

CITY OF SAN ANTONIO

CAPITAL IMPROVEMENTS MANAGEMENT SERVICES DEPARTMENT



**REQUEST FOR QUALIFICATIONS
DESIGN-BUILD SERVICES
FOR
LAS MORAS PREFABRICATED METAL FACILITY**

RFQ: CIMS060713DV

ISSUE DATE: **FRIDAY, JUNE 7, 2013**

SUBMITTAL DEADLINE: **FRIDAY, JUNE 28, 2013 at 10:00 A.M. Local Time**

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I. BACKGROUND/OVERVIEW

The City of San Antonio (hereafter referred to as “City” or “Owner”), Capital Improvements Management Services Department (hereafter referred to as “CIMS”) is soliciting for the selection of a Design-Build (hereafter referred to as “DB”) Firm for the design and construction services of a prefabricated metal facility at Las Moras Maintenance Facility. This Request for Qualifications (hereafter referred to as “RFQ”) is the first of a two-phase solicitation process.

Responses in the form of Statements of Qualifications (hereafter referred to as “SOQ”) are requested from qualified DB firms or teams in this first phase.

City is seeking to contract with a design-builder which will take City’s provided programming documents and, via a DB contract, complete construction documents as the Architect of Record and perform all required construction for the Project, if selected. Upon completion, the design-builder shall deliver the completed and operational facility to City.

City’s goal is to move facilities maintenance shops towards mid-City, where the highest concentration of City facilities are located. As part of this change, a prefabricated building is needed at Las Moras Maintenance Facility, located at 318 Las Moras Street, San Antonio, Texas. The purpose of this facility is to house materials and equipment of five (5) facilities maintenance shops, to include carpenter, paint, electric, HVAC and plumbing shops. The addition of this building greatly will reduce transportation lag time and increase the work completion rates of the facility’s maintenance staff.

The selected DB firm will be required to install the pre-fabricated facility onto an engineered foundation and be required to connect the facility to required utilities (water, sewage and electrical) as needed to provide a turn-key functional facility. This facility also shall include interior fixtures such lighting, heating, ventilation, showers and restrooms.

The qualified DB firm will provide a complete project, including professional design, conforming to all applicable criteria, complete construction services and follow-up work, as appropriate. Interested and qualified DB firms which can demonstrate their ability to successfully complete the Project are invited to submit their qualifications statements.

II. DEFINITIONS

As used in the Request for Qualifications (RFQ), the terms have the meanings set forth below:

- A. “Design-Build Contract” means a single contract with a firm or business entity for the design and construction of the facility.
- B. “Design-Build Firm”/”DB Firm” or “Respondent” means a partnership, corporation, joint venture or other legal entity or team that includes an Engineer and/or Architect and contractor qualified to engage in building construction in Texas.
- C. “Construction Documents” means all the design documents to be provided by selected DB team and approved by City, including, without limitation, those to be used in

constructing the Project, performing the work and the rendering of the Project fully operational and shall include, without limitation, detailed plans, drawings, specifications, manuals and related materials.

D. "Respondent" shall mean the DB Team/Firm that responds to this RFQ.

E. "Design Criteria Consultant" means the Owner's Architect/Engineering consultant supplying the design development drawings and specifications.

III. PROJECT DESCRIPTION/SCOPE OF WORK

This Section is intended to provide Respondents to this RFQ with summary information concerning the Project requirements, budget, scope and schedule, to ensure Respondents understand City's basic expectations and to allow Respondents to submit their qualifications accordingly.

The scope of work is to assemble and install a prefabricated and engineered insulated metal open bay facility, to be used by the Building and Equipment Services Department at the Las Moras Maintenance Facility. The building shall be a prefabricated metal facility (insulated) structure and skin, open bay warehouse with concrete flooring and with single large overhead door (8 x 12ft) and two (2) additional personal doors. The dimensions of the open bay facility will be 36 foot x 153 foot and 14 feet high and shall include a main 12 foot x 14 foot roll up metal door and four (4) other 72-inch personal doors. Interior features entail ceiling mounted electric space heaters, ventilation fans, industrial lighting fixtures, an ADA-compliant restroom with two (2) stalls and a shower room and two (2) vanity sinks. The prefabricated building shall be mounted on a minimum of six (6) inches of concrete engineered foundation. Respondent also shall pave the area adjacent to the newly constructed facility (approximately 69,862 sf. of paving) with, at minimum, a 2-inch asphalt overlay and paint the new paving, as required, for traffic control and parking.

Construction phase services may include, but are not limited to, the following:

- Coordination with City, Consultants and Stakeholders;
- Procurement of materials and equipment;
- Scheduling and management of site operations;
- Quality control;
- Bonding and insurance of the construction;
- Maintaining a safe work site for all Project participants;
- Submission of a proposed Guaranteed Maximum Price (hereafter referred to as "GMP") is anticipated, at this time, at the completion of the Design Documents;
- Multiple Fixed Price Proposals for various packages, if required, prior to submission of a GMP; and
- Bidding, award and management of all construction-related contracts, in compliance with City's solicitation requirements, including City's Small Business Economic Development Advocacy Policy.

BUDGET COST: The anticipated Construction Cost Limitation for the DB services listed in this RFQ is expected to be approximately \$350,000.

OWNER REQUIRED PROVISIONS:

ALL DB WORK SHALL BE IN ACCORDANCE WITH THE DB CONTRACT AND THE GENERAL CONDITIONS FOR CITY BUILDING DB CONTRACTS (INCLUDED BY REFERENCE IN THIS RFQ).

A. Personnel:

The selected DB firm shall provide managers, properly trained and experienced personnel and administrative staff, to ensure satisfactory performance under a contract awarded in connection with this solicitation.

By submission of this RFQ, Respondent certifies that each individual or business entity, which is the Engineer or Architect proposed by Respondent as a member of the DB team, was selected based on demonstrated competence and qualifications only in accordance with Section 2254.004 of the Texas Government Code.

B. Project Execution:

1. Following selection of a DB Contractor/Firm, the DB's Engineer(s) or Architect(s) shall complete the Construction Documents, submitting all design elements for review and determination of scope compliance to City at 50%, 85% and 100% completion for review and approval, prior to submitting for permit and before construction.
2. An Architect shall be licensed in the State of Texas and shall be responsible for compliance with the requirements including but not limited to the requirements of the Texas Occupation Code, Title 6, Chapter 1051 and the Texas Administrative Code, Title 22, Part 1, Chapter 1. An Engineer shall be licensed in the State of Texas and have the responsibility of ensuring compliance with all applicable engineering design requirements including but not limited to the requirements of the Texas Occupation Code, Title 6, Chapter 1001, and the Texas Administrative Code, Title 22, Part 6, Chapter 131.
3. City shall provide or contract for, independent of the DB Contractor/Firm, inspection services, special inspection services, testing of construction materials and any verification testing services necessary for acceptance of the facility by City.
4. The DB Contractor/Firm shall supply a set of "as-built" construction documents in PDF electronic form for the Project to City at the conclusion of construction, as a precondition to final payment.

C. DB Contractor/Firm shall establish and maintain, throughout the contract period, a viable safety program, in accordance with requirements of applicable regulatory authorities.

IV. TENTATIVE SCHEDULE FOR SELECTION PROCESS AND AWARD

- A. Final approval of a selected Respondent or Respondents is subject to the action of City of San Antonio City Council.

- B. Submittals may not be withdrawn within one hundred twenty (120) days from date on which submittals are received or opened.
- C. Submission of a response to this solicitation indicates Respondent's acceptance of the evaluation technique and Respondent's recognition that some subjective judgments must be made by City during the evaluation.
- D. The following **tentative** schedule has been prepared for this Project. Firms interested in the Project must be available on the interview date.

Pre-Submittal Conference	June 12, 2013 at 10:00 AM
Deadline for Submission of Written Questions	June 17, 2013 by 4:00 PM
Qualifications Responses due	June 28, 2013 by 10:00 AM
Phase Two Request for Additional Information and Proposed Costing Methodology	Week of July 8, 2013
Anticipated City Council Approval of Contract Award:	August 2013

V. PRE-SUBMISSION CONFERENCE

A Pre-submission Conference is scheduled to be held on **Tuesday, June 12, 2013 at 10:00 a.m. at Riverview Towers 16th Floor Missions Conference Room, 111 Soledad, San Antonio, Texas 78205.** Respondents are encouraged to prepare and submit their questions in writing to the staff contact person listed in Article IX of the RFQ three (3) calendar days in advance of the Pre-Submission Conference in order to expedite the proceedings (such that staff may review the questions received and be able to respond verbally during the pre-submission conference).

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

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

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

VI. SUBMITTAL DOCUMENT REQUIREMENTS – PHASE ONE OF THE SOLICITATION

Respondent's Submittal should include the required items in the following sequence:

- A. **COVER LETTER:** - Respondents shall include a one-page Cover Letter for the SOQ. The letter shall include a statement of how the DB firm intends to use the design build method to deliver, accomplish and perform each specific service for the delivery of this prefabricated metal facility.
- B. **SUBMITTAL COVER/SIGNATURE PAGE – FORM 1:** Respondent must complete, sign, and include the Submittal Cover/Signature Sheet with the Submittal. The Submittal Cover/Signature Sheet must be signed by a person, or persons, authorized to bind the entity, or entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures require signatures from all firms participating in the joint venture. Joint ventures are required to provide legal proof of the joint venture such as a joint venture Agreement as an attachment to their Submittal. The Cover Page/Signature Sheet shall be indexed and labeled as **Tab “1”** in the submittal.
- C. **SUBMITTAL CHECKLIST AND TABLE OF CONTENTS – FORM 2:** Respondent must complete and utilize this form that shall be used as the Table of Contents for the DB Firm's Submittal, indexed and labeled as **Tab “2”** in the submittal.
- D. **DISCRETIONARY CONTRACTS DISCLOSURE FORM – FORM 3:** All proposed parties to the contract with City shall complete and return this form with the Submission. Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. This form shall be indexed and labeled as **Tab “3”** in the submittal.
- E. **LITIGATION DISCLOSURE FORM- FORM 4:** – Completed Litigation Disclosure form, as found in RFQ Attachment 4 and additional pages for explanation, if necessary, shall be indexed and labeled as **Tab “4”** in the submittal.
- F. **SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)- FORM 5:**
Submit a completed and signed Subcontractor/Supplier Utilization Commitment Form indicated that your firm commits to satisfy a twenty percent (20%) Small Business Enterprise (SBE) subcontracting goal for this solicitation. Label and index this form as **Tab “5”** in the submittal.

During the first phase of this solicitation, absent a waiver granted by the SBO, failure of a DB Firm/Contractor to submit a completed Subcontractor/Supplier Utilization Commitment Form in its response shall render its response **NON-RESPONSIVE**.

- G. **PROOF OF BONDABILITY AND INSURABILITY:** (Indexed and labeled as **Tab “6”** in submittal) Submit a letter from insurance provider stating provider's commitment to insure the Respondent for the types of coverages and at the levels specified in the attached General Conditions for City of San Antonio Building Design Build Contracts

(RFQ Exhibit A) if awarded a contract in response to this solicitation process. Respondent also shall submit a copy of its current insurance certificate. Respondent shall also submit a letter of intent from its bonding company stating in specific terms that the bonding company (Surety) is prepared to issue both payment and performance bonds to the full value of the proposal tendered for the Project awarded in response to this solicitation.

- H. **LETTERS OF REFERENCE:** (required): Respondent shall provide a maximum of 3 letters of reference, indexed and labeled as **Tab “7”** in the submittal.
- I. **DESIGN-BUILD AGREEMENT TEMPLATE AND GENERAL CONDITIONS:** Respondent shall review the City of San Antonio General Conditions (attached hereto and labeled as **Exhibit “A”**) and Design-Build Agreement template (attached hereto and labeled as **Exhibit “B”**) and provide written comments, objections and/or concerns regarding the Agreement and General Conditions with its submission. If Respondent does not have any comments, objections and/or concerns, Respondent must indicate that in this Tab 8. If no comments, objections and/or concerns are submitted by the Respondent, City shall conclude Respondent will sign the Design-Build Agreement as presented, if selected. Respondent shall index and label this information as **Tab “8”** in its submittal.
- J. **STATEMENT OF QUALIFICATIONS:** Respondent shall provide narrative documentation, as outlined in this **Statement of Qualification** below, addressing all evaluation criteria in **Section III** herein. **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 III** of this RFQ in submittal. Respondents’ submittals shall be scored as follows:

A. Background, Experience and Qualifications of Design-Build Team (35 points):

Respondent shall respond to the following items as they relate to Section III. 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 three (3) pages or less describing the DB team’s qualifications, as they relate to the referenced scope of services in this RFQ. Include how the proposed DB team has worked together on past similar projects and include the number of years working together as a team. For any Sub-Consultants listed as part of the team, include information on how each shall function within the team’s organization. In addition, 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 team members.

2. Project Sheets (Indexed and Labeled as Tab “10”) – Respondent’s submittal shall include a maximum of 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 the following:

1. Name and Description of the project (similar to this project) and the delivery method;
2. Year of project;
3. Respondent's role in the project;
4. Project Manager;
5. Superintendent;
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:

Name of Owner: _____
Name of Owner's Representative: _____
Representative's Phone Number: _____
Representative's E-mail: _____

3. Proposed Key Personnel/Organizational Chart (Indexed and Labeled as Tab "11") – Provide a detailed organizational chart of your DB team, identifying key personnel who will be committed to work on the various tasks for this contract. The Proposed Key Personnel shall include a Licensed Architect and/or Licensed Landscape Architect and 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
- Superintendent
- Chief Estimator
- Project Engineer
- Safety Manager

4. Resumes (Indexed and Labeled as Tab "12") – Respondent shall submit one (1) page resumes for all its key DB 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 Licensee's current Firm
- Number of years experience in proposed role corresponding to the assignments included in the organizational chart
- City of residence

B. Project Understanding, Approach/Management Plan (30 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 defined 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. Project Understanding (10 points) – (indexed and labeled as Tab “13”)

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

- Describe Respondent's understanding of the primary objectives of the Project; and
- Describe the constraints and technical challenges related to design and construction Respondent foresees and Respondent's approach to addressing each.

2. Design Management (10 points) – Indexed and labeled as Tab “14”.

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

- Describe your DB Team's management approach and team organization for the provisions outlined in this RFQ;
- Describe your DB Team's Quality Control/Quality Assurance Process, approach and capabilities to maintain quality control of the design and construction throughout the Project; and
- Describe your DB Team's approach to assuring timely completion of designs, including methods for schedule recovery, if necessary.

3. Construction Management (10 points) - Indexed and labeled as Tab “15”.

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

- Describe your DB Team's construction management approach and ability to coordinate with all stakeholders;
- Describe your DB Team's cost estimating methodology and approach to construction documents and bid phase management;
- Describe your DB Team's mechanism to track and respond to requests for information, review of change orders, coordinating construction progress meetings between Designer, Contractor and Owner, preparing and distributing meeting minutes, reviewing schedules and other construction phase services;

C. Team’s Experience with City of San Antonio and City of San Antonio Issues (20 points):

City is interested in evaluating Respondent’s (including Sub-Consultants/Subcontractors) experience with San Antonio issues, evidenced by previously performed work in the San Antonio and surrounding area during the past five (5) years. Briefly describe Respondent’s experience in the following areas and reference projects relating to that experience. This information shall be indexed and labeled as **Tab “16”**.

- City of San Antonio site development and/or building permit requirements;
- City of San Antonio area construction in the public right-of-way;
- City of San Antonio area construction costs and practices;
- City of San Antonio environmental community, conditions and constraints;
- Public awareness and involvement in project development in City of San Antonio area;

Scoring for this criteria may be based on City’s Consultants’ and Contractor Scorecard, along with other documentation or experience with City projects. City shall consider the history of the DB Firm in complying with project programs, schedules and budgets on previous **City of San Antonio** projects.

Specific items for City’s consideration may include:

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

D. SBE Prime Contract Program (15 points)

Certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime Consultants, proposing at least 51% SBE participation (Prime and/or Sub-Consultant), shall receive fifteen (15) evaluation criteria percentage points.

No evaluation criteria percentage points will be awarded to non-SBE Prime Consultants through subcontracting to certified SBE firms.

VII. PHASE I EVALUATION CRITERIA:

City shall consider the background, experience, qualifications and capability of the DB Firm to provide complete contract documents, as well as Respondent’s project understanding, approach and management plan. Respondent should provide information regarding specific quality experience with projects of a similar nature as follows:

Phase I Evaluation Criteria Summary:	Maximum Points
A. Background, Experience and Qualifications of Design-Build Team	35 Points
B. Project Approach/Management Plan	30 Points
C. Local Team's Experience with City of San Antonio Issues	20 Points
D. SBE Prime Contract Program	15 Points
Total Maximum	100 Points

The subtotal of all possible points that can be awarded for Phase One for items A through C above is 100 points as set out in the table above.

TOTAL MAXIMUM = 100 POINTS.

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.

VIII. PHASE II EVALUATION CRITERIA, IF SELECTED

Based on the evaluation process of Phase I, the Selection Committee shall qualify a maximum of five (5) Respondents to participate in Phase II of the solicitation process. Phase II of the solicitation process shall include requests for additional information from the qualified short-listed firms and may include an invitation for an interview. Additional information requested may include more detailed information from Respondent regarding demonstrated competence and qualifications, the ability of Respondent to meet the Project schedule and other information, as appropriate. During the Phase II of the solicitation process, the Selection Committee shall evaluate and rank the short-listed firms based on the published evaluation criteria set forth below:

Phase II Evaluation Criteria Summary (Short-listed firms only):	Maximum Points
A. Background, Experience and Qualifications of Design-Build Team	30 Points
B. Project Approach/Management Plan	25 Points
C. Local Team's Experience with City of San Antonio Issues	10 Points
D. Budget and Costing Methodology	20 Points
E. SBE Prime Contract Program	15 Points
Total Maximum	100 Points

IX. PHASE I SUBMISSION INSTRUCTIONS

Interested firms should submit one (1) unbound original, signed in ink, five (5) bound copies, and one (1) compact disc (CD) that contains a copy of Respondent's SOQ in Adobe PDF format in a sealed package clearly marked with the project name, "**DESIGN BUILD SERVICES FOR LAS MORAS PREFABRICATED METAL FACILITY**" on the front of the package. All Submittals must be received in City Clerk's Office **NO LATER THAN 10:00 A.M. LOCAL TIME, ON FRIDAY, JUNE 28, 2013**, at the address below. Any submittal received after this time shall not be considered

Mailing Address:

City Clerk's Office, Capital Improvements Management Services Department
Attention: Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office, Capital Improvements Management Services Department
Attention: Contract Services Division
100 Military Plaza
2nd Floor, City Hall
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 must include the sections and attachments in the sequence listed in the RFQ Section VI, Submittal Document Requirements for Phase I of the Solicitation, and each section must be divided by tabs and indexed as indicated in this RFQ. Failure to meet the above conditions may result in disqualification of the proposal.

Respondents who submit responses to this RFQ shall 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.

X. AMENDMENTS TO THE RFQ

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 the Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of qualifications. A Respondent who does not have access to the Internet must notify City in accordance with Section IX, Restrictions on Communication that the Respondent wishes to receive copies of changes, amendments, or written responses to questions by mail.

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

XI. RESTRICTION ON COMMUNICATION

Respondents are prohibited from communicating with elected City officials and their staff regarding the solicitation, Statements of Qualifications or Proposals from the time the solicitation has been released until the contract is posted as a City Council agenda item. Respondents are prohibited from communicating with City employees, or any outside consultant(s) assisting in the solicitation process, from the time the solicitation 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 solicitation and/or Qualification Statement/Proposal 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. Respondent may ask verbal questions concerning this RFQ at the Pre-Submission Conference.
2. Respondent may submit written questions concerning this RFQ to the Staff Contact Person listed below until no later than **4:00 p.m., on Tuesday, June 17, 2013**. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by electronic mail:

Diana Vasquez, 207-5872 or diana.vasquez@sanantonio.gov (via email)

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

Diana Vasquez, Contract Officer
City of San Antonio, Capital Improvements Managements Services Department
Contract Services Division
114 W. Commerce Street, Room 913, San Antonio, TX 78205

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

Respondent and/or its agents are encouraged to contact the Small Business Office of the Economic Development Department (hereafter referred to as “EDD”) for assistance or clarification with issues specifically related to the City’s Small Business Economic Development Advocacy (hereafter referred to as “SBEDA”) Program policy and/or completion of the SBEDA form. The point of contact at EDD is Shuchi Nagpal. Ms. Nagpal may be reached by telephone at (210) 207-0071 or by e-mail at Shuchi.Nagpal@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.*

City reserves the right to contact any Respondent to receive clarification or to negotiate a contract with the DB Firm being recommended for contract award if such is deemed desirable by City.

XII. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

It is the intent of City of San Antonio to award this contract to the DB Firm(s)/Team(s) whose services provide the best value for City, based on the selection criteria set out in this RFQ, which is Phase I of the solicitation process, and in Phase II of the solicitation, as determined when considering the relative importance of price, capability and other published evaluation criteria. City reserves the right to adopt the most advantageous interpretation of the SOQ, additional information presented and the subsequent Costing Methodology. City is not bound to accept the lowest priced Costing Methodology that is not in the best interest of City, as determined solely by City.

The SOQs submitted in response to this RFQ together with the subsequent additional information and Costing Methodology submitted by qualified Respondents in Phase Two of the solicitation will be analyzed based on the published criteria by City in determining which DB Firm will provide the best value to City.

- A. The contract, if awarded, will be awarded to the DB Firm whose submittal is deemed most qualified to City, as determined by the Selection Committee, and subject to approval of the San Antonio City Council.
- B. City may accept any submittal in whole or in part. If subsequent negotiations are conducted, said negotiations shall not constitute a rejection or alternate solicitation on the part of City. However, final selection of DB Firm is subject to the San Antonio City Council’s 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 the subsequent interview process, and to waive informalities and irregularities in the submittals received. City also reserves the right to terminate this solicitation, and reissue a subsequent solicitation, and/or remedy technical errors in the process.
- D. City will require the selected DB Firm to execute a contract in substantially the form as attached with City, prior to San Antonio City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of

bonds and insurance, as required in the contract. Contract documents are not binding on City until approved by the San Antonio City Attorney.

- E. 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 solicitation neither commits City to enter into a contract, award any services related to this solicitation, nor does it obligate City to pay any costs incurred in preparation or submission of a response or in anticipation of a contract.
- G. The successful DB Firm must be able to formally invoice City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by City. City administers its design and construction management through an Internet-based management system. All vendors are required to comply with Specification 700 of City of San Antonio Standard Construction Specifications.
- 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 – Form 4 in this 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 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
<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 and/or any portions thereof 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-Submission Conference, if any, or during any phase of the selection process shall be borne solely by Respondent.
- N. All provisions in Respondent's submittal, including any estimated or projected costs, shall remain valid for one hundred twenty (120) days following the deadline date for submissions or, if a Proposal is accepted, throughout the entire term of the contract.
- O. Subsequent to the issuance of this solicitation, CIMS reserves the right to amend it, waive any requirement or irregularity, request modifications to submittals, providing all teams are treated equally, and reject any and all submittals for any reason. The CIMS Department further reserves the right to award one or more contracts for these projects as deemed in its best interest, and to request changes in the composition of any team.
- P. SBEDA - CIMS shall follow the SBEDA Ordinance Compliance Provisions outlined in **Article XII** of this RFQ.
- Q. SOLICITATION PROCESS REVIEW: Any Respondent desiring a review of this RFQ 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 his/her designee shall review Respondents concerns and the solicitation process for legitimacy and procedural correctness. After performing a full review, the CIMS Director shall notify Respondent in writing of his/her determination.
- R. INDIVIDUAL SUBMITTAL 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-time debriefing after 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 shall not be eligible for future debriefings on future solicitations for the remainder of the calendar year. Any Respondent meeting the above criteria that desires an individual submittal debriefing 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.

XIII. 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 - 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://sanantonio.gov/SBO/SmallBusinessDevelopmentAdvocacyProgram/RevisedSBEDAOrdinanceForms.aspx>) with its solicitation response. 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 shall not be considered.**

Exception Request - 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://sanantonio.gov/SBO/SmallBusinessDevelopmentAdvocacyProgram/RevisedSBEDAOrdinanceForms.aspx>) with its solicitation response. Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

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 also 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 Respondent to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the City as fraudulent if Respondent attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances

where a commercially useful function is not actually performed by the S/M/WBE firm, the Respondent 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 Respondent 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 Respondent’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 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 Respondent’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 – City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Respondent 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 for purposes of providing goods or services for and/or the City. For purposes of this agreement, this term refers to the Respondent.

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, the DB Firm/Team is the Respondent.

Responsible – a firm which is capable in all respects fully to 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 Respondent in furtherance of the Respondent’s performance under a contract or purchase order with the City. A copy of each binding agreement between the Respondent and its SubConsultants shall be submitted to 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 Respondent’s and/or S/M/WBE firm’s performance and payment under City contracts due to the City’s imposition of Penalties and Sanctions 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 Respondent’s commitment for the use of Joint Venture Partners and/or Sub-Consultants/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 Respondent’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-Consultants/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 Respondent 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 Respondent'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. Respondent voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the City. Without limitation, Respondent further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. Respondent fully shall cooperate fully with the Small Business Office and other City departments in its data collection and monitoring efforts regarding Respondent'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. Respondent fully shall cooperate 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 Respondent or its SubConsultants or suppliers;
3. Respondent 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. Respondent shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Respondent'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 Respondent to replace the Sub-Consultant / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Sub-Consultant / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Respondent of work previously designated for performance by 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. Respondent immediately shall notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.
6. Respondent shall retain all records of its Sub-Consultant payments for this contract for a minimum of four (4) 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 Respondent's Sub-Consultant / Supplier Utilization Plan, the Respondent 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 Respondent and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. Respondent acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Respondent 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 Respondent 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

City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. Respondent 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. 1. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Respondent affirms that if it is presently certified as an SBE, Respondent agrees not to subcontract more than 49% of the contract value to a non-SBE firm, **and**

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is also being awarded pursuant to the SBE Subcontracting Program. Respondent agrees to subcontract at least **twenty percent (20%)** 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 Respondent 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, **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. Respondent agrees to subcontract at least **fourteen percent (14%)** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Sub-Consultant/Supplier Utilization Plan which Respondent 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 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 M/WBE Sub-consultant, and documentation including a description of each M/WBE Sub-Consultant's scope of work and confirmation of each M/WBE 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 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 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 Respondent 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, Respondent 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 future City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Respondent's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Respondent 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 Respondent, Respondent 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 Respondent's reported subcontract participation is accurate. Respondent shall pay its Sub-Consultants in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten (10) days of receipt of payment from City. In the event of Respondent's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Respondent, and no new City contracts shall be issued to the Respondent until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, Respondent acknowledges and agrees 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 Respondent or other business firm from eligibility for providing goods or services to the City for a period not to exceed two (2) years (upon City Council approval).