

**CITY OF SAN ANTONIO**

**CAPITAL IMPROVEMENTS MANAGEMENT SERVICES DEPARTMENT**



**REQUEST FOR PROPOSALS:  
CONSTRUCTION AND OPERATION OF KENNEL FACILITY  
FOR ANIMAL CARE SERVICES SERVICES**

**CIMS021313EF**

**Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts.** Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee who contributes to City Council elections, from the tenth (10<sup>th</sup>) business day after a contract solicitation has been released until thirty (30) calendar days after the contract has been awarded:

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

**A high-profile contract cannot be awarded to an individual or entity if a prohibited contribution has been made by any of the above-listed individuals during the "blackout" period.**

**RFP ISSUE DATE: Wednesday, February 13, 2013**

**SUBMITTAL DEADLINE: TUESDAY, March 12, 2013 AT 10:00 AM**

**TABLE OF CONTENTS**

	<b>Section</b>	<b>Page Number</b>
<b>I.</b>	<b>INTRODUCTION .....</b>	<b>3</b>
<b>II.</b>	<b>PROJECT BACKGROUND.....</b>	<b>4</b>
<b>III.</b>	<b>SCOPE OF SERVICES.....</b>	<b>5</b>
<b>IV.</b>	<b>TERM OF CONTRACT .....</b>	<b>7</b>
<b>V.</b>	<b>SCHEDULE OF EVENTS.....</b>	<b>7</b>
<b>VI.</b>	<b>PRE-SUBMITTAL CONFERENCE .....</b>	<b>8</b>
<b>VII.</b>	<b>SUBMITTAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA .....</b>	<b>8</b>
<b>VIII.</b>	<b>SUBMISSION INSTRUCTIONS.....</b>	<b>13</b>
<b>IX.</b>	<b>AMENDMENTS TO RFP.....</b>	<b>15</b>
<b>X.</b>	<b>RESTRICTION ON COMMUNICATIONS.....</b>	<b>15</b>
<b>XI.</b>	<b>AWARD OF CONTRACT AND RESERVATION OF RIGHTS.....</b>	<b>16</b>
<b>XII.</b>	<b>SBEDA ORDINANCE COMPLIANCE PROVISIONS .....</b>	<b>19</b>

<b>Form 1</b>	<b>Respondent Submittal Cover / Signature Sheet</b>	<b>RFP Attachment 1</b>
<b>Form 2</b>	<b>Submittal Checklist and Table of Contents</b>	<b>RFP Attachment 2</b>
<b>Form 3</b>	<b>Discretionary Contracts Disclosure Form and Instructions</b>	<b>RFP Attachment 3</b>
<b>Form 4</b>	<b>Litigation Disclosure Form</b>	<b>RFP Attachment 4</b>
<b>Form 5</b>	<b>Small Business Economic Development Advocacy Funding Agreement and General Conditions</b>	<b>RFP Attachment 5</b>
	<b>Price Proposal Form</b>	<b>Exhibit C</b>
	<b>General Wage Decision</b>	<b>Exhibit D</b>
	<b>SBEDA Subcontractor/Supplier Utilization Plan</b>	<b>Exhibit E</b>

## I. INTRODUCTION

City of San Antonio (hereafter referred to as “City”), through this Request for Proposals (hereafter referred to as “RFP”) is soliciting proposals from interested parties for the design, construction and operation of a kennel facility.

The successful Respondent will: identify and hire the design firm to design the kennel facility; identify, hire and manage the construction contractor; and, upon completion of the construction, manage City-owned facility through a long-term lease agreement with City of San Antonio.

The newly constructed kennel facility shall be constructed on Respondent-owned/leased land. Respondent shall retain ownership/control of the land upon which the kennel facility shall be built for the duration of the 25-year time frame addressed herein and, upon execution of its Agreement with City, lease/sublease that land to City for twenty five (25) years. Respondent shall pay all costs to insure, maintain and operate the kennel facility and retain all income generated as a result of Respondent’s operation of the kennel facility.

City will own the newly constructed kennel facility upon its completion and Respondent will enter into a ground lease with City, giving City reasonable access to the facility. Upon completion of the facility, Respondent shall obtain a lease from City for the capital improvements. Both the ground lease held by City and lease for the capital improvements shall be for a term for at least as long as the debt remains outstanding, which is approximately twenty five (25) years. Upon completion of the long-term lease and upon Respondent’s satisfactorily operating the kennel facility for the duration of the lease term, ownership of the newly constructed kennel facility shall either be transferred to the successful Respondent or the kennel facility shall be moved from Respondent’s site.

The subject General Obligation Bond Program funds only may be utilized for “brick and mortar” construction that solely increases City’s kennel capacity at Respondent’s location, ensuring ACS’s increased capacity. Respondent shall have the option of with submitting a proposal utilizing all of the money available for the Project from City (\$2,134,000.00), or Respondent may submit a proposal for an amount less than all of City’s available funds for the Project. In either case, in its submittal, Respondent fully shall detail how Respondent will utilize the funds awarded, clearly state how Respondent will utilize these funds and clearly state if Respondent will be constructing new kennel facilities or if Respondent will be renovating and expanding existing kennels to gain the required increased capacity.

City reserves the right to select one, more than one or no Respondents to this solicitation for the award of these General Obligation Bond Program funds. Respondent hereby agrees that, if awarded a contract under this solicitation, Respondent shall operate the newly constructed expanded kennel facility pursuant to City’s standards, rules and regulations.

## II. PROJECT BACKGROUND

For a number of years, City has been in the midst of an animal overpopulation crisis, with thousands of homeless animals coming into Animal Care Services Department (hereafter referred to as “ACS” or “the department”) each year. This animal overpopulation is a problem that adversely has affected the quality of life in neighborhoods throughout San Antonio. In 2009, City opened a new ACS facility on State Highway 151, replacing the 60-year-old shelter in Brackenridge Park. This new facility has the capability of holding an estimated 22,000 animals annually and an additional 6,000 may be housed at the Southside Auxiliary Shelter (hereafter referred to as “Brooks”) located on the Brooks City Base.

In October 2011, the San Antonio City Council approved the ACS 2012 Strategic Plan, which outlined the Department’s goals, strategies and initiatives. The three priorities identified included:

- (1) Enhanced Enforcement;
- (2) Controlling the Stray Population; and
- (3) Increasing the Live Release rate.

ACS is committed to achieving these priorities and to date has shown significant progress in all three areas. Since the implementation of the Strategic Plan, ACS has seen its Live Release rate increase from 31% in FY 2011 to 61% in FY 2012. Animal adoptions increased by a count of 1,756 (28%) and animal rescues by 9,654 (321%) in FY 2012. In addition, ACS impounded nearly 35,000 animals, which was a 21% increase from FY 2011. In January 2013, ACS’s Live Release rate increased again to a new record high of 83%.

On May 12, 2012, San Antonio voters approved a \$596 million dollar Bond Program. The funds from the Bond Program will be used on various capital improvement projects to meet community infrastructure needs and improve the overall quality of life in San Antonio. As part of that program, ACS was allocated \$2,134,000.00 in General Obligation Bond Funds for the construction of animal kennels to increase the City of San Antonio’s’ capacity to house stray animals.

While the funds allocated to ACS are restricted to “brick and mortar” projects, it is not solely restricted to just building new additional kennels at a City-owned. These Bond Funds also may be used to pay for a construction project that increases kennel capacity at a partner’s location, as long as a long-term contract is established that ensures ACS’s capacity increases.

### III.SCOPE OF SERVICES

1. The purpose of this RFP is to enable City and ACS to obtain qualified Proposals fully outlining how Respondent's new facility will increase City's animal shelter capacity. As a condition of the 2012-2017 Bond Program, only RFPs for capital improvement projects for either the construction of animal kennels to increase the capacity to house stray animals or the renovation of existing facilities that results in an increase kennel capacity of an existing facility will be accepted. Proposals are limited to:
  1. the construction or renovation at an approved high volume rescue partners facility within City limits that increases City's kennel capacity;
  2. the construction or renovation of a facility on non-City-owned property within City limits that increases City's kennel capacity; and
  3. facilities that increase the number of animals taken from ACS and guarantee live outcomes.

The successful Respondent shall provide complete construction services to include, but not be limited to: facility design, construction management, budget controls, scheduling, administration, construction engineering and inspection, quality assurance, drawing submittal review and approval coordination, project records and close-out documents. The selected Respondent shall maintain a close liaison with City throughout the duration of the project.

As Respondent is building the kennel facility on its own property (either Respondent owned or Respondent leased for the twenty five (25) year period described herein), Respondent shall provide a detailed proposal, for the duration of the twenty five (25) year period, fully outlining and describing:

1. how Respondent will utilize the Bond Project funds;
2. the projected total number of animals Respondent's organization will rescue from ACS, showing the increase City's shelter capacity;
3. the increase in the number of pets taken from ACS and the increase in guaranteed live outcomes; and
4. how many animals annually Respondent it will house for reclaim or rescue.

In addition to the above stated requirements Respondent also will be required to ensure the following:

1. All utilization funds received by City will be for "brick and mortar" capital expense only;

2. Proof of Respondent owned/leased land for the 25-year duration of the Agreement. Upon completion of the facility, Respondent shall enter into a 25-year lease for the capital improvements. At the end of the lease term, if Respondent operated the facility and met the requirements of its submitted rescue and care proposal, City would transfer ownership of the capital improvements thereon to the selected Respondent at no additional cost to Respondent;
3. In the event Respondent was unable to meet its annual animal rescue commitment and/or other contractual obligations at any time during its lease term(s), Respondent shall be required to:

a. Reimburse City in an amount calculated as follows:

$$\frac{\# \text{ of Annual Rescue Commitment} - \# \text{ Animals Actual Rescued}}{\# \text{ of Annual Rescue Commitment}} * \frac{\text{Total Contract Dollar Amount}}{\text{Length of Contract}}$$

- b. Or, at City's option, allow City to operate the new facility (directly or indirectly through a third party) for the remainder of the term;
4. Respondent shall be responsible for all funding costs of the facility upon its completion, to include insurance, operation and maintenance expenses, as well as managing all aspects of the facility's design and construction;
5. Ensure that the construction is completed in a timely manner and in accordance with City-approved Project schedule;
6. In the operation of the kennel facility, Respondent shall comply with all City Code ordinances pertaining to, but not limited to, stray hold laws and all animals are made available to prospective owners for reclaiming or, if not reclaimed by their owner, accepted as a rescued animal by the kennel facility;
7. Respondent shall provide humane housing and proper care of all animals housed in the new kennel facility to include, but not be limited to, providing food, water, shelter and appropriate veterinary care for so long as such animals remain under the facility's care and control. Humane housing includes, but is not limited to, shelter from sun, wind, extreme temperatures and rain. In addition, animals shall not be overcrowded and shall not be commingled, unless it is appropriate to do so. Animals also must be able freely to move around their enclosures and be able to eat away from fecal matter/debris. Animals shall receive adequate stimulation and appropriate veterinary care, including sterilization and plenty of exercise;
8. Respondent shall ensure more than 90% of all animals rescued during term of contract receive a live outcome;
9. Respondent shall keep accurate records and documentation relating to construction of the kennel facility, as well as to the care and outcome of all the animals to be housed at the new facility. These records include, but are not limited to, all design and construction

costs incurred, the care and treatment of all animals and the disposition and fees collected.

10. Due to the use of General Obligation Bond Funds for this Project, the successful Respondent shall be required to comply with City's SBEDA Program during the design and construction phase of this Agreement, as outlined in **Section XI** of this solicitation.

City shall be responsible for:

1. Providing Respondent with animals;
2. Funding for construction, as outlined in this RFP, as follows:
  - a. Funding would be paid to the vendor on a cost-reimbursement basis; and
  - b. Funding shall be paid by City in phases of the construction.

Following construction of the new facility, Respondent shall be given the ability to utilize its own fee schedule to cover operational costs for animals in its care. Facility operations shall be funded through revenues on site and the selected Respondent shall be allowed to identify its own fee schedule, upon review and written approval of the Director of Animal Care Services. The successful Respondent shall retain all income generated as a result of the operation of the kennel facility.

#### **IV. TERM OF CONTRACT**

The anticipated term of the proposal, for the operation of the kennel facility, is twenty five (25) years from the completion of construction of the new facility.

#### **V. SCHEDULE OF EVENTS**

The following tentative schedule has been prepared for this Project.

<b>RFP Advertisement</b>	<b>February 13 - March 12, 2013</b>
<b>Pre-Submittal Conference</b>	<b>February 22, 2013</b>
<b>Deadline to submit RFP Questions</b>	<b>February 27, 2013</b>
<b>RFP Submittals Due</b>	<b>March 12, 2013</b>
<b>Evaluation and Initial Selection</b>	<b>March 29, 2013</b>
<b>Interview of Shortlisted Respondents (if necessary)</b>	<b>Week of April 15-18, 2013</b>
<b>Anticipated City Council Consideration</b>	<b>May/June 2013</b>

## VI. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference will be held on **February 22, 2013 at 10:00 a.m.** at the **Municipal Plaza Building, 1<sup>st</sup> Floor, Conference Room C, 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 must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses, if any. 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.

## VII. SUBMITTAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

City will conduct a comprehensive, fair and impartial evaluation of all submittals received in response to this RFP. City shall appoint an Evaluation Committee to perform the required evaluation of submitted RFPs. Each submittal will be analyzed to determine overall responsiveness and qualifications under the RFP. The Evaluation Committee may select all, some or none of Respondents.

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, to be included at the front of Respondent's submission, shall state the number of years in operation, number of years in operation with a local office, its local office address and number of employees employed in its 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 Proposal. 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) – Respondent shall complete the form online at <http://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.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. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (FORM 5) - Submit a completed and signed Subcontractor/Supplier Utilization Commitment Form indicated that your firm/team commits to satisfy a thirty percent (30%) Small Business Enterprise (SBE) subcontracting goal and a twenty one percent (21%) M/WBE (as defined in **Section XI** herein) for this solicitation. During the first phase of this solicitation, absent a waiver granted by the SBO, failure of Respondent’s Prime Contractor to submit a completed Subcontractor/Supplier Utilization Commitment Form in its response shall render its submittal NON-RESPONSIVE. This form shall be indexed and labeled as “**Tab 5**” in the submittal.
- G. FUNDING AGREEMENT AND GENERAL CONDITIONS (Indexed and labeled as “**Tab 6**”) – Respondent shall review the Funding Agreement Template and General Conditions for City of San Antonio Construction Contracts provided as **RFP Exhibit A and B**, which shall be provided via an Amendment to this solicitation hereafter, and provide written comments and/or concerns regarding the Funding Agreement and General Conditions. If Respondent does not have any comments and/or concerns, Respondent shall indicate this in this **Tab 6**. If no objections are submitted by

Respondent, City will presume that Respondent will sign the Funding Agreement as presented, if a contract is awarded.

H. PROOF OF INSURABILITY (Indexed and labeled as “**Tab 7**”.) - Respondent shall submit a copy of its current insurance certificate.

I. STATEMENT OF QUALIFICATIONS - Narrative document that addresses **all** evaluation criteria outlined below in this RFP. Sufficient information regarding past projects and key personnel experience shall be provided, to indicate that Respondent’s team has met or exceeded the minimum qualifications provided herein of this RFP.

**A. Background, Experience and Qualifications of Respondent, Key Personnel, Architect/Engineer and Key Contractor(s), including Respondent’s Co-Respondent, Joint Venture Party or Partner (50 Points)**

**1. Construction Experience: (Indexed and Labeled as “Tab 8” – 25 Points) -**

City will consider the relevance of past construction experience for all parties proposed as a part of Respondent’s team. Provide a narrative in three (3) pages or less that describes the team’s construction qualifications. Include how the proposed team has worked together on past similar projects and include the number of years working as a team. If an Architect, Engineer and/or Contractor is part of the team, include information on how they function within the team’s organization. Include a construction organizational chart, 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 Architect, Engineer and Contractor with demonstrated experience in design, mechanical, electrical, plumbing and construction work.

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 Principal Architect/Engineer;
- Proposed Project Manager; and
- Contractors for services deemed necessary to fulfill the duties of this contract.

**2. Respondent’s History/Success with Animal Adoptions and Assuring Live Outcomes (Indexed and Labeled as “Tab 9” – 15 Points) -** In a narrative of no

more than three (3) pages, detail Respondent's history and success with animal adoptions, Respondent's history and success with live outcomes, Respondent's proposed plan to ensure successful live outcomes and Respondent's overall plan for successful animal adoptions at the new facility, focusing on Respondent's success with animal adoptions in San Antonio and the surrounding area, as well as Respondent's current operations, if any to include:

- a. The number of cats and dogs for which Respondent provided care in FY 2010, 2011 and 2012;
- b. The outcome of the animals under Respondent's care listed in a.;
- c. The average length of stay for the animals listed in a.;
- d. The number of dog and cat kennels Respondent currently has available;
- e. The criteria Respondent uses to determine if a pet must be euthanized; and
- f. Respondent's current overall kennel capacity.

**3. Respondent's History/Success in Establishing and Maintaining High Standards of Animal Wellness (Indexed and Labeled as "Tab 10" – 10 Points)** – In a narrative of no more than two (2) pages, detail Respondent's history and success with establishing and maintaining a high standard of animal wellness, to include how Respondent animals under Respondent's care properly are cared for and receive all necessary medical treatments. If Respondent has specific experience with public entity clients, specifically large municipalities, with providing similar animal wellness services, identify the name of the projects and/or municipal departments for which Respondent provided such services.

## **B. Proposed Facility Management/Operation Plan (40 points)**

**1. Respondent's Anticipated/Projected Number of Animals to be Rescued and Keneled Annually from ACS (Indexed and Labeled as "Tab 11" – 25 Points)** – In a narrative of no more than two (2) pages, detail Respondent's projection for the annual number of animals it anticipates rescuing and its outline for fulfilling this projection. Respondent should include the projected number of additional cats and dogs Respondent projects to be rescued from ACS, above what currently are being (or are committed to be) rescued from ACS. Further, Respondent shall include the programs that will be implemented by Respondent to rescue and adopt pets on a high volume basis.

**2. Respondent's Proposed Operating Plan, Marketing Plan, Proposed Fee Schedule and Budget for the Kennel Facility (Indexed and Labeled as "Tab**

**12” – 15 Points)** – In a narrative of no more than eight (8) pages, detail Respondent’s:

- a. Kennel Facility Operating Plan:** Respondent’s outside resources, anticipated total number of employees, anticipated total number of volunteers, number and location of operating offices/locations and the number and types of equipment available to Respondent to support this Project. Respondent also shall include its plan on how it will ensure the safety of the facility’s employees, as well as ensuring the safety and humane housing of the animals under its care. Respondent also shall include its proposed maintenance plan, to ensure proper maintenance of the kennel facility throughout the 25-year term of this Agreement.
- b. Respondent’s Proposed Facility Marketing Plan:** Respondent’s projected Marketing Plan for the kennel facility, to include community outreach and the utilization of specific media. Respondent shall identify its minimum annual expenditures to be dedicated to its marketing efforts, the type of marketing to be used and how Respondent will utilize its marketing efforts to ensure the live release of those animals rescued from ACS.
- c. Respondent’s Proposed Fee Schedule:** Respondent’s projected fee schedule it proposes to implement for the new kennel facility, to include projected charges for customers utilizing Respondent’s services, such as adoption, owner reclaim, licensing, vaccination fees, etc. Utilizing the fee schedule proposed, Respondent shall include its annual expense breakdown, illustrating Respondent’s projected operating budget.

**C. Respondent’s Financial History (Indexed and Labeled as “Tab 13” – 10 Points)** – Submit a copy of Respondent’s three most recent annual financial statements, prepared in accordance with Generally Accepted Accounting principles, audited by an independent Certified Public Accountant. If voluminous, Respondent may elect to provide this information on a CD, labeled to indicate its contents, so long as the CD is provided by the deadline for submission of proposals and submitted in accordance with instructions for submission of hard copy proposals.

<b>Evaluation Criteria:</b>	<b>Maximum Points</b>
<b>A. Experience, Background and Qualifications:</b>	
<b>Construction Experience; History/Success in Animal Adoptions and Assuring Live Outcomes; History/Success in Maintaining High Standards of Animal Wellness.</b>	<b>50 points</b>
<b>B. Proposed Facility Management/Operation Plan:</b>	
<b>Projected Number of Animals to be Rescued and Kenneled Annually from ACS; Proposed Operating Plan, Marketing Plan; Proposed Fee Schedule.</b>	<b>40 points</b>
<b>C. Financial Information/History</b>	<b>10 points</b>
<b>E. TOTAL</b>	<b>100 points</b>

Respondent is expected to examine this RFP 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 Respondent's submittal being deemed non-responsive and, therefore, disqualified from consideration.

### **VIII. SUBMISSION INSTRUCTIONS**

When submitting a Request for Proposal in person, visitors to City Hall must allow time for security measures. Visitors to City Hall will be required to enter through the east side of the building. The public will pass through a metal detector and x-ray machine located in the lobby. All packages, purses and carried items will 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 will sign in and receive a visitor's badge. For those that might require the use of a ramp, entry is available on the south side of the building (Dolorosa side). Security will meet the visitor in the basement with a hand scanner.

Respondent shall submit a total of **seven (7)** Proposals which shall include one **(1)** original unbound Proposal **(to include Respondent's Financial Information/History)**, signed in ink, and **six (6)** printed copies of the submittal **(without Financial Information/History)**, as well as

one (1) copy of the entire submittal (to include Respondent's Financial Information/History) in an Adobe PDF format on a compact disk (CD) in a sealed package, clearly marked on the front of the package "RFP: INCREASED KENNEL CAPACITY" All submittals must be received in the Office of City Clerk **NO LATER THAN 10:00 AM TUESDAY, MARCH 12, 2013** at the address indicated below. Any submittal received after this time shall not be considered.

Mailing Address: Office of City Clerk  
Attn: Capital Improvement Management Services Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Physical Address: Office of City Clerk  
Attn: Capital Improvement Management Services Department  
100 Military Plaza,  
City Hall, 2<sup>nd</sup> Floor,  
San Antonio, Texas 78205

Proposals sent by facsimile or email will not be accepted.

Responses to the solicitation should be complete and well organized. Adherence to the maximum page criterion is critical; each page side (maximum 8 1/2" x 11") with criteria information will be counted. Respondent shall adhere to the page limitations for each section as stated herein. Pages which have project photos, charts, and graphs will be counted towards the maximum number of pages. Front and back covers, Table of Contents pages and tabbed divider pages will 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 RFP Section V, Submittal Document Requirements & Evaluation Criteria, and each section shall be divided by tabs and indexed as indicated in this RFP. Failure to meet the above conditions may result in disqualification of the proposal.

Respondents who submit responses to this RFP shall correctly 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). No nick-names, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact

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

## **IX. AMENDMENTS TO RFP**

Changes, amendments or written responses to questions received in compliance with **Section IX, Restrictions on Communication** may be posted on City's website at <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. A Respondent who does not have access to the Internet, shall notify City in accordance with **Section IX, Restrictions on Communication**, that 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 RFP, and changes to the RFP – if any – shall be made in writing only.

## **X. RESTRICTION ON COMMUNICATIONS**

Once this RFP has been released, Respondents are prohibited from communicating with City staff regarding the RFP or Submittals, with the following exceptions:

Respondents are prohibited from communicating with elected City officials and their staff regarding the RFP or submittal from the time the RFP has been released until the contract is posted as a City Council agenda item. Respondents are prohibited from communicating with City employees from the time the RFP has been released until the contract is awarded. These restrictions extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or submittal submitted by Respondents. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's submittal from consideration.

Exceptions to the restrictions on communication with City employees include: Respondents may ask verbal questions concerning this RFP at the Pre-Submittal Conference.

2. Respondents may submit written questions concerning this RFP to the Staff Contact Person listed in the address below until **4:00 PM on Wednesday, February 27, 2013**. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by electronic mail or by fax to:

Ms. Elvia Fernandez, CIMS Management Analyst, via telephone at (210) 207-4033 or via e-mail to [elvia.fernandez@sanantonio.gov](mailto:elvia.fernandez@sanantonio.gov)

Questions sent by certified mail, return receipt requested, also will be accepted up until the deadline listed herein and should be addressed to:

Ms. Elvia Fernandez, Management Analyst  
City of San Antonio  
Capital Improvements Management Services Department  
Contract Services Division  
114 W. Commerce Street, Room 913  
San Antonio, TX 78205

3. 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 City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact is Brenda Navarro. Ms. Navarro may be reached by telephone at (210) 207-5442 or by e-mail at [brenda.navarro@sanantonio.gov](mailto:brenda.navarro@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.*
  
3. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. City reserves the right to exclude any persons from such selection committee meetings as it deems in its best interests.

## **XI. 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 RFP.

- A. The Contracts, if awarded, will be awarded to Respondent(s) whose submittal(s) is/are deemed most advantageous to City, as determined by the Evaluation Committee, upon approval by City Council.
- B. City may accept any submittal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP 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 RFP, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFP, reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.

- D. City will require the selected Respondent(s) to execute a contract with City in substantially the same form as attached, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFP and the contract. Contract documents are not binding until approved by City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified by City, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- E. This RFP does not commit City to enter into a Contract, award any services related to this RFP, 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 management system. All vendors will be required to use City's system and submit schedules.
- G. **Conflicts of Interest:** Respondent acknowledges that it is informed that 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 Contractor on a City contract, a partner or a parent or subsidiary business entity.
- H. Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of City, as defined in Section 2-42 of City's Ethics Code. (Discretionary Contracts Disclosure) – Instructions and web-link to electronic form are included in Form 3 of RFP.
- I. **Independent Respondent:** Respondent agrees and understands that, 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 Respondent(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- J. 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 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.ethics.state.tx.us/forms/CIQ.pdf>

Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of 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  
City Hall, 2<sup>nd</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 will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- L. Any cost or expense incurred by Respondent that is associated with the preparation of the submittal, the Pre-Submittal Conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

- M. **Solicitation Process Review:** Any Respondent desiring a review of the P3 solicitation process must deliver a written request to the Director of CIMS within 7 calendar days from the date the notice of non-selection was sent. When the CIMS Director receives a timely written request, the CIMS Director, or designee, shall review Respondents concerns and the solicitation process for legitimacy and procedural correctness. After performing a full review, the CIMS Director will notify Respondent in writing of his determination.
- N. **Debriefings:** In an effort to improve solicitation responses, CIMS 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 Respondents with 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 if:
- (a) it is not the selected Respondent; and
  - (b) it has not been debriefed since March 1, 2012.
- Once a firm has been debriefed, it will not be eligible for future debriefings within that calendar year. Any Respondent meeting the above criteria that desires an individual submittal debriefing must deliver a written request to the CIMS 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 anytime 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 if such is deemed desirable by City.

## **XII. SBEDA ORDINANCE COMPLIANCE PROVISIONS**

### **A. SBEDA Program**

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

meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

## B. Definitions

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

## C. Definitions

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

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

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

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

**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 (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

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

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

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

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

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

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

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

Native Americans: Persons having no less than 1/16<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 CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

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

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

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

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

**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 MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

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

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

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

**Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSAs), 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 Business Office Manager** – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

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

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

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

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

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

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

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

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

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

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

The CITY has applied the following contract-specific Affirmative Procurement Initiative 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 Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. CONTRACTOR agrees to subcontract at least *thirty percent (30%)* of its prime contract value to certified SBE firms headquartered or have a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement, and,

**M/WBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least *twenty-one (21%)* of its prime contract value to certified M/WBE firms headquartered or have a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that

contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain these subcontracting goals for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

#### 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.

E. 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).