



City of San Antonio

ADDENDUM IX

SUBJECT: Request for Qualifications (RFQ) for Catering and Concessions for the Convention Center (**RFQ 014-007**) Scheduled to Open: January 26, 2015; Date of Issue: May 21, 2014

FROM: Denise D. Gallegos, C.P.M, CPPB
Procurement Administrator

DATE: December 11, 2014

**THIS NOTICE SHALL SERVE AS ADDENDUM NO. IX TO THE ABOVE REFERENCED
REQUEST FOR QUALIFICATIONS**

QUESTIONS SUBMITTED IN ACCORDANCE WITH RFQ SECTION 011 RESTRICTIONS ON COMMUNICATION:

Question 1: Does an ESBE qualify as an SBE?

Response: Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs.

Question 2: COSA has provided a new definition of Joint Venture (JV). The definition of JV requires “sharing of management, profits and losses commensurately with its contribution.” This RFQ requires large capital investment that can be provided through external “debt” or through the investment of “equity.” If debt is used, the venturers will be required to repay the debt before sharing profits and losses. If equity is used, the venturer that provides the equity will expect its repayment and a return on its equity over and above its JV ownership.

Example: Out of town catering company (OOT) invites local SBE/MBE entities to participate in a newly-formed JV (or LLC) to respond to the RFQ. Local companies have not contracted for catering/concessions as large as HBG requirements, so they are concerned with assumption of liabilities equal to their ownership of new JV. OOT agrees to “invest” with equity all capital requirements for the JV, agreeing to receive preferential returns from the JV to repay equity (plus any agreed return to compensate OOT for risk of capital). Local cos. would not have individual liability to repay OOT equity other than this preferential return. This agreement will be reflected in the JV (LLC regulations) agreement (eg: sharing of profits/losses would require repayment of equity first before equal sharing of profits/losses from operations of the JV (LLC). Local cos. will also provide other services to the JV (LLC) and bring knowledge/relationships of local practices and “sweat equity” to the transaction. Assume that profits will be allocated 90/10 to repay equity and then revert to 50/50 upon repayment.

Does this disproportionate allocation of sharing losses and profits to repay one venturer's equity infusion (similar to external debt) violate the definition of JV? SBEDA goals of the RFQ, 20 points are awarded for Evaluation Preference Points if M/WBE partners are 50% partners under JV definition. Whether capital requirements of the RFQ are paid through external debt or one venturer's equity, it has to be paid first. The JV (LLC) should still qualify for all 20 EPPs. Can you confirm this interpretation?

Response: Multiple factors are examined in determining whether a respondent meets the definition of a JV. The "Joint Venture Information Form" included in Addendum VIII to this RFP is designed to elicit information concerning those factors. All of these factors must be considered, collectively, to determine whether the definition of a JV is met and the allocation of preference points under all the programs. As a reminder, the ownership and location of the individual entities will be considered in the award of local preference points.

Question 3: If one entity in a joint venture has changed from a sole proprietorship to a corporation within the past year and has not really employed anyone for the last year, but operated in San Antonio, would that be looked passed to see the "substance" of that partner?

Response: No, the City will review and evaluate the business entities comprising the joint venture responding to the RFQ and whether they meet the definition of a City Business in the award of local preference points.

Question 4: Please clarify SBEDA API?

Response: The Small Business Office applied a SBE subcontracting goal of 20% and M/WBE subcontracting goal of 14% for this RFQ. In addition, this RFQ includes a M/WBE Joint Venture incentive consisting of evaluation preference points. Please see pp. 21 and 22 of the RFQ for additional details.

Question 5: Define "City Business".

Response: Please see answer to question number 29 on Addendum VIII.

Question 6: Regarding the Employee Cafeteria \$3.50 meal and drink for City employees, is this meal/cost subsidized at all by the City?

Response: No, but Employee Cafeteria sales are excluded from Gross Receipts for City Commission purposes.

Question 7: For Local Preference, joint ventures have to be located in San Antonio, but for SBEDA, they don't?

Response: To be eligible for Local Preference points, a firm must be located within the City of San Antonio city limits. To be SBEDA eligible, firms must be certified through the SCTRCA and must be headquartered, or must have a significant business presence in the San Antonio Metropolitan Statistical Area for at least one year. The San Antonio Metropolitan Statistical Area includes the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Question 8: Does attachment J need to be submitted to the Small Business Office prior to deadline for submittal?

Response: Respondents may submit Attachment J to the Small Business Office prior to deadline however, it is required to be included in response package by due deadline.

Question 9: Venturers of a JV (or the members of a LLC) can receive the Local Preference (LP) points if they independently meet the definition of a City Business (CB), (i.e., HQ for more than 1 year in COSA), even though the JV itself (or LLC) would not receive any LP points. The JV (LLC) does not meet the definition of a CB because it may be only recently formed (or to be formed) for the purpose of responding to this RFQ. My question is whether a venturer (or LLC member) that may not technically meet the definition of a CB, because its choice of entity was changed to comply with the requirements of the RFQ, would be awarded any LP points if it can prove that the ownership of the venturer meets the COSA HQ requirement?

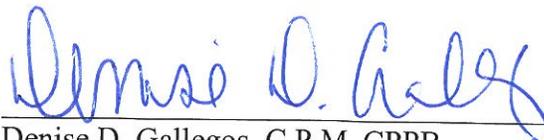
Example: Davy Crockett, as a sole proprietor, has sold Alamo raspas for many years. As a local business for many years and a veteran, an out-of-town Catering Company approaches Crockett to be a venturer (member) of its JV (LLC). In order to qualify under SBEDA as a Veteran-owned company, Crockett organizes as a LLC. The Crockett LLC would not technically meet the definition of a CB (has not HQ in COSA for one year) and not be eligible for LP points, even though Mr. Crockett, as owner of Crockett LLC, has been HQ in San Antonio for many years.

It would be logical to assume that the LP ordinance would “look through” the entity structure of the joint venturer (or member), as it “looks through” the JV/LLC. The RFQ is drafted to encourage local participation of SBE/MBE persons. If those individuals change from an individual to another form of entity for the purposes of complying with the RFQ, they should not be placed at a disadvantage of losing LP points, since by any measure they would qualify as a CB. Do you agree?

Response: Please see response to question number 3.

Question 10: Under question 4, it is unclear whether a DUNS number is required for either the JV (LLC) or its venturers (members). The question is whether the term “if available” applies to the entity and/or its venturers/members. For example, the JV (LLC) may not be formed until (and unless) COSA selects its winning bid, so it cannot be assigned a DUNS number. As to the potential venturers (members) of the entity, there may be no reason for a SBE/MBE to apply for a DUNS number if it will not be part of the winning team. Based on that premise, it would seem logical that COSA would not require a DUNS number for either the JV or its venturers until a winning team is announced. As you know, the DUNS application process can take up to 30 business days if not expedited and may involve some fees.

Response: Please see answer to question number 4 on Addendum VIII. Each member of the joint venture must provide a DUNS number.



Denise D. Gallegos, C.P.M, CPPB
Procurement Administrator
Finance Department – Purchasing Division