

## 040 STANDARD INSTRUCTIONS TO BIDDER/RESPONDENT

**Read Carefully**

### 1. STANDARD TERMS AND CONDITIONS

1.1 By submitting this bid/proposal, Bidder/Respondent:

- a) affirms that it is duly authorized to execute the proposed contract, Bidders/Respondent's company, corporation, firm, partnership or individual has not prepared this bid/proposal in collusion with any other Bidder/Respondent and the contents of this bid/proposal, with regard to prices, terms or conditions of said bid/proposal, neither have been communicated by Bidder/Respondent nor by any employee or agent of Bidder/Respondent to any other person engaged in this type of business, prior to the public bid/proposal opening or official award of this contract, as applicable.
- b) represents, to the best of its knowledge, it is not indebted to the City of San Antonio (City). Bidder/Respondent acknowledges indebtedness to City may be basis for non-award of a contract and/or cancellation of any contract award.
- c) agrees to comply with City Ordinance Number 2008-11-20-1045, concerning Wage and Hour Labor Standard Provisions for City of San Antonio Construction Projects (amending City Ordinance Number 71312). This is a public works contract and Chapter 2258 of the Texas Government Code requires not less than the prevailing wage rate for work of a similar character in this locality shall be paid to all laborers, workers and mechanics employed in the construction of this Project. This includes overtime regulations. Bidder/ Respondent shall refer to the wage decision posted with this solicitation to determine the prevailing wage rates that shall be utilized for work on this Project.

1.2 Bidder/Respondent is required to submit its bid/proposal upon the following expressed conditions:

- a) Bidder/Respondent thoroughly shall examine the drawings, specifications, schedule(s), instructions and all other solicitation and contract documents.
- b) Bidder/Respondent shall make all investigations necessary to thoroughly inform itself of conditions at the Project site, as well as the Project's Specifications, Plans and any Addenda to the Specifications and/or Plans issued by City. No plea of ignorance by Bidder/ Respondent of conditions which exist or may hereafter exist, as a result of failure or omission on the part of Bidder/Respondent to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, shall be accepted as a basis for varying the requirements of City or the compensation to Bidder/Respondent.
- c) Bidder/Respondent is advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. Any bid/proposal, after being opened, becomes subject to the Open Information Act, V.T.C.A. Government Code Chapter 552. Therefore, in the event of City receiving an Open Information Request, Bidder/Respondent clearly must indicate any portion of the submitted bid/proposal which Bidder/Respondent claims is not subject to public inspection under the Open Information Act.
- d) No officer or employee of City shall have a financial interest, either direct or indirect, in any contract with the City or shall benefit financially, either directly or indirectly, in the sale to City of any materials, supplies or services, except on behalf of City as an officer or employee. This financial interest prohibition extends to City Public Service Board, San Antonio Water System and all City boards and commissions, other than those which purely are advisory. In this instance, a City employee is defined as any employee of City who is required to file a financial involvement report, pursuant to City's ethics ordinance.

1.3 For federally funded projects, Bidder/Respondent certifies:

- a) It does not and will not maintain or provide for its employees any segregated facilities at any of their offices and will not permit its employees to perform services at any location under Bidder's/Respondent's control where segregated facilities are maintained.
- b) In accordance with the guidelines referenced below, that neither Bidder/Respondent nor its principal(s) presently

are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

- c) Where a prospective lower tier participant is unable to certify any of the statements referenced in **Paragraph 1.3 (b)**
- d) above and herein below, such prospective participant shall attach an explanation of its status to this bid/proposal.

## **GUIDELINES FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this bid/proposal, a prospective lower tier participant is providing the certification set out below.

- 1.3.1 The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it later is determined that a prospective Subcontractor and/or Sub- Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, City may pursue available remedies, including suspension and/or debarment.
- 1.3.2 A prospective lower tier participant shall provide immediate written notice to City if, at any time, the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- 1.3.3 The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in **this Paragraph 1.3** have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. City may be contacted for assistance in obtaining a copy of those regulations.
- 1.3.4 A prospective lower tier participant agrees, by submitting this bid/proposal, should a contract be entered into, knowingly shall not enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- 1.3.5 A prospective lower tier participant further agrees, by submitting this bid/proposal, it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier-covered transactions and in all solicitations for lower tier covered transactions.
- 1.3.6 Bidder/Respondent may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. Bidder/Respondent may decide the method and frequency by which it determines the eligibility of its principals. Bidder/Respondent may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- 1.3.7 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of Bidder/Respondent is not required to exceed that which normally is possessed by a prudent person in the ordinary course of business dealings.
- 1.3.8 Except for transactions authorized under **Paragraph 1.3.5** of this 040 City Form, if Bidder/Respondent knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, City may pursue available remedies, including suspension and/or debarment.

## **2. DISCREPANCIES AND INTERPRETATION**

- 2.1 Prospective Bidder/Respondent only shall contact Consultant and City in writing, at minimum ten (10) calendar days prior to scheduled submittal deadline if discrepancies, ambiguities and/or omissions are found in the Project Plans and/or Specifications, or if further information or clarification is desired.

- 2.2 Responses by Consultant and/or City shall be given in writing to all prospective Bidder/Respondents in Addendum form. All information, provisions and requirements of such issued addenda shall supersede or

modify the affected portions of the Project Plans and/or Specifications. All issued addenda shall be incorporated into the Project's Contract Documents. No other explanation or interpretation shall be considered official or binding upon the City.

### 3. UNBALANCED BIDS & PREPARATION OF BIDS

The City defines an unbalanced bid as a bid that may be mathematically and/or materially unreasonable and abnormal due to bidder placing high price on some bid items and a low price on other bid items in unit price contract.

- 3.1 **Mathematically Unbalanced Bid.** A bid containing lump sum or unit bid prices that do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs.
- 3.2 **Materially Unbalanced Bid.** A bid that creates a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the City. Consequently, a materially unbalanced bid may not be accepted.
- 3.3 The City reserves the right to declare a bid unbalanced and deem a bidder non-responsive based on the City's analysis of the bids.

Submittals shall be prepared in accordance with the following:

- 3.4 All information required by the invitation for bids shall be furnished in Bidder/Respondent's submittal or the bid/proposal may be deemed nonresponsive.
- 3.5 Bid Documents must contain "Legal Name of Company" as listed by the Texas Secretary of State Registry (<http://www.sos.state.tx.us/>). The documents required in CivCast (fully completed and with digital signatures) constitute the required information to be submitted as a part of the bid proposal.
- 3.6 Bidder/Respondent shall complete the "020 Contract Signature Page" and include the completed form in City's solicitation documents. Failure to complete and submit this 020 Contract Signature Page may render Bidder's/Respondent's proposal as being deemed nonresponsive.
- 3.7 If applicable to the Project, Bidder/Respondent shall fill out the Bid Form on the CivCast website at <https://www.civcastusa.com/bids> or submit a Unit Pricing form(s) provided by City or its Consultant, with the solicitation documents, for Lump Sum solicitations. The unit prices uploaded shall be the unit prices used to tabulate Respondent's bid/proposal and shall be used in the contract, if awarded by City.
- 3.8 If applicable to the Project, Bidder/Respondent shall submit a unit price for each work element pay item in Bidder's/Respondent's bid/proposal, except in the case of an alternate being listed in the solicitation, as described below. In the case of alternates included in the solicitation, Bidder/Respondent shall follow the procedure as follows:
  - 3.8.1 The City may elect to award this Project based solely on the base bid, based on a combination of the base bid plus any combination of selected alternates or based on a combination of the base bid plus all alternates that serve the best interest of City. All bids must include a price for all units or line items, including any alternates. Entering a price of "\$0.00" shall mean the units or line items will be provided at no cost to the City. A unit price left blank shall result in the bid being deemed nonresponsive and disqualified from consideration. City reserves the right to delete line items prior to award.
  - 3.8.2 Additive Alternate(s): In the case of Additive Alternates, unit prices, for the base bid/proposal shall be submitted separately from all items comprising the additive alternate(s).
  - 3.8.3 Substitute Alternate(s): In the case of Substitute Alternates (Substitute Alternates appear in sets of two or more related alternates), unit prices for all items comprising the base bid/proposal shall be submitted separately from the unit prices for all items comprising the related substitute alternates in each set.
- 3.9 Where there is an error in extension of price, the unit price submitted by Bidder/Respondent shall govern.
- 3.10 If Bidder/Respondent detects an error in Project quantities reflected on the specifications or in the solicitation documents, Bidder/Respondent's submitted unit price for an item shall govern. Bidder/Respondent shall

notify City in writing of such error. Bidder/Respondent shall not attempt to correct the detected error on its own by inflating/deflating its unit pricing.

3.11 In the event additional or extra blank spaces remain after completion of the various forms, Bidder/Respondent shall enter the terms "none" or "not applicable" on any remaining blank spaces, as an indication that Bidder/Respondent has considered City requests for information on every line presented. Any blank unit prices shall be tabulated and evaluated as and at "no cost" to the City.

3.11.1 If applicable to the Project, Bidder/Respondent hereby acknowledges the maximum combined total cost for Project Mobilization and Preparing Right-of-Way shall not exceed fifteen percent (15%) of the total base bid/proposal cost. The percentage allowed for Mobilization and Preparing Right-of-Way shall be proposed by Bidder/Respondent based upon the total of base bid/proposal. A bid/proposal containing a combined total cost for Mobilization and Preparing Right-of-Way in excess of fifteen (15%) percent may be considered unbalanced and may be rejected by City.

3.11.2 Unit prices, if applicable to the Project, shall be inserted on the Bid Form under the "UNIT PRICE" column. Extensions, which are Bidder's/Respondent's unit prices multiplied by the approximate quantities listed for each item, shall be inserted in figures in the "Amount" column.

3.11.3 Bids/Proposals only shall be submitted on Bid Form or on approved computer printout sheets. Bids/Proposals not submitted on Bid Form or on approved computer printout sheets are subject to being considered nonresponsive. Conditional bid/proposals or unbalanced bid/proposals are subject to being considered nonresponsive.

3.11.4 Separated Contract: This Project shall be awarded as a "separated contract", in accordance with a recent amendment to section 151.311 of the United States Tax Code, in order for Bidder/Respondent to claim a tax exemption on the contract price of materials.

#### 4. SUBMISSION OF BIDS/PROPOSALS

4.1 Online bidding will be utilized via CivCast at <https://www.civcastusa.com/bids> as set forth in the Invitation for Bid (hereafter referred to as "IFB") or Request for Competitive Sealed Proposals (hereafter referred to as "RFCSP"). **Hard Copies will not be accepted.**

4.1.1 Bidder/Respondent should receive an electronic confirmation notice upon submitting its bid for an IFB or RFCSP via CivCast. Failure to receive such confirmation indicates that there was a problem with the submission. In such instance Bidder/Respondent shall contact CivCast Support at (281) 376-4577 or [support@civcast.com](mailto:support@civcast.com) to attempt to resolve any such issues.

4.2 Plans and specifications are obtainable from the Project Consultant, as set forth in the published IFB/RFCSP. Solicitation documents are available for download on the CivCast website.

4.3 Bids/Proposals shall be submitted on the forms furnished with this solicitation. Bids/Proposals, however, may be modified if Bidder/Respondent submits a bid/proposal prior to the submission deadline, provided such modifications by Bidder/Respondent are completed on the CivCast website prior to the submission deadline.

4.4 By submittal of a bid/proposal, Bidder/Respondent certifies and confirms, to the best of its knowledge, all information submitted by Bidder/Respondent is true and correct.

4.5 Every manufacturer, supplier, vendor, contractor and others interested in doing business with the City of San Antonio shall first register with City through the City of San Antonio's **Vendor Registration Website**: <http://www.sanantonio.gov/purchasing/SAePS.aspx>.

For assistance with registration, Bidder/Respondent shall contact Vendor Support at (210) 207-0118 or via e-mail at [vendors@sanantonio.gov](mailto:vendors@sanantonio.gov).

If Bidder/Respondent submitting a bid is not registered in the City's Vendor Registration, the submitted bid may be rejected.

#### 5. LOCAL PREFERENCE PROGRAM ORDINANCE

In accordance with Chapter 271, Texas Local Government Code, the City adopted a policy, known as the Local Preference Program, described in the San Antonio City Code Chapter 2, Article XII. **This solicitation is not subject to the Local Preference Program. For tracking purposes, all Bidders are required to complete and**

**submit the Local Preference Identification Form, regardless of the location of their business.** For more information on the program, refer to the Local Preference Program Identification Form, attached to this solicitation, or to the City Code.

## **6. VETERAN-OWNED SMALL BUSINESS PREFERENCE PROGRAM**

Pursuant to Ordinance No. 2013-12-05-0864, all solicitations issued by 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. All Bidders are required to complete and submit the Veteran-Owned Small Business Preference Program Tracking Form.

## **7. RESPONSIBLE BIDDER ORDINANCE**

7.1 Pursuant to Local Government Code Chapter 252, the City passed ordinance 2023-01-26-0041, establishing responsible bidder and best value criteria and authorizing the City to refuse to enter into a contract or other transaction with a person deemed not a responsible bidder.

7.1.1 **Person** means an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the City as defined in Local Government Code Chapter 252, Section 252.0436.

7.2 **Persons Indebted to City.** This ordinance establishes regulations permitting the City to refuse to enter into a contract or other transaction with a Person indebted to the City. Persons indebted to the City shall be deemed “not a Responsible Bidder”.

7.3 **Claims or Litigation.** A Person involved in any active Frivolous Claim or litigation against the City of San Antonio shall be deemed “not a Responsible Bidder” and City shall refuse to enter into a contract or other transaction with such Person.

7.4 **Contract Termination.** A Person in which the City has had to terminate a contract with cause within the past three (3) years shall be deemed “not a Responsible Bidder” and City shall refuse to enter into a contract or other transaction with such Person.

7.5 **History of Poor Performance.** A Person with a history of poor performance of its contractual obligations, including any noncompliance with project requirements and any City project scorecards rated below 70%, within the past three (3) years shall be deemed “not a Responsible Bidder” and City shall refuse to enter into a contract or other transaction with such Person.

7.6 **Failure to Disclose Violation of Criminal Law.** A Person which fails to disclose any violation of criminal law shall be deemed “not a Responsible Bidder” and City shall refuse to enter into a contract or other transaction with such Person for a period of three (3) years from the date of the failure to disclose. Violations of criminal law shall include: felony conviction, felony deferred adjudication, Class A misdemeanor conviction, Class A misdemeanor conviction, Class A misdemeanor deferred adjudication, Class B misdemeanor conviction within the past 10 years, Class B misdemeanor deferred adjudication within the last 10 years, an open arrest for any criminal offense (felony or misdemeanor), and family violence conviction.

Contractors are responsible for assessing risk and maintaining effective background check policy and procedures for all employees, staff and subcontractors responsible for performing services under any City contract. Contractor shall remove an employee or subcontractor from service under any City contract should Contractor become aware that the employee or subcontractor has been convicted of a crime, evaluated based on level of offense, time period, and relevance to position, as recommended by U.S. Equal Employment Opportunity Commission (EEOC) guidelines.

## **8. REJECTION OF BIDS/PROPOSALS**

8.1 City may reject Bidder's/Respondent's submitted bid/proposal if:

- 8.1.1 Bidder/Respondent misstates or conceals any material fact in the bid/proposal; or
- 8.1.2 the bid/proposal does not strictly conform to law or the requirements of the bid/proposal;

- 8.1.3 the bid/proposal is conditional;
  - 8.1.4 Bidder/Respondent is deemed to be unqualified to perform the Work by City;
  - 8.1.5 Bidder/Respondent has exceeded its bonding capacity;
  - 8.1.6 the bid/proposal is deemed unbalanced by City;
  - 8.1.7 Bidder's/Respondent's Subcontractor/Supplier Utilization Plan is not submitted with its bid, if applicable.
  - 8.1.8 Bidder/Respondent fails to register in City's Vendor Registration system.
- 8.2 In the event Bidder/Respondent is or subsequently becomes delinquent in the payment of its City taxes, including state and local sales taxes, such fact shall constitute grounds for City determining Bidder/Respondent is not responsible to perform on a project or, if awarded the bid/proposal, for City canceling Bidder's/Respondent's awarded contract. City reserves the right to deduct any delinquent taxes owed by a delinquent Bidder/Respondent from any payments City may owe a delinquent Bidder/Respondent as a result of Work under a City contract.
- 8.3 City may reject any or all bids/proposals submitted by Bidder/Respondents whenever such rejections are deemed in the best interest of City to do so. City also may reject any part of a Bidder/Respondent's bid/proposal unless, the bid/proposal has been qualified as provided in **Paragraph 8.1.3** above.
- 8.4 City, at its sole discretion, also may waive any minor informalities or irregularities in any Bidder/Respondent bid/proposal, to include failure to submit sufficient copies of a submitted bid/proposal, failure to submit literature or similar attachments or a Bidder/Respondent's business affiliation information.

## **9. WITHDRAWAL OF BIDS/PROPOSALS BY BIDDER/RESPONDENT**

Bids/Proposals may not be withdrawn by Bidder/Respondent after the time set for the bid/proposal opening, unless approved by City in writing.

## **10. LATE BIDS/PROPOSALS OR MODIFICATIONS**

- 10.1 A bid/proposal and/or modification received after the time set for the bid/proposal deadline and bid/submittal opening (also known as the solicitation deadline) shall not be considered.
- 10.2 Proposal amounts may not be amended or modified in any manner after the Solicitation Deadline reflected in the advertised IFB/RFCSP, except as hereinafter provided.
- 10.3 City shall perform a cursory review of the received bids/submittal to determine if the bids/submittal received and opened are complete, as to required contents, in proper form and properly signed. A bid/proposal that obviously is defective on its face shall not be read aloud at the bid/proposal opening, nor will the bid/proposal prices included therein publicly be revealed. If a minor clerical error or omission committed by a Bidder/Respondent is discovered and classified by City, in its sole discretion, as a technicality, for which City has reserved the right to waive or an applicable law allows City the right to waive, Bidder's/Respondent's representative shall have the opportunity to make the appropriate correction after bid/proposal opening.

## **11. BID PROTEST PROCEDURES**

- 11.1 Any Bidder/Respondent who is adversely affected in connection with the solicitation, evaluation, or proposed award of a contract may file a protest with the Director and appeal any adverse decision to the City Manager of the City of San Antonio. Bidder/Respondent must deliver a written notice of protest to the Finance Director within 7 calendar days of the posting of the Bid Summary in the CivCast website. If Bidder/Respondent does not file a written notice within this time, Bidder/Respondent will have waived all rights to formally file a bid protest. It is Bidder's/Respondent's responsibility to check the CivCast website posting.

## **12. PROPOSAL GUARANTY**

- 12.1 Each bid/proposal shall be accompanied by an original Bid/Proposal Bond issued by a corporate surety company licensed to conduct business in the State of Texas, for the stated solicitation and in the amount of not less than five percent (5%) of the greatest total amount of the bid/proposal, payable without

recourse to the order of the City of San Antonio, Texas. The Bid/Proposal Bond must be signed by the Bidder/Respondent, surety company, and witnesses. Failure to submit the Bid/Proposal Bond with the required signatures will deem the Bidder/Respondent's bid/proposal non-responsive. The forms of security submitted by Bidder/Respondent shall serve as a guarantee, if awarded the Contract; Bidder/Respondent promptly will enter into an Agreement with City, as required by the Contract Documents, and execute Performance and Payment Bonds on provided City forms. Bidder/Respondent acknowledges, accepts and agrees City shall not accept Performance and/or Payment Bonds not provided to City on a City-provided form.

- 12.2 Termination of Bid/Proposal: No Bid/proposal shall be withdrawn or terminated by Bidder/Respondent without consent of City for a period of ninety (90) calendar days after the solicitation deadline.
- 12.3 Should a successful Bidder/Respondent fail to execute the Contract and Bonds and provide the required proof of insurance coverage(s) to City within ten (10) calendar days after the date of the Project's award and the transmittal of the Contract Documents (if applicable) by City to Contractor, said Proposal Guaranty shall become the property of City, not as a penalty but as liquidated damages resulting from a Project's delay and the resulting administrative damages suffered by City, as a result of the successful Bidder/Respondent failing to enter into the awarded City Contract.
- 12.4 Proposal guarantees of the first, second and third-ranked Bidder/Respondents (for RFCSP) or first, second and third- lowest bidders (for IFB) shall be retained by City until after a Contract Agreement has been executed and the required Payment and Performance Bonds have been received by City on City-approved forms.

### 13. QUALIFICATIONS OF BIDDER/RESPONDENT:

- 13.1 City or its agents may make such investigations as it deems necessary to determine the ability and responsibility of Bidder/Respondent to perform the Work. Bidder/Respondent shall furnish City reasonable information and data for this investigative purpose as City reasonably may request. City reserves the right to reject any bid/proposal if the evidence submitted by, or investigation of, such Bidder/Respondent fails to satisfy City that such Bidder/Respondent is responsible to carry out the obligations of the Contract and to complete the Work contemplated therein.
- 13.2 City has implemented a Contractor/Consultant performance evaluation system. The evaluation covers the accomplishment of a Contractor/Consultant on any past project(s); Contractor's/Consultant's, utilization of and adequate management of manpower on a project; Contractor's/Consultant's ability to meet a project schedule; adequacy of materials and equipment utilized by a Contractor/Consultant on a project; Contractor's/Consultant's citizen complaint response; Contractor's/Consultant's adjacent-to-project property owner relations; and Contractor's/Consultant's attendance at public project meetings. Contractor's/Consultant's evaluation history also may be used by City Staff as a basis for recommendation of a contract award to City Council or, if Contractor/Consultant is deemed not to be a responsible bidder based on past performance, a denial of a contract award.

### 14. AWARD OF CONTRACT

- 14.1 For an Invitation for Bid, the contract shall be awarded to the lowest responsible Bidder whose bid, conforming to the requirements of City's Invitation for Bids, is most advantageous to City.
- 14.2 For Request for Competitive Sealed Proposals, the contract shall be awarded to the Bidder/Respondent whose proposal, conforming to the Request for Competitive Sealed Proposals requirements, is most advantageous to City.
- 14.3 Pursuant to an Invitation for Bid, a **written award of acceptance (manifested by a City Ordinance) and an appropriation of funds (as evidenced by Purchase Order) mailed or otherwise furnished to the successful Bidder results in a binding contract between City and Bidder without further action by either party.**
- 14.4 A breaking of tie bids received shall be conducted in accordance with V.T.C.A. Local Government Code § 271.901.
- 14.5 City reserves the right to accept any items or groups of items on as bid/proposal, unless



Bidder/Respondent qualifies its bid/proposal by specific limitations, as referenced in **Paragraph 5.1.3.**

- 14.6 Although the information furnished to Bidder/Respondent specified the approximate quantities needed, based on the best available information when a contract is awarded on a unit price basis, payment on a project shall be based on the actual quantities supplied to the project. Following the award of an Invitation for Bid contract, City reserves the right to delete items and purchase said deleted items by other means and increase or decrease the quantities bid and adjust the contract value accordingly, in accordance with Chapter § 252.048 of the Texas Local Government Code. No changes in project quantities or changes in a contract's value shall be made without written notification by City.
- 14.7 **For Unit Price Task Order Contracts:** The bidder acknowledges that this is a unit price contract; that unit prices established will remain in effect and valid throughout the duration of the contract; the quantities shown are estimated quantities for budgetary purposes only; the award of this contract does not guarantee contractor the entire work shown in this solicitation; the City may order all, some, or none of the work shown in this solicitation; and projects will be assigned as they become available.
- 14.8 **Additive Alternates:** If additive alternates are included in the solicitation, the City may elect to award this Project based solely on the base bid, based on a combination of the base bid plus any combination of selected alternates or based on a combination of the base bid plus all alternates that serve the best interest of City. All bids must include a price for all units or line items, including any alternates. Entering a price of "\$0.00" shall mean the units or line items will be provided at no cost to the City. A unit price left blank shall result in the bid being deemed nonresponsive and disqualified from consideration. City reserves the right to delete line items prior to award.
- 14.9 **City Data:** Vendors awarded a contract with the City of San Antonio agree to comply with the City's Data Governance Administrative Directive 7.12 and Data Security Administrative Directive 7.3a in the same manner required of City employees, interns, volunteers and trainees, for City Data arising out of, resulting from or related to Vendor's activities under such contract.
- As between City and Vendor, City is and will remain the sole and exclusive owner of all right, title, and interest in and to all City Data, including all intellectual property rights relating thereto, subject only to any limited license expressly granted to Vendor, and Vendor is and will remain the sole and exclusive owner of all right, title, and interest in and to the Vendor materials, including all intellectual property rights relating thereto, subject only to the authorization and license granted to City.
- 14.10 Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, entities or their agents, which seek to contract for the sale or purchase of property, goods or services with City, shall file a completed Conflict of Interest Questionnaire (hereafter referred to as "CIQ") with City Clerk not later than the seventh (7<sup>th</sup>) business day after the date that the person, entity or agent:

14.10.1 begins contract discussions or negotiations with City; or

14.10.2 submits to City an application, a response to a request for bid, a proposal, correspondence related to a bid/proposal, or another writing related to a potential agreement with City.

The CIQ form is available from the Texas Ethics Commission online at the following web address:  
<https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>

In addition to the CIQ form, City requires individuals, entities and agents to submit a CIQ-Addendum. The CIQ-Addendum is available from the City of San Antonio on line at the following web address:  
<http://www.sanantonio.gov/atty/ethics/pdf/OCC-CIQ-Addendum.pdf>.

Completed CIQ forms and the CIQ addendum may be delivered by hand to the Office of the City Clerk, Municipal Records Facility, 719 S. Santa Rosa, San Antonio, TX 78204 or may be mailed to the Office of the City Clerk,

P.O. Box 839966, San Antonio, TX 78283-3966. Bidder/Respondent shall consult its own legal advisor if Bidder/Respondent has questions regarding the Local Government Code statute or the CIQ form.

## 15. SITE INVESTIGATION

- 15.1 The submittal of a bid/proposal by Bidder/Respondent shall constitute an admission that Bidder/Respondent full has examined the location of the proposed Work related to the subject Project



and the requirements of the Project's Work. Bidder/Respondent shall be familiar with all of the Contract Documents and other City instructions, including Bidder/Respondent's ability to submit inquiries to City and Design Consultant before submitting a bid/proposal, so that no misunderstanding shall exist with Bidder/Respondent regarding the nature and character of the Work to be performed on the subject Project. No allowance shall be made by City for any claim made by Bidder/Respondent that Bidder's/Respondent's bid/proposal is based upon incomplete information as to the nature and character of the Project site or the Work involved.

- 15.2 After investigating the Project site and comparing the Plans and Specifications and other Contract Documents with the existing conditions, Bidder/Respondent immediately shall notify City and Consultant of any conditions for which the requirements of labor and materials are not clear and pose any question regarding the quantity and extent of the Project Work involved. Bidder/Respondent inquiry notifications to City and Consultant shall be made in writing at least ten (10) calendar days prior to the scheduled solicitation deadline.
- 15.3 It is understood and acknowledged by Bidder/Respondent that full and complete allowance for conditions under which Bidder/Respondent shall be required to perform Work, or that will in any manner affect Work under this Contract, are included in the Bidder's/Respondent's bid/proposal and reflected in Bidder's/Respondent's bid/proposal. When applicable, if a soils investigation was conducted as a potential aid to City's Consultant, in preparation of the Project Plans and Specifications, this information shall be available to Bidder/Respondent for review at the Project Consultant's office and any cost paid by Bidder/Respondent to purchase a copy of said soils investigation from Consultant is non-refundable. THIS INFORMATION SHALL BE MADE AVAILABLE TO BIDDER/RESPONDENT WITHOUT EXPRESS OR IMPLIED REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTEE BY CITY OR CONSULTANT THAT THE INFORMATION IS COMPLETE OR CORRECT OR THAT IT REPRESENTS A TRUE OR APPROXIMATELY TRUE PICTURE OF THE SUB-SURFACE CONDITIONS TO BE ENCOUNTERED ACROSS THE PROJECT'S PROPOSED WORK SITE. THIS INFORMATION SPECIFICALLY IS NOT PART OF THE CONTRACT DOCUMENTS.
- 13.4 Before submitting its bid/proposal, Bidder/Respondent may, at Bidder's/Respondent's own expense, make reasonable work site investigations and tests as Bidder/Respondent may deem necessary to determine its bid/proposal for performance of the Work, in accordance with the Contract Documents. Access for such investigations and tests shall be coordinated with City.

## **16. RESTRICTION ON COMMUNICATION**

In accordance with and as authorized by Section 2-61 of the City Code, the following restrictions on communications apply to City solicitations: Bidder/Respondents are prohibited from contacting 1) City officials, as defined by §2-62 of the City Code of the City of San Antonio, regarding the proposal/bid from the time the solicitation has been released until the contract is posted for consideration as an agenda item during a meeting designated as an A session; and 2) City employees from the time the proposal/bid has been released until the contract is approved at a City Council "A" session.

Restrictions extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of this solicitation and/or proposal/bid submitted by Bidder/Respondents.

Violation of this provision by Bidder/Respondent and/or its agent may lead to disqualification of Bidder/Respondent's proposal/bid from consideration.

As used herein, City Official is defined as the Mayor; members of City Council; Municipal Court Judges and Magistrates; City Manager; Deputy City Manager; City Clerk; Deputy City Clerk; Assistant City Clerk; Assistant City Managers; Assistants to City Manager; all City department heads and assistant department heads; Internal Auditor and Assistant Internal Auditors; Compliance Auditor; Assistant to City Council; Assistants to City Council, including contract personnel; Assistant to Mayor; Assistants to the Mayor, including contract personnel; Executive Secretaries; Public Utilities Supervisor; members of bid committees; members of the Historic and Design Review Commission; Zoning Commission; and members of any board or commission that is more than advisory in nature.

Exceptions to the restrictions on communication with City employees include:

- 16.1 Bidder/Respondent may ask questions concerning this solicitation during the pre-bid/pre-submittal conference.

- 16.2 Respondent must submit questions concerning this solicitation through the CivCast website at <https://www.civcastusa.com/bids> until the stated deadline. Questions received after the stated deadline shall not be answered. Answers by Consultant and/or City shall be issued in writing to all prospective Bidders/Respondents in Addendum form. All provisions and requirements of such addenda shall supersede or modify affected portions of the Project Plans and/or Specifications. All addenda shall be incorporated in and made a part of the Project's contract documents. No other explanation or interpretation shall be considered official or binding upon the City. All addenda related to this Project shall be posted on the CivCast website with this solicitation. It is Bidder's/Respondent's responsibility to obtain any and all issued Project addenda.
- 16.3 Respondents and/or their agents are encouraged to contact 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 may be reached by telephone at (210) 207-3922 or by e-mail at [SBEDAdocs@sanantonio.gov](mailto:SBEDAdocs@sanantonio.gov). This exception to the restriction on communication does not apply, and there is no contact permitted to the Economic Development Department regarding this solicitation, after the solicitation closing date.
- Exception Request - A Respondent may request, for good cause, an exception to City's application of the SBEDA Program to the solicitation if the Respondent submits the Exception to SBEDA Program Request Form (available at <http://www.sanantonio.gov/EDD/Forms.aspx>) with its solicitation response. The request must document one of the following: (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. Note: This form may not be used for requesting a waiver of a solicitation's subcontracting goals. A Contracting Goal Waiver Request Form must be used for that purpose.
- 16.4 Bidder/Respondent shall provide responses to any questions asked of it by City Procurement Staff representative before and after bids/proposals are received and opened.
- 16.5 By submitting a response, Respondent warrants and certifies that it has read and understands all instructions for form(s) submission required under City's SBEDA program. If a Contracting Program API goal applies to this solicitation, Respondent acknowledges that failure to submit EITHER a Utilization Plan OR a Contracting Goal Waiver Request with its proposal will result in the proposal being deemed nonresponsive and excluded from consideration.

## **17. STATE PROHIBITIONS ON CONTRACTS**

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit 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. This term does not include a sole proprietorship.

### **17.1 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

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.

"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.

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 hereby relies on Company's verification. If affirmation is found to be false, City may terminate the contract for material breach.

#### 17.2 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES

Texas Government Code §2274 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 energy companies; and (2) will not boycott energy companies during the term of the contract.

"Boycott energy company" means, without an ordinary business purpose, 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 with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### 17.3 PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES

Texas Government Code §2274 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 have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### 17.4 PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §2270.0201 or §2252.153 "Listed Companies". Consultant/Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's/Contractor's certification. If found to be false, or if Consultant/Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.