040

STANDARD INSTRUCTIONS TO RESPONDENT

Read Carefully

1. STANDARD TERMS AND CONDITIONS

1.1 By submitting this offer, the Respondent:

(a) Affirms that it is duly authorized to execute the proposed contract, that this company, corporation, firm, partnership or individual has not prepared this offer in collusion with any other Respondent, and that the contents of this offer, as to prices, terms or conditions of said offer, have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the public offer opening or official award of this contract, as applicable.

(b) Represents, to the best of its knowledge, it is not indebted to the City of San Antonio hereafter referred to as "City." Indebtedness to City may be basis for non-award and/or cancellation of any award.

(c) Agrees to comply with City Ordinance Number 2008-11-20-1045 concerning Wage and Hour Labor Standard Provisions for City of San Antonio Construction Projects (amending City Ordinance Number 71312). This is a public works Contract and chapter 2258 of the Texas Government Code requires that not less than the prevailing wage rate for work of a similar character in this locality shall be paid all laborers, workmen, and mechanics employed in the construction thereof. This includes overtime regulations. Refer to wage decision posted with this solicitation.

1.2 Respondents are required to submit their offers upon the following expressed conditions:

(a) Respondents thoroughly shall examine the drawings, specifications, schedule(s), instructions and all other contract documents.

(b) Respondents shall make all investigations necessary to thoroughly inform themselves of conditions at the Project site, the Specifications, the Plans and any Addenda to the Specifications and/or Plans issued. No plea of ignorance by Respondent of conditions which exist or may hereafter exist as a result of failure or omission on the part of the Respondent to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of City or the compensation to the vendor.

(c) Respondents are advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. Any offer, after being opened, becomes subject to the Open Information Act, V.T.C.A. Government Code Chapter 552 Therefore, vendors clearly must indicate any portion of the submitted offer which the vendor claims is not subject to public inspection under the Open Information Act.

(d) No officer or employee of City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to City of any materials, supplies or services, except on behalf of City as an officer or employee. This prohibition extends to City Public Service Board, San Antonio Water System and all City boards and commissions, other than those which are purely advisory. In this instance, a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City's ethics ordinance.

1.3 For federally funded projects, the Respondent certifies the following:

(a) That it does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that it does not and will not permit its employees to perform services at any location, under its control where segregated facilities are maintained.

(b) In accordance with the guidelines below, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency OR where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this offer.

GUIDELINES FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS

By signing and submitting this offer, the prospective lower tier participant is providing the certification set out below.

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. The prospective lower tier participant shall provide immediate written notice to the person to which this offer is submitted if, at any time, the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The person to whom this offer is submitted may be contacted for assistance in obtaining a copy of those regulations.

4. The prospective lower tier participant agrees by submitting this offer that, should the proposed covered transaction be entered into, it knowingly shall not enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

5. The prospective lower tier participant further agrees, by submitting this offer, that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. DISCREPANCIES AND INTERPRETATION

(a) Prospective Respondents shall notify Consultant and City in writing at minimum eleven (11) calendar days prior to scheduled submittal deadline if discrepancies and ambiguities or omissions are found in the Project Plans and/or Specifications, or if further information or interpretation is desired.

(b) Answers by Consultant and/or City will be given in writing to all prospective Respondents in Addendum form. All provisions and requirements of such addenda will supersede or modify affected portions of the Project Plans and/or Specifications. All addenda will be incorporated in and bound with the Contract Documents. No other explanation or interpretation will be considered official or binding upon the City.

3. PREPARATION OF BIDS

Offers will be prepared in accordance with the following:

(a) All information required by the invitation for offers shall be furnished or the bid may be deemed non-responsive.

(b) Respondent shall complete the "020 Bid Form or 020 Proposal Form" and include the completed form in City's solicitation documents. Failure to complete and submit this form may render Respondent's proposal nonresponsive.

(c) If applicable, Respondents shall submit unit pricing either on the forms provided by the City or its Consultant or submit an original computer printout sheet bearing certification by and signature for the offering firm. The unit prices shown on acceptable printouts will be unit prices used to tabulate the offer and used in the contract if awarded by City. As a minimum, computer printouts must contain the information and in the arrangement shown on the 025 Unit Pricing form included in City's solicitation documents. Proposals with unit prices by computer printout may be considered nonresponsive if:

1. The proposal does not bear the certification verbatim, as shown on the example in the City's solicitation documents.

2. The computer printout is not signed in the name of the firm to whom the proposal was issued.

3. The computer printout omits or alters required offer items or includes items not shown in the City's solicitation documents or specifications.

If the proposal submitted by Respondent contains both the form furnished by City, completed according to the instructions, and also a computer printout, completed according to the instructions, only one will be considered. In such a situation, the offer prices shown on the computer printout will be used to determine the offer.

(d) Respondents shall submit a unit price for each Work element pay item for which an offer is requested, except in the case of an alternate. In such a case, the procedure is as follows:

1. Additive Alternate: In the case of Additive Alternates, unit prices must be submitted for the base offer and the items in all proposed additive alternates separately.

2. Substitute Alternate: In the case of a Substitute Alternate (these alternates appear in sets of two or more related alternates), unit prices must be submitted for all the items in the base offer separately and for all the items in one of the related substitute alternates in each set.

(e) Where there is an error in extension of price, the unit price shall govern.

(f) If a Respondent detects an error in quantities on the specifications or solicitation documents, unit price shall govern. Respondent shall notify City of such error by indicating in the comments section of the bid/pricing form or beside the item on City's proposal form or computer printout referenced in 3. (e) above. Respondent should not attempt to correct the error by inflating unit pricing.

(g) In the event additional or extra blank spaces remain after completion of the various forms, Contractor shall enter the terms "none" or "not applicable" on any remaining blank spaces as an indication that the Contractor has considered City requests for information on every line presented. Any blank unit prices will be tabulated and evaluated as "no cost" to the City.

(h) The combined total offers, for Mobilization and Preparing Right-of-Way shall not exceed fifteen percent (15%) of the total project offer. The 15% allowed for Mobilization and Preparing Right-of-Way will be calculated based upon the total of all offer components. An offer containing a combined total for Mobilization and Preparing Right-of-Way in excess of fifteen (15%) percent may be considered unbalanced and may be rejected.

(i) The unit price shall be inserted on the 025 Unit Pricing Form in the "UNIT BID PRICE" column. Extensions, which are the unit prices multiplied by the approximate quantities for each item, shall be inserted in figures in the amount column. Offers shall be submitted only on City's 025 Unit Pricing Form or approved computer printout sheets. Offers not so submitted will be considered nonresponsive. Conditional offers or unbalanced offers will be considered nonresponsive.

(j) Separated Contract: This project will be offered as a "separated contract", in accordance with a recent amendment to section 151.311 of the tax code, in order for the contractor to claim a tax exemption on the contract price of materials.

4. SUBMISSION OF OFFERS

(a) Respondent's Offer shall be enclosed in a sealed envelope addressed to the **City Clerk, City of San Antonio, 100 Military Plaza, San Antonio, Texas,** as set forth in the Invitation for Bid (IFB) or Invitation for Competitive Sealed Proposals (IFCSP). The name and address of Respondent, the date and hour of the offer/bid opening and the title of the offer solicitation shall be placed on the outside of the envelope.

(b) Information and solicitation documents are obtainable from the Consultant as set forth in the published IFB/IFCSP. Solicitation documents also are on file in the Office of Plans and Records, 5th Floor, Municipal Plaza Building, 114 W. Commerce, or online at the following web address: http://epay.sanantonio.gov/RFPListings/RFPList.aspx

(c) Offers must be submitted on the forms furnished. Offers, however, may be modified, provided such modifications are sealed and received by the City Clerk prior to the submission deadline.

(d) By submittal of this offer, Respondent certifies to the best of its knowledge that all information is true and correct.

(e) Every manufacturer, supplier, vendor, contractor and others interested in doing business with the City of San Antonio **MUST FIRST** register with the City by using the City of San Antonio's **Vendor Registration Website**: http://www.sanantonio.gov/purchasing/SAePS.aspx.

For assistance, in registration call Vendor Support at (210) 207-0118 or via e-mail at vendors@sanantonio.gov.

If Respondent submitting a bid is not registered in the City's Vendor Registration, the submitted bid may be rejected.

5. REJECTION OF OFFERS

(a) City may reject an offer if:

1. Respondent misstates or conceals any material fact in the offer; or
2. The offer does not strictly conform to law or the requirements of the offer;
3. The offer is conditional.
4. Respondent is deemed by the City to be unqualified.
5. Respondent has exceeded its bonding capacity.
6. The offer is unbalanced.
7. Subcontractor/Supplier Utilization Plan is not submitted with bid, if applicable.
8. Respondent fails to register in the City's Vendor Registration system.

(b) In the event that a Respondent is or subsequently becomes delinquent in the payment of its City taxes, including state and local sales taxes, such fact shall constitute grounds for rejection of the offer or, if awarded the offer, for cancellation of the contract. City reserves the right to deduct any delinquent taxes from payments that City may owe to the delinquent Respondent as a result of such contract.

(c) City may reject all offers, whenever it is deemed in the best interest of City to do so, and may reject any part of an offer unless the offer has been qualified as provided in 5(a) 3 above.

(d) City, at its sole discretion also may waive any minor informalities or irregularities in any offer, to include failure to submit sufficient offer copies, failure to submit literature or similar attachments, or business affiliation information.

6. WITHDRAWAL OF OFFERS

Offers may not be withdrawn after the time set for the offer opening, unless approved by City.

7. LATE OFFERS OR MODIFICATIONS

(a) Offers and modifications received after the time set for the offer opening (solicitation deadline) will not be considered.

(b) Proposal amounts may not be amended or modified in any manner after the Solicitation Deadline in the published IFB/IFCSP, except as hereinafter provided.

(c) City will perform a cursory review to determine if the offers are complete as to required contents, in proper form and are properly signed. An offer that is obviously defective will not be read aloud at the bid/offer opening, nor will the offer prices included therein be publicly revealed. If a minor clerical error or omission is discovered and classified by City as a technicality which the City of San Antonio has reserved the right to waive, or applicable law allows City a right to waive, Respondent's representative shall have the opportunity to make the appropriate correction.

8. PROPOSAL GUARANTY:

(a) Each Offer Proposal must be accompanied by an original Bid/Offer/Proposal Bond issued by a corporate surety company licensed to conduct business in the State of Texas, in the amount of not less than five percent (5%) of the greatest total amount of the Offer/Bid/Proposal, payable without recourse to the order of the City of San Antonio, Texas. These forms of security will serve as a guarantee that, if awarded the Contract, the Respondent will promptly enter into Agreement with City as required by the Contract Documents and execute Performance and Payment Bonds on City forms provided.

(b) Termination of Offer: No Offer shall be withdrawn or terminated by Respondent without consent of City for a period of ninety (90) calendar days after the solicitation deadline.

(c) Should the successful Respondent fail to execute the Contract and Bonds and provide the required insurance within twenty (20) calendar days after the date of transmittal of the Contract Documents by City to Contractor, said Proposal Guaranty shall become the property of City, not as a penalty, but as liquidated delay and administrative damages suffered by City as a result of the successful Respondent failing to enter into the awarded City Contract.

(d) Proposal guarantees of the first-, second- and third-ranked respondents (for IFCSP) or first-, second- and third-lowest bidders (for IFB) will be retained until after the Contract Agreement and Bonds have been executed.

9. QUALIFICATIONS OF RESPONDENT:

(a) City or its agents may make such investigations as it deems necessary to determine the ability and responsibility of Respondent to perform the Work. Respondent shall furnish to City reasonable information and data for this purpose as City may reasonably request. City reserves the right to reject any offer if the evidence submitted by, or investigation of, such Respondent fails to satisfy City that such Respondent is responsible to carry out the obligations of the Contract and to complete the Work contemplated therein.

(b) City has implemented a Contractor performance evaluation system. The evaluation will cover accomplishment of the Project with adequate manpower; ability to meet schedule; adequacy of materials and equipment; citizen complaint response; adjacent-to-project property owner relations; and attendance at public project meetings. Contractor's evaluation history also may be used by City Staff as a basis for recommendations of award to the City Council.

10. AWARD OF CONTRACT

(a) For Invitation for Bids, the contract will be awarded to the lowest responsible Respondent whose offer, conforming to the Invitation for Bids, is most advantageous to City.

(b) For Invitation for Competitive Sealed Proposals, the contract will be awarded to the Respondent whose offer, conforming to the Invitation for Competitive Sealed Proposals, is most advantageous to City.

(c) **A written award of acceptance (manifested by a City Ordinance) and appropriation (evidenced by Purchase Order) mailed or otherwise furnished to the successful Respondent results in a binding contract without further action by either party.**

(d) Breaking of tie offers shall be in accordance with V.T.C.A. Local Government Code § 271.901**.**

(e) City reserves the right to accept any items or groups of items on this offer, unless Respondent qualifies his/her offers by specific limitations (Re: Par. 5(a) (3) above).

(g) Although the information furnished to Respondents specified the approximate quantities needed, based on the best available information where a contract is awarded on a unit price basis, payment shall be based on the actual quantities supplied. City reserves the right to delete items, prior to the awarding of the contract, and purchase said items by other means; or after the awarding of the contract, to increase

or decrease the quantities offer in accordance with § 252.048 of the Texas Local Government Code**.** No changes shall be made without written notification of City.

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

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

In addition to 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 may delivered by hand to the Office of the City Clerk at City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205 or may be mailed to the Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. Please consult your own legal advisor if you have questions regarding the statute or form.

11. SITE INVESTIGATION

(a) The submittal of an Offer by Respondent shall constitute an admission that Respondent has fully examined the location of the proposed Work and the requirements of the Work. Respondent shall be familiar with all of the Contract Documents and other City instructions including Respondent's ability to submit inquiries to City and Design Consultant before submitting an Offer so that no Contractor misunderstanding shall exist regarding the nature and character of the Work to be performed. No allowance will be made by City for any Respondent claim that the Offer/Proposal/Bid is based upon incomplete information as to the nature and character of the site or the Work involved.

(b) After investigating the Project site and comparing the Plans and Specifications and other Contract Documents with the existing conditions, the prospective Respondent immediately should notify Consultant of any conditions for which the requirements of labor and materials are not clear, and pose any question regarding the quantity and extent of the Work involved. Respondent inquiry notifications to City and/or Consultant must be made in writing at least eleven (11) calendar days prior to the scheduled solicitation deadline.

(c) It is understood and acknowledged by Respondent that full and complete allowance for conditions under which the Contractor will be required to perform construction, or that will in any manner affect Work under this Contract, are included in the Respondent's Proposal and reflected in the proposed Contract sum. If a soils investigation was conducted as a potential aid to the Consultant in preparation of the Contract Plans and Specifications, this information is available to prospective respondents for review at the Project Consultant's office and is non-refundable. Copies may be purchased from the Consultant. THIS INFORMATION IS AVAILABLE TO PROSPECTIVE RESPONDENTS WITHOUT EXPRESS OR IMPLIED REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTEE BY CITY OR CONSULTANT THAT IT IS COMPLETE OR CORRECT OR THAT IT REPRESENTS A TRUE, OR APPROXIMATELY TRUE, PICTURE OF THE SUB-SURFACE CONDITIONS TO BE ENCOUNTERED ACROSS THE PROPOSED WORK SITE. THIS INFORMATION IS SPECIFICALLY NOT PART OF THE CONTRACT DOCUMENTS. Before submitting its Offer, each Respondent may, at Respondent's own expense, make reasonable work site investigations and tests as the Respondent may deem necessary to determine his Offer for performance of the Work in accordance with the Contract Documents. Access for such investigations and tests must be reasonably coordinated with the City.

12. RESTRICTION ON COMMUNICATION

Respondents are prohibited from communicating with City staff and City officials regarding this solicitation with the following exceptions:

(a) Questions or other communication at the pre-submittal conference are allowed.

(b) Written questions and comments concerning this solicitation shall be sent to the consultant (see address for purchasing plans and specifications on the 010 IFB or RFCSP Form) a copy is in the City's Plans and Records Office at 114 W. Commerce St., 8th floor, Municipal Plaza Building, San Antonio, TX 78205. Questions received after the stated deadline will not be answered.

(c) Respondent and/or its agent(s) 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, prior to Respondent's submittal. The SBEDA point of contact for this solicitation is Ruben A. Flores. He may be reached by telephone at (210) 207-3923 or by e-mail at ruben.a.flores@sanantonio.gov. Mr. Flores may designate other members of City staff to address issues raised by Respondent. After the solicitation's closing date, no contact is permitted by Respondent to the Small Business Office. The City reserves the right to contact Respondent over SBEDA issues after the solicitation closing date.

(d) Respondents shall provide responses to any questions asked of them by the Staff Contact Person before and after responses are received and opened.

Answers by Consultant and/or City will be given in writing to all prospective Respondents in Addendum form. All provisions and requirements of such addenda will supersede or modify affected portions of the Project Plans and/or Specifications. All addenda will be incorporated in and bound with the Contract documents. No other explanation or interpretation will be considered official or binding upon the City. All addenda will be posted on the City's website with this solicitation. It is respondent's responsibility to obtain addenda.

Violation of this provision by Respondent or his or her agent may lead to disqualification of its offer from consideration.