CITY OF SAN ANTONIO

CAPITAL IMPROVEMENTS MANAGEMENT SERVICES DEPARTMENT

REQUEST FOR QUALIFICATIONS:

ENGINEERING DESIGN SERVICES FOR UTSA BOULEVARD
(Project No. 40-00445)

(RFQ-CIMS04172013AM)

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 that contributes to City Council elections from the 10th business day after a contract solicitation has been released until 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 the individual or entity if a prohibited contribution has been made by any of these individuals during the "black out" period.

RFQ ISSUE DATE:
April 17, 2013

SUBMITTAL DEADLINE:
MAY 8, 2013 AT 3:00 P.M. LOCAL TIME

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Form 1 – Respondent Submittal Cover / Signature Sheet	RFQ Attachment 1
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CITY OF SAN ANTONIO

ENGINEERING DESIGN SERVICES FOR UTSA BOULEVARD

I. BACKGROUND

The City of San Antonio (hereafter referred to as "City"), Capital Improvements Management Services Department (hereafter referred to as "CIMS") is seeking a Statement of Qualifications (hereafter referred to as "SOQ") from qualified design firms to provide engineering design services, along with construction administration services, for the UTSA Boulevard – Edward Ximenes Drive to Babcock Road, a Metropolitan Planning Organization (MPO) project.

As a thriving institution, the University of Texas at San Antonio, the surrounding development and adjacent communities have brought about the need of improvements along the UTSA Boulevard. The City has secured funding through the Metropolitan Planning Organization (MPO) to widen UTSA Boulevard, from Edward Ximenes Drive to Babcock Road. As part of the efforts to improve this corridor, the Texas Department of Transportation is currently designing UTSA Boulevard, from Edward Ximenes Drive to IH-10, along with schematic design and environmental clearance for the entire corridor from Edward Ximenes Drive to Babcock Road.

City is committed to ensuring that all businesses, including small, minority and women-owned business enterprises (hereafter collectively referred to as "S/M/WBEs"), are afforded the maximum opportunity to participate in awarding of City contracts.

II. SCOPE OF SERVICES

City seeks to hire an engineering design firm to provide design and construction administration services for the UTSA Boulevard – Edward Ximenes Drive to Babcock Road. The scope of work includes the design of the roadway reconstruction and the expansion of the existing two (2) lanes of traffic to four (4) lanes of traffic with median, left turn lanes or two-way left turn lanes, as needed. Curbs and sidewalks will be installed along the expanded roadway section. In addition, a shared use path will be added, parallel to UTSA Boulevard south of the roadway. Signals, signs and pavement markings will be upgraded, as well. Drainage enhancements will be added, as necessary. Noise wall construction will be required, to separate the roadway, pedestrian and bike noise from the adjacent homes. Utility adjustments also may be needed. The Project site is located over the Edwards Aquifer Recharge Zone and will require the preparation of a Water Pollution Abatement Plan. Consultant services also will be required for construction management throughout the duration of the Project. The Project design shall be in accordance with TxDOT standards.

The selected design firm shall:

- Design and prepare plans for bid.
- Adhere to TxDOT Standards, AASHTO and MUTCD.
- Perform the Project survey and geotechnical services required to clarify design needs and criteria.
- Be required to closely coordinate with TxDOT.
- Provide construction phase services.

III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this project.

Pre-Submittal Conference:	**April 29, 2013,10:00 A.M.**
Deadline for Submission of Written Questions:	**April 30, 2013, 4:00 P.M.**
RFQ Responses Due:	**May 8, 2013, 3:00 P.M.**
Anticipated City Council Consideration	**June 2013**

IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference is scheduled to be held on **April 29, 2013 at 10:00 A.M.** at the **Municipal Plaza Building, 1st Floor, Conference Room B, 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 questions in writing three (3) calendar days in advance of the Pre-Submittal Conference in order to expedite the proceedings. Under this RFQ solicitation, the deadline for the submittal of written questions is April 30, 2013.

City's responses to questions received in time, prior to the Pre-Submittal Conference, may be distributed at the Pre-Submittal Conference and shall be posted on City's website at http://epay.sanantonio.gov/RFPListings/.

The Pre-Submittal Conference meeting location 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 forty eight (48) hours prior to the Pre-Submittal Conference. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses to questions 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.

V. SUBMITTAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

City will conduct a comprehensive, fair and impartial evaluation of all submittals received in response to this RFQ. City may appoint a selection committee to perform the evaluation. Each submittal will be analyzed to determine overall responsiveness and qualifications under the RFQ. The selection committee may select all, some or none of the Respondents for interviews. If City elects to conduct interviews, Respondents may be interviewed and re-scored based upon these same criteria, or other criteria to be determined by the selection committee.

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

A. **EXECUTIVE SUMMARY** – Respondent shall include a one (1) page Executive Summary at the beginning of its SOQ. This Executive Summary shall state the number of years Respondent has been in business, Respondent's number of years in business in its local office, Respondent's local office address and number of employees employed in Respondent's local office.

B. **SUBMITTAL COVER/SIGNATURE PAGE (Form #1) (Indexed and labeled as Tab "1")** – Respondent shall include the completed Submittal Cover/Signature Sheet with its submittal**.** The Submittal Cover/Signature Sheet shall be signed by a person (or persons) authorized to bind Respondent and the entity/entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures submittals require signatures from **all** firms participating in the joint venture. Submitting joint ventures are required to provide legal proof of the joint venture, such as a joint venture agreement, as an attachment to Respondent's submittal.

C. **SUBMITTAL CHECKLIST AND TABLE OF CONTENTS (Form #2) (Indexed and labeled as Tab "2")** – Respondent shall complete this form, which is to be used as the Table of Contents and as a checklist for Respondent's submittal.

D. **DISCRETIONARY CONTRACTS DISCLOSURE FORM (Form #3) (Indexed and labeled as Tab "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 the form in Respondent's **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 Respondent's submittal.

E. **LITIGATION DISCLOSURE FORM (Form #4) (Indexed and labeled as Tab "4")** – Complete Litigation Disclosure form and additional pages for explanation, if necessary in Respondent's 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 Respondent's submittal.

F. **SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY FORM (Form #5)** (**Indexed and labeled as Tab "5")** – Submit a completed and signed Subcontractor/Supplier Utilization Commitment Form indicating that your firm commits to satisfy the established **thirty percent (30%)** Small Business Enterprise (SBE) subcontracting goal for this Project. During the first phase of this solicitation, absent a waiver granted by the Small Business Office (SBO), failure of a Prime Contractor to submit a completed Subcontractor/Supplier Utilization Commitment Form in its response shall render its response NON-RESPONSIVE.

G. **CONTRACT TEMPLATE AND GENERAL CONDITIONS REVIEW (Indexed and labeled as Tab "6")** – Respondent shall review the Contract Template and General Conditions, provided and made a part hereto and labeled as **RFQ Exhibit A and B,** and provide written comments and/or concerns regarding the Contract and General Conditions. If Respondent does not have any comments and/or concerns, Respondent shall indicate this in this **Tab 6**. If no objections are submitted by the Respondent, City and Respondent agree that Respondent will sign the Contract as presented, if a Respondent is selected and 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. **LETTERS OF REFERENCE (required) (Indexed and labeled as Tab "8")** – Respondent shall provide a maximum of five (5) letters of reference.

J. **STATEMENT OF QUALIFICATIONS** – Respondent shall provide narrative documentation, as outline in this **Statement of Qualification** below, addressing all evaluation criteria in **Section II. Scope of Services** of this RFQ. Sufficient information regarding past projects and key personnel's experience must be provided to indicate that Respondent's team has met or exceeded the minimum qualifications provided in **Section II** of this RFQ in submittal.

A. Experience and Qualifications of Prime Firm and Key Sub-Consultants (30 Points)

Respondent shall respond to the following items as they relate to **Section II. Scope of Services:**

1. Experience (Indexed and Labeled as "Tab 9") – City shall consider the relevance of past experience for all parties proposed as a part of Respondent's team. Respondent shall provide a narrative, in four (4) pages or less, that describes the team's qualifications, as they relate to the Project's scope in this RFQ. Respondent's submittal shall include how the proposed team has worked together on past similar projects and shall include the number of years working as

a team. For any Sub-Consultants listed as part of Respondent's team, include information on how those Sub-Consultants shall function within the team's organization. In addition, Respondent shall provide a narrative description of the proposed roles of Respondent and each Sub-Consultant, to include assignments, roles and responsibilities, lines of authority and communication among all team members.

2. Project Sheets (Indexed and Labeled as "Tab 10") – Respondent's submittal shall include, at minimum, three (3) project sheets, limited to one (1) page for each project included, which shall describe similar projects Respondent has completed within the last five (5) years. Each project sheet shall include, at minimum, the following:

1. Name and Description of the project, including similarity to the scope of work in this RFQ;
2. Year of project;
3. Respondent's role in the project;
4. Project Designer;
5. Project Manager;
6. Project's original and final construction contract amounts (explain inconsistencies);
7. Project's proposed completion date and actual completion date achieved (explain inconsistencies);
8. Project owner's name and the name of the representative (if different) who served as the day-to-day liaison for the project in the following format:
    a. Name of Owner: _____
    b. Name of Owner's representative: _____
    c. Representative's Phone Number: _____
    d. Representative's E-mail_____
    e. The name of the Prime Firm and key Sub-Consultants and Subcontractors, including S/M/WBE status.

3. Proposed Key Personnel/Organizational Chart (Indexed and Labeled as "Tab 11") – Respondent shall **p**rovide a detailed organizational chart of its firm, identifying key personnel who will be committed to work on the various tasks for this contract. The proposed key personnel shall include a Licensed Engineer with demonstrated experience in San Antonio or the South Texas Region with the activities normally associated with the scope of work listed.

Label assignments as:

- Project Manager
- Designer (Roadway, Drainage, etc…)
- Coordination with regulatory agencies
- Coordination with utility companies
- Design Quality assurance

- Plan review coordination
- Construction/bidding documents
- Construction services

4. <u>Resumes</u> (Indexed and Labeled as "Tab 12") – Respondent shall submit one (1) page resumes for all its key team members. Resumes should link to project sheets and also may include additional previously-completed relevant projects not highlighted in the project sheets.

Resumes also shall include:

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

B. Team's Experience with San Antonio Region Issues and Past Experience with City of San Antonio Contracts on LAM Projects (15 points)

City is interested in evaluating Respondent's and key Sub-Consultants' experience with San Antonio issues, as may be evidenced by work in San Antonio and the surrounding area, during the past five (5) years. In narrative form, using a maximum of two (2) pages, briefly describe Respondent's and its team's experience in the following areas, referencing projects relating to that experience. (Note: you may reference projects included in the project sheets under **Criteria A** above or include other projects, but no additional project sheets shall be provided for this criteria.) This information shall be indexed and labeled as **"Tab 13":**

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

Note that a portion of the scoring for these criteria may be based on City's Consultants' Scorecard, experience with City and Land Area Management (hereafter referred to as "LAM") projects and/or other documentation generated by City staff and previous City Consultants on other City projects. City will consider the history of Respondent in complying with project programs, schedules and budgets on previous City and LAM projects. **No items shall be submitted by the respondent for this criterion.** Specific items that may be used for consideration may include, but are not limited to:

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

C. Understanding of the Project and Proposed Management Plan (35 total points)

Respondent shall describe its understanding of the project and specific issues and challenges likely to be involved, as well as the availability of labor resources (Respondent's capacity to perform) in executing the scope of work. Respondent shall submit information in a brief narrative plan that clearly and concisely describes the challenges it foresees and its approach to managing the project.

1. <u>Project Understanding</u> – (indexed and labeled as Tab "14")

Limit your response to the following items to three (3) pages:

- Describe Respondent's understanding of the primary objectives of the Project;
- Describe the constraints and technical challenges related to design and construction Respondent foresees and Respondent's approach to addressing each;
- Describe Respondent's approach to obtaining input from stakeholders, assessing biases and gaining consensus and support

2. <u>Design Management</u> – (Indexed and labeled as Tab "15")

Limit your response to the following items to three (3) pages:

- Describe Respondent's project management approach and team organization for the provision of the services outlined in this RFQ.
- Describe Respondent's Quality Control/Quality Assurance Process, approach and capabilities to maintain quality control of the design and construction.
- Describe Respondent's approach to designing to the Project budget and providing options based on bid results
- Describe Respondent's approach to assuring timely completion of designs, including methods for schedule recovery, if necessary.

3. <u>Construction Phase Services</u> – (Indexed and labeled as Tab "16")

Limit your response to the following items to two (2) pages:

- Describe Respondent's construction observation approach and ability to coordinate work with all project stakeholders.

- Describe Respondent's mechanism to track and respond to:

    1. contractor requests for information;
    2. review of change orders;
    3. coordinating construction progress meetings with the contractor;
    4. preparing and distributing meeting minutes;
    5. reviewing contractor schedules; and
    6. other construction phase issues

D. SBEDA – SBE & M/WBE Prime Contract Program (20 total points available)

These points shall be awarded by SBEDA to qualifying Respondents. No items are required to be submitted by Respondent for this criterion.

SBEDA - SBE Prime Contract Program – 10 pts.

Certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime Consultants proposing at least 51% SBE participation (Prime and/or Sub-Consultant) will receive ten (10) evaluation criteria percentage points, and

SBEDA - MWBE Prime Contract Program –10 pts.

Certified M/WBE firms (see *Minority/Women Business Enterprise* definition) headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime Consultants proposing at least 51% M/WBE participation (Prime and/or Sub-Consultant) will receive ten (10) evaluation criteria percentage points.
No evaluation criteria percentage Points will be awarded to non-SBE or non-M/WBE Prime Consultants through subcontracting to certified SBE or M/WBE firms.

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

Evaluation Criteria Summary:	Maximum Points
A. Experience and Qualifications of Prime Firm and Key Sub-Consultants	**30 Points**
B. Team's Experience with San Antonio Region Issues and Past Experience with City of San Antonio Contracts	**15 Points**
C. Understanding of the Project and Proposed Management Plan	**35 Points**
D. SBEDA – SBE & M/WBE Prime Contract Program	**20 Points**
TOTAL	**100 Points**

VI. SUBMISSION INSTRUCTIONS

When submitting a Statement of Qualifications 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)** Qualification Statements which shall include one (**1**) original unbound Qualification Statement, signed in ink, and **six (6)** printed copies of the submittal, as well as one (**1**) copy of the entire submittal in an Adobe PDF format on a compact disk (**CD**) in a sealed package, clearly marked on the front of the package "**RFQ: ENGINEERING DESIGN SERVICES FOR UTSA BLVD."** All submittals must be received in the Office of the City Clerk **NO LATER THAN 3:00 PM WEDNESDAY, MAY 8, 2013** at the address indicated below. Any submittal received after this time shall not be considered.

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

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

Submittals 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 aides, expensive paper or other materials beyond which is sufficient to present a complete and effective submission are not required. All pages shall be numbered. Margins shall be no less than 1" around the perimeter of each page. Electronic files, websites or URLs shall not be included as part of the proposal, other than the CD specified above. Each submittal shall include the sections and attachments in the sequence listed in the RFQ Section V, Submittal Document Requirements & Evaluation Criteria, and each section shall be divided by tabs and indexed as indicated in this RFQ. Failure to meet the above conditions may result in disqualification of the proposal.

Respondents who submit responses to this RFQ shall 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.

VII. AMENDMENTS TO RFQ

Changes, amendments, or written responses to questions received in compliance with Section VIII, 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 VIII, 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 RFQ, and changes to the RFQ – if any – shall be made in writing only.

VIII. RESTRICTION ON COMMUNICATIONS

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

Respondents are prohibited from communicating with elected City officials and their staff regarding the RFQ or submittal from the time the RFQ 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 RFQ 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 RFQ 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:

1. Respondents may submit written questions on this RFQ, prior to the Pre-Submittal conference, and may ask verbal questions concerning this RFQ at the Pre-Submittal Conference.
2. Respondents may submit written questions concerning this RFQ to the Staff Contact Person listed in the address below until **4:00 PM on April 30, 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:

   Angelica Mata, Contract Coordinator
   207-4034 (via fax)
   angelica.mata@sanantonio.gov

   Questions also may be by certified mail, return receipt requested, until the **April 30, 2013** deadline and should be addressed to:

   Angelica Mata, Contract Coordinator
   City of San Antonio
   Capital Improvements Management Services Department
   Contract Services Division
   114 W. Commerce Street, Room 908
   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 **Ruben Flores**. Mr. Flores may be reached by telephone at **(210) 207-3923** or by e-mail at **ruben.a.flores@sanantonio.gov**. This exception to the restriction on communication does not apply, and there is no contact permitted to the Small Business Office regarding this solicitation, after the solicitation closing date.

4. 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.

IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

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

A. The Contracts, if awarded, will be awarded to the Respondents whose submittals are deemed most advantageous to City, as determined by the selection 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 RFQ on the part of City. However, final selection of a Respondent is subject to City Council approval.

C. City reserves the right to accept one or more submittals or reject any or all submittals received in response to this RFQ, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFQ, reissue a subsequent solicitation and/or remedy technical errors in the RFQ process.

D. City reserves the right to recommend the most advantageous construction delivery method. As a result, the design firm may be required to work with a contractor through traditional design-bid-build or using an alternative construction delivery method such as Competitive Sealed Proposal, Construction Manager at Risk or Design-Build. If an alternative construction delivery method is selected by City, the selected design firm may be required to serve on the contractor selection committee.

E. 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 RFQ 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.

F. This RFQ does not commit City to enter into a Contract, award any services related to this RFQ, nor does it obligate City to pay any costs incurred in preparation or submission of a response or in anticipation of a contract.

G. 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.

H. **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 Subcontractor on a City contract, a partner or a parent or subsidiary business entity.

I. 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 RFQ.

J. **Independent Contractor:** 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 Contractor(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.

K. 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 (7th) 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
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, 2nd floor
100 Military Plaza
San Antonio, TX 78205

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

L. 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.

M. Any cost or expense incurred by the 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.

N. **Solicitation Process Review:** Any Respondent desiring a review of the solicitation process must deliver a written request to the Director of CIMS within seven (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 the respondents concerns and the solicitation process for legitimacy and procedural correctness. After performing a full review, the CIMS Director will notify the respondent in writing of his determination.

O. **Debriefings:** In an effort to improve solicitation responses, CIMS is making available on its web site a "Solicitation Response Tip List" that includes the most common items that "make or break" submissions. By providing this information prior to the due date of the submittal, a Respondent is provided with the opportunity to develop a better response to this solicitation. As a result of this up-front effort, each Respondent is entitled to a <u>one</u> (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 January 1, 2013.

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.

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

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

R. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City.

X. SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements

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

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

B. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 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 SubConsultants 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 CONSULTANT to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONSULTANT

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 CONSULTANT shall not be given credit for the participation of its S/M/WBE subConsultant or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONSULTANT and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

Good Faith Efforts – documentation of the CONSULTANT'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 Consultant's posting of a bond covering the work of SBE or M/WBE SubConsultants; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by 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 Sub-Consultants.) The appropriate form and content of CONSULTANT'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 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONSULTANTS and/or Sub-Consultants and vendors for CITY contracted goods and/or services.

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

Prime Consultant – the vendor or Consultant 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 CONSULTANT.

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, CONSULTANT 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.

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

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

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

Small 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 Consultant 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.

Sub-Consultant – any vendor or Consultant that is providing goods or services to a Prime Consultant or CONSULTANT in furtherance of the Prime Consultant's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONSULTANT and its subConsultants 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 CONSULTANT'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.

Sub-Consultant/Supplier Utilization Plan – a binding part of this contract agreement which states the CONSULTANT's commitment for the use of Joint Venture Partners and / or SubConsultants/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 CONSULTANT's Joint Venture partners and Sub-Consultants/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Sub-Consultant/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Sub-Consultant/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by 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 CONSULTANT 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 CONSULTANT'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. CONSULTANT voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONSULTANT further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONSULTANT shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONSULTANT's utilization and payment of Sub-Consultants, 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 SubConsultants with this term;

2. CONSULTANT 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 CONSULTANT or its SubConsultants or suppliers;

3. CONSULTANT 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 Sub-Consultants and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONSULTANT shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONSULTANT's Sub-Consultant / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONSULTANT to replace the Sub-Consultant / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Sub-Consultant / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONSULTANT of work previously designated for performance by Sub-Consultant or supplier, substitutions of new Sub-Consultants, terminations of previously designated Sub-Consultants, or reductions in the scope of work and value of work awarded to Sub-Consultants or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONSULTANT 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. CONSULTANT shall retain all records of its Sub-Consultant 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 CONSULTANT's Sub-Consultant / Supplier Utilization Plan, the CONSULTANT shall not be given credit for the participation of its S/M/WBE or HUBZone Sub-Consultant(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONSULTANT and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONSULTANT acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONSULTANT and each of its Sub-Consultants for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONSULTANT has represented to CITY which primary commodity codes each registered Sub-Consultant will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 3. (a), this contract is also being awarded pursuant to the SBE Subcontracting Program. CONSULTANT agrees to subcontract at least **thirty percent (30%)** of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Sub-Consultant/Supplier Utilization Plan which Consultant 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 Sub-consultants to be used by Consultant on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Sub-consultant, and documentation including a description of each SBE Sub-Consultant's scope of work and confirmation of each SBE Sub-consultant'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 Consultant to attain this Sub-consultant goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONSULTANT 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, CONSULTANT 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 Sub-Consultants, 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 Sub-Consultants, 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. CONSULTANT'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. CONSULTANT shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONSULTANT, CONSULTANT shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Sub-Consultants, including HUBZone Sub-Consultants, to ensure that the CONSULTANT's reported subcontract participation is accurate. CONSULTANT shall pay its Sub-Consultants 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 CONSULTANT's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONSULTANT, and no new CITY contracts shall be issued to the CONSULTANT until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONSULTANT 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 CONSULTANT 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).