



SOLICITATION AND OFFER

City of New Braunfels
Purchasing
550 Landa Street
New Braunfels, Texas 78130

Solicitation Number: CSP 21-005 Fiber Optic Network Routing Construction Project for the City of New Braunfels	<input type="checkbox"/> Invitation for Bid (IFB) <input checked="" type="checkbox"/> Competitive Sealed Proposal (CSP)	Date Issued: Jan 12, 2021
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SOLICITATION

A virtual Pre-Proposal Conference will be held on January 26, 2021 at 2:00 P.M. (CST). Instructions are referenced in **03.02. Questions may be submitted until close of business day on January 28, 2021, 5:00 P.M. (CST).**

Proposers must submit proposals in a signed original, with 1 hard copy, and 1 in digital format (.pdf File on USB Thumb Drive). Proposals will be received at the New Braunfels City Hall, City Secretary Office at the address shown above until: **3:00 P.M. (CST), February 16, 2021**. **Proposals will be read aloud Virtually. Instructions are referenced in 03.01 & 03.04.** Proposals received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact: <small>(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)</small>	<u>Purchasing Representative</u> Debbie Kimball, Purchasing Buyer	Email : DKimball@nbtexas.org Phone : (830) 221-4081 Fax: (830) 608-2112
5% Proposal Bond Required:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	(If YES, refer to information in Section 5.)
100% Payment Bond Required:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	(If YES, refer to information in Section 5.)
100% Performance Bond Required:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	(If YES, refer to information in Section 5.)

OFFER

(This portion must be fully completed by Proposer.)

In compliance with the solicitation documents, the undersigned in compliance with the Solicitation and Instructions to proposers and having examined the Project Manual, Drawings, Addenda and being familiar with the character of work included in these solicitation documents, proposes to furnish all pertinent labor, permits, machinery, tools, supplies and equipment necessary and to perform all work required to complete the Project for the unit prices for work in place for the items and quantities identified in the attached Solicitation Schedule.

The Owner reserves the right to reject any and all bids and may reject a bid if a bidder does not acknowledge receipt of all addenda issued by the Owner.

CONTRACT AWARD SHALL INCLUDE ALL ASSOCIATED SOLICITATION DOCUMENTS, ATTACHMENTS, AND ADDENDA.

SIGNATURE IS MANDATORY; MANUALLY SIGN ORIGINAL DOCUMENT AND ALL REQUESTED COPIES SUBMITTED.

1) **Proposer's State of Residence:** _____ (Refer to information in Section 5 Article 22.)

Name and Address of Proposer:	Name and Title of Person Authorized to Sign Offer: E-Mail Address: Telephone Number: Fax Number:
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Signature:	Date:
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<u>Name, Address, E-mail Address, and Telephone Number</u> of Person authorized to conduct negotiations on behalf of Proposer. <i>(Applies to Request for Proposal only.)</i>	
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TECHNICAL SPECIFICATIONS

The Construction Specifications for this Project are included in the contract documents. In the event a specification is not provided in the City of New Braunfels (CONB) plans and specifications, the current version of the *City of San Antonio Standard Specifications for Construction* (as amended and revised) will apply for this project where applicable.

The San Antonio River Basin Low Impact Development Technical Guidance Manual will apply for this as they are referenced for in the construction drawings and bid form.

STANDARD DETAILS & TECHNICAL SPECIFICATIONS:

The Standard Details for this Project are included in the construction drawings. In the event a standard detail is not shown, the current version of the *City of San Antonio Standard Details for Construction*, TxDOT Standard Details, and *The San Antonio River Basin Low Impact Development Technical Guidance Manual* (as amended and revised) will apply for this project where applicable.

All traffic control to be submitted to the City by the Contractor. Shall be TMUTCD standards or from a licensed traffic engineer.

SECTION 3
INSTRUCTIONS FOR RESPONSE**03.01 AVAILABLE DOCUMENTS**

Proposals are due **February 16, 2021 at 3:00 P.M. (CST)** at the City of New Braunfels - City Secretary's Office at 550 Landa Street, New Braunfels, Texas 78130 and proposals will be publicly opened and read aloud virtually by joining the webinar at the link below:

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81592732776>

Telephone Only:

(833) 926-2300

Webinar ID: 815 9273 2776

Solicitation documents may be obtained from:

- Purchasing Staff at the New Braunfels City Hall.
- The BidNet Direct website <https://www.bidnetdirect.com/texas/city-of-new-braunfels>

In the interest of security involving this Fiber Optic Network Routing Construction Project, the City is not releasing the associated fully engineered drawings without a Vendor Registration process. Any vendor wishing to bid on this proposal must sign a document confidentiality agreement, at which time they will receive a copy of all associated documents.

03.02 VIRTUAL PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be hosted virtually at **2:00 p.m. (CST) on January 26, 2021 (CST)**. Remote access via Zoom instructions are:

Please access the link below to join the webinar:

<https://us02web.zoom.us/j/84490927892>

Telephone Only:

(833) 926-2300

Webinar ID: 844 9092 7892

Attendance is not mandatory but due to the complexity of the project, it is strongly recommended. Proposers are encouraged to attend and participate in the conference. The City will transmit to all prospective Proposers of record such Addenda as the City considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

Pre-Proposal conference minutes and any addendum may be downloaded at The BidNet Direct website <https://www.bidnetdirect.com/texas/city-of-new-braunfels>.

03.03 SUBMISSION OF PROPOSAL

Companies responding to the CSP must follow the instructions below.

The statements which follow request information that the Evaluation Committee will utilize to evaluate the proposal. Each statement should be specifically addressed. Failure to respond to a statement may result in a proposal being deemed non-responsive and therefore not considered in the selection Process.

To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that proposals be submitted with **1 original master (marked original), 1 hardcopy, and 1 digital copy in a .pdf file format saved on a USB thumb drive.** Responses shall be tabbed and labeled as indicated for consistency.

1. **TAB 1 – Solicitation and Offer Form**; completed and signed.
2. **TAB 1 – Acknowledgment of Addenda**, if applicable.
3. **TAB 2 – Cover Letter**: Name and address of the Proposer, as well as a brief description of the firm and its history
4. **TAB 3 – Executive Summary**: A brief summary highlighting the most important points of the proposal.
5. **TAB 4 – Cost Proposal Form** (Exhibit 1)
6. **TAB 5 – Qualifications of Proposer** (Exhibit 4)
7. **TAB 6 – Plan and Schedule** as required in (Exhibit 4), Qualifications of Proposer, Section 5.
8. **TAB 7 – Acceptable Documentation**
 - **Bond Form - Proposal Guaranty/Bid Bond** in an amount no less than five percent (5%) of price proposal – Exhibit 2
 - One copy of **Certificate of Insurance** completed and signed (Section 4.14).
 - **Conflict of Interest** (Section 4.15.11).
 - **Certificate of Interested Parties**; Form 1295 (Section 4.15.10).
9. **TAB 8 – Required information indicated in Drawings**, if applicable.
10. ***Required after contract award* – Performance, Payment and Maintenance Bonds** – Exhibit 2

Requested Information/Proposal Format

Contractors desiring to qualify for the work must provide all information described in this section including complete and explicit answers to the questions. Do not provide tables and generic product information and expect the reader to count and/or interpret responses. Vague and unresponsive answers and missing information will be considered negative responses.

Section 1 - Minimum Requirements

Provide the following information:

- A. All work shall be performed and completed directly by the chosen vendor. No subcontractors, unless specifically approved by the City of New Braunfels IT

- Department, will be a part of this construction.
- B. Please include all required forms and documentation in this section as mentioned throughout this RFP this should include (but not be limited to) bonds and proof of insurance.
 - C. The firm submitting shall provide documentation to show that they are or can become licensed as a Contractor in the City of New Braunfels and Comal and Guadalupe County, if needed.
 - D. The Firm shall be a certified fiber optic integrator. Provide documentation of your Fiber Optic Certifications. FOA certification preferred.
 - E. At the completion of the project, provide as-built fiber construction documentation/drawings.
 - F. Warranty – Include the following warranty information:
 - 1. Warranty length
 - 2. Location of the nearest warranty service location.
 - 3. What is covered by the warranty?

Section 2 - Financial and Technical Resources

Provide the following information in tabbed sections as follows:

- 1. Financials - Please provide the most recent audited annual financial statements.
- 2. Personnel Resources.
 - a) Provide a company organizational chart and the total number of employees. Provide a project organizational chart accompanied with a written description that includes specific people and specific responsibilities of each stakeholder including subcontractors and Owner. Provide evidence that your staff includes more than one person with directly applicable experience in the design, installation, and testing of Fiber Optic network cabling.
 - b) Does the Company employ qualified fiber optic Service Technicians that can certify and repair fiber optic network terminations? Please provide specifics on their assigned company “home” office location.
 - c) Provide all certification/qualifications showing the ability to perform this project within the electric service area on existing utility poles. Fiber will be lashed/installed within the electric service area of the utility poles, below the neutral power lines. Contractor will be required to be certified and highly experienced to work in the electric service area of the utility lines.
- 3. Support, Service and Maintenance Capabilities.

Describe the services available from your firm and location of personnel for fiber optic installation and maintenance. Identify projects where similar types of services have been provided. Include the Owner’s company, project name, contact person, and phone number of the Owner’s organization. Indicate how your firm could provide long-term maintenance and support services including realistic response times and location where support will originate.

Section 3 - Experience and References

The supplier must have a demonstrable track record in performing installations of this level

of complexity. Provide the following information in separately tabbed subsections:

1. References and Project Experience

- A. A list of at least three (3) similar or larger fiber optic installation projects completed in the last five years, not including municipalities or municipal utilities, including the following:
- Project name and location.
 - Contract amount.
 - Completion date.
 - Name and current phone number of end user reference.
- B. A list of at least three (3) similar or larger fiber optic installation projects completed in the last five years, including municipalities or municipal utilities, including the following:
- Project name and location.
 - Contract amount.
 - Completion date.
 - Name and current phone number of end user reference.

Projects used as references should exhibit past experience in the design, construction, installation, testing and certifying of aerial and underground fiber optic networks, comparable to the size, type, and complexity to the proposed project.

As much of this fiber installation will be lashing to existing fiber conductor located within the service area of utility poles, below the neutral power lines, references should include projects of similar scope.

2. Have any penalties, liquidated damages, liens, claims, or stop notices been filed on any project in progress or completed during the last five years? If so, identify the project, contract date, type of claim/lien, etc. and comment on the reasons.
3. Identify the largest Fiber Optic network installation (in dollar amount) bonded by your company, and state the bonded value, if possible.
4. Submit samples of as-built drawings of similar underground fiber optic network projects, including depth measurements for underground fiber.

Section 4 - Project Approach

Provide the following information describing your project understanding and approach.

1. Describe how you will perform the work on this project. Include a description of how your firm will organize, mobilize, implement this project, and quality control procedures. This is your management approach that will show your understanding of the key issues and steps required for implementation. Indicate issues and potential solutions that will need to be addressed to ensure project success.

2. Schedule and Cost Control Methods.
Describe your methods and tools used to monitor and control project schedules and costs. Please include a sample timeline and estimated number of days to complete this project.
3. Provide Network Validation and Acceptance Testing Plan.
4. Create and submit labeling system for the fiber cabling installation. The cable labeling shall clearly identify all components of the fiber installation.
5. Pricing
Please include detailed pricing for the proposed project. Each section, as labeled per the City's provided engineering drawings, should have pricing listed separately. Please include price per linear foot (or other, indicated, unit of measure) for additional fiber lines. Please include any mobilization or startup costs as separate line items.

Proposal shall include all specified items in this section and be placed in an envelope, sealed and clearly identified on outside as a Proposal to Owner, with Proposer's name and address, and project name. Failure to submit Proposal in this manner may subject Proposer to disqualification. Proposal may be mailed or delivered (in person or by Express Mail or delivery service) to:

Delivery

Purchasing Department
City of New Braunfels
550 Landa Street
New Braunfels, TX 78130

**CSP 21-005 Fiber Optic Network Routing Construction Project
Project Due: February 16, 2021 3:00 PM (CST)**

When sent by mail, Express Mail, or delivery service, sealed Proposal (marked as indicated above) shall be enclosed in an additional envelope clearly identified on outside as a Proposal to Owner with Proposer's name and address, Project name, and Proposal date and time. It is the sole responsibility of the Proposer to ensure timely delivery of Proposal. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the Proposer.

03.04 PROPOSALS AND COMPLIANCE PLANS RECEIVED AFTER THE DATE AND TIME STATED ABOVE WILL NOT BE ACCEPTED FOR EVALUATION.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81592732776>

Telephone Only:

(833) 926-2300

Webinar ID: 815 9273 2776

An abstract of the amounts of the base Proposals and alternatives will be made available to Proposers after the awarding of Proposals.

03.05 AUTHORIZED CONTACT PERSONS

The persons listed below may be contacted for information regarding the Invitation for Proposals. If the Proposer contacts any other City employee, including Council Members and members of Boards and Commissions, the Proposer may be found in violation regarding Anti-Lobbying and Procurement.

CONTRACT PROCUREMENT REPRESENTATIVE:	Debbie Kimball	830-221-4081
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END OF SECTION

SECTION 4**GENERAL INFORMATION****04.01 PROJECT DESCRIPTION**

The City of New Braunfels seeks proposals from qualified vendors for the selection of a Fiber Optic Cable Construction Contractor to implement single mode optic infrastructure to all new facilities. The entire project is 19+ miles of fiber optic cable, including 17 miles of overhead and 2 miles of underground, terminating at 7 unique locations. The new fiber will feed off backbone connections located at our City Hall and Main Public Library. The new facilities include three (3) fire stations, fire training facility, police station, public library, and sport complex. One (1) of the three (3) fire stations will be a reinstallation of existing fiber currently pulled back to the utility pole.

Engineer's Opinion of Probable Construction Costs for the project is: **\$1,450,000.**

04.02 SCOPE OF WORK**SPECIFIC REQUIREMENTS:**

Any variance in any item must be specified clearly under the Exceptions to Proposer's Proposal by Proposer in order to have a valid Proposal. Any exceptions taken may be just cause for disqualification.

Project Description

1. This project scope includes construction, utility pole installation and installation of fiber optic network cabling. Construction should include installation and termination of underground/above ground single mode fiber optic network between specified endpoints, as well as full testing of terminated fiber links.
2. Work includes, but is not necessarily limited to, the following:
 - a. New Installation of outside plant and inside plant fiber optic cabling and terminations.
 - b. Overlapping of new fiber to existing fiber conductor, owned by New Braunfels Utility, City of New Braunfels and New Braunfels ISD.
 - c. Reinstallation of existing fiber and fiber termination at Fire Station 3.
 - d. Installation of guy/anchors assemblies and guy stand cable.
 - e. Installation of snowshoe assemblies/fittings.
 - f. Where there is not existing fiber, new fiber construction will be required, including but not limited to new utility poles, snowshoes, and hardware wiring.
 - g. Installation of fiber in existing conduit owned by the City of New Braunfels and/or New Braunfels Utilities.

- h. Testing and certification of all terminated fibers, including documentation of test results
- i. Installation of weatherproof NEMA rated outdoor enclosures, and indoor fiber splicing enclosures.
- j. Installation of two new poles where existing pole standards are inadequate. 1 out of the 2 new poles will facilitate a railroad crossing. The new poles will not replace existing communication poles. Pole removal will not be required.
- k. Relocation of at least one utility pole.

Technical Services

The City of New Braunfels is providing fully engineered fiber design plans, digital and hardcopies once a confidentiality agreement is signed. The engineered design plans validate route data to complete each fiber segment. The fiber engineered designs are construction ready, providing construction level details including fiber strand counts. The contractor will adhere to the provided fiber engineering plans. Any discrepancies, conflicts or issues must be brought to the attention of the City of New Braunfels staff. Deviations from the engineering plans due to manufacturing requirements or construction limitations shall be made in writing and must be approved by the City of New Braunfels staff.

The City of New Braunfels is currently in the permitting submittal phase for highway and railroad crossings. The City of New Braunfels will supply the approved permits to the fiber contractor. The fiber contractor shall comply with all requirements of the crossing permits. All traffic control needed to perform all portions of the permitted work shall be the responsibility and be coordinated by the fiber contractor.

The fiber optic network installation vendor shall provide the following services during the course of this project. The Contractor shall:

- a) Provide all material, equipment, and resources required for complete installation of the facilities indicated in the plans.
- b) Provide all project management services required to insure a successful and fully functional fiber optic network between the specified connections points.
- c) Provide the onsite services of a fiber optic service engineer to validate connectivity of all fiber links. Results of all testing shall be documented in writing on a site by site basis.
- d) Contact all underground utilities providers to locate existing infrastructure along the proposed fiber route prior to construction.
- e) Provide all traffic control measures to comply with the current MUTCD.
- f) Perform all work within existing ROW or easements and protect all existing improvements within the project limits.
- g) Comply with OASHA requirements and all local, state, and, federal safety guidelines.

Onsite Services

Provide the onsite services of a field technician to show the New Braunfels IT Department each completed network endpoint location.

Submittals

- a) Comply with other pertinent provisions of this specification
- b) Product data: Within 90 calendar days after the Contractor has received the Owner's Notice to Proceed, submit:
 - A printed and electronic copy of fiber termination diagrams as well as enclosure hardware specifications.
 - Permits from all jurisdictions involved, excluding permits City of New Braunfels has indicated they will be responsible for as a part of this project.

System Description

- a) All underground fiber shall be installed in existing conduit.
- b) Indoor installation in plenum spaces shall conform to NFPA 262/90A standards
- c) All work performed on New Braunfels Utility or Guadalupe Valley Electric Cooperative utility poles are subject to inspection and approvals by the utilities' company field technicians or engineers.
- d) Each handhole cover shall be clearly marked with permanent "City of NEW BRAUNFELS" markings similar to existing fiber handhole covers to indicate ownership.
- e) In addition to the typical warning labels indicating the presence of underground fiber optic cable, each marker pole shall have a note on two sides stating "48 HOURS BEFORE DIGGING IN THIS VICINITY CALL PHONE", then "www.nbtexas.org" on last line.
- f) Splices shall conform to ANSI/TIA/EIA standards and have no splice loss greater than 0.05dB. At the conclusion of the fiber installation, test all cables and termination hardware from end to end for defects and to verify cable performance. Fiber segments shall be tested with certified OTDR equipment at 1310nm and 1550nm wavelengths. Supply the testing documentation and footage of each cable run, including OTDR trace for all fibers including the optical loss of each cable.
- g) Coordinate with City of New Braunfels before initiating any tree trimming.

04.03 DESIGN ENGINEER

Brian Scott Meuth of M&S Engineering, 376 Landa Street, New Braunfels, TX 78130 is the Design Engineer for the Project.

04.04 CONTRACT TIMES**04.04.01 Time of the Essence**

Time is of the essence in all phases of the Work and performance of obligations owed by the Contractor to the Owner as stated in the Agreement and the Contract Documents. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

04.04.02 Days to Achieve Substantial Completion and Final Payment

The Work will be substantially completed within **210** calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.3 of the Project Manual General Conditions and completed and ready for final payment in accordance with Section 6 Article 14.7 of the General Conditions within **240** calendar days after the date when the Contract Times commence to run. The substantial completion schedule will be further defined with the final contract.

04.04.03 Liquidated Damages

Contractor and Owner recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.01 above, plus any extensions thereof allowed in accordance with Article 12 of the Project Manual General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$500** for each calendar day that expires after the time specified in Paragraph 4.01 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$500** for each calendar day that expires after the time specified in Paragraph 4.01 for completion and readiness for final payment until the Work is completed and ready for final payment.

04.05 CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 04.04 below:

- A. For all Work, at the unit prices stated in Contractor's Proposal.
- B. Installation costs should include the cost all required parts, tools, and personnel, including fiber cable. It is expected the construction related to this proposal will be

complete before the newly constructed buildings are turned over to the City of New Braunfels. Costs must include the future finishing of the installation of the fiber optic cable into the building as determined by the City of New Braunfels. As mentioned previously, Vendors must sign a confidentiality agreement prior to receiving the Engineering Drawings associated with this proposal. These drawings will provide vendors with the specific route and a required parts list, including parts specifications. This project will be broken into 3 phases. For each of the 3 phases, the City will require a cost and construction timeline for each phase. If multiple phases can be constructed simultaneously, please indicate such. The quantities shown on the plans and the bid documents are estimated quantities and based on the plan set and to be used for bidding purposes only. The contractor is responsible for determining actual quantities. The contractor shall be responsible for resolving any perceived discrepancies in the quantities prior to beginning any construction work.

04.06 PAYMENT PROCEDURES

04.06.01 Submittal and Processing of Payments

Contractor shall submit Applications for Payment in accordance with Article 14 of the Project Manual General Conditions and Exhibit 5, "Supplementary Conditions."

04.06.02 Progress Payments; Retainage

Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided herein.

A. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.2 of the General Conditions:

- i. 95% (percent) of Work completed (5% retained).
- ii. 95% (percent) of cost of materials and equipment not incorporated in the Work (5% retained).

04.06.03 Final Payment

Upon final completion and acceptance of the Work in accordance with Section 6, Article 14.7 of the Project Manual General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

04.07 CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the contract documents and the other related data identified in the bidding documents.

- B. Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the work.
- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site which may affect cost, progress, or performance of the work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the bidding documents, and safety precautions and programs incident thereto.
- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the work at the contract price, within the contract times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. Contractor has given the Purchasing Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the City of New Braunfels is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

04.08 CONTRACT DOCUMENTS

Contents

- A. Contract Documents consist of the following:
 - 1. Contract Award Form & Agreement;
 - 2. Project Manual (Sections 6 - 29), including the General Conditions
 - 3. Competitive Proposal
 - a. Solicitation and Offer Form
 - b. Performance Bond, Exhibit 2
 - c. Payment Bond, Exhibit 2
 - d. Warranty Bond, Exhibit 2

- e. General Information
 - f. Terms and Conditions
 - g. Specifications as listed in the table of contents of the Project Manual
 - h. Addenda (if any)
 - i. Exhibits and Attachments (Cost Proposal Form, Prevailing Wage Schedule, Qualifications of Proposer, Supplementary Conditions, Supplementary Provisions, Plans, and Technical Specifications)
4. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
- a. Notice to Proceed;
 - b. Work Change Directives;
 - c. Contract Change Orders.
- B. The documents listed in Paragraph 04.06 are attached to this contract except as expressly noted otherwise above.
- C. There are no Contract Documents other than those listed above in Section 04.06.
- D. The Contract Documents may only be amended, modified, or supplemented as provided therein.
- E. **ORDER OF PRECEDENCE.** In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (1) Change Orders, Work Change Directives, and written amendments to the Contract; (2) the Contract; (3) Supplemental Conditions, if any; (4) General Conditions; (5) the drawings, specifications, and addenda issued prior to the execution of the Contract; (6) Competitive Proposal, including Solicitation Offer and Award, Performance Bond, Payment Bond, General Information, Terms and Conditions, Exhibits and Attachments. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency.

04.09 COMPETITIVE PROPOSALS

This proposal is presented in accordance with Section 2269.151 Texas Government Code and City requirements.

- A. The City of New Braunfels will evaluate proposals according to the process and criteria listed below. The City of New Braunfels reserves the right to consider all other pertinent factors in addition to the proposal in making its final decision. Each of the criteria has been assigned an appropriate weight by the City of New Braunfels. Following an analysis and valuation of the Proposals, ranking of the Proponents will be made based upon the evaluation criteria. In the event of a tie in the rankings, the City of New Braunfels will break the tie based upon the City of New Braunfels's determination of which Proposal will provide the best value to the City of New Braunfels. Subjective judgment on the part of the City of New Braunfels is implicit in the criteria evaluation process. After opening and ranking, award may be made on the basis of the original proposal as is, without discussion, clarification or modification, or the City of New

- Braunfels may discuss with the selected Proponent, offers for cost adjustment and other elements of the Proposal.
- B. Any Proposal may be considered unacceptable if the City of New Braunfels determines it fails to provide adequate technical and price information as specified in this Instruction to Proponents.
 - C. Evaluation Criteria: The proposals submitted in response to this competitive sealed proposal (CSP) will be reviewed by a committee assembled by the City of New Braunfels. This committee will evaluate the proposals based on, but not limited to, the following criteria.

The following criteria will be used by the evaluation committee to evaluate the proposal:

Percent	Description
30	Cost Proposal Price
30	Proposed Project Timelines
25	Experience and Qualifications
15	Availability in Region for Warranty Work

Cost Proposal Price: (30 Points)

- a) The Owner will consider the total contract cost as part of its evaluation.

Proposed Project Timelines: (30 Points)

Represent a potential plan and schedule for performing the work for the project.

- a) Baseline Schedule: Provide a proposed baseline schedule in Microsoft Project for this Work while defining a critical path.
- b) Schedule Strategies: Provide strategies which are included in the proposal to minimize delays and describe areas for possible time savings.

Experience and Qualifications (25 Points)

Experience as a **general contractor** with specific experience of the same or similar type, size, nature and class as the project being proposed.

- a) Minimum experience is indicated in Exhibit 4. Consideration will be given to the number of years the Proponent has been in business.
- b) Consideration will be given to projects which are:
- Occupied or substantially **complete**, as a Prime Contractor or Sub-Contractor within the last five years;
 - At a cost in excess of \$1,000,000 that your company is **presently** constructing as a Prime Contractor.
- c) This includes the qualifications, reputation, capability, safety record, and contractors past relationship and experience with the City and and/or other public entities.
- Proposer must include a list of all proposed key personnel.
 - If you are using a sub-contractor for this work, provide the sub-contractor's specific experience in general road and sidewalk construction, underground utilities, as well as construction of TAS-complaint Ramps and Walkways of the same or similar type, size, nature and class as the project being proposed.

- The Prime Contractor or Sub-Contractor on projects with CONB as the Owner.
- d) **Other Considerations:** The City reserves the right to consider historical information and facts, whether gained from the proposal, references, or any other source, in the evaluation process. The City further reserves the right to consider a submitter's background, personnel, experience, financial and other references, management practices, exceptions to the CSP or subsequent contract, and any working relationships, past or present, a submitter may have with its other clients.

Availability in Region for Warranty Work (15 Points)

- Include the following warranty information Warranty length
- Location of the nearest warranty service location.
- What is covered by the warranty?

Financial Capacity to perform the work: (Pass/Fail)

- a) Provide evidence of financial capability and stability which must be appropriate to the size and scope of this project.
- b) List bank references, including contact name and title, address and phone of contact person at each bank listed.

TOTAL POINTS POSSIBLE: 100

- D. **Presentations/Interviews:** After an initial review and compilation process, the City may ask for a presentation/interview of services from selected companies or individual to clarify and to develop a comprehensive assessment of the submissions. Interviews will provide a maximum of 10 additional points, per Street Project, as applicable.
- E. **Proposed Project Schedule:**

DATE	MILESTONE
January 12, 2021	CSP issued on https://www.bidnetdirect.com/texas/city-of-new-braunfels
January 26, 2021	Virtual Pre-Proposal Conference will be held. Time and Zoom link are provided in Section 3, Item 03.02.
January 28, 2021	Deadline for questions and requests for clarification
February 16, 2021	Competitive Sealed Proposal (CSP) submission deadline Time, address and Zoom link are provided in Section 3, Item 03.01.
March, 2021	Anticipated approval, and award of Contract, by City Council

04.10 GENERAL CONTRACTOR REGISTRATION

Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels before commencing work within city limits. All information may be obtained from the Planning & Community Development department,

Building Division on the City's website, www.nbtexas.org. In addition to topics such as permitting and fees, et cetera, the "Forms and Applications" hyperlink has links to the required "**Contractor's Registration Packet**" and "**Sub-Contractor Registration**" forms. Additional information may be provided by calling the Building Division at (830) 221-4060.

04.11 PROPOSAL GUARANTY

All Proposals shall be accompanied by an acceptable Proposal Guaranty in an amount of not less than five percent (5%) of the total Proposal Amount, as specified in Terms and Conditions, Section 5, Article 5.

04.12 CONTRACT SECURITY

The required Performance and Payment Bonds must be delivered to Owner not later than 10 days after Notice of Award is issued to Contractor. Refer to Exhibit 2 for the City Bond Forms.

04.13 PERFORMANCE AND PAYMENT BONDS

When Performance or Payment Bonds are required, each shall be issued in equal to the Contract Amount as security for the faithful performance or payment of all Contractors' obligations under the Contract Documents.

04.14 WARRANTY BOND

Not Required for this Project.

04.15 MINIMUM WAGES AND PREVAILING WAGE RATES

Minimum wage rates have been established and are specified in Section 5, Articles 23 and 24, "Wage Rates."

Refer to Exhibit 3, "Prevailing Wage Schedule"

04.16 INSURANCE AND LIABILITY COVERAGE

During the period of this contract, Contractor shall maintain at his expense, insurance with limits not less than those prescribed below. Contractor further agrees to indemnify, defend, and hold City of New Braunfels harmless from any and all causes of action arising from this contract. With respect to required insurance, Contractor shall:

- A. Name City of New Braunfels as additional insured/or an insured, as its interests may appear.
- B. Provide City of New Braunfels a waiver of subrogation.
- C. Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- D. Provide the Purchasing Representative at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award.

E. Submit a certificate of insurance reflecting coverage as follows:

a. Automobile Liability:

Bodily Injury (Each person)	-	\$1,000,000.00
Bodily Injury (Each accident)	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00

b. General Liability (Including Contractual Liability):

Bodily Injury	-	\$1,000,000.00
Property Damage	-	\$1,000,000.00
Aggregate	-	\$2,000,000.00

c. Excess Liability:

Umbrella Form	-	\$5,000,000.00
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d. Worker's Compensation:

- Statutory

Or Employer's Liability Insurance: - \$1,000,000.00

Each Accident - \$1,000,000.00

Disease each employee - \$1,000,000.00

Policy Limit - \$1,000,000.00

04.17 MISCELLANEOUS

04.17.01 Terms

Terms used in this Agreement will have the meanings stated in the Project Manual General Conditions, Section 6, Article 1 and Section 9 (Definitions and Terminology) and as elsewhere defined throughout the Contract Documents.

04.17.02 Assignment of Contract

No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

04.17.03 Successors and Assigns

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

04.17.04 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid

and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

04.17.05 Contractor's Certifications

Contractor certifies in Exhibit 4, "Qualifications of Proposer", it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph:

- A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
- B. "fraudulent practice" means an intentional misrepresentation of facts made
 - 1. to influence the bidding process or the execution of the Contract to the detriment of Owner,
 - 2. to establish Bid or Contract prices at artificial non-competitive levels, or
 - 3. to deprive Owner of the benefits of free and open competition;
- C. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
- D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

04.17.06 Certification of House Bill 89

Contractor certifies in Exhibit 4, "Qualifications of Proposer", it has not boycotted Israel currently and will not boycott Israel during the term of the contract, Pursuant to Section 2270.0001, Texas Government Code.

04.17.07 Indemnity Against Loss

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, hold harmless and defend City of New Braunfels, their officers, agents and employees from any loss, damage, liability or expense, including reasonable attorney's fees, on account of damage to property and injuries, including death, to all persons, including employees of the Contractor or any of its consultants, which may arise from any negligent act, error or omission, on the part of the Contractor, its employees, agents, and consultants, pursuant to this contract.
- B. The City does not assume any liability to third persons, nor will the City reimburse the Contractor for its liability to a third person, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder, and Contractor further agrees to provide the defense for, and indemnify and hold harmless City from any and all claims, suits, causes of action, and liability, arising in connection with this contract.

04.17.08 Anti-Lobbying and Procurement

Lobbying activities or representations by the Bidder are prohibited between the date that the solicitation is issued and the date of contract execution.

During a no-contact period, a bidder shall make a representation only through the authorized contact person.

During the no-contact period, a bidder may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a bidder.

The prohibition of a representation during the no-contact period applies to a representation initiated by a bidder, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.

04.17.09 Safeguarding of Information and Data

The Contractor shall safeguard all information and data provided by the City. Further, Contractor shall not sell or make available data or mailing lists compiled from data received from the City without the express written approval of the City Council, through the City's Purchasing Representative, with appropriate remuneration to the City.

04.17.10 Certificate of Interested Parties (Form 1295)

Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission (TEC) 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 **Certificate of Interested Parties (Form 1295)** to the City before the City may enter into a contract with that business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

Standard Filing Process: Form 1295 is accessible at, and must be completed online, at the following web address: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

A business entity must enter the required information as directed on Form 1295 and then print a copy of the completed form after it has been submitted online. It is important to note that the information that is required in 'Certification Number' and 'Date Filed' fields in the 'Certification of Filing' box on the form will not be generated until the form has been submitted, not saved. An authorized agent of the business entity must then complete the information required in the "Unsworn Declaration" field of the form and sign the printed copy of the form, containing the unique Certification Number and filing date. The

completed and signed Form 1295 must be filed with the governmental body or state agency with which the business entity is entering into the contract; the governmental body or state agency will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website.

Solicitation Document: If a completed Form 1295 is requested in a solicitation document issued by the City, Respondent shall reference the City's solicitation number in Box 3 of the form as a contract number is not generated until the award of a contract by City Council. Respondents must submit the original signed form with their response to the solicitation. The City will subsequently acknowledge the Certificate of Interested Parties (Form 1295) on the TEC website after the contract has been awarded.

04.17.11 Requirement for Disclosure of Conflict of Interest

In accordance with Chapter 176 of the Texas Local Government Code, "Disclosure of Certain Relationships with Local Government Officers," persons, or their agents who seek to who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a **Conflict of Interest Questionnaire (Form CIQ)** with the City Secretary if the vendor has a business relationship as defined by Section 176.001(1-a) with the City and the vendor meets requirements under Section 176.006(a).

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

The Conflict of Interest Questionnaire (Form CIQ) is required to be filed within 7 business days of:

- a. Beginning of discussions or negotiations to enter into a contract with the City; or
- b. Submission of an application, response to a request for proposals or bids, correspondence or other writing related to a potential agreement with the City.

If requested in the solicitation document, all respondents are to submit a completed Conflict of Interest Questionnaire (Form CIQ) with their proposal **in addition to** submitting a completed Form CIQ to the office of the City Secretary located at 550 Landa Street; New Braunfels, Texas 78130.

By law, Form CIQ must be filed with the City Secretary no later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed as per Section 176.006(a-1). A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

END OF SECTION

TERMS AND CONDITIONS**ARTICLE 1 DEFINED TERMS**

05.01.01 Terms used in these Terms and Conditions, which are defined in the General Conditions of the Contract Documents, have the meanings assigned to them in the General Conditions. The term "Proposer" means one who submits a Proposal directly to Owner, as distinct from a sub-Proposer, who submits a proposal to a Proposer. The term "Successful Proposer" means the lowest, qualified, responsible and responsive Proposer to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Proposal Documents" includes the Advertisement or Invitation to Proposal, General Terms and Conditions, the Proposal Form, and the Contract Documents (Including all Addenda issued prior to receipt of Proposals).

ARTICLE 2 COPIES OF PROPOSAL DOCUMENTS

05.02.01 Complete sets of the Proposal Documents in the number and for the sum stated in the Advertisement or Competitive Sealed Proposal may be obtained from Owner. The sum for the Project Documents is not refundable.

05.02.02 Complete sets of Proposal Documents must be used in preparing Proposals; neither Owner nor Design Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.

05.02.03 Owner, in making copies of Proposal Documents available on the above terms, do so only for the purpose of obtaining Proposals on the Work and do not confer a license or grant for any other use.

05.02.04 Complete sets of Proposal Documents may be downloaded at <http://www.bidnetdirect.com/texas>, unless otherwise notified.

ARTICLE 3 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

05.03.01 It is the responsibility of each Proposer before submitting a Proposal, to: (a) examine the Contract Documents thoroughly; (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work; (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work; (d) study and carefully correlate Proposer's observations with the Contract Documents; and (e) notify the City of all conflicts, errors or discrepancies in the Contract Documents.

05.03.02 Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others and Owner does not assume responsibility for the accuracy of completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

05.03.03 On request in advance, Owner will provide each Proposer access to the site to conduct such explorations and tests as each Proposer deems necessary for submission of a Proposal. Proposer shall fill all holes, clean up, and restore the site to its former condition upon

completion of such explorations. The Proposer shall be responsible for the expenses associated with such tests and explorations.

05.03.04 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. **All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor.** Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

05.03.05 The submission of a Proposal will constitute an incontrovertible representation by Proposer that Proposer has complied with every requirement of this Article, that without exception the Proposal is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 4 INTERPRETATIONS AND ADDENDA

05.04.01 All questions about the meaning or intent of the Contract Documents are to be directed to Purchasing Representative. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda emailed, mailed or delivered to all parties recorded by Purchasing Representative as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

05.04.02 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner.

ARTICLE 5 PROPOSAL GUARANTY

05.05.01 All Proposals shall be accompanied by a proposal guaranty in an amount of not less than five percent (5%) of the total Proposal. If the total Proposal amount is \$100,000 or less, Proposer has the option of providing a cashier's or certified check, made payable to City of New Braunfels, or a proposal bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to Owner. If the total Proposal amount exceeds \$100,000, the only acceptable proposal guaranty will be a proposal bond with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to Owner.

05.05.02 Proposal guaranty accompanying the Proposal of the apparent low Proposer will be retained until Contract is awarded and successful Proposer executes Contract and furnishes required bonds and insurance, after which proposal guaranty will be returned to the Proposer. Proposal guaranty accompanying the second lowest Proposer will be retained until Contract is awarded. All other proposal guaranties will be returned after Proposal certification.

ARTICLE 6 PERFORMANCE AND PAYMENT BONDS

05.06.01 When performance and/or payment bonds are required, each shall be issued in an amount equal to the Contract Amount as security for the faithful performance and/or payment of all Contractors' obligations under the Contract Documents. Performance and payment bonds shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by Owner pursuant to applicable law.

ARTICLE 7 WARRANTY BOND

05.07.01 Warranty Bond is not required for this solicitation.

ARTICLE 8 CONTRACT TIME

05.08.01 The number of days within which, or the dates by which, the Work is to be completed and ready for final payment (the Contract Time) are set forth in the Agreement.

ARTICLE 9 LIQUIDATED DAMAGES

05.09.01 Contractor and Owner recognize that time is of the essence Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.01 of the General Information, plus any extensions thereof allowed in accordance with Article 12 of the Project Manual General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$500** for each calendar day that expires after the time specified in Paragraph 4.01 of the General Information for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$500** for each calendar day that expires after the time specified in Paragraph 4.01 of the General Information for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 10 SUBSTITUTE AND "OR-EQUAL" ITEMS

05.10.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or substitute or "or-equal" materials and equipment approved by Owner and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by Owner as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by Owner at least 7 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.5 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Owner's decision of approval or disapproval of a proposed item will be final. If Owner approves any proposed item, such approval

will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 11 SUBCONTRACTORS, SUPPLIERS AND OTHERS

05.11.01 If the Contract Documents require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Proposer, and any other Proposer so requested, shall within five days after Proposal opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Proposer to submit a substitute. If the Substitute will cause the cost of the work to increase the Owner will agree to increase the contract price by the corresponding increase.

05.11.02 If apparent Successful Proposer declines to make any such substitution, Owner may award the Contract to the next ranked Proposer that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Proposal security of any Proposer. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner subject to revocation of such acceptance after the Effective Date of the Agreement.

ARTICLE 12 PREPARATION OF PROPOSAL

05.12.01 The Proposal Form is included with the Proposal Documents.

- A. All blanks on the Proposal Form shall be completed. Erasures or alterations shall be initialed in ink by the person signing the Proposal Form. A Proposal price shall be indicated for each proposal item or unit price listed therein. In the case of optional alternatives, the words "No Proposal," "No Change," or "Not Applicable" may be entered.
- B. All names shall be printed in ink below the signatures.
- C. The Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
- D. Postal and e-mail addresses and telephone number for communications regarding the Proposal shall be shown.
- E. The Proposal shall contain evidence of Proposer's authority and qualification to do business in the state where the Project is located, or Proposer shall covenant in writing to obtain such authority and qualification prior to award of the Contract and

attach such covenant to the Proposal. Proposer's state Contractor license number, if any, shall also be shown on the Proposal Form.

ARTICLE 13 SUBMISSION OF PROPOSAL

05.13.01 Each Proposal, completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity shall be submitted in accordance with Section 3.03.

ARTICLE 14 BASIS OF PROPOSAL; COMPARISON OF COSTS

05.14.01 Unit Price

1. Proposers shall submit a Proposal on a unit price basis for each item of Work listed in the Proposal Form.
2. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price.
3. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

05.14.02 Lump Sum Price

1. Proposers shall provide proposal items on a lump sum price for each item of Work listed as such in the Proposal Form.
2. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding lump sum price.
3. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the lump sum prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

ARTICLE 15 MODIFICATION AND WITHDRAWAL OF PROPOSALS

05.15.01 Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted at any time prior to the opening of Proposals.

05.15.02 Changes

The City Purchasing Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any of the following:

- a) Description of services to be performed.
- b) Time of performance (i.e. hours of day, days of week, etc.)
- c) Place of performance of the services.
- d) Correction of errors of a general administrative nature or other mistakes, the correction that does not affect the scope of the contract or does not result in expense to the Contractor.

If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under this contract, whether or not changed by the order, the City shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must submit any "proposal for adjustment" under this clause within 30 days from the date of receipt of the written order. However, if the City decides that the facts justify it, the City may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

05.15.03 If, within twenty-four hours after Proposals are opened, and Proposer files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Proposal, that Proposer may withdraw its Proposal and the Proposal security will be returned. Thereafter, that Proposer will be disqualified from further proposal on the work to be provided under the Contract Documents.

ARTICLE 16 OPENING OF PROPOSALS

05.16.01 Proposals will be opened, and base price will be read aloud. Other content will not be disclosed to competing Proposers and the contents will be kept confidential during negotiations. Until the negotiations are completed, only the number, identity and proposed price of the Proposers submitting Proposals will be made available to the public.

ARTICLE 17 PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

05.17.01 All Proposals will remain subject to acceptance for one-hundred twenty (120) days after the day of the Proposal opening, but Owner may, in its sole discretion, release any Proposal and return the Proposal security prior to that date.

ARTICLE 18 AWARD OF CONTRACT

05.18.01 Owner reserves the right to reject any and all Proposals, to waive any and all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Proposer, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Proposals. Also, Owner reserves the right to reject the Proposal of any Proposer if Owner believes that it would not be in the best interest of the Project to make an award to that Proposer, whether because the Proposal is not responsive, or the Proposer is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

05.18.02 In evaluating Proposals, Owner will consider the qualifications of the Proposers, whether or not the Proposals comply with the prescribed requirements, and such alternatives, and other data, as may be requested in the Proposal Form or prior to the Notice of Award.

05.18.03 If the Contract is to be awarded, it will be awarded to the best value Proposer whose evaluation by Owner indicates to Owner that the award will be in the best interest of the Project.

05.18.04 If the contract is to be awarded, Owner will give the Successful Proposer a Notice of Award within one-hundred twenty (120) days after the day of the Proposal opening.

05.18.05 Owner reserves the right to increase the value of the contract by adding alternatives described in the Proposal.

05.18.06 Causes for Rejection; Waiver of Irregularities; Disqualification - In any case, of ambiguity or lack of clarity in stating the prices in the proposal, the Owner will use the construction most advantageous to it or reject the proposal.

05.18.07 Other causes for the Owner to disqualify a proposer or reject its proposal include:

- a) The proposal has any omission, alteration of form, addition or condition not called for, or unreasonable or unbalanced unit prices.
- b) The proposal is incomplete or is not accompanied by an acceptable proposal guaranty.
- c) More than one proposal is submitted by the proposer.
- d) There is evidence of collusion among proposers.
- e) There is evidence of unsatisfactory performance, default or litigation with an owner by the proposer under a previous contract, either with this Owner or with another owner, including work by the proposer as a subcontractor.
- f) There is evidence that the proposer is behind schedule, in arrears in payment to an employee, subcontractor or material supplier, in default, or in litigation with an owner under an existing contract.
- g) The Owner determines that the proposer is not responsible because there is evidence that the proposer does not have sufficient qualifications (including without limitation, lack of experience, poor safety record, insufficient personnel, equipment, financial resources, or any other attribute) to assure the satisfactory completion of the Project.
- h) The Owner determines that the proposer has been convicted of a criminal offense committed in Texas involving fraud, theft, bribery, kickbacks or unlawful gifts to a public official if the conviction occurred within three years immediately preceding either the date of submission of your bid, the submission of your statement of proposer's qualifications or the advertised contract award date.
- i) More than 50 percent of the work performed by subcontractors to the Contractor.
- j) The proposer does not meet the minimum experience qualifications established in the Statement of Proposer's Qualifications.

05.18.09 Each proposer by submission of a proposal waives any claims it has or may have against the Owner, the Engineer, its sub-consultants and their employees and any other

consultants, and any trustees, officers, and employees of Owner, connected with or arising out of the proposal administration, proposal evaluation, recommendation for Contract award, the award of the Contract and the rejection of any proposals.

ARTICLE 19 CONTRACT SECURITY

05.19.01 The required performance and payment Bonds must be delivered to Owner not later than 10 days after Notice of Award.

ARTICLE 20 SALES TAX

05.20.01 The Proposer shall investigate all statutory requirements for the payment of sales taxes and shall include the cost of any such payments in the Proposal prices of his proposal.

05.20.02 The Proposer's attention is directed to Chapter 151 of the Tax Code of the State of Texas. This section provides that all items used or consumed in direct pursuance of this Contract can be purchased free of State of Owner sales tax since the project is being performed for an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas.

ARTICLE 21 LAWS AND REGULATIONS

05.21.01 The Proposer's attention is directed to the fact that all applicable Texas state laws, municipal ordinances and rules and regulations of all authorities having jurisdiction over the work to be performed and services to be provided will apply to the Contract through out, and they will be deemed to be included in the Contract the same as if herein written out in full.

ARTICLE 22 RESIDENT PROPOSERS

05.22.01 Texas provides no advantage to resident Proposers in the award process. However, offers from another state where that state favors their residents will be evaluated by adding the same differential to the proposal that would be required for a non-resident proposal to be awardable in their resident state. For example, how much lower a Texas firm must be in that state than one of their resident proposals in order to be the awardee.

05.22.02 Pursuant to Local Government Code §271.9051, the City of New Braunfels has a local preference resolution 2009-R61. This resolution authorizes the municipality to enter into a contract with the lowest Proposer or the Proposer whose principal place of business is in the City of New Braunfels if that local Proposer is within five percent of the lowest proposal price received from a Proposer who is not a resident and offers the municipality the best combination of contract price and additional economic development opportunities for the City created by the contract award; including the employment of residents of the municipality and increased tax revenues to the municipality and total amount of the contract is less than \$100,000. This provision does not prohibit the City of New Braunfels from rejecting all proposals.

ARTICLE 23 GENERAL CONTRACTOR REGISTRATION

05.23.01 Ordinance 2008-43 requires all general Contractors and their Subcontractors to be registered with the City of New Braunfels before commencing work within city limits. All information may be obtained from the Planning & Community Development department, Building

Division on the City's website, www.nbtexas.org. In addition to topics such as permitting and fees, et cetera, the "Forms and Applications" hyperlink has links to the required "**Contractor's Registration Packet**" and "**Sub-Contractor Registration**" forms. Additional information may be provided by calling the Building Division at (830) 221-4060. Contractor must be registered with the City prior to construction start.

ARTICLE 24 PREVAILING WAGES

05.24.01 Proposer must comply with all requirements of the prevailing wage statute, Government Code chapter 2258 and Davis-Bacon and Related Acts for non-Federal contracts.

05.24.02 Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Highway-Heavy Trades "AS APPLICABLE".

A. Wages shall be paid in accordance with the Davis Bacon Wage Rates.

<https://www.wdol.gov/dba.aspx> Exhibit 3; "Prevailing Wage Schedule"

05.24.03 Such wage rates shall be used throughout the contract. If a classification is to be used, which is not listed in the attached wage rates, Contractor shall submit to Owner rates and classification proposed for use, for approval, prior to performance of the Work.

ARTICLE 25 EMPLOYMENT REQUIREMENTS AND WAGE RATES

05.25.01 This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

05.25.02 The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

05.25.03 Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act of 1990, and Contractor will indemnify and hold Owner harmless for any failure to so comply and any discrimination for which Contractor may be charged.

05.25.04 Contractor shall keep certified payrolls which will be collected and maintained by the Contractor for itself and all subcontractors and made available to the Owner as may be required upon request or for audit at completion of the job. Accurate records shall show the names and occupations of all laborers, workmen, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by representatives of the Owner.

05.25.05 According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that

the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

05.25.06 Contractor shall comply with all requirements of the hours of work on public works law of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto.

05.25.07 Pursuant to Texas Revised Civil Statutes, Article 4413(31), Contractor shall give preference in employment to honorably discharged veterans who were engaged in the services of the United States in time of war or conflict and who are and have been citizens of Texas for not less than five years.

ARTICLE 26 RELEASE OF INFORMATION

05.26.01 Under Texas law, information relating to this Solicitation may be kept confidential until a contract has been awarded. Owner shall not release information relative to this Solicitation during the proposal evaluation process or prior to contract award, except as otherwise required by law.

ARTICLE 27 DISCLOSURE OF PROPRIETARY INFORMATION

05.27.01 All materials submitted to Owner become public property and are subject to the Texas Public Information Act, Government Code Chapter 552, upon receipt. If Proposer does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked "proprietary" at time of submittal.

Owner will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

05.27.02. This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner. Respondents and Contractor must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract; (2) promptly provide to the Owner any contracting information related to the Contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the Contract, either:

- (i) provide at no cost to the Owner all contracting information related to the Contract that is in the custody or possession of the entity; or
- (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.

05.27.03 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Request for Proposals and Contract and the vendor agrees that the Contract can be terminated if the vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

ARTICLE 28 OTHER TERMS OF AGREEMENT

05.28.01 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

05.28.02 Governing Law

The Contract shall be governed by the law of the state of Texas without regard to its conflict of law principles.

05.28.03 Venue

This Agreement is entered into and performed in Comal County, Texas, and the Contractor and the Owner agree that mandatory venue for any legal action related to this Contract shall be in the state District Courts of Comal County, Texas.

END OF SECTION