

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ON-CALL ENVIRONMENTAL CONSULTANT SERVICES FOR  
THE CITY OF SAN ANTONIO CITY'S CENTER CITY DEVELOPMENT  
AND OPERATIONS DEPARTMENT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, pursuant to Ordinance No. 2017-11-\_\_\_\_-\_\_\_\_ passed and approved on the \_\_\_\_ day of November, 2017 and SCS Engineers by and through its Vice President Kevin D. Yard, P.E. ("Consultant"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 "Consultant" is defined in the preamble of this Agreement and includes its successors.
- 1.3 "Director" shall mean the director of City's Center City Development & Operations Department or his designee.

**II. TERMS AND CONDITIONS**

- 2.1 **Incorporated Documents.** This Contractual Agreement comprises this document as well as the Exhibits listed below. Terms and conditions for performance and compensation for this Agreement are set forth within this document as well as in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:
  - 1. Exhibit I, a Request for Qualifications (RFQ) for On Call Environmental Consulting Services for the City's Center City Development and Operations Department (RFQ 17-089), released by the City on June 10, 2017;
  - 2. Exhibit II, Addendum I, RFQ 17-089 dated July 10, 2017;
  - 3. Exhibit III, Price Schedule;
  - 4. Exhibit IV, Copy of enabling Ordinance No. 2017-11-\_\_\_\_-\_\_\_\_

**Referenced Documents:** All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

**Conflict and Priority:** The Enabling Ordinance governs the agreement and any exhibits/attachments in case of conflict.

- 2.2 **Term of Performance and Termination Date:** Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement is for one (1) year and shall commence after approval by the City Council as signified by the passage of an Ordinance, on the date recited in the enabling Ordinance, and terminate one year hence. At City's exclusive option, City may extend the contract for up to one (1) additional one-year period under the same terms and conditions with no further City Council action. All extensions shall be in writing and signed by the Director, or designee. City may terminate a contract at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory.
- 2.3 **Non-Appropriation:** If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period beyond the initial term is subject to and contingent upon subsequent appropriation.
- 2.4 This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

### III. SCOPE OF SERVICES

- 3.1 Consultant agrees to provide the on-call environmental services described in this Article III entitled Scope of Services in exchange for compensation described in Article IV. Compensation.

**SCOPE OF SERVICES:** On-call professional environmental consulting services including, but not limited to, conducting environmental site assessments, preparing Quality Assurance Project Plans (QAPPs), conducting lead and asbestos surveys, developing all required reports, performing independent third-party review of environmental reports, assisting with preparation of future grant proposals, and assisting with program strategy, and development.

**OBJECTIVE:** To identify and delineate contaminants that may exist on properties located within the City's Brownfield Redevelopment Program Area. Consultant shall perform environmental consulting activities for Brownfields Site Assessments including lead and asbestos surveys, Phase I Environmental Site Assessments (ESAs), Phase II ESAs, and Phase III ESAs for properties within the program areas. Additionally, Consultant may be requested to assist with program strategy, community outreach, future grant proposals, and independent third party review of ESA reports and related documents.

Consultant shall be knowledgeable in all applicable Federal, State, and Local environmental regulations relating to environmental assessments and remediation, including, but not limited to, City of San Antonio Unified Development Code; Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); American Society for Testing and Materials Environmental Site Assessment Process; All Appropriate Inquiries (AAI) Final Rule; EPA Quality Management Systems; Quality Assurance Project Plans for Brownfields; Resource Conservation and Recovery Act (RCRA); Texas Commission on Environmental Quality (TCEQ) Petroleum Storage Tank Guidance, forms and process, Texas Administrative Code Chapter 334, Texas Risk Reduction Program (TRRP); Toxic Substances Control Act (TSCA); and the TCEQ Voluntary Cleanup Programs. Consultant awarded contracts under this RFQ must adhere to all pertinent grant requirements as outlined in the Assessment Terms and Conditions, referenced in the RFQ.

The EPA requires that all federally funded environmental monitoring and measurement efforts participate in a centrally managed quality assurance program. Consultant generating data under this quality assurance program has the responsibility to implement procedures to ensure that the precision, accuracy, and completeness of its data are known and documented. To meet this responsibility, EPA requires that each Brownfields Project prepare a written Quality Assurance

Project Plan (QAPP), which must be submitted to and approved by the EPA prior to the commencement of sampling on any targeted brownfields site.

**BROWNFIELD SITE ASSESSMENTS:** Consultant shall marshal its knowledge of and familiarity with EPA processes, procedures, and Federal regulations is highly desirable when performing the below assessments.

**Phase I ESAS:** Conduct Phase I ESAs for program applicants in accordance with American Society for Testing and Materials (ASTM) E1527-13, City guidelines, and United States Environmental Protection Agency All Appropriate Inquiries Final Rule, 40 CFR Part 312 (AAI) requirements.

**Phase II ESAs:**

- Perform subsurface investigations to identify the presence or absence of potential contaminants, and delineate the vertical and horizontal extent of contamination if encountered. All subsurface investigation studies shall be conducted in accordance with Federal, State and local regulations, as well as applicable industry standards.
- Any samples (soil, water, and air) collected shall be analyzed by an authorized Texas Commission on Environmental Quality (TCEQ) laboratory and Consultant(s) shall render conclusions and recommendations in the Phase II ESA report based on Texas laws and regulations.
- Phase II ESAs shall meet minimum ASTM E1903-11 and environmental industry requirements. Consultant(s) will be required to provide recommendations based on Texas Risk Reduction Program guidelines.
- Additional services may include preparation of scopes of work, Quality Assurance Project Plans (QAPPs), Sampling and Analysis Plans, Health and Safety Plans, site investigations, and reports on the environmental condition of soil, surface water, groundwater, or other affected media in accordance with Federal and State approved standards, regulations and guidance. Reports shall meet minimum ASTM E1903-11 requirements, 2 CFR 1500.11 requirements, and all State imposed regulations.

**Phase III ESAs:** Cleanup Alternatives/ Remediation and Reuse Plans will be produced. The plans shall describe the nature and extent of the environmental contamination and provide options for the remediation, engineering and/or institutional controls at the site. The plans, where appropriate, shall include options for greener, sustainable cleanups and waste diversion. The plans shall include the consideration of reuse options consistent with public health environmental objectives at the site, and in accordance with applicable cleanup regulations. All Phase III activities shall be completed in accordance with all applicable Federal, State and local environmental regulations. In some instances, Consultant may be required to review construction site plans and prepare documentation to outline cleanup and remediation alternatives, and/or soil reuse plans.

**Lead Paint and Asbestos Surveys:** Additionally, Consultant will provide reports for asbestos/lead-based paint inspections and surveys in accordance with all Federal, State, and local environmental regulations.

**Development of Program Strategy and Community Outreach:** Consultant will assist with program strategy to enhance the growth of the program, provide recommendations for greater visibility of the program, and assist with a plan of action to target properties eligible to be revitalized and assisted under the City's Brownfield Redevelopment Program, if requested to do so. Attend and/or facilitate community meetings (as necessary) regarding site activities and program development.

**Grant Proposal Assistance:** Consultant will assist with identifying grant opportunities and preparing grant proposals to secure additional program funding for sustainable program growth, if requested to do so. Grant opportunities may include those offered through the EPA or other grant opportunities.

**Independent Third-Party Review of Environmental Reports:** Consultant will ensure quality data and recommendations adhere to the Texas Risk Reduction Program rules and regulations, EPA requirements, and industry standards.

**Legal Compliance:** Consultant will perform all work under this Contract in accordance with all Local, State and Federal regulations required. Consultant must follow the Texas Commission on Environmental Quality (TCEQ) rules and regulations, as applicable. Additional information is detailed in Exhibit 4, Assessment Terms and Conditions of the RFQ. Consultant must possess and demonstrate all applicable licenses, permits, insurance and training required to perform environmental work activities. Where professional consultants are concerned, the City's review of qualifications must consider highest competency as the primary criterion.

### 3.2 PROCESS AND PROCEDURES

Assessments will be implemented through a series of work authorizations which shall govern the performance of services for which the City has received, or will receive local, State, and/or Federal funding. Work authorizations shall be executed by both parties and, at a minimum, shall describe the services to be performed under the most stringent requirements applicable to the funding source. City will provide formal authorization to initiate the project. **The City does not guarantee a minimum number of projects or a minimum dollar amount for each project.** The Consultant(s) are not authorized to begin work on any project until the City issues a Notice to Proceed for the project. The procedure for establishing each project assignment by negotiating subsequent written authorizations is as follows:

- **Proposal Request:** Upon identifying a specific assignment, the City will issue a written proposal request to the Consultant describing the project, site location map, services requested, proposed schedule, and method of compensation selected by the City.
- **Project Proposal:** Consultant(s) will be provided with contact information for the program applicant and/or property owner and a Right of Entry Agreement. At that time, Consultant(s) is responsible for preparing a proposal for the given scope of work and submitting to the City within the timeline established by the City.
- **Notice to Proceed:** Upon City's approval of the project proposal, the City will issue an approval letter and a Notice to Proceed. Consultant(s) are required to adhere to the project schedule set up in the approval letter. Extensions of the deadlines must be submitted in writing and are subject to approval by the City.

### 3.3 ADDITIONAL REQUIREMENTS

#### Intellectual Property.

Consultant agrees to abide by the following regarding intellectual property rights:

Consultant will pay all royalties and licensing fees. Consultant will hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It will defend all suits for infringement of any Intellectual Property rights. Further, should Consultant have reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it will promptly give such information to the City.

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately:

**Either:**

- 1) obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, OR,
- 2) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, **AND**
- 3) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

Consultant will: 1) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement; 2) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses; and 3) indemnify the City against any monetary damages and/or costs awarded in such suit; **Provided that**, 1) Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City; 2) the Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim; and 3) the liability claimed will not have arisen out of the City's negligent act or omission, and the City promptly provide Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

**Ownership and Licenses.**

In accordance with Texas law, Consultant acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Consultant pursuant to this Contract shall be the subject of any copyright or proprietary claim by Consultant.

The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the State, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Consultant acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFQ, will belong to and be the property of City. Consultant will be required to turn over to City, all such records as required by said contract. Consultant shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Consultant agrees to comply with all applicable Federal, State and local laws, rules and regulations governing documents and ownership, access and retention thereof.

Further, all work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate. City shall notify Consultant in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

#### **IV. COMPENSATION TO CONSULTANT**

- 4.1 Consultant understands, accepts and agrees that, as authorized by the enabling Ordinance:
- 4.1.1. The total annual budget sums under RFQ 17-089 will not exceed \$500,000.00 unless the enabling Ordinance is amended to reflect that change.
- 4.1.2. City may enter into three on-call contracts with the maximum contract capacity of \$300,000.00 and has the authority, through its Director, to assign work tasks (see section 3.2 Process and Procedures above) as needed based on Department requirements and considering experience, expertise and availability. The City neither guarantees that the entire contract capacity amount of \$300,000.00 will be spent under the on-call contract nor that any minimum amount of work shall be authorized.
- 4.1.3. Consultant shall be paid for actual work performed which may be less than the maximum contract capacity of \$300,000.00. Unless the specific project requirements are determined to preclude a specific consultant from consideration, City shall attempt to allocate the work evenly between each Consultant.
- 4.2 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities (work) set forth in this Agreement, Consultant will be compensated as detailed in the Price Schedule, attached as Exhibit III. No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the Price Schedule submitted by the Consultant. Total payments to Consultant cannot exceed that amount set forth, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefor.
- 4.3 Consultant shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Center City Development & Operations Department, P.O. Box 839966, San Antonio, Texas 78283-3966.
- 4.4 Final acceptance of work products and services require written approval by City through its Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City without limitation; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.
- 5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

## **VI. RECORDS RETENTION**

- 6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant's expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents at its sole cost and expense.
- 6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
  - 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or

7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required; or

7.4.4 Performing unsatisfactorily.

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested by City.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to



have been duly given if and when delivered personally (with receipt acknowledged), an e-mail upon notification of receipt to an email address given for purpose of communication under this Agreement, or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

Director  
City of San Antonio  
Center City Development & Operations Department  
P.O. Box 839966  
San Antonio, TX 78283

If intended for Consultant, to:

James Lawrence, P.G.  
SCS Engineers  
1901 Central Drive, Suite 550  
Bedford, TX 76021

## IX. NON-DISCRIMINATION

Non-Discrimination. As a party to this contract, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

## X. INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "RFQ 17-089 RFx: 6100009004 ENVIRONMENTAL CONSULTANT SERVICES" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Center City Development and Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 10.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined <u>Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Contractor's Pollution Liability	\$5,000,000 each occurrence \$5,000,000 General Aggregate

10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Center City Development and Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

10.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

\* Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

\* Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

\* Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

\* Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

10.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

10.12 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

## **XI. INDEMNIFICATION**

11.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY to the extent directly or indirectly arising out of CONSULTANT'S negligent activities under this Agreement, including any negligent acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's negligent activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.
- 11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

- 12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.
- 12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: N/A. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.
- 12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

### **XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

- 14.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA 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.

#### **14.2 Definitions.**

- 14.2.1 **Affirmative Procurement Initiatives (API)** – Refers to various 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). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

- 14.2.2 **Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This

Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City's 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

- 14.2.3 **Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).
- 14.2.4 **Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.
- 14.2.5 **Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective respondents and subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. 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.
- 14.2.6 **Certification** – 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 may accept 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.
- 14.2.7 **City** – refers to the City of San Antonio, TX.
- 14.2.8 **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution 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.

- 14.2.9 **Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.
- 14.2.10 **Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.
- 14.2.11 **Emerging SBE (ESBE)** – a certified SBE 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 whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 14.2.12 **Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 14.2.13 **Evaluation Preference** – an API that may be applied by the Goal Setting Committee 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 Respondents.
- 14.2.14 **Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.
- 14.2.15 **Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by

City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

- 14.2.16 **Good Faith Efforts** – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation 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., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)
- 14.2.17 **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).]
- 14.2.18 **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.
- 14.2.19 **Individual** – an adult person that is of legal majority age.
- 14.2.20 **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, 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."
- 14.2.21 **Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements



between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

**14.2.22 Minority/Women Business Enterprise (M/WBE)** – firm that is certified 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.

**14.2.23 M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City's M/WBE Program APIs.

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

(1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or

(2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

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

**14.2.25 M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

**14.2.26 Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified 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 the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

- 14.2.27 **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 with origins in any of the black racial groups of Africa.

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

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

Native Americans: Persons having no less than 1/16<sup>th</sup> percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

- 14.2.28 **Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.
- 14.2.29 **Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.
- 14.2.30 **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).
- 14.2.31 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.
- 14.2.32 **Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 14.2.33 **Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).
- 14.2.34 **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, 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.

- 14.2.35 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.
- 14.2.36 **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.
- 14.2.37 **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.
- 14.2.38 **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City's 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).
- 14.2.39 **Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.
- 14.2.40 **SBE Directory** – a listing of small businesses that have been certified for participation in the City's SBE Program APIs.
- 14.2.41 **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.
- 14.2.42 **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.
- 14.2.43 **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.

- 14.2.44 **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.
- 14.2.45 **Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.
- 14.2.46 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City's issuance of a notice to proceed.
- 14.2.47 **Suspension** – the temporary stoppage of an 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, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.
- 14.2.48 **Subcontractor/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 Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Consultant's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.
- 14.2.49 **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 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 Ordinance is not inclusive of MBEs.

#### 14.3 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:

- 14.3.1 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 Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
- 14.3.2 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 Subcontractors or suppliers;
- 14.3.3 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 Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
- 14.3.4 Consultant shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
- 14.3.5 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.
- 14.3.6 Consultant shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
- 14.3.7 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 Subcontractor / Supplier Utilization Plan, the Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- 14.3.8 Consultant acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Consultant for this project has registered and/or maintained active status in the City's Centralized Vendor Registration System (CVR), and

Consultant has represented to City which primary commodity codes each Subcontractor will be performing under for this contract. City recommends all Subcontractors to be registered in the CVR.

- 14.4 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. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), CONTRACTOR 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. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONTRACTOR affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

- 14.5 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 Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. 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 Subcontractor and supplier agreements entered into pursuant to City contracts.
- 14.6 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 Subcontractors, including HUBZone Subcontractors, to ensure that the Consultant's reported subcontract participation is accurate. Consultant shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of 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.

- 14.7 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:

- 14.7.1 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;
- 14.7.2 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;
- 14.7.3 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;
- 14.7.4 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
- 14.7.5 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).

## **XV. CONFLICT OF INTEREST**

- 15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10

- percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Consultant does not cause a City employee or officer to have a prohibited financial interest in the Contract. Consultant further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant. CCDO Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

## **XVII. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XVIII. LICENSES/CERTIFICATIONS**

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XIX. COMPLIANCE**

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

## **XX. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and



signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

#### **XXI. LAW APPLICABLE & LEGAL FEES**

- 21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

#### **XXII. LEGAL AUTHORITY**

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

#### **XXIII. PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

#### **XXIV. CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

#### **XXV. INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

#### **XXVI. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

**XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.
- 27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**CONSULTANT**

\_\_\_\_\_  
(Signature)

Printed Name: Sheryl L Sculley  
Title: City Manager  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

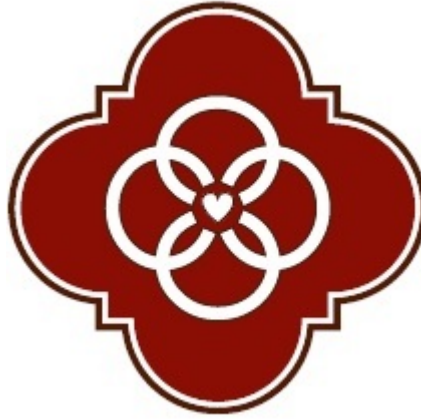
Printed Name: Kevin D. Yard, P.E.  
Title: Vice President  
Date: November 10, 2017

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney

**EXHIBIT I**  
**Request for Qualifications (RFQ) for On Call**  
**Environmental Consulting Services for the City's**  
**Center City Development and Operations Department**  
**(RFQ 17-089)**

**CITY OF SAN ANTONIO**  
**CENTER CITY DEVELOPMENT & OPERATIONS DEPARTMENT**



**REQUEST FOR QUALIFICATIONS**  
**("RFQ")**  
for  
**ENVIRONMENTAL CONSULTANT SERVICES**  
**(RFQ 17-089 RFx: 6100009004)**

Release Date: Tuesday, June 20, 2017  
Proposals Due: Monday, July 24, 2017

## 002 - TABLE OF CONTENTS

002 - TABLE OF CONTENTS.....	2
003 - INTRODUCTION .....	3
004 - BACKGROUND .....	3
004 - SCOPE OF SERVICE.....	3
005 - ADDITIONAL REQUIREMENTS .....	6
006 - TERM OF CONTRACT.....	7
007 - PRE-SUBMITTAL CONFERENCE .....	7
008 - PROPOSAL REQUIREMENTS .....	8
009 - CHANGES TO RFQ.....	9
010 - SUBMISSION OF PROPOSAL .....	9
011 - RESTRICTIONS ON COMMUNICATION .....	11
012 - EVALUATION OF CRITERIA .....	11
013 - AWARD OF CONTRACT AND RESERVATION OF RIGHTS .....	12
014 - SCHEDULE OF EVENTS .....	13
015 - RFQ EXHIBITS .....	14
016 - RFQ ATTACHMENTS .....	29

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### **003 – INTRODUCTION**

The City of San Antonio City's Center City Development and Operations Department (CCDO) is soliciting responses from qualified consultants with experience in implementing United States Environmental Protection Agency (EPA) Brownfields Assessment Grants. The consultant(s) will be expected to coordinate, direct and oversee brownfields assessment activities as described below. This work should meet all applicable Federal requirements for work funded by the grants in compliance with 2 CFR Part 200.317 – 200.326. The selected environmental consultant(s) should be experienced and qualified to perform Phase I, Phase II and Phase III environmental assessments and remediation planning at various sites throughout San Antonio's inner city.

### **004 - BACKGROUND**

On October 1, 2015, the City of San Antonio (City) was awarded 2 (two) three-year Community-Wide Assessment Grants from the U.S. Environmental Protection Agency (EPA), each in the amount of \$200,000 for a total of \$400,000 to be spent by September 30, 2018. One grant provides environmental site assessments for properties with hazardous substances concerns, and the other for petroleum concerns. The City's Center City Development and Operations Department administers the Brownfield Redevelopment Program and is seeking Request for Qualifications (RFQ) from experienced and qualified consulting firms for on-call professional environmental consulting services including, but not limited to, conducting environmental site assessments, preparing Quality Assurance Project Plans (QAPPs), conducting lead and asbestos surveys, developing all required reports, performing independent third-party review of environmental reports, assisting with preparation of future grant proposals, and assisting with program strategy, and development.

Two or more contracts are anticipated to be awarded in response to this RFQ retained through on-call contracts. As projects are identified, work to be performed by the selected Consultant(s) shall be authorized. The contract term is anticipated to commence in 2017 and shall be for a one (1) year term. The City has the exclusive option to extend the contract(s) for up to one (1) additional one-year period under the same terms and conditions. The estimated fee per project will vary, with a maximum contract capacity of \$500,000 per year.

For purposes of satisfying requirements of the Texas Professional Services Procurement Act (hereafter referred to as "the Act"), this RFQ is designed to anticipate responses from professional consultants who may be Geologists, Geoscientists, Environmental Scientists, Engineers or others who may be covered by the Act. Where environmental professionals are concerned, City's review of qualifications shall consider highest competency as the primary criterion.

The enabling City Ordinance shall identify the total amount of money that may be expended under the contract(s) anticipated to be awarded in connection with this RFQ. The City neither guarantees that the entire contract capacity amount will be spent under the on-call contracts nor that any minimum amount of work shall be authorized. Unless the specific project requirements are determined to preclude a specific consultant from consideration, if more than one contract is awarded pursuant to this solicitation, CCDO shall attempt to allocate the work evenly.

### **004 - SCOPE OF SERVICE**

4.1 PREFERRED QUALIFICATIONS: Preference will be given to Respondents who possess the education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of environmental contamination. The credentials of an environmental professional include individuals who possess the following combinations of education and experience:

- 4.1.1 Hold a current Professional Geoscientist (P.G.) license or registration from the State of Texas, be in good standing with the respective Texas Board of Professional GeoScientists, and have the equivalent of five (5) years of full-time relevant experience; or
- 4.1.2 Be licensed or certified by the State of Texas to perform environmental inquiries as defined in 40 CFR Part 312.21 and have the equivalent of five (5) years of full-time relevant experience; or
- 4.1.3 Be qualified and have licensed, trained, and/or certified personnel in accordance with Federal and State regulations to provide various environmental consulting services on staff or subcontract with a qualified firm to provide the services proposed.

- 4.1.4 Perform all work under this Contract in accordance with all Local, State and Federal regulations required. Consultant must follow the Texas Commission on Environmental Quality (TCEQ) rules and regulations, as applicable. For additional information see enclosed Exhibit 4, Assessment Terms and Conditions. Consultant must possess and demonstrate all applicable licenses, permits, insurance and training required to perform environmental work activities. Where professional consultants are concerned, the City's review of qualifications must consider highest competency as the primary criterion.
- 4.2 The objective of this project is to identify and delineate contaminants that may exist on properties located within the City's Brownfield Redevelopment Program Area, please see reference maps exhibit 5 and exhibit 6. The selected Consultant(s) shall perform environmental consulting activities for Brownfields Site Assessments including lead and asbestos surveys, Phase I Environmental Site Assessments (ESAs), Phase II ESAs, and Phase III ESAs for properties within the program areas. Additionally, the selected Consultant(s) may be requested to assist with program strategy, community outreach, future grant proposals, and independent third party review of ESA reports and related documents.
- 4.3 The selected Consultant(s) shall be knowledgeable in all applicable Federal, State, and Local environmental regulations relating to environmental assessments and remediation, including, but not limited to, City of San Antonio Unified Development Code; Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); American Society for Testing and Materials Environmental Site Assessment Process; All Appropriate Inquiries (AAI) Final Rule; EPA Quality Management Systems; Quality Assurance Project Plans for Brownfields; Resource Conservation and Recovery Act (RCRA); Texas Commission on Environmental Quality (TCEQ) Petroleum Storage Tank Guidance, forms and process, Texas Administrative Code Chapter 334, Texas Risk Reduction Program (TRRP); Toxic Substances Control Act (TSCA); and the TCEQ Voluntary Cleanup Programs. All Consultants awarded contracts under this RFQ must adhere to all pertinent grant requirements as outlined in the Assessment Terms and Conditions, referenced as exhibit 4.
- 4.4 The EPA requires that all federally funded environmental monitoring and measurement efforts participate in a centrally managed quality assurance program. Any consultant generating data under this quality assurance program has the responsibility to implement procedures to ensure that the precision, accuracy, and completeness of its data are known and documented. To meet this responsibility, EPA requires that each Brownfields Project prepare a written Quality Assurance Project Plan (QAPP), which must be submitted to and approved by the EPA prior to the commencement of sampling on any targeted brownfields site.
- 4.5 The selected Consultant(s) should have at minimum of 5 (five) years of environmental experience preparing the scope of services listed above, in addition of preparation of QAPPs. The City has developed a template for QAPP preparation, and selected Consultant(s) will be expected to use this template in the development of the required documents for EPA approval.
- 4.5.1 Brownfield Site Assessments: Knowledge of and familiarity with EPA processes, procedures, and Federal regulations is highly desirable.
- 4.5.1.1 Phase I ESAS: Conduct Phase I ESAs for program applicants in accordance with American Society for Testing and Materials (ASTM) E1527-13, City guidelines, and United States Environmental Protection Agency All Appropriate Inquiries Final Rule, 40 CFR Part 312 (AAI) requirements.
- 4.5.2 Phase II ESAs:
- 4.5.2.1 Perform subsurface investigations to identify the presence or absence of potential contaminants, and delineate the vertical and horizontal extent of contamination if encountered. All subsurface investigation studies shall be conducted in accordance with Federal, State and local regulations, as well as applicable industry standards.
- 4.5.2.2 Any samples (soil, water, and air) collected shall be analyzed by an authorized Texas Commission on Environmental Quality (TCEQ) laboratory and Consultant(s) shall render

conclusions and recommendations in the Phase II ESA report based on Texas laws and regulations.

4.5.2.3 Phase II ESAs shall meet minimum ASTM E1903-11 and environmental industry requirements. Consultant(s) will be required to provide recommendations based on Texas Risk Reduction Program guidelines.

4.5.2.4 Additional services may include preparation of scopes of work, Quality Assurance Project Plans (QAPPs), Sampling and Analysis Plans, Health and Safety Plans, site investigations, and reports on the environmental condition of soil, surface water, groundwater, or other affected media in accordance with Federal and State approved standards, regulations and guidance. Reports shall meet minimum ASTM E1903-11 requirements, 2 CFR 1500.11 requirements, and all State imposed regulations.

4.5.3 Phase III ESAs: Cleanup Alternatives/ Remediation and Reuse Plans will be produced. The plans shall describe the nature and extent of the environmental contamination and provide options for the remediation, engineering and/or institutional controls at the site. The plans, where appropriate, shall include options for greener, sustainable cleanups and waste diversion. The plans shall include the consideration of reuse options consistent with public health environmental objectives at the site, and in accordance with applicable cleanup regulations. All Phase III activities shall be completed in accordance with all applicable Federal, State and local environmental regulations. In some instances, the selected Consultant(s) may be required to review construction site plans and prepare documentation to outline cleanup and remediation alternatives, and/or soil reuse plans.

4.5.4 Lead Paint and Asbestos Surveys: Additionally, the selected Consultant(s) shall provide reports for asbestos/lead-based paint inspections and surveys in accordance with all Federal, State, and local environmental regulations.

#### 4.6 Development of Program Strategy and Community Outreach

The selected Consultant(s) may be requested to assist with program strategy to enhance the growth of the program, provide recommendations for greater visibility of the program, and assist with a plan of action to target properties eligible to be revitalized and assisted under the City's Brownfield Redevelopment Program. Selected Consultant(s) may be required to attend and/or facilitate community meetings (as necessary) regarding site activities and program development.

#### 4.7 Grant Proposal Assistance

The selected Consultant(s) may be required to assist with identifying grant opportunities and preparing grant proposals to secure additional program funding for sustainable program growth. Grant opportunities may include those offered through the EPA or other grant opportunities.

#### 4.8 Independent Third-Party Review of Environmental Reports

It is anticipated that one Consultant will be selected to provide an independent third-party review of work prepared by other consultants to ensure quality data and recommendations adhere to the Texas Risk Reduction Program rules and regulations, EPA requirements, and industry standards. The selected Consultant may be required to provide a professional opinion of such reports and provide additional recommendations (if needed).

#### 4.9 PROCESS AND PROCEDURES

4.9.1 Assessments will be implemented through a series of work authorizations which shall govern the performance of services for which the City has received, or will receive local, State, and/or Federal funding. Work authorizations shall be executed by both parties and, at a minimum, shall describe the services to be performed under the most stringent requirements applicable to the funding source. CCDO will provide formal authorization to initiate the project. **The City does not guarantee a minimum number of projects or a minimum dollar amount for each project.** The Consultant(s) are not authorized to begin work on any project until the City issues a Notice to Proceed for the project. The procedure for establishing each project assignment by negotiating subsequent written authorizations is as follows:



- 4.9.1.1 Proposal Request: Upon identifying a specific assignment, the City will issue a written proposal request to the Consultant describing the project, site location map, services requested, proposed schedule, and method of compensation selected by the City.
- 4.9.1.2 Project Proposal: Consultant(s) will be provided with contact information for the program applicant and/or property owner and a Right of Entry Agreement. At that time, Consultant(s) is responsible for preparing a proposal for the given scope of work and submitting to the City within the timeline established by the City.
- 4.9.1.3 Notice to Proceed: Upon City's approval of the project proposal, the City will issue an approval letter and a Notice to Proceed. Consultant(s) are required to adhere to the project schedule set up in the approval letter. Extensions of the deadlines must be submitted in writing and are subject to approval by the City.

4.10 City shall 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 shall be analyzed to determine overall responsiveness and qualifications under the RFQ. Respondents shall be aware that the City may select one, some, all, or none of the submitting Respondents to perform the scope of work outlined in this RFQ. If City elects to conduct interviews following its evaluation of the submittals received, selected Respondent(s) shall be interviewed and re-scored, based upon these same criteria or additional criteria to be determined by the selection committee.

## **005 - ADDITIONAL REQUIREMENTS**

### Intellectual Property.

If selected, Respondent agrees to abide by the following regarding intellectual property rights:

Respondent shall pay all royalties and licensing fees. Respondent shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Respondent has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Respondent will immediately:

Either:

obtain, at Respondent's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,

alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

Respondent further agrees to:

assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,

assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and

indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

Respondent is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Respondent agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,

the Software or the equipment is used by the City in the form, state, or condition as delivered by Respondent or as modified without the permission of Respondent, so long as such modification is not the source of the infringement claim,

the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Respondent with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Respondent assumes responsibility under this section.

#### Ownership and Licenses.

In accordance with Texas law, Respondent acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Respondent pursuant to this Contract shall be the subject of any copyright or proprietary claim by Respondent.

The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the State, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Respondent acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFQ, will belong to and be the property of City. Respondent, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Respondent, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Respondent, if selected, agrees to comply with all applicable Federal, State and local laws, rules and regulations governing documents and ownership, access and retention thereof.

#### **006 - TERM OF CONTRACT**

The term for a contract awarded in response to this RFQ is for an initial one (1) year. The City shall have the option to renew under the same terms and conditions for one (1) additional, one (1) year extension. All renewals shall be in writing and signed by the Director, or his or her designee, without further action by the San Antonio City Council. However, the City may terminate a contract at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory. Municipal funds that cover by any resulting contract will be requested and, if approved, will be provided as part of City's budget each fiscal year.

#### **007 - PRE-SUBMITTAL CONFERENCE**

A Pre-Submittal Conference will be held at the City of San Antonio, Finance Department - Purchasing Division, Hill Country Conference Room, Riverview Towers, 111 Soledad, 11<sup>th</sup> Floor, San Antonio, Texas 78205 at **2:30 p.m., Central Time, Tuesday, June 27, 2017**. Respondents are encouraged to prepare and submit their questions in writing 2 calendar days in advance of the Pre-Submittal Conference in order to expedite the proceedings. City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted with this solicitation. Attendance at the Pre-Submittal Conference is optional, but highly encouraged.

Respondents that are not able to attend in person may participate by Conference Call. Respondents may call the toll free number listed below and enter access code to participate the day of the conference.

**Toll Free Dial-In Number: 1-877-226-9790**

**Access Code: 4511640**

This meeting place is accessible to disabled persons and wheelchair accessible. 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 response given at the Pre-Submittal Conference that is not confirmed in writing and posted with this solicitation shall not be official or binding on the City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of the City shall not be binding on the City. Respondents are encouraged to resubmit their questions in writing, to the City Staff person identified in the Restrictions on Communication section, after the conclusion of the Pre-Submittal Conference.

## 008 - PROPOSAL REQUIREMENTS

Respondent's Proposal shall include the following items in the following sequence, noted with the appropriate heading as indicated below. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

If submitting a hard copy proposal, submit **one (1) COMPLETE** original signed in ink, **six (6) hard copies WITH ONLY TABS** and documents for General Information Form; Experience, Background and Qualifications; Proposed Plan, etc. **(NO SBEDA OR VOSB TO BE INCLUDED)** one (1) copy of the **COMPLETE** proposal on compact disk (CD) and USB flash drive containing an Adobe PDF version of the entire proposal. Each of the item requirements listed below must be labeled with the heading indicated below as a separate file on the CD or USB flash drive.

If submitting electronically through City's portal, scan and upload these documents with your proposal. Each of the items listed below must be uploaded as a separate attachment, labeled with the heading indicated below.

### TABLE OF CONTENTS

EXECUTIVE SUMMARY. Respondent shall include a one (1) page Executive Summary at the beginning of their proposal response. The summary shall include a Statement of the work to be accomplished, how Respondent proposes to accomplish and perform each specific service and unique problems perceived by Respondent and their solutions. Respondent's Executive Summary shall state the number of years Respondent team has been in business, Respondent's number of years in business in its local office, Respondent's local office address, the number of employees employed in Respondent's local office, and the number of the employees who will be working directly under this contract.

GENERAL INFORMATION FORM. Use the Form found in this RFQ as Attachment A, Part One.

EXPERIENCE, BACKGROUND & QUALIFICATIONS. Use the Form found in this RFQ as Attachment A, Part Two.

PROPOSED PLAN. Use the Form found in this RFQ as Attachment A, Part Three.

CONTRACTS DISCLOSURE FORM. Use the Form in RFQ Attachment B which is posted separately or Respondent may download a copy at:

<http://www.sanantonio.gov/Ethics/ForCompliance/Vendors-And-Conflict-of-Interest-Reports>

Instructions for completing the Contracts Disclosure form:

Download form and complete all fields. All fields must be completed prior to submitting the form.

Click on the "Print" button and place the copy in your proposal as indicated in the Proposal Checklist.

LITIGATION DISCLOSURE FORM. Complete and submit the Litigation Disclosure Form, found in this RFQ as Attachment C. If Respondent is proposing as a team or joint venture, then all persons or entities who will be parties to the contract (if awarded) shall complete and return this form.

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM FORM(S). Complete, sign and submit any and all SBEDA form(s), found in this RFQ as Attachment D.

\*VETERAN-OWNED SMALL BUSINESS (VOSB) PREFERENCE PROGRAM TRACKING FORM. Complete, sign, and submit VOSB Tracking Form found in this RFQ as Attachment E.

**\*\*CERTIFICATE OF INTERESTED PARTIES HB Form 1295.** Respondent must complete, sign and submit HB Form 1295 as RFQ Attachment F. You may download a copy of the form at:

[https://www.ethics.State.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.State.tx.us/whatsnew/elf_info_form1295.htm)

**PROOF OF INSURABILITY.** 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 this RFQ if awarded a contract in response to this RFQ. Respondent shall also submit a copy of their current insurance certificate.

**FINANCIAL INFORMATION.** Submit a recent copy of a Dun and Bradstreet financial report, or other credit report, on Respondent and its partners, affiliates and subtenants, if any.

**SIGNATURE PAGE.** Respondent must complete, sign and submit the Signature Page found in this RFQ as Attachment G. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. Proposals signed by a person other than an officer of a corporate respondent or partner of partnership respondent shall be accompanied by evidence of authority.

**PROPOSAL CHECKLIST.** Complete and submit the Proposal Checklist found in this RFQ as Attachment H.

Respondent is expected to examine this RFQ carefully, understand the terms and conditions for providing the services listed herein and respond completely. **FAILURE TO COMPLETE AND PROVIDE ANY OF THESE PROPOSAL REQUIREMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.**

### **009 - CHANGES TO RFQ**

Changes to the RFQ, made prior to the due date for proposals shall be made directly to the original RFQ. Changes are captured by creating a replacement version each time the RFQ is changed. It is Respondent's responsibility to check for new versions until the proposal due date. City will assume that all proposals received are based on the final version of the RFQ as it exists on the day proposals are due.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFQ.

### **010 - SUBMISSION OF PROPOSAL**

Proposals may be submitted electronically through the portal or in hard copy format.

#### **Submission of Hard Copy Proposals.**

Respondent shall submit **one (1) COMPLETE** original proposal signed in ink, and **six (6) hard copies *WITH ONLY TABS and documents for General Information Form; Experience, Background and Qualifications; Proposed Plan, etc. (NO SBEDA OR VOSB)*** and one **COMPLETE** copy of the proposal on compact disk (CD) and flash drive containing an Adobe PDF version of the entire proposal in a sealed package clearly marked with the project name, "**RFQ 17-089 RFx: 6100009004 ENVIRONMENTAL CONSULTANT SERVICES**" on the front of the package. The name and address of Respondent, the due date for submission of proposals, RFQ number and title of the solicitation shall be marked on the outside of the envelope(s). All times stated herein are Central Time. Any proposal or modification received after the time and date stated on the Cover Page shall be rejected.

Proposals must be received in the Office of the City Clerk no later than **11:00 a.m., Central Time, on Monday, July 24, 2017** at the address below. Any proposal or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should note that delivery to the P.O. Box address in a timely manner does not guarantee its receipt in the Office of the City Clerk by the deadline for submission. Therefore, Respondents should strive for early submission to avoid the possibility of rejection for late arrival.

#### **Mailing Address:**

City of San Antonio - Office of the City Clerk

Attn: **RFQ 17-089 RFx: 6100009004 ENVIRONMENTAL CONSULTANT SERVICES**

P.O. Box 839966

San Antonio, Texas 78283-3966

**Physical Address:**

City of San Antonio - Office of the City Clerk

Attn: **RFQ 17-089 RFX: 6100009004 ENVIRONMENTAL CONSULTANT SERVICES**

100 Military Plaza

1<sup>st</sup>. Floor, City Hall San Antonio, Texas 78205

Proposals sent by facsimile or email will not be accepted.

Submission of Electronic Proposals. Submit **one (1) COMPLETE** proposal electronically by the due date provided on the Cover Page. All times stated herein are Central Time. Any proposal or modification received after the time and date stated on the Cover Page shall be rejected. All forms in this solicitation which require a signature must have a signature affixed thereto, either by manually signing the document, prior to scanning it and uploading it with your submission, or affixing it electronically.

Proposal Format. Each proposal shall be typewritten, single spaced and submitted on 8 ½" x 11" white paper. If submitting a hard copy, place proposal inside a three ring binder. The use of recycled paper and materials is encouraged. Unnecessarily elaborate brochures, artwork, bindings, visual aids, expensive paper, or other materials beyond that sufficient to present a complete and effective submission are not required. Font size shall be no less than 12-point type. All pages shall be numbered and, in the case of hard copy submissions, printed one-sided. Margins shall be no less than 1" around the perimeter of each page. Websites or URLs shall not be submitted in lieu of the printed proposal or electronic submission through City's portal. **ORIGINAL and/or ELECTRONIC** proposals must include **ALL** the sections and attachments in the sequence listed in the RFQ Section 008, Proposal Requirements, and each section and attachment must be indexed and, for hard copy submissions, **ONLY REQUIRED SECTIONS AND ATTACHMENTS listed by asterisk in Section 008, Proposal Requirements MUST** be divided by tabs and indexed in a Table of Contents page. For electronic submissions, whether through the portal or on a CD, each separate section should be attached as a separate file. Failure to meet the above conditions may result in disqualification of the proposal or may negatively affect scoring.

Modified Proposals. Proposals may be modified provided such modifications are received prior to the due date for submission of proposals and submitted in the same manner as original proposal. For hard copy proposals, provide a cover letter with the proposal, indicating it is a modified proposal and that the Original proposal is being withdrawn. For electronic proposals, a modified proposal will automatically replace a prior proposal submission.

Correct Legal Name. Respondents who submit proposals to this RFQ shall correctly 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 nicknames, 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 General Information form found in this RFQ as Attachment A, Part One.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the General Information form, the Director of the Finance Department shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

Firm Offer. All provisions in Respondent's proposal shall remain valid for ninety (90) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.

Confidential or Proprietary Information. All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted; 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.

Cost of Proposal. Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, the Pre-Submittal conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

## 011 - RESTRICTIONS ON COMMUNICATION

Respondents are prohibited from communicating with: 1) City officials, as defined by §2-62 of the City Code of the City of San Antonio, regarding the RFQ or proposals from the time the RFQ has been released until the contract is posted for consideration as a City Council agenda item during a meeting designated as an A session; and 2) 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 proposal submitted by Respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's proposal from consideration.

Exceptions to the Restrictions on Communication with City employees include:

Respondents may ask verbal questions concerning this RFQ at the Pre-Submittal Conference.

Respondents may submit written questions concerning this RFQ to the Staff Contact Person listed below until **10:00 a.m., Central Time, on Friday, June 30, 2017**. Questions received after the stated deadline will not be answered. All questions shall be sent by e-mail or through the portal.

**Denise Flotte, C.T.P.M. Procurement Specialist III**  
**City of San Antonio, Finance Department – Purchasing Division**  
[denise.flotte@sanantonio.gov](mailto:denise.flotte@sanantonio.gov)

Questions submitted and the City's responses will be posted with this solicitation.

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 the City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the required SBEDA forms. The point of contact, David Rodriguez, may be reached by telephone at (210) 207-0071 or by e-mail at David.Rodriguez3@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.*

Upon completion of the evaluation process, Respondents shall receive a notification letter indicating the recommended firm and anticipated City Council agenda date, and a review of the solicitation process.

City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City. Such negotiations, initiated by City staff persons, shall not be considered a violation by Respondent of this section.

## 012 - EVALUATION CRITERIA

The City will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFQ. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFQ. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon the same criteria. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council.

### Evaluation criteria:

- A. Experience, Background, Qualifications (55 points)**
- B. Proposed Plan (25 points)**
- C. Small Business Economic Development Advocacy Program (SBEDA) (20 points):**

#### **SBE Prime Contract Program – 10 pts.**

Certified SBE firms (see *Small Business Enterprise definition*) headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime CONTRACTORS proposing at least 51% SBE participation (Prime and/or Subcontractor) will receive ten (10) evaluation criteria points, and

### **M/WBE 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 CONTRACTORS proposing at least 51% M/WBE participation (Prime and/or Subcontractor) will receive ten (10) evaluation criteria points.

No evaluation criteria points will be awarded to non-SBE or non-M/WBE Prime CONTRACTORS through subcontracting to certified SBE or M/WBE firms.

### **013 - 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.

The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.

City may accept any Proposal 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.

City reserves the right to accept one or more proposals or reject any or all proposals 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, and reissue a subsequent solicitation, and/or remedy technical errors in the RFQ process.

City will require the selected Respondent(s) to execute a contract with the City, 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 on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.

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 proposal or in anticipation of a contract.

If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.

The successful Respondent must be able to formally invoice the City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by the City.

Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the 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: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) 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.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City's Ethics Code. (Discretionary Contracts Disclosure – form may be found online at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.)

Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be an independent contractors, responsible for 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.

State of Texas Conflict of Interest Questionnaire (Form CIQ). 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 the City,

shall file a completed Form CIQ with the City Clerk if those persons meet the requirements under §176.066(a) of the statute.

By law this questionnaire must be filed with the City Clerk not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.066(a-1), Texas Local Government Code. Form CIQ is available from the Texas Ethics Commission by accessing the following web address:

[https://www.ethics.State.tx.us/filinginfo/conflict\\_forms.htm](https://www.ethics.State.tx.us/filinginfo/conflict_forms.htm)

In addition, please complete the **City's Addendum to Form CIQ (Form CIQ-A)** and submit it with Form CIQ to the Office of the City Clerk. The Form CIQ-A can be found at:

<http://www.sanantonio.gov/Ethics/ForCompliance/Vendors-And-Conflict-of-Interest-Reports>

When completed, the CIQ Form and the CIQ-A Form should be submitted together, either by mail or hand delivery, to the Office of the City Clerk. If mailing, mail to:

Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966.

If delivering by hand, deliver to: Office of the City Clerk, City Hall, 1st floor, 100 Military Plaza, San Antonio, TX 78205.

Do not include these forms with your proposal. The Purchasing Division will not deliver the forms to the City Clerk for you.

#### **014 - SCHEDULE OF EVENTS**

Following is a list of **projected dates/times** with respect to this RFQ:

RFQ Release Date	<b>Tuesday, June 20, 2017</b>
Pre-Submittal Conference	<b>Tuesday, June 27, 2017 at 2:30 p.m., Central Time</b>
Final Questions Accepted	<b>Friday, June 30, 2017 at 10:00 a.m., Central Time</b>
Proposal Due	<b>Monday, July 24, 2017 at 11:00 a.m., Central Time</b>



## 015 - RFQ EXHIBITS

### RFQ EXHIBIT 1

#### SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

##### ***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 *Subcontracting Goal- Waiver Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Waiver request must fully document Subcontractor 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 Subcontractors 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.** More information on the good faith effort criteria is available within the Subcontracting Goal – Waiver Request Evaluation Criteria at <http://www.sanantonio.gov/SBO/Forms.aspx>.

**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/SBO/Forms.aspx>) 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. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA 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 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). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City's 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the

Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

**Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

**Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. 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** – 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 may accept 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.

**City** – refers to the City of San Antonio, TX.

**Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution 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.

**Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

**Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

**Emerging SBE (ESBE)** – a certified SBE 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 whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Evaluation Preference** – an API that may be applied by the Goal Setting Committee 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 Respondents.

**Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

**Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

**Good Faith Efforts** – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation 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., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and CONTRACTORS that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

**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, 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.”

**Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement,

each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

**Minority/Women Business Enterprise (M/WBE)** – firm that is certified 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 M/WBEs that have been certified for participation in the City's M/WBE Program APIs.

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

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

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

**M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified 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 the SBEDA 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 with origins in any of the black racial groups of Africa.

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

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

Native Americans: Persons having no less than 1/16<sup>th</sup> percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

**Payment** – dollars actually paid to Prime Contractors and/or Subcontractors 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, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

**Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

**Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, 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.

**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 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

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

**Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

**Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City's issuance of a notice to proceed.

**Suspension** – the temporary stoppage of an 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, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

**Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the 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 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 Ordinance is not inclusive of MBEs.

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

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

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

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

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

**SBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), CONTRACTOR 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. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONTRACTOR affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

#### F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the

solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

#### G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

#### H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).



## RFQ EXHIBIT 2

### INSURANCE REQUIREMENTS

If selected to provide the services described in this RFQ, Respondent shall be required to comply with the insurance requirements set forth below:

#### INSURANCE

A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled **"RFQ 17-089 RFx: 6100009004 ENVIRONMENTAL CONSULTANT SERVICES"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Center City Development and Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Contractor's Pollution Liability	\$5,000,000 each occurrence \$10,000,000 General Aggregate

D) Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Center City Development and Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

F) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L) Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

### RFQ EXHIBIT 3

#### INDEMNIFICATION REQUIREMENTS

If selected to provide the services described in this RFQ, Respondent shall be required to comply with the indemnification requirements set forth below:

#### INDEMNIFICATION

**RESPONDENT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT'S activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, consultant or subcontractor of RESPONDENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RESPONDENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT known to RESPONDENT related to or arising out of RESPONDENT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at RESPONDENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by RESPONDENT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. RESPONDENT shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If RESPONDENT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and RESPONDENT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of RESPONDENT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for RESPONDENT or any subcontractor under worker's compensation or other employee benefit acts.

#### **RFQ EXHIBIT 4**

##### **Assessment Terms and Conditions.**

Posted as separate document.

**RFQ EXHIBIT 5**

**Community Revitalization Action Group (CRAG) Area Map.**

Posted as separate document.

**RFQ EXHIBIT 6**

**EPA Community – Wide Assessment Grant Target Area Map.**

Posted as separate document.

## **RFQ EXHIBIT 7**

### **VETERAN-OWNED SMALL BUSINESS PREFERENCE PROGRAM (VOSBPP) ORDINANCE**

Pursuant to Ordinance No. 2013-12-05-0864, effective for solicitations issued after January 15, 2014, all solicitations issued by the City are subject to tracking of Veteran Owned Small Business (VOSB) participation.

For more information on the program, refer to the Veteran-Owned Small Business Program Tracking Form attached to this solicitation.

Respondent must complete and return the attached Veteran-Owned Small Business Preference Program Tracking Form.

**016 - RFQ ATTACHMENTS**

**RFQ ATTACHMENT A, PART ONE**

**GENERAL INFORMATION**

**1. Respondent Information:** Provide the following information regarding the Respondent.

(NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: \_\_\_\_\_

(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Website address: \_\_\_\_\_

Year established: \_\_\_\_\_

Provide the number of years in business under present name: \_\_\_\_\_

Social Security Number or Federal Employer Identification Number: \_\_\_\_\_

Texas Comptroller's Taxpayer Number, if applicable: \_\_\_\_\_

(NOTE: This 11-digit number is sometimes referred to as the Comptroller's TIN or TID.)

DUNS NUMBER: \_\_\_\_\_

Business Structure: Check the box that indicates the business structure of the Respondent.

☐ Individual or Sole Proprietorship If checked, list Assumed Name, if any: \_\_\_\_\_

☐ Partnership

☐ Corporation If checked, check one: ☐ For-Profit ☐ Nonprofit

Also, check one: ☐ Domestic ☐ Foreign

☐ Other If checked, list business structure: \_\_\_\_\_

Printed Name of Contract Signatory: \_\_\_\_\_

Job Title: \_\_\_\_\_

(NOTE: This RFQ solicits proposals to provide services under a contract which has been identified as "High Profile". Therefore, Respondent must provide the name of person that will sign the contract for the Respondent, if awarded.)

Provide any other names under which Respondent has operated within the last 10 years and length of time under for each:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Provide address of office from which this project would be managed:

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Annual Revenue: \$ \_\_\_\_\_

Total Number of Employees: \_\_\_\_\_



Total Number of Current Clients/Customers: \_\_\_\_\_

Briefly describe other lines of business that the company is directly or indirectly affiliated with:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List Related Companies:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. **Contact Information:** List the one person who the City may contact concerning your proposal or setting dates for meetings.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

3. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes \_\_\_ No \_\_\_

4. Is Respondent authorized and/or licensed to do business in Texas?

Yes \_\_\_ No \_\_\_ If "Yes", list authorizations/licenses.

\_\_\_\_\_  
\_\_\_\_\_

5. Where is the Respondent's corporate headquarters located? \_\_\_\_\_

6. **Local/County Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes \_\_\_ No \_\_\_ If "Yes", respond to a and b below:

- a. How long has the Respondent conducted business from its San Antonio office?

Years \_\_\_\_\_ Months \_\_\_\_\_

- b. State the number of full-time employees at the San Antonio office.

If "No", indicate if Respondent has an office located within Bexar County, Texas:

Yes \_\_\_ No \_\_\_ If "Yes", respond to c and d below:

- c. How long has the Respondent conducted business from its Bexar County office?

Years \_\_\_\_\_ Months \_\_\_\_\_

- d. State the number of full-time employees at the Bexar County office. \_\_\_\_\_

**7. Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes \_\_\_\_ No \_\_\_\_ If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

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**8. Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes \_\_\_\_ No \_\_\_\_ If "Yes", State the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

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**9. Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under State or Federal proceedings?

Yes \_\_\_\_ No \_\_\_\_ If "Yes", State the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

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**10. Disciplinary Action:** Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations? If "Yes", State the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

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**11. Previous Contracts:**

a. Has the Respondent ever failed to complete any contract awarded?

Yes \_\_\_\_ No \_\_\_\_ If "Yes", State the name of the organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

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b. Has any officer or partner proposed for this assignment ever been an officer or partner of some other organization that failed to complete a contract?

Yes \_\_\_\_ No \_\_\_\_ If "Yes", State the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

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c. Has any officer or partner proposed for this assignment ever failed to complete a contract handled in his or her own name?

Yes \_\_\_\_ No \_\_\_\_ If "Yes", State the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

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## REFERENCES

Provide no more than four (4) references, that Respondent has provided services to within the past three (3) years. The contact person named should be familiar with the day-to-day management of the contract and be willing to respond to questions regarding the type, level, and quality of service provided.

### Reference No. 1:

Firm/Company Name \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Date and Type of Service(s) Provided: \_\_\_\_\_

\_\_\_\_\_

### Reference No. 2:

Firm/Company Name \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Date and Type of Service(s) Provided: \_\_\_\_\_

\_\_\_\_\_

### Reference No. 3:

Firm/Company Name \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Date and Type of Service(s) Provided: \_\_\_\_\_

\_\_\_\_\_

### Reference No. 4:

Firm/Company Name \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Date and Type of Service(s) Provided: \_\_\_\_\_

\_\_\_\_\_

## **RFQ ATTACHMENT A, PART TWO**

### **EXPERIENCE, BACKGROUND, QUALIFICATIONS**

Prepare and submit narrative responses to address the following items. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

#### **Experience**

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 two (2) pages (not including forms and attachments) that describes the team's qualifications. Respondent shall include the following in the narrative:

- How Respondent's proposed team has worked together on past similar projects. Please include the number of years working together as a team. Specify the team's experience with public entity clients, especially large municipalities and regulatory agencies. If Respondent has provided services for the City of San Antonio in the past, identify the name of the project and the department for which Respondent provided those services.
- If a Sub-Consultant is part of the team, Respondent shall include information on how the Sub-Consultant functions within the team's organization and the extent to which the Respondent has worked with the Sub-Consultant in the past.
- List other resources, including total number of employees, number and location of offices, and number and types of equipment available to support this project.
- Describe any work with the EPA or with EPA grants including QAPP development. List and describe relevant projects of similar size and scope performed over the past five (5) years. Identify associated results or impacts of the project/work performed.

Additionally, Respondent is required to submit a sample Phase II ESA and QAPP prepared in the past five (5) years as a part of this submission package.

#### **Proposed Key Personnel/Organizational Chart**

Key personnel Respondent includes in this section are expected to be the same personnel that will be assigned to the contract, if awarded. Respondent shall provide a detailed organizational chart of its firm, identifying key personnel who shall be committed to working on the various tasks and their current office locations required under this contract. The Proposed Key Personnel shall consist of personnel holding professional licenses/certifications required to do the duties stipulated as part of this contract, and with a minimum of five (5) five years of demonstrated experience in environmental services. Label key personnel assignments as:

- a. Proposed Senior Environmental Project Manager;
- b. Proposed Project Manager; Project Geologist, Environmental Scientist, Environmental Technician, and any other professional that is part of the team in the local office to work under this contract;
- c. Designated primary point of contact for the City's Brownfield Redevelopment Program Manager and related qualifications and years of experience (if different than above);
- d. Designated personnel designated to coordinate with regulatory agencies and authorities (if any);
- e. Quality assurance/quality control coordination for submitting applicable documentation;
- f. Sub-Consultants for any services deemed necessary to fulfill the duties under this contract and their respective responsibilities such as traffic control, drilling, laboratory analyses, surveying, etc.
- g. Identify the number and professional qualifications (to include licenses, certifications, associations) of staff to be assigned to the project and relevant experience on projects of similar size and scope.
- h. State the primary work assignment and the percentage of time key personnel will devote to the project if awarded the contract.
- i. Identify any additional skills, experiences, qualifications, and/or other relevant information about the Respondent's qualifications.

#### **Resumes**

Respondent shall submit one (1) page resumes for all key team members. Resumes should link to the provided project sheets and also may include additional previously-completed relevant projects not highlighted in the provided project sheets. The provided resumes also shall include the license type (if applicable), number of years licensed, location of

office, number of years' experience in proposed role and experience with the firm. The information included in this section should include only personnel who will work directly under this contract, not including support staff.

### **Project Sheets**

Respondent's submittal shall include a maximum of five (5) project sheets, limited to one (1) page for each project, which describe similar projects Respondent has completed within the last five (5) years. Each project sheet shall include the following:

- a. Name and Description of past successfully completed environmental projects;
- b. Scope of those projects;
- c. Project cost;
- d. Project start and completion dates;
- e. Project owner;
- f. Names of Respondent's team members who worked with the project. Indicate if the named team members are still retained by Respondent.
- g. The project's 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: \_\_\_\_\_

## RFQ ATTACHMENT A, PART THREE

### PROPOSED PLAN

Respondent shall describe its understanding of this contract, 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 of this contract. Respondent shall submit information in a brief narrative plan that clearly and concisely describes the challenges Respondent foresees and its approach to managing the Project. Respondent shall specify the roles that relevant employees in local office will perform under this contract.

#### **Project Management Plan**

Respondent shall limit its response to no more than six (6) pages (including charts or diagrams):

- a. Indicate the percentage of time key personnel shall be devoted to the projects outlined in this RFQ.
- b. Describe Respondent's project management approach and team organization for the provision of the services outlined in this RFQ. Respondent shall specify the roles that relevant employees in local office will perform under this contract, including the job functions of each, such as preparation of invoices, printing documentation, Subcontractor and Sub-Consultant coordination, etc.
- c. Detail the current capacity of key team individuals and the firm's capabilities to complete the services outlined herein.
- d. Briefly describe Respondent's plans for quality control of documentation or services provided by the prime firm, dispute resolution, and safety management in providing the services outlined in this RFQ.
- e. Briefly describe Respondent's plans for quality control of documentation or services provided by Sub-Consultants and Subcontractors, dispute resolution and safety management in providing the services outlined in this RFQ.
- f. Briefly describe Respondent's approach for changes in key personnel.
- g. Respondent shall include a strategy plan for replacing a key team member, such as a Senior Project Manager, Sub-Consultant or Subcontractor, that leaves Respondent's firm or team due to any reason. Respondent also shall include an organizational chart showing back-up personnel to all of Respondent's staff in the key positions.
- h. Include a table with the names of the employees who will be working under this contract, their capacities, and their office location.

**RFQ ATTACHMENT B**  
**CONTRACTS DISCLOSURE FORM**

Contracts Disclosure Form may be downloaded at:

<http://www.sanantonio.gov/Ethics/ForCompliance/Vendors-And-Conflict-of-Interest-Reports>

Instructions for completing the Contracts Disclosure form are listed below:

1. Download form and complete all fields. Note: All fields must be completed prior to submitting the form.
2. Click on the "Print" button and place the copy in proposal response as indicated in the Proposal Checklist.

**RFQ ATTACHMENT C**

**LITIGATION DISCLOSURE FORM**

**Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.**

Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes \_\_\_\_ No \_\_\_\_

Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes \_\_\_\_ No \_\_\_\_

Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes \_\_\_\_ No \_\_\_\_

**If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.**



**RFQ ATTACHMENT D**

**SBEDA FORM(S)**

Posted as separate document.

**RFQ ATTACHMENT E**

**VOSB TRACKING FORM(S)**

Posted as a separate document.

## RFQ ATTACHMENT F

### **CERTIFICATE OF INTERESTED PARTIES (Form 1295)**

The Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 to the City before the City may enter into a contract with that business entity.

Form 1295 must be completed online. In Box 3 of the form, provide the solicitation number shown on the cover page of this solicitation (e.g. IFB 6100001234, RFO 6100001234 or RFCSP 6100001234). The form is available from the Texas Ethics Commission by accessing the following web address:

[https://www.ethics.State.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.State.tx.us/whatsnew/elf_info_form1295.htm)

**Print your completed Form 1295 showing the Certification Number and Date Filed in the Certification of Filing box at the upper right corner. Sign Form 1295 in front of a notary and submit it with your response to this solicitation.**

The following definitions found in the statute and Texas Ethics Commission rules may be helpful in completing Form 1295.

“Business entity” includes an entity through which business is conducted with a governmental entity or State agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or State agency.

“Controlling interest” means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

“Interested party” means: (1) a person who has a controlling interest in a business entity with whom a governmental entity or State agency contracts; or (2) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or State agency, including a broker, intermediary, adviser, or attorney for the business entity.

“Intermediary”, for purposes of this rule, means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person's participation;
- (2) communicates directly with the governmental entity or State agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity.

## RFQ ATTACHMENT G

### SIGNATURE PAGE

Respondent, and co-respondent, if any, must complete City's Certified Vendor Registration (CVR) Form prior to the due date for submission of proposals. The CVR Form may be accessed at: <http://www.sanantonio.gov/purchasing/>.

By submitting a proposal, whether electronically or by paper, Respondent represents that:

If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.

If awarded a contract in response to this RFQ, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in RFQ Exhibits 2 & 3.

If awarded a contract in response to this RFQ, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's proposal and during Proposal process.

Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.

Respondent agrees to fully and truthfully submit the Respondent Questionnaire form and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.

To comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is posted as a City Council agenda item.

(S)he is authorized to submit this proposal on behalf of the entity.

\_\_\_\_\_  
Respondent Entity Name

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

(NOTE: If proposal is submitted by Co-Respondents, an authorized signature from a representative of each Co-Respondent is required. Add additional signature blocks as required.)

If submitting your proposal electronically, through City's portal, Co-Respondent must also log in using Co-Respondent's log-on ID and password, and submit a letter indicating that Co-Respondent is a party to Respondent's proposal and agrees to these representations and those made in Respondent's proposal. While Co-Respondent does not have to submit a copy of Respondent's proposal, Co-Respondent should answer any questions or provide any information directed specifically to Co-Respondent.

\_\_\_\_\_  
Co-Respondent Entity Name

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## RFQ ATTACHMENT H

### PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and appear in the correct order.

Document	Initial to Indicate Document Is Attached to Proposal
Table of Contents	
Executive Summary	
General Information and References RFQ Attachment A, Part One	
Experience, Background & Qualifications RFQ Attachment A, Part Two	
Proposed Plan RFQ Attachment A, Part Three	
*Contracts Disclosure Form RFQ Attachment B	
Litigation Disclosure RFQ Attachment C	
* SBEDA Form RFQ Attachment D; and Associated Certificates, if applicable	
*Veteran-Owned Small Business Preference Program Form RFQ Attachment E	
** Certificate of Interested Parties (Form 1295) RFQ Attachment F	
Proof of Insurability (See RFQ Exhibit 2) Insurance Provider's Letter Copy of Current Certificate of Insurance	
Financial Information - Dun and Bradstreet Financial Report	
* Signature Page RFQ Attachment G	
Proposal Checklist RFQ Attachment H	
One (1) Original, and (6) copies (no SBEDA or VOSB to be included) and one (1) CD and flash drive of entire proposal in PDF format if submitting in hard copy.	
*Signed Addendums, if applicable	

\*Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.

\*\* Certificate of Interested Parties (Form 1295) requires notarization.

**Be sure all forms that require a signature and/or to be notarized are done so prior to submittal of proposal.**

## **EXHIBIT II**

**Addendum I, RFQ 17-089 dated July 10, 2017**



**City of San Antonio**

**ADDENDUM I**

**SUBJECT:** Request for Qualifications for Environmental Consultant Services (RFQ 17-089, RFx No.: 6100009004) Scheduled to Open: July 24, 2017; Date of Issue: June 20, 2017

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

**DATE:** July 10, 2017

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

**THE ABOVE MENTIONED REQUEST FOR QUALIFICATIONS IS HEREBY AMENDED AS FOLLOWS:**

1. Add: Exhibit 8, Pre-Submittal Sign in sheet dated June 27, 2017 – Exhibit posted as a separate document.
2. Add: Exhibit 9, SBEDA PowerPoint Presentation – Exhibit is posted as a separate document.

**QUESTIONS SUBMITTED IN ACCORDANCE WITH SECTION 011, RESTRICTIONS ON COMMUNICATION:**

On June 27, 2017, the City of San Antonio and the City Center Development and Operations Department (CCDO) held a pre-submittal conference to provide information and clarification for the Request for Qualifications for Environmental Consultant Services. Below is the list of questions asked during the Pre-Submittal Conference and/or received in accordance with Section 011, Restrictions on Communication. The City's official response to questions asked is as follows:

**Question 1:** Will our presence out of state affect any decision on project bidding without a San Antonio presence?

**Response 1:** The selected consultant must demonstrate knowledge of environmental regulations and practices at the federal level, in the State of Texas, and in the City of San Antonio. The selected consultant also must be able to respond quickly to requests and be present to conduct work at sites in San Antonio as authorized under the contract. Respondents should put together a team able to best address these concerns for a competitive response.

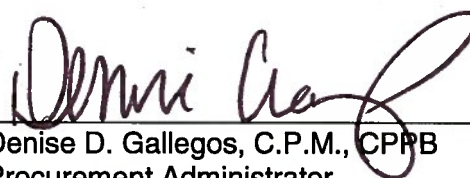
- Question 2:** Per Section 004 – Scope of Service from the RFQ, the services requested are for Phase I, Phase II and Phase III, will the City also like the Respondent to have experience working with grants, lead and asbestos. Are you looking for a Respondent that can perform all those tasks or could a joint venture also be possible?
- Response 2:** Respondents should put together a team that can respond to the RFQ in its entirety. One firm or team that can provide all services requested in the RFQ is ideal. The award(s) will be made based upon the qualifications of the submissions received.
- Question 3:** Is the City looking for programmatic support and help on ACRES Reporting, records entry and quarterly reports?
- Response 3:** The City will negotiate detailed roles and responsibilities with the selected consultant(s). It would be helpful for the selected consultant(s) to assist with more technical documents and reports, such as ACRES entries. Responsibility for the programmatic aspects of the grant, such as quarterly reporting, will be negotiated with the selected consultant(s) or team(s).
- Question 4:** Please define the certification of a veteran-owned small business and will the City accept various disabled veteran certifications?
- Response 4:** The City relies on inclusion in the database of veteran-owned small businesses maintained by the U.S. Small Business Administration to verify VOSB status; however, veteran status may also be confirmed by certification by another public or private entity that uses similar certification procedures. Please note that no preferences will be given to veteran-owned small businesses for this procurement. The City is asking for respondents to complete the form for tracking purposes only.
- Question 5:** Please elaborate on the certifications South Central Texas Regional Certification Agency (SCTRCA).
- Response 5:** The South Central Texas Regional Certification Agency is a local non-profit organization that performs certification public entities in the San Antonio Metropolitan Statistical Area. For information on specific requirement for SMWBE certification through the SCTRCA please visit the SCTRCA website at <https://sctrca.org> or contact them at 210.227.4722.
- Question 6:** Per Section 004 – Scope of Service section 4.1.2, could you clarify the license or certification from the State of Texas to perform environmental inquiries as defined in 40 CFR Part 312.21?
- Response 6:** Please see Section 004 – Scope of Service section 4.1.4. Vendors are required to perform all work under this Contract in accordance with all Local, State and Federal regulations required. Consultant must follow the Texas Commission on Environmental Quality (TCEQ) rules and regulations, as applicable. For additional information about which license or certification is required from the State of Texas, please see the following site: <https://www.tceq.texas.gov/licensing>  
For additional clarification on what would be required from 40 CFR Part 312.21, please see the following site:  
<https://www.gpo.gov/fdsys/granule/CFR-2011-title40-vol28/CFR-2011-title40-vol28-sec312-21>



- Question 7:** Are you looking for bids with a fixed price, or time and material? Is this an on-call contract?
- Response 7:** The maximum award made under this solicitation will be no greater than \$500,000 to provide on-call, as needed services. Please see Section 004 – Background for more information.
- Question 8:** How will service requests be submitted to the vendor?
- Response 8:** Please refer to Section 004 – Scope of Service, from Process and Procedures items 4.9.1.1, 4.9.1.2 and 4.9.1.3.
- Question 9:** Is there an expected volume?
- Response 9:** The volume of work depends on the requests received in the coming year. The City has certain goals for the EPA grant; however, the volume of work ultimately depends on the applications received for environmental services through the Brownfield Redevelopment Program. This could result in several phase 1 ESAs, just a few phase 2 ESAs, or a combination thereof.
- Question 10:** Please clarify between volume expected and the grant funds.
- Response 10:** The City has a goal of 2-3 phase 1 ESAs per quarter, 3 phase 2 ESAs per year, and 2 clean-up plans for the remainder of the EPA grant. In addition to grant funds, the City also has limited municipal funds to provide additional assessments as needed. As stated in Response 9, the actual volume will depend on requests received. Several phase 1 ESAs or one complex phase 2 ESA may require the same amount of funding.
- Question 11:** Who is the grant's assigned program officer?
- Response 11:** Denise Williams, EPA Region 6.
- Question 12:** Will a copy of the sign in sheet be provided?
- Response 12:** Please see copy of the sign in sheet provided as Exhibit 8, Pre-Submittal Sign in sheet dated June 27, 2017, posted as a separate document.
- Question 13:** Who is the incumbent?
- Response 13:** Current services performed for CCDO's Brownfield Redevelopment Program are provided by the Department of Transportation and Capital Improvements (TCI) Environmental Management Division's on-call contracts.
- Question 14:** Is there a place or listing of businesses that would qualify as HUBS or MBE's that we could have access to?
- Response 14:** The City of San Antonio provides a vendor search tool online that allows vendors to search businesses registered with the City of San Antonio. You are able to search the City database by business name, commodity code, SBEDA eligibility and certification type. To access the online vendor search tool please visit <http://www.sanantonio.gov/purchasing/vendorinformation/cosavendorlisting>. Please contact the Small Business Office at 210.207.0071 with any additional questions about the use of the online vendor search tool.

- Question 15:** How could I obtain a copy of the solicitation document?
- Response 15:** To view this solicitation, go to <https://supplierservice.sanantonio.gov/iri/portal>. If you have not completed the City's SAePS Vendor Registration, you must do so in order to view the solicitation and submit a response. It is the Respondent's responsibility to review this site and ascertain whether amendments or revisions have been made prior to submission of a proposal.
- Question 16:** Are vendors allowed to electronically submit their responses?
- Response 16:** Proposals may be submitted electronically through the portal or in hard copy format. For additional information, please see Section 010- Submission of Proposal of the RFQ document.
- Question 17:** When was the last time that a City of San Antonio environmental consultant contract for Brownfields was awarded?
- Response 17:** The Brownfield Redevelopment Program administered through CCDO has never had any environmental consultant contracts. Please also refer to the response to Question 13.
- Question 18:** Which contractors received the previous awards?
- Response 18:** Please refer to the response to Question 17.
- Question 19:** The FY13 proposed budget was \$200,000.00 for Brownfield Environmental Assessments. Do you foresee the same amount budgeted for this RFQ?
- Response 19:** The City of San Antonio's Brownfield Redevelopment Program was established in 2012. In the FY2013 City budget process, \$200,000 was provided as seed funding to get the program started until grant funds could be secured. In FY2016, the City of San Antonio was awarded \$400,000 through the EPA Community-Wide Assessment Grants. With this level of grant funding, \$200,000 is not anticipated to be allocated through municipal funds in the coming fiscal year.
- Question 20:** SBEDA Program, page 12 of 42: The RFQ states "no evaluation criteria points will be awarded to non-SBE or non-M/WBE prime contractors through subcontracting to certified SBE and M/WBE firms." Please confirm that this statement is accurate and a firm priming this solicitation, who is not SBEDA certified, will receive no points for this section even if SBEDA certified subcontractors are included on the team.
- Response 20:** Evaluation criteria points are awarded based on certification and SBEDA eligibility of the prime respondent. Evaluation criteria points will not be awarded to non-SBE or non-M/WBE Prime CONTRACTORS through subcontracting to certified SBE or M/WBE firms.
- Question 21:** Attachment A, Part Two on page 33 of 42: It states the experience section is limited to two (2) pages. Under the experience section it also states that we need to provide a sample Phase II ESA and QAPP. Are those considered attachments?

- Response 21:** The sample Phase II ESA and QAPP are considered separate attachments independent of the 2-page experience section. Neither the Phase II ESA or QAPP are restricted on length.
- Question 22:** Is there an overall page limit for the proposed key personnel/organization chart and resumes?
- Response 22:** Resumes are preferred to be no longer than 2 pages per person. The organizational chart should be clear and concise as well, but there is no required page limit for either. Brief yet clear and concise responses are appreciated.



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

DG/dvf

**EXHIBIT III**  
**Price Schedule**

**SCS Engineers**  
**1901 Central Dr, STE 550**  
**Bedford, TX 76021**

**Environmental Consultant Services**  
**City of San Antonio**  
**City Center Development and Operations Department**  
**Development Division**

11/14/2017

**Personnel Rates through term of contract**

	RATE
· Principal	\$ 185.00
· Senior Environmental Project Manager	\$ 160.00
· Project Manager	\$ 125.00
· Project Geologist	\$ 95.00
· Environmental Scientist	\$ 95.00
· Senior Engineer	\$ 145.00
· Engineer	\$ 115.00
· Risk Assessor / Toxicologist	\$ 130.00
· Environmental Technician	\$ 65.00
· CADD / GIS Technician	\$ 65.00
· Admin Support / Clerical	\$ 50.00
· Asbestos Inspector	\$ 70.00
· Asbestos Project Manager	\$ 62.00
· Asbestos Consultant	\$ 94.00
· Sr. Archeologist	\$ 115.00
· Archeologist	\$ 75.00
· Industrial Hygenist	\$ 110.00

**EXHIBIT IV**  
**Copy of enabling Ordinance**