indexed and labeled as **Tab “10”**) – 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 to 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 their submitted proposal.

The City shall review Form 1295 as part of the Minimum Requirements Review performed upon receipt of the all proposals. Deficiencies in or missing Form 1295 shall not be a disqualifying error. Instead, the City shall notify 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.

L. **STATEMENT OF QUALIFICATIONS** – Narrative document that addresses all evaluation criteria in Section II of this RFQ. Sufficient information regarding past projects and key personnel's experience should be provided to indicate that the respondent's team has met or exceeded the minimum qualifications provided in Section II of this RFQ in submittal.

**A. Background, Experience and Qualifications of Prime Firm, Key Personnel and Key Sub-consultants including Co-Respondent, Joint Venture Party or Partner (35 Points)**

**1. Experience: (Indexed and Labeled as Tab "11")** – City will consider the relevance of past experience for all parties proposed as a part of the team. Provide a narrative in two (2) pages or less that describes the team's qualifications. Include how the proposed team has worked together on past similar projects and include the number of years working as a team. If a Sub-consultant is part of the team, please include information on how they function within the team's organization.

**2. Proposed Key Personnel/Organizational Chart (Indexed and Labeled as Tab "12")** – Key personnel included in this section are expected to be the same personnel that will be assigned to contract if awarded. Provide a detailed organizational chart of your firm identifying key personnel who will be committed to work on the various tasks for this contract. The Proposed Key Personnel shall consist of a Licensed Consultant with a minimum of 5 five years demonstrated experience in engineering services.

Label key personnel assignments as:

- Coordination of the project and requirements with regulatory agencies and authorities (if any);
- Quality assurance/quality control Coordination for submitting applicable notifications;
- Proposed Project Principal;
- Proposed Project Manager; and

- Sub-consultants (for any services deemed necessary to fulfill the duties of this contract).

**3. Resumes (Indexed and Labeled as Tab “13”)** – Respondent shall submit one-page resumes for all key team members. Resumes should link to project sheets and may also include additional previously completed relevant projects not highlighted in the project sheets. Resumes shall also include the license type (if applicable), number of years licensed, location of office, number of years’ experience’s in proposed role and experience with the Firm.

**4. Project Sheets (Indexed and Labeled as Tab “14”)** – Respondent’s submittal shall include a maximum of three (3) project sheets, limited to one (1) page for each project, which describe similar projects the respondent has completed within the last five years. Each project sheet should include the following:

1. Name and Description of the project;
2. Scope of the project;
3. Project Principal and note whether this person will work on this contract and his/her role planned for this contract;
4. Project Manager and note whether this person will work on this contract and his/her role planned for this contract;
5. Budget for project;
6. Project’s proposed completion date and actual completion date (explain inconsistencies);
7. Names of the Team members who worked with on the project. Please indicate if they are still retained by the Respondent.
8. The owner’s name and the name of the representative (if different) who served as the day-to-day liaison for the project in the following format:

Name of Owner: \_\_\_\_\_

Name of Owner’s representative: \_\_\_\_\_

Representative’s Phone Number: \_\_\_\_\_

Representative’s E-mail: \_\_\_\_\_

**B. Team’s Experience with San Antonio Region Issues and past experience with City of San Antonio contracts (25 points)**

City is interested in evaluating the firm’s experience with San Antonio issues, as may be evidenced by work in San Antonio and/or the surrounding area during the past five (5) years. In narrative form using two (2) pages, briefly describe Respondent’s experience (if any) in the following areas, referencing projects relating to that experience. Note: Respondent may reference projects included in project sheets under **Tab 14** herein or include other projects, but no additional project sheets should be provided for this criteria. This information shall be indexed and labeled as **Tab “15”**.

- 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;
- Firm’s experience with private and public utilities within the San Antonio or surrounding area;
- Local site development;
- Building code requirements; and
- City of San Antonio Design Guidelines

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

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

### **C. Proposed Management Plan (20 points)**

This information should include the firm’s proposed organizational structure and availability of labor resources (capacity to perform) in executing the firm’s effort. The firm shall submit information in a brief narrative plan indexed and labeled as **Tab “16”** that clearly and concisely describes the organization and approach to the project to include the information below:

1. Describe your firm’s project management approach and team organization for the provision of the services outlined in this RFQ.
2. Detail the current capacity of key team individuals and the firm’s capabilities to complete the services outlined herein.
3. Briefly describe the firm’s experience on quality control, accelerated schedules and value engineering.

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

#### **SBE Prime Contract Program – 10 pts.**

Certified SBE firms (see *Small Business Enterprise* definition) headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime CONTRACTORs proposing at least 51% SBE participation (Prime and/or Subcontractor) will receive ten (10) evaluation criteria points, **and**

**M/WBE Prime Contract Program –10 pts.**

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 CONTRACTORs proposing at least 51% M/WBE participation (Prime and/or Subcontractor) will receive ten (10) evaluation criteria points.

No evaluation criteria points will be awarded to non-SBE or non-M/WBE Prime CONTRACTORs through subcontracting to certified SBE or M/WBE 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>35 points</b>
<b>B. Team’s Experience with San Antonio Region Issues &amp; past experience with City of San Antonio contracts</b>	<b>25 points</b>
<b>C. Proposed Management Plan</b>	<b>20 points</b>
<b>D. SBE and M/WBE Prime Contract Program</b>	<b>20 points</b>
<b>TOTAL</b>	<b>100 points</b>

**VI. SUBMISSION INSTRUCTIONS**

When submitting a Statement of Qualifications in person, visitors to City Hall shall allow time for security measures. Visitors to City Hall shall be required to enter through the east side of the building. The public then 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 requiring the use of a ramp, entry is available on the south side of the building (Dolorosa side). Security shall meet the visitor in the basement with a hand scanner.

Respondent shall submit a total of **six (6)** Qualification Statements, which shall include one (1) original unbound Qualification Statement (to include Respondent's DISCRETIONARY CONTRACTS DISCLOSURE FORM – Form #3 under Tab 3), signed in ink, and **five (5)** reprinted copies of its submittal, as well as one (1) copy of the entire submittal in an Adobe PDF format on a compact disk (CD) in a sealed package, with Respondent's submittal clearly marked on the front of the package "**RFQ: On-Call Construction Inspection Services for Federally Funded Projects.**"

All submittals shall be received in the Office of the City Clerk **NO LATER THAN 10:00 AM ON FRIDAY, FEBRUARY 10, 2017** at the address indicated below. Any submittal received after this time shall not be considered.

Physical Address:

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

Submittals sent by facsimile or email will not be accepted.

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

To correctly submit a response to this RFQ, Respondent shall reveal, disclose and state the true and correct name of the individual, proprietorship, corporation and/or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any) submitting the response. No nick-names, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" shall be accepted in lieu of the full, true and correct legal name of the entity. The true and correct name shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual

name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the Proposal.

## **VII. AMENDMENTS TO RFQ**

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

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

## **VIII. RESTRICTION ON COMMUNICATIONS**

Upon release of this RFQ solicitation, Respondent is prohibited from communicating with City staff regarding the RFQ or its submittal, with the following exceptions:

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

1. Respondent may ask questions concerning this RFQ at the Pre-Submittal Conference.
2. Respondent may submit written questions concerning this RFQ to the TCI Staff Contact Person listed in the address below until **4:00 PM on January 27, 2017**. Questions received after the stated deadline shall not be answered. It is suggested all questions be sent by electronic mail or by fax to:

Diana Vasquez, Contract Officer  
Email: [Diana.vasquez@sanantonio.gov](mailto:Diana.vasquez@sanantonio.gov)  
or via fax to: (210) 207-4034

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

Diana Vasquez, Contract Officer  
City of San Antonio  
Transportation and Capital Improvements  
Contract Services Division  
Room 9<sup>th</sup> floor  
114 W. Commerce Street  
San Antonio, TX 78205

3. Exceptions to the Restrictions on Communication with City employees include:

Respondents and/or their agents are encouraged to contact the Small Business Office of the Economic Development Department for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact, David Rodriguez, may be reached by telephone at (210) 207-0071 or by e-mail at [David.Rodriguez3@sanantonio.gov](mailto:David.Rodriguez3@sanantonio.gov). *This exception to the restriction on communication does not apply, and there is no contact permitted to the Small Business Office regarding this solicitation, after the solicitation closing date.*

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

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

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

- A. A contract or contracts, if awarded, shall be awarded to the selected Respondent(s) whose submittal(s) is/are deemed most advantageous to City, as determined by the selection committee and upon approval by City Council.
- B. City may accept any submittal in whole or in part. If subsequent negotiations are conducted, those negotiations shall not constitute a rejection or alternate RFQ on the part of City. However, final selection of a Respondent is subject to City Council approval.

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

J. 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 City, shall file a completed conflict of interest questionnaire with 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 City; or

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

[http://www.ethics.state.tx.us/whatsnew/conflict\\_forms.htm](http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm)

or

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

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

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

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

Office of City Clerk  
San Antonio City Hall  
1<sup>st</sup> floor  
100 Military Plaza  
San Antonio, TX 78205

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

K. All submittals become the property of City upon receipt and shall not be returned. Any information deemed to be confidential by Respondent should clearly be noted on the page(s) where confidential information is contained; however, City cannot guarantee it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law or pursuant to a Court order.

L. Any cost or expense incurred by Respondent associated with the preparation of its submittal, attendance at the Pre-Submittal Conference, if any, or incurred during any phase of the selection process shall be borne solely by Respondent.

M. **Solicitation Process Review:** If Respondent desires a review of the solicitation process, Respondent shall deliver a written request to the Director of TCI within seven (7) calendar days from the date the notice of non-selection was sent. When the TCI Director receives a timely written request, the TCI Director or his/her designee shall review Respondent's concerns and the solicitation process utilized for legitimacy and procedural correctness. After performing a full review, the TCI Director shall notify Respondent in writing of his/her determination of the solicitation process utilized.

N. **Debriefings:** In an effort to improve solicitation responses, TCI is making available on its web site a "Solicitation Response Tip List" that includes the top common items that "make or break" submissions. Providing this information, prior to the due date of the submittal, provides Respondent an opportunity to develop a better response for each solicitation. As a result of this up-front effort, each Respondent is entitled to a one (1) debriefing per calendar year after the San Antonio City Council has made an award of a contract on a project if:

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

(b) Respondent has not been debriefed since January 1, 2017.

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

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

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

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

## **X. SECTION 3 COMPLIANCE PROVISIONS**

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted project covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low- income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment practices can see the notice. The notice shall described the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulation of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

## **XI. SBEDA 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.

**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 *Subcontracting Goal- 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.** More information on the good faith effort criteria is available within the Subcontracting Goal – Waiver Request Evaluation Criteria at <http://www.sanantonio.gov/SBO/Forms.aspx>.

**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

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

## C. Definitions

**Affirmative Procurement Initiatives (API)** – Refers to various 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). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

**Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

**Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent’s previous experience and quality of product or services procured, and other factors identified in the applicable statute.

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. 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 the 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** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City may accept 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.

**City** – refers to the City of San Antonio, TX.

**Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution 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.

**Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

**Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

**Emerging SBE (ESBE)** – a certified SBE 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 whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to 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 prime Respondents.

**Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

**Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

**Good Faith Efforts** – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation 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., 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 CONTRACTORS that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

**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 the City of San Antonio inclusive of Construction, Architectural & Engineering, 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.”

**Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

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

**M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.

**M/WBE 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 M/WBE 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:

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or

- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program 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 M/WBE firms.

**M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA 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 with origins in any of the black racial groups of Africa.

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** – the City department or authorized representative of the City which

issues solicitations or for which a solicitation is issued.

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

**Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

**Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

**Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

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

**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 the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within

Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

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

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

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

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

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

**Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

**Subcontractor** – any vendor or contractor that is providing goods or services to a Prime

Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City's issuance of a notice to proceed.

**Suspension** – the temporary stoppage of an SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

**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 at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Ordinance is not inclusive of MBEs.

#### D. SBEDA Program Compliance – General Provisions

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

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring

efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state

law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

#### E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

#### F. Commercial Nondiscrimination Policy Compliance

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

#### G. Prompt Payment

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

#### H. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the

SBEDA Ordinance;

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

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

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