



SOLICITATION AND OFFER

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

Solicitation Number: CSP 21-006
Demolition Services for the City of
New Braunfels, TX

- Invitation for Bid (IFB)
Competitive Sealed Proposal (CSP)

Issued:
October 1, 2020

SOLICITATION

Questions may be submitted until close of day October 12, 2020.
Proposers must submit sealed Proposals containing one (1) signed original and one (1) electronic formatted (USB).
Proposals will be received at the address shown above until: 3:00 P.M. (Central Time), October 23, 2020. No public bid opening. Proposals received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact:

Purchasing Representative
Deborah Kimball, Buyer

Telephone: 830-221-4081
E-mail: DKimball@nbtexas.org

Proposal Bond Required: YES (\$5,000)
100% Payment Bond Required: YES See Sec 5.6
100% Performance Bond Required: YES See Sec 5.6

OFFER

(This portion must be fully completed by Proposer.)

In compliance with the above, the undersigned offers and agrees to furnish any or all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein.

CONTRACT AWARD WILL INCLUDE ALL ASSOCIATED SOLICITATION DOCUMENTS, ATTACHMENTS, AND ADDENDA.
SIGNATURE IS MANDATORY; MANUALLY SIGN ORIGINAL DOCUMENT AND COPIES SUBMITTED ARE TO INDICATE SIGNATURE.

- 1) Proposer's State of Residence: _____ CONTRACTOR'S LICENSE NO: _____
2) Prompt Payment Terms: _____ % Discount if paid within _____ days. City of New Braunfels payment terms are NET 30.
3) Contractor can be available for project assignment within _____ days of notification by the City of New Braunfels.
4) IF YOU HAVE A COOPERATIVE CONTRACT, PLEASE SPECIFY YOUR CONTRACT NUMBER: _____

Company Name, Address of Proposer:

Name and Title of Person Authorized to Sign Offer:

E-Mail Address: _____

Phone Number: _____

Fax Number: _____

Signature:

Date:

Specify Name, Address, E-mail Address, and Telephone
Number of Person authorized to conduct negotiations
on behalf of Proposer, if different than listed above.

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SECTION 3 – STANDARD TERMS AND CONDITIONS

3.1 INSTRUCTIONS TO PROPOSERS

- (a) Thoroughly examine the drawings, specifications, schedule, instructions, and all other solicitation documents.
- (b) Make all investigations necessary to be familiar with conditions that affect the Proposal, such as but not limited to, knowledge of locations and needed materials and equipment to handle the requirements of the bid. No plea of ignorance by the Proposer because of failure to investigate or examine conditions or failure to fulfill details of the contractual documents will be accepted as a basis for varying the requirements of City or changing the compensations due.
- (c) City contracts are subject to all legal requirements of City, state or federal statutes and regulations. Laws of the State of Texas apply.
- (d) Provide all required information on the forms furnished in the solicitation. Print or Type name on Proposal and **ORIGINAL AND COPIES MUST HAVE SIGNATURE IN THE SPACE AND ON THE FORMS PROVIDED. Telegraphic, Fax, E-mail and Online responses WILL NOT BE ACCEPTED unless specifically authorized in the terms and conditions of the solicitation. If you obtained this solicitation by Internet posting, your response will not contain any alteration to the document posted other than entering data in the spaces provided or including attachments as necessary. By submission of a response, Respondent affirms that no alteration of any kind has been made to this solicitation.**
- (e) If applicable, provide unit prices and extension prices. The unit price shall govern where there is disagreement in the unit and extension prices.
- (f) Alternate Proposals cannot be considered unless specifically invited and authorized by the solicitation.
- (g) If applicable, provide your proposed delivery time. Include weekends and holidays in counting days or months.
- (h) Do not include federal taxes or State of Texas limited sales excise and use taxes in Proposal prices since CITY is exempt from payment of these taxes. (Sec 151.309 Tax Code)
- (i) If applicable, include cost of freight to destination(s) shown in the unit price in your bid. Only F.O.B. destination bids will be considered.
- (j) All Proposals must be current and final at the time of opening to be considered responsive. No Proposal will be accepted for consideration, and no award will be made, if at the time of opening anything contained therein is contingent upon, or subject to, any outstanding matter, including, but not limited to, any review, certification, or approval by any party that has not been received.
- (k) Substitute and "Or-Equal" Items: The Contract, if awarded, will be based on materials and equipment specified or described in the Proposal Documents, or substitute or "or-equal" materials and equipment approved by Owner. The materials and equipment described in the Proposal 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 Proposer with Proposer's bid response. The burden of proof of the merit of the proposed item is upon Proposer. Owner's decision of approval or disapproval of a proposed item will be final. If Owner approves any proposed item, such approval may be set forth in an Addendum issued to all prospective Proposers. Proposers shall not rely upon approvals made in any other manner.

3.2 PROPOSER'S CERTIFICATIONS/AGREEMENTS

By submission of a Proposal:

- (a) You certify that you are a duly qualified, capable, and otherwise bondable business entity. You further certify that the Company, Corporation or Partnership does not owe any back taxes within City. No award will be made to a firm owing back taxes within the City. Additionally, if taxes become delinquent after an award has been made to you, that fact may constitute cause for cancellation of this contract.
- (b) You warrant that all applicable patents and Copyrights which may exist on items in Proposal have been adhered to and further, you warrant that City will not be liable for any infringement of those rights. Such rights granted City will apply for the duration of the contract or for the life of the equipment or supplies purchased. City agrees not to sell, convey, barter, or otherwise extend the use or exclusive right granted herein to anyone other than City employees for official use as described in this contract. City will not knowingly or intentionally violate any patent, license or copyrights applicable to items sold hereunder.
- (c) You warrant that upon execution of a contract with City you will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, race, color, sex, disability, creed, or national origin and will submit reports as City may require assuring compliance. Furthermore, City, its Contractors, their Subcontractors and suppliers, as well as all vendors of goods, equipment, and services, will not discriminate based on race, color, religion, national origin, handicap, or sex in the award and/or performance of contracts. All vendors, suppliers, professionals, and Contractors doing business, or anticipating doing business, with City will support, encourage, and implement affirmative steps toward the goal of establishing equal opportunity for all the citizens of City.

- (d) If applicable, you certify that any substitute brand bid upon matches the performance and essential characteristics of the item in the purchase description and agree to replace it in the event it does not conform. All information, brochures, specifications, etc., necessary to determine the alternate item conforms to that stated in the purchase description must be submitted with each offer.
- (e) **You warrant that the offered price will be held firm and subject to acceptance by the City Council for a period of sixty (60) calendar days from solicitation closing date, or such longer period indicated in your offer.**
- (f) City is a government agency engaged in public projects where damages caused by breach of contract are difficult or impossible to measure. Awardee agrees that the amount of the bond is the amount of damage, except that if in the opinion of the City Council, the failure to perform terms of the contract is the result of acts or events over which you have no control the BOND in whole or in part may be returned to you at the City Council's sole discretion.
- (g) You warrant that you employ or retain no one or no agency to solicit or secure this contract where you have agreed to pay a commission, percentage, brokerage, or CONTINGENCY FEE, except for your bona fide employees or your bona fide established commercial or selling agencies that you maintain as a regular course of business. Violation is cause for City to annul the contract without liability, or at its discretion to deduct consideration from the contract price for the full amount of the commission, percentage, brokerage, or contingent fee.
- (h) You affirm that any response has not included any preparation in collusion with any other Proposer, and that the contents of any response as to prices, terms or conditions of said response have not been communicated in any manner to any other person engaged in this type of business prior to the official opening of this solicitation.
- (i) You hereby assign to City any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

3.3 PAYMENT AND INVOICING

PAYMENT/INVOICE REQUIREMENTS

- (a) PAYMENTS will be made by check or warrant by City upon satisfactory delivery of services and submission and acceptance of Contractor's INVOICE to the address below, or as indicated on Purchase Order or as specified on Attachment A – Cost Proposal Form.

ACCOUNTS PAYABLE
550 LANDA STREET
NEW BRAUNFELS, TEXAS 78130
Phone Number: (830) 221-4380

1. All payment terms will be "Net 30 Days" unless otherwise specified in the solicitation.
 2. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
 3. The City may withhold or set off the entire payment or part of any payment otherwise due the Vendor to such extent as may be necessary on account of:
 - a. Reasonable evidence that the Vendor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - b. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- (b) INVOICES. The City agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The City does not agree to the payment of late charges or finance charges assessed by the vendor for any reason.

Vendor must provide adequate detail on invoice for the City to review and approve. The City reserves the right to request and receive additional detail when needed. The following data shall accompany monthly invoices:

1. Date(s) of Service and Locations Served
2. Contract Number
3. Any other data sharing as required by the Agreement.

- (c) ASSIGN PAYMENT In a contract award exceeding Five Thousand Dollars (\$5000.00), you may assign payment to a bank, trust company or other financing institution, including any Federal lending agency by prior written approval and authorization through the City Manager's Office. Payment by City can be made only to one party. Assignments that do not conform to these terms will not be recognized.

- (d) NOVATION/NAME CHANGE If you change your name or ownership (NOVATION), notify the City's Purchasing Representative immediately. The change must be approved by the City Manager before any change can be recognized in the contract.

3.4 F.O.B. DESTINATION Title and risk of loss of the goods will not pass to City until receipt and acceptance takes place at the F.O.B. point. Contractor will be responsible to deliver to the destination(s) shown in the schedule (or in more detail in resultant orders), unload, remove any debris caused by the Contractor at final destination at Contractor's expense, as applicable.

3.5 NO CITY OFFICER, EMPLOYEE OR ELECTED OFFICIAL WILL BENEFIT from this contract. They may not hold a share or interest in its proceeds. If the award is to a corporation, however, the provision does not apply to minority stockholders of publicly traded corporations.

3.6 NO GRATUITIES (in the form of entertainment, gifts, or otherwise) may be offered or given by the Proposer or Awardee or any of their agents or representatives, to any City officer or employee for the purpose of securing a contract or securing favorable treatment in the award or amendment of a contract, or to determinations concerning performance of the contract. Violation is cause for termination of the contract by written notice by the City, followed by an opportunity for a hearing. The facts of the City Council findings can be an issue for review by any competent court. Contractual remedies that apply to BREACH of contract apply if terminated under this provision. A penalty of exemplary damages, in an amount determined by City Council of not less than three nor more than ten times the cost incurred by the violator in providing any gratuity, in addition to any other damages to which City is entitled by law, is recoverable.

3.7 FORCE MAJEURE Neither party can be held responsible for losses of any kind because of causes not within their control, if reasonable diligence has been exercised to prevent the loss or delay.

3.8 PROTESTS, DISPUTES AND APPEALS A contract may not be awarded to a Proposer who is not the best value Proposer meeting specifications unless, before the award, each lower Proposer is given notice of the proposed award and is given an opportunity to appear before City Council and present evidence concerning their responsibility.

- (a) Protest before award must be submitted in writing to the City's Purchasing Representative and will be heard by City Council prior to award.
- (b) Protests after award must be submitted in writing to the City's Purchasing Representative within ten (10) calendar days after notification of such award. The City's Purchasing Representative routinely will forward a written reply to the protestant within ten calendar days from receipt thereof. If the protestant is not satisfied with the reply of the City's Purchasing Representative, the protestant may appeal the decision within ten calendar days after receipt thereof, to the City's Purchasing Representative outlining in detail the exact point(s) of disagreement. Should the matter not be resolved to the satisfaction of the Proposer/Contractor, the appeal will be submitted to City Council. The appellant will then have the right to be heard in open court by City Council.
- (c) CITY Finance Department, Purchasing Division, acts as an official City representative in the issuance and administration of this contract, and may issue and receive all documents, notices, and correspondence. Such documents, notices, and correspondence not issued by or received by CITY Finance Department, Purchasing Division, may be null and void.
- (d) The decision of City Council will be final and conclusive, and will be binding on all parties concerned, appealable in a court of competent jurisdiction in this City, and in accordance with the laws of the State of Texas.

3.9 TERMINATION CLAUSES

- (a) TERMINATION FOR DEFAULT
Pertaining to contract-related issues, it is the responsibility of both the City of New Braunfels and the awarded Contractor to communicate with each other in as clear and complete a manner as possible. If at any time during the term of this contract the City or the Contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and associated corrective action. The other party will, within 10 days, respond in writing to the other party. If conditions warrant, the City will retain the right to require the Contractor to respond in a shorter period of time. Failure to take corrective action or failure to provide a written reply within the prescribed 10 days may constitute a default of contract.

Prior to termination, the City may choose to warn the Contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially incur termination. The City will maintain in the contract file a written record of any such warning detailing all pertinent information. If the Contractor does not agree with such action, the Contractor will have 10 days to dispute or protest, in writing, such action; if Contractor does not do so within the 10-day period, Contractor will have no recourse but to accept and agree with the City's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the City's alleged incorrect action(s).

If the Contractor is in material breach of the contract, the City may promptly terminate the contract in whole or in part. Such termination must be delivered to the Contractor in writing and will fully detail all pertinent issues pertaining to the cause of and justification for the termination. The termination will be effective upon the date set forth in the notice and will not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.

After termination, if the Contractor does not agree with the City's justification for the termination, the Contractor will have

10 days to dispute, in writing, such action; if Contractor does not do so within the 10-day period, Contractor will have no recourse but to accept and agree with the City's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the City's alleged incorrect action(s). Termination by City may be directed by City Director(s), without further action by City Council. However, if necessary, City Council may take whatever action as its interest may appear, resulting from such notice.

City reserves the right to enforce the performance of this contract in any manner prescribed by law in the event of breach or default of this contract and may contract with another party with or without solicitation of Proposals or further negotiations. As a minimum, Contractor may be required to pay any difference in the cost of securing the products or services covered by this contract or compensate for any loss to City should it become necessary to contract with another source because of default, plus reasonable administrative costs and attorney's fees.

- (b) If it is in the PUBLIC INTEREST TO TERMINATE the contract, the City Council reserves the right to do so. If terminated for the public good, all costs directly attributable to work done or supplies obtained in preparation for completion or compliance with the contract prior to termination will be paid. Costs are excluded which are recoverable in the normal course of business or which can be mitigated through the sale of supplies or inventories. In the event City pays for supplies or materials, they will become the property of CITY and will be delivered to the F.O.B. point shown in the contract, or as designated by the City Finance Department, Purchasing division. No anticipated profits are payable.

3.10 CONTRACT CONSTRUCTION

- (a) Provisions Words, Phrases, and Statutes, whether incorporated by actual use or by reference, will be applied to this contract in accordance with Government Code 311.001 et seq Code Construction Act. Wherever "City" is used herein, it is understood to mean "New Braunfels, Texas".
- (b) In the event of inconsistency between provisions of this solicitation, the inconsistency will be resolved by giving PRECEDENCE in the following order: (a) the Schedule of Items/Services and Specifications; (b) Special Provisions; (c) General Provisions; (d) Terms and Conditions of Request for Proposal/Invitation for Bid; (e) other provisions, whether incorporated by reference or otherwise.
- (c) The written contract is the SOLE AGREEMENT between the parties and supersedes any prior understanding or written or oral agreement on the subject matter.
- (d) No provision of the contract will be deemed waived, amended, or MODIFIED unless such change is IN WRITING AND SIGNED by both parties.
- (e) Terms addressed in the solicitation apply to the contract, as well.

3.11 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 on this solicitation. 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.

3.12 PRE-AWARD SURVEY

After CSP closing and prior to award, City reserves the right to make a pre-award survey of any or all Proposer's facilities and equipment to be used in the performance of work under this solicitation. Proposer agrees to allow all reasonable requests for inspection with two (2) days advance notice. Failure to allow such an inspection is cause for rejection of Proposals as non-responsive. City reserves the right to reject facilities or equipment as a result of this survey. In addition, Proposer's reputation relating to quality of performance may also be used for purposes of evaluating Proposer's suitability for award of this solicitation. Additionally, you may be required to make appropriate financial data available for review. An acceptable review would result in the data being returned. Should the data be the basis for a determination of non-responsibility, then the data would be presented to City Council and filed for record.

3.13 AWARD OF CONTRACT

- (a) Award will be made to the responsible Proposer(s) who submits the lowest and best Proposal(s), or to the responsible respondent(s) whose Proposal is most advantageous to the City, price and other factors considered. When payments are to be made to the City, award will be made to the highest Proposer. After approval by City Council, City Manager will sign Contract Award form and City Finance Department, Purchasing Division, will issue fully executed contract to the successful Proposer. No contract exists until the signed document is delivered.
- (b) **It is the intent of the City to make multiple awards if deemed in the best interest of the City.**
 - 1. The City reserves the right to not award specific lines if deemed not in the best interest of the City.
 - 2. City reserves the right to accept any item or group of items offered, unless the Proposer qualifies their Proposal by specific limitations.
- (c) City may reject a Proposal (or all Proposals) if not satisfactory to City Council. City also reserves the right to waive minor

informalities or irregularities in any Proposal.

- (d) Other factors may be considered in determining the successful Proposal when they are applicable, such as administrative cost for a multiple award calculated at \$500 per award, warranties and guarantees, delivery or production schedule/performance period offered, and ability to perform as requested in bid specifications.
- (e) Ties will be broken by consideration of delivery time or delivery schedule.
- (f) 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.
- (g) 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 Respondent or the Respondent whose principal place of business is in the City of New Braunfels if that local Respondent is within five percent of the lowest bid price received from a Respondent 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 the contract is less than \$100,000. This provision does not prohibit the City of New Braunfels from rejecting all bids.

SECTION 3 - SPECIAL TERMS AND CONDITIONS

These Special Terms and Conditions are changes to or addition to the Solicitation and contract requirements. **By execution of the solicitation, the Proposer is certifying they accept all conditions of the contract as outlined below and within the bid specifications.**

Emergency/Declared Disaster Requirements

In the event of an emergency or if the City of New Braunfels is declared a disaster area, by the County, State, or Federal Government, this Acceptance of Offer may be subjected to unusual usage. Contractor shall service the City during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing as specified in this Acceptance of Offer shall apply to serving the City's needs regardless of the circumstances. If Contractor is unable to supply the services under the terms of the Acceptance of Offer, then Contractor shall provide proof of such disruption and a copy of the invoice from Contractor's supplier(s). Additional profit margin as a result of supplying services during an emergency or declared disaster shall not be permitted. In the event that additional equipment, supplies, and materials are required during the declared disaster, additional shipping, handling and drayage fees may apply.

Federal Funding. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance may be used to fund the contract. The Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. The parties acknowledge that the above-referenced contract is subject to the provisions of 2 CFR 200 Section 318-326 and the FEMA Public Assistance Act.

This attachment is hereby expressly incorporated into the agreement between the City and the Contractor. To the extent that the terms of the Agreement and this Attachment conflict, the terms of this Attachment shall control. Nothing in this Attachment shall be construed as making this Agreement contingent upon a Presidential disaster declaration or FEMA approval or obligation of funds.

Contractor Warranties:

1. The successful Proposer (Contractor) will warrant that it has sufficient and requisite experience, personnel, education, licenses and permits, equipment, and knowledge to safely and lawfully collect, transport, and dispose of all disaster debris that may be collected for disposal by the City.
2. Contractor must warrant that it understands the currently known hazards which are present to persons, property, and the environment in the transportation, storage, and treatment/disposal of the wastes received at all events.
3. Contractor must warrant that the Contractor-owned or approved storage treatment/disposal facilities are licensed and permitted as necessary. In the event that the storage/treatment facility loses its permitted status hereafter, during the term of the Agreement, the Contractor will promptly notify the City of such loss.
4. The Contractor will ensure that all vehicles transporting disaster debris (Subcontractors included) are properly registered, and that disaster debris drivers have all required State and Federal licenses.
5. Contractor must obtain all required Local, State, and Federal permits for the responsibilities of the Contractor. Contractor must obtain all necessary permits and qualify to transport waste according to DOT exemptions. Contractor must qualify to transport waste streams packaged in non-DOT specification packaging under DOT exemptions.
6. **Pre-Audit** - Any contract resulting from this RFP process may be pre-audited in the manner required by the Local Government Budget and Fiscal Control Act as evidenced by the City contract or purchase order issued which is incorporated as if fully set out.
7. **Records Retention and Review** - The Contractor shall retain all records pertaining to the services and the contract for these services and make them available to the City for a period of seven (7) years following receipt of final payment for the services referenced herein. Final payment may be payment of any retention for the services.
8. **Written Notice to Proceed** - The City shall issue an official written Notice to Proceed for the services referenced in this contract. The notice shall be sent via electronic mail or facsimile followed by regular mail. Under no circumstances shall the City be liable for any services rendered unless the written Notice to Proceed has been sent and received by the Contractor. Contractor must acknowledge receipt of the written Notice to Proceed.

Federal funding Mandated Federal Clauses

The following federal clauses are being added to this solicitation, to be applicable, if any contract awarded through this RFP is utilized during a declared disaster or declared emergency, the following clauses are adopted and form part of the Contract.

2 CFR Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal

entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- (C) **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148), see FEMA Public Assistance Program and Policy Guide, Ch.2(V)(G)(2), page 32 (FP 104-009-2/January 2016). (*Not required for EWP program*) When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, Contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the **Copeland “Anti-Kickback” Act (40 U.S.C. 3145)**, as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each Contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

If applicable to the work and services performed by Contractor under the parties' AGREEMENT:

- (a) Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this AGREEMENT.
- (b) Contractor or Subcontractor shall insert in any subcontract the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontract with all of these contract clauses.
- (c) A breach of the AGREEMENT clause above may be grounds for termination of the AGREEMENT, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. §5.12.
- (E) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)**, as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) **Energy Efficiency and Conservation, 2 CFR Section 200.326 Appendix II to Part 200 (H).** If applicable to the work and services performed by Contractor under the parties' Agreement, Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the **Energy Policy and Conservation Act (42 U.S.C. Section 6201)**.
- (I) **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide **Excluded Parties List System in the System for Award Management (SAM)**, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986

Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The **Excluded Parties List System in SAM** contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than **Executive Order 12549**.

(J) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See § 200.322 **Procurement of recovered materials**.

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-

(a) Competitively within a timeframe providing for compliance with the contract performance schedule;

(b) Meeting contract performance requirements; or

(c) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>.

The list of EPA-designate items is available at <http://www.epa.gov/cpg/products/htm>.

(L) **Agreementing with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR §200.321)**

Should the Contractor subcontract any of the work under this Agreement, Contractor shall take the following affirmative steps: place qualified small and minority businesses and women's business enterprises on solicitation lists; assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

(M) **DAMAGES, 2 CFR §200.326 Appendix II to Part 200 (A)**

All work to be performed under this Contract shall be timely commenced. A breach of this Contract by Contractor would cause substantial delay in the completion of the required services affecting the safety and welfare of the public.

1. In the event of Contractor's breach of its performance obligations, City shall have all rights and remedies against Contractor as provided by law.

(N) **Access to Records**

(1) Contractor agrees to provide Government, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(O) **Seal, Logo and Flags** - Contractor shall not use the U.S. Department of Homeland Security's seal(s), logos, crests, or reproductions of flags or likenesses of the U.S. Department of Homeland Security's agency officials without specific FEMA preapproval.

(P) **Compliance with Federal Law, Regulations and Executive Orders**

This is an acknowledgement that FEMA financial assistance will be used to fund the AGREEMENT only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(Q) **No Obligation by Federal Government**

The Federal Government is not a party to this AGREEMENT and is not subject to any obligations or liabilities to GOVERNMENT, Contractor, or any other party pertaining to any matter resulting from the contract.

(R) **Program Fraud and False or Fraudulent Statements or Related Acts**

Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

(S) **During the performance of this contract, the contractor agrees as follows:**

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 4 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**SECTION 4
INSTRUCTIONS FOR RESPONSE**

4.1 SUBMISSION OF PROPOSALS

Deliver your Proposal, or changes to your Proposal, in SEALED ENVELOPES OR PACKAGES identified on outside as a Request for Proposal to Owner, with Respondent's name and address, and solicitation name. Failure to submit Proposal in this manner may subject Respondent to disqualification. **Proposal may be delivered in person to the New Braunfels City Hall-Front Lobby/City Secretary's Office, by Express Mail or delivery service, or submission through BidNet Direct to:**

**City of New Braunfels
City Secretary's Office Front Lobby (COVID-19) ATTN: Purchasing
550 Landa Street
New Braunfels, TX 78130**

The outside of the Proposal envelope or package **must state**:

**"CSP 21-006 Demolition Services for the City of New Braunfels, TX.
Proposal Due Date: October 23, 2020, 3:00 P.M."**

It is the sole responsibility of the respondent to ensure timely delivery of the 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 respondent. Proposal received after the closing date and time will not be accepted or considered. **THERE WILL NOT BE A PUBLIC BID OPENING.**

- (a) 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.
- (b) An authorized official of the firm must print or type their name and **MANUALLY SIGN THE ORIGINAL PROPOSAL, AND COPIES MUST BE REFLECT THE SAME SIGNATURE.**
- (c) Proposals may not be withdrawn after the time set for the closing, unless approved by the City.
- (d) Your offer or a modification to your offer is LATE if received after the time set for Proposal opening and will not be considered.
- (e) If you need clarification or have any question as to the true meaning of specifications or any other document in the solicitation, your concerns must be submitted in writing to the City's Purchasing Representative on or before seven (7) calendar days prior to scheduled opening of Proposals. Late requests will not be honored. Timely requests will be interpreted or otherwise clarified by issuance of a modification to the solicitation distributed to all sources that received a set of the solicitation. No other interpretations or clarifications will be provided prior to award.

- (f) Prompt payment discounts WILL NOT BE CONSIDERED in determining low Proposal and making award. Prompt Payment Discounts offered by Proposer, and earned by the City, will be taken. When computing the DISCOUNT PERIOD for payments, time will begin upon satisfactory delivery of goods and/or submission of acceptable invoice, whichever is later. Partial payments will not be made unless specifically requested and approved by City prior to award of contract.
- (g) The following items request information that the Evaluation Committee will utilize to evaluate the Proposal. Failure to provide any of the information below 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 **one (1) original master (marked 'original'), one (1) copy also signed, and one electronic copy of all documents listed below on a USB.**

Each Proposal completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity, will include the following in one envelope/package:

- **TAB 1 –Solicitation and Offer Form:** Complete and sign form located on Page 1.
- **TAB 2 –Acknowledgment of Addendums,** if applicable.
- **TAB 3 Cover Letter:** Name and address of the Respondent, as well as a brief description of the company and its history, and how this makes the Proposer qualified for this bid.
- **TAB 4 Contains the following documents:**
 - a. **Certificate of Insurance** One copy completed and signed (Refer to Section 5.10). **A “for information purposes only” copy is acceptable.** The awarded Contractor will be required to provide their certificate of insurance prior to contract award.
 - b. **Conflict of Interest Questionnaire (Form CIQ)** (per Section 5.13) Must be filed 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).
 - c. **Certificate of Interested Parties - Form 1295** (Refer to Section 5.14) This form will be requested from the awarded Contractor.
- **TAB 5 Cost Proposal Form (ATTACHMENT A)** Return this Attachment with your Proposal.
- **TAB 6 Qualifications and Experience of Company** (Refer to Section 4.8 for details) and also attach ATTACHMENT B – COMPANY INFORMATION; and ATTACHMENT C – RESPONDENT CERTIFICATIONS to your proposal to support Qualification and Experience of Company criteria.
- **TAB 7 Additional Supporting Documentation** Attach copies of contractor’s license, certifications, or any other documentation not referenced under another tab.

- **TAB 8 Deviations from Request for Proposal** Proposer is to indicate any deviations being offered in lieu of specified language referenced in the solicitation. Each deviation should be clearly identified as listed within the CSP for cross reference purposes. The terms may be negotiated as part of the negotiation process with the exception of contract provisions that are non-negotiable. Final approval and acceptance of deviations will be at the discretion of the City.

NOTE: AWARDED CONTRACTOR WILL BE REQUIRED TO SUBMIT PERFORMANCE AND PAYMENT BONDS IN ACCORDANCE WITH SECTION 5.6 OF THIS SOLICITATION.

4.2 ISSUING OFFICE AND CONTACT FOR QUESTIONS

All questions concerning this solicitation shall be in writing, and received on or before **October 12, 2020** to:

Deborah Kimball, Purchasing Buyer Email: DKimball@nbtexas.org

DUE TO COVID-19, QUESTIONS MUST BE RECEIVED BY EMAIL, AS CITY PERSONNEL IS CURRENTLY WORKING FROM HOME.

All prospective respondents are hereby instructed to not contact any member of the City of New Braunfels' City Council, City Manager, evaluation committee, or City of New Braunfels' staff members other than the noted contact person regarding this solicitation. Any such contact may be cause for rejection of your Proposal.

4.3 AVAILABLE DOCUMENTS

Proposals are due **October 23, 2020 at 3:00 P.M. (Central Time)** at the City of New Braunfels, City Secretary's Office ATTN: Purchasing, 550 Landa Street, New Braunfels, Texas 78130. Solicitation documents may be obtained from:

- the Purchasing Representative at the New Braunfels City Hall
- the BidNet Direct website: <https://www.bidnetdirect.com/texas/city-of-new-braunfels>
- the City of New Braunfels' website: <http://nbtexas.org/DocumentCenter/Home/Index/139>

4.4 ANTICIPATED SOLICITATION SCHEDULE

DATE	EVENT
October 1, 2020	CSP issued on https://www.bidnetdirect.com/texas/city-of-new-braunfels and City's website: http://nbtexas.org/DocumentCenter/Home/Index/139
October 12, 2020	Deadline for questions and requests for clarification.
October 23, 2020	Proposal submittal deadline.
November, 2020	City Council considers award of contract.

4.5 SOLICITATION UPDATES

Respondents shall monitor the BidNet Direct website (<https://www.bidnetdirect.com/texas/city-of-new-braunfels>) and the City's website <http://nbtexas.org/DocumentCenter/Home/Index/139> for any updates pertaining to the solicitation described herein. Various updates may include addendums, cancelations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. It is the Respondent's responsibility to change the

websites for current changes to the Solicitation documents.

4.6 EXCEPTIONS AND DEVIATIONS

Any exceptions to the specifications or objectives of the solicitation document must be clearly stated in Respondent's Proposal.

4.7 COMPETITIVE PROPOSALS

Proposals will not be opened publicly to avoid disclosure of contents to competing respondents and kept confidential during the process of negotiation. However, all Proposals will be open for public inspection after award except for trade secrets and confidential information contained in the Proposals and identified as such by the Proposer. Marking the entire Proposal as confidential and/or proprietary is not in conformance with the Texas Open Records Act.

4.8 EVALUATION OF PROPOSALS

(a) The City of New Braunfels will review Proposals, and the respondent will be recommended for award by City Council, based upon the published Evaluation Standard noted below. The evaluation committee recommendations are subject to approval by the City of New Braunfels' City Council.

- The City will evaluate price as an important, but not sole factor, considering the cost of base goods/services and any requested optional features.
- City reserves the right to accept one or more submittals or reject any or all submittals received in response to this solicitation, and to waive informalities and irregularities in the Proposals received.
- The City reserves the right to award to one or more companies or individuals as necessary to meet the contract demands.
- The contracts, if awarded, will be awarded to the respondents whose submittals are deemed most advantageous to City, as determined by the Evaluation Committee.
- The recommended respondent(s) will be submitted to the City Council for approval.

(b) Evaluation Standard:

The City of New Braunfels will review Proposals on the basis of determining the best value to the City in accordance with established specific, weighted criteria for selection. The respondent will be selected based on the published evaluation criteria, demonstrated competence, and qualifications to perform the services. Should the City discover any discrepancies in submissions, Proposer will be given 72 hours to resolve these issues. Failure to resolve any issues concerning inaccuracies may result in Proposer being deemed non-responsive.

This section presents the evaluation criteria, description, and relative weight assigned to each (100 points maximum). The Proposer will be selected based on the published selected criteria, demonstrated competence, and qualifications to perform the services:

- **(Maximum of 20 POINTS) Company Background, Qualifications, Experience, References**

The City will evaluate based on the Proposer's background, qualifications and successful experience with providing the requested services. City will consider the relevance of past experience for all parties proposed as a part of the team. Specified services shall be performed by a Company with a minimum of five (5) years' experience or documented experience specializing in this type of service.

- Provide a narrative or cover page in two (2) pages or less that describes Contractor's qualifications.
 - Describe in detail the services your company can provide to the City and your service processes.
 - Provide a listing or details on jobs you have completed of similar nature of items listed within this bid document, including size and estimated pricing of projects completed.
 - Identify and provide copies of any professional qualifications which your company has, such as, licenses, certifications, associations, if applicable.
 - Provide a minimum of three (3) references showing experience in having completed contracts of this type. References should include company name, contact person, address and telephone numbers. **Refer to Attachment B for details.**
- **(Maximum of 10 POINTS) Work Performed with the City of New Braunfels**
 - Provide documentation showing that you have performed similar work with the City of New Braunfels within the last three (3) years.
 - **(Maximum of 70 POINTS) Proposed Contract Pricing**

The City will evaluate price as an important, but not overriding factor, considering the cost of base services and optional services.

 - Proposer shall submit the required pricing as requested in Attachment A – Cost Proposal Form. It is the Proposer's responsibility to ensure all pricing requested is either on Attachment A or attached to their proposal.
 - Proposer's price bid shall remain firm, unless the City of New Braunfels requests additional services from the awarded Contractor, which are directly related to the contract. All additional costs shall be approved by the City and confirmed through a written Contract Modification or change order to purchase order issued by the City.
- (c) Negotiations may be conducted with responsible respondent(s) who submit Proposals determined by Purchasing staff to be reasonably susceptible of being selected for award. All respondents will be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of Proposals. Revisions to Proposals may be permitted after submission and before award for the purpose of obtaining best and final offers.
- (i) Any oral negotiations must be confirmed in writing prior to award.
 - (ii) Award may be made without negotiation of Proposals with any respondent.
- (d) Cost and/or Pricing Data will be required to be submitted with the Proposal, as specified elsewhere in this CSP, and additional cost information during the process of any negotiations that may be conducted after receipt of Proposals and prior to award.
- (e) 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. This is at the City's option.
- (f) 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, including Respondent's past working or business relationship with the City, if any. The City further reserves the right to consider a respondent'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 respondent may have with its other clients.

CONTACT THE PURCHASING REPRESENTATIVE NOTED ON PAGE ONE (1) IF YOU HAVE ANY QUESTIONS.

SECTION 5

GENERAL REQUIREMENTS

5.1 CONTRACT TERM

This contract shall be for **three (3) years** and will begin upon the effective date of **November 1, 2020**, or the begin date specified in contract award, whichever is later, through **October 31, 2023**.

5.2 OPTION TO RENEW

At City's option, this Contract may be renewed under the same terms and conditions for **two (2) additional one (1) year period(s)**. Renewals will be in writing and signed by the City's Purchasing Manager, without further action by City Council, subject to, and contingent upon, the appropriation of sufficient funding. Contractor must contact City's Purchasing Representative no later than ninety (90) days prior to end of contract term to request any contract modifications, including cost adjustment.

5.3 PRICE ADJUSTMENTS

After the pricing schedule has been established in the initial agreement, requests for price increases and/or decreases must be made in writing and submitted by an authorized representative of the Awarded Vendor to the Purchasing representative noted on Page 1 of this Solicitation. Vendor must submit supportive documentation for increase request. Price adjustments are at the discretion of the City and adjustments shall be approved at the City's discretion, with City Manager's approval, as needed.

The City prefers that price adjustments be based on unadjusted percent change for the preceding year in the CPI-W under the expenditure category entitled "All items less power and energy", which is provided by the U.S. Bureau of Labor Statistics. Any other sources to support a request for price adjustment must be mutually agreed upon by City and Vendor.

5.4 CONTRACT 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 and/or delivery of products.
- 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 will make an equitable adjustment in the contract price, the delivery schedule, or both, and will 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 will have the right to prescribe the manner of disposition of the property. Failure to agree to any

adjustment will be a dispute under the Disputes and Appeals clause. However, nothing in this clause will excuse the Contractor from proceeding with the contract as changed.

5.5 DESIGNATED CITY HOLIDAYS

No deliveries or services will be required or accepted, unless specific prior arrangements have been made, on designated holidays as per the City’s approved holiday schedule.

2020 HOLIDAYS		
New Year’s Day	Wednesday	January 1, 2020
Martin Luther King, Jr. Day	Monday	January 20, 2020
President’s Day	Monday	February 17, 2020
New Braunfels Founder’s Day	Friday	April 10, 2020
Memorial Day	Monday	May 25, 2020
Independence Day	Friday	July 3, 2020
Labor Day	Monday	September 7, 2020
September 11 Remembrance Day (Uniform Fire Dept. Personnel Only)	Friday	September 11, 2020
Comal County Fair Day (Excluding Uniform Fire Dept. Personnel)	Friday	September 25, 2020
Thanksgiving Day	Thursday	November 26, 2020
Day after Thanksgiving	Friday	November 27, 2020
Christmas Eve	Thursday	December 24, 2020
Christmas Day	Friday	December 25, 2020

5.6 PROPOSAL BOND, PERFORMANCE AND PAYMENT BOND (REQUIRED FROM SELECTED CONTRACTORS)

Proposers shall submit a proposal bond in the amount of **\$5,000** with their proposal to provide guarantee that the winning bidder will fulfill the contract as specified. 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 upon request after Proposal certification.

When performance and/or payment bonds are required, each shall be issued in equal to the Project amount as security for the faithful performance and/or payment of all Contractors’ obligations under the Contract Documents. 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. Applicable bonds must be received by the Purchasing Office prior to work commencing on said project.

- A Payment bond is required for EACH project which exceeds \$50,000
- A performance bond is required for EACH project which exceeds \$100,000

5.7 LIQUIDATED DAMAGES

If contracted services are necessary to support a construction contract, Contractor and Owner recognize that time is of the essence for performance of the Work as described within this Agreement and that

Owner may suffer negative repercussions if the Work is not completed within the times specified by the City, including any City-authorized extensions. 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 by the City 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 for completion and readiness for final payment until the Work is completed and ready for final payment.

5.8 PREVAILING WAGES:

5.8.1 Proposers must comply with all requirements of the prevailing wage Statute 2258 for non-Federal contracts and Davis-Bacon and Related Acts for federal contracts.

5.8.2 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".

Wages shall be paid in accordance with the Davis Bacon Wage Rates.
<http://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf>

5.8.3 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.

5.9 EMPLOYMENT REQUIREMENTS AND WAGE RATES:

5.9.1 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.

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

5.9.3 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.

5.9.4 Contractor and each Subcontractor shall keep an accurate record showing 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.

5.9.4.1 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.

5.9.5 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.

5.9.6 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.

5.10 INSURANCE AND LIABILITY

During the period of this contract, Contractor will 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 will:

- i. Name City of New Braunfels as additional insured/or an insured, as its interests may appear.
- ii. Provide City of New Braunfels a waiver of subrogation. Contractor's workers' compensation, employers' liability, commercial automobile liability, CGL, excess liability, professional liability, and builder's risk insurance policies will be endorsed to waive all rights of subrogation in favor of the Owner Group. With respect to all such policies, Contractor waives any and all rights of recovery or subrogation against the Owner Group.
- iii. Provide City of New Braunfels with a thirty (30) day advance written notice of cancellation or material change to said insurance.
- iv. Provide a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of Notice of Award to the City's Finance department, Purchasing Representative noted on Page 1 of this contract.
- v. Submit a certificate of insurance reflecting coverage as follows:

a. Automobile Liability

Bodily Injury (Each Person)	-	\$250,000
Bodily Injury (Each Accident)	-	\$500,000
Property Damage	-	\$100,000

b. General Liability (Including Contractual Liability)

Bodily Injury	-	\$ 500,000
Property Damage	-	\$100,000
<u>Worker's Compensation</u>	-	Statutory

ACTUAL FINALIZED INSURANCE COVERAGE WILL ONLY BE REQUIRED OF THE SELECTED PROPOSAL. PROPOSALS CAN SEND THEIR CERTIFICATE OF INSURANCE "FOR INFORMATION PURPOSES ONLY" WITH THEIR PROPOSAL.

5.11 INDEMNITY AGAINST LOSS

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.

5.12 SAFEGUARDING OF INFORMATION AND DATA

The Contractor will safeguard all information and data provided by the City. Further, Contractor will 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 Finance Department, Purchasing division, with appropriate remuneration to the City.

5.13 CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ)

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, will 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/data/forms/conflict/CIQ.pdf>

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 City Secretary's Office 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.

5.14 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

(THIS FORM WILL BE REQUESTED FROM CONTRACTOR(S) BEING AWARDED A CONTRACT BY THE CITY OF NEW BRAUNFELS. THE FORM MUST BE FILED WITH THE TEXAS ETHICS COMMISSION AND ACKNOWLEDGED BY THE CITY, PRIOR TO FINALIZATION OF AWARD.)

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 TEC system-generated 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 will 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.

SECTION 6

SCOPE OF WORK, SPECIFICATIONS, REQUIREMENTS AND DRAWINGS

6.1 PURPOSE

This is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract for Demolition Services and a combination Firm Fixed- Price and Estimated Requirements Contract. The firm fixed-price portion calls for a definite quantity of items as shown in the Schedule of Items, and for which City of New Braunfels incurs an obligation by award of contract. Award of this solicitation for the firm quantities stated obligates the bidder to deliver that firm quantity specified without regard to placement of any Delivery Order.

The contractor shall be obligated to deliver the products at the stated prices, within the time specified, and in accordance with all Terms and Conditions, and General Provisions contained herein as specified in individual delivery orders. Actual requirements will be stated through issuance of individual Delivery/Purchase Orders against the contract, and no obligation to pay for any quantities shall be deemed to exist unless or until such orders are issued. If applicable, Delivery Schedule listed by bidders on Page 1 of this solicitation shall apply to the individual Delivery/Purchase Orders.

- (a) City of New Braunfels is obligated to pay for such orders above and to order all its requirements against this contract for which award has been made. City of New Braunfels is not obligated to order products not covered by this contract and may secure those requirements from other sources in accordance with applicable purchasing statutes.
- (b) Delivery Orders may be issued from date of Award, through October 31, 2021. All delivery orders are subject to the terms and conditions of this contract; therefore, delivery orders may be issued through length of entire contract period should all renewal options be exercised. In the event of conflict between a Delivery Order and this contract, the contract shall control.
- (c) If mailed, a delivery order is considered "issued" when the City deposits the order in the mail. Orders may also be issued orally, by fax, or by email.
- (d) If the City urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the City may acquire the urgently required goods or services from another source.
- (e) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and City's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.
- (f) If the City urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the City may acquire the urgently required goods or services from another source.
- (g) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and City's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.
- (h) If applicable, all traffic control devices shall be provided by the Contractor and shall comply with all TMUTCD regulations.

6.2 SCOPE OF WORK

The City of New Braunfels is seeking qualified contractors to provide demolition services for buildings or structures on an as-needed basis. The scope of work may include, but not be limited to, the removal of all construction materials from the jobsite, including the building slab, the removal of all debris, and Contractor must backfill all voids created by demolition with City-approved material, including but not limited to, existing fill material on property. If applicable, tanks (above or below ground) must be emptied, cleaned and removed. As an alternative, underground tanks, if not removed, must be emptied, cleaned and filled with a clean inert material.

NOTE: A separate permit is required for each separate building or structure being removed in whole or in part.

6.3 SPECIFICATIONS

- Contractor is responsible to have all the equipment, labor and materials to be able to do the job.
- Plumbing Permit: A master plumber must obtain a plumbing permit and disconnect all sewer and water supply lines connected to the building or structure being demolished. Plumbing permits can be obtained at the address on Page 1 of the solicitation.
- Sewer Disconnected: The plumber must have the sewer disconnect permitted, inspected and approved by the City prior to requesting a demo permit.

NOTE: When a structure has no plumbing or sewer to disconnect, approval must be obtained from the City before requesting a demo permit.

- Asbestos Survey: All commercial and residential structures require proof of an asbestos inspection from a state certified third party inspector before a demolition permit can be issued. Proof of the asbestos inspection must be provided when applying for the demo permit. The demolition contractor is responsible for obtaining the asbestos survey.
- Demolition Permit: The City will review the application, the asbestos survey, and the computer records for the address specified to verify the plumbing disconnect has been inspected and finalized. When all the requirements have been completed, a demo permit will be issued.

NOTE: All demolition permits include the following notation:

“Demolition on private property only. This permit does not grant authority for work in the City’s right-of-way (which may include unpaved areas). Do NOT remove sidewalks, driveways, curbs, ramps or trees from within the street right-of-way.”

- Unless otherwise approved by the City, all work is to be performed within 7 to 10 calendar days of Work Order or Release Order submitted.
- Mowing requirement and disposal: Mowing height, for both vacant and substandard lots, shall be three (3”) inches. Grass trimmings and cuttings and all identified debris located on each site shall be removed from the lots. The debris shall be taken for disposal to a permitted and licensed land disposal facility. The contractor shall dispose of all associated materials identified as eligible, including demolition materials, vegetation refuse, trash and debris at an approved landfill and shall submit a copy of the weight slip and charges with their invoice as proof of compliance.
- The contractor shall ensure that all fire hydrants and water control valves shall be kept free of obstruction and available for use at all times.

- Clean-Up: It shall be the responsibility of the contractor to remove from the job site and properly dispose of all residues at the end of each workday. Materials and equipment left on site overnight shall be clearly marked and identified so as to ensure public safety. No materials or equipment shall be left on site over a weekend unless arrangements have been made with and approved by the City. Contractor shall be responsible for any materials or equipment left on site. Any loss of materials or equipment due to theft, vandalism, or any other mishap shall be the responsibility of the contractor.
- Price Structure: The contracted rate for the demolition of a specific structure shall be determined by calculating the total square footage of the City-designated structure. Calculating the square footage shall be the responsibility of the City and the City's calculation shall be presumed accurate. In addition, City may, in its sole discretion, rely upon the square footage provided by the Comal or Guadalupe County Appraisal.
- Respondents shall submit their price proposals, based upon demolitions for asbestos containing structures and non-asbestos containing structures. If applicable, excavation and leveling will be calculated and price proposals submitted on a cubic yard basis.
- Asbestos Identification and Responsibility: Contractor shall dispose of all Asbestos Containing Materials (ACM) as regulated waste. The contractor shall be prepared to provide resources such as certified and trained supervisory personnel and asbestos workers, furnish all required or necessary equipment and supplies, and provide insurance and transportation as required to manage this type of waste. The contractor shall mark vehicles used to transport asbestos containing waste material during the loading and unloading of waste so that the signs are visible. The markings shall conform to the requirements of EPA NESHAP regulation 40 CFR §61.169(d) 1.
- Additionally, the contractor shall provide a competent person on-site to identify hazards and conditions, including potential asbestos that may be identified prior and/or during the demolition. The contractor shall dispose of known asbestos containing materials (ACM) at a disposal facility licensed or permitted to receive special wastes.
- Wet Demolition: All demolitions shall be performed as wet demolitions. A "wet demolition" shall be defined as the demolition of a structure while applying a sufficient amount of water to eliminate any visible emissions of dust. Contractor shall make every attempt to keep this water from migrating off the site. The "wet demolition" process shall be more critical in emergency conditions where a regulated structure is in imminent danger of collapse and cannot be entered into safely for materials testing or for asbestos abatement activities, or where it is already on the ground.

6.4 WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

6.4.1 Warranty and Guarantee

The Contractor warrants and guarantees to the Owner that all work will be new, of merchantable quality, in fully operative condition, fit for the intended use, of good quality, and free of any defective work. The Owner will give prompt notice of defective work to the Contractor. All defective work, whether or not in place, may be rejected, corrected or accepted as specified in this bid, or as agreed upon by the Project Manager. The Contractor will be responsible for all direct, indirect and consequential costs and damages resulting from the defective work, and for all direct, indirect and consequential damages resulting from the Contractor's breach of separate specific warranties or guarantees required by the specifications. These warranties take precedence over any other provisions of the Contract Documents unless otherwise provided in the Supplementary Conditions.

6.4.2 Tests and Inspections

If the Contract Documents or any laws and regulations specifically require any work to be inspected, tested, or approved, the Contractor will notify the Inspector to arrange for the inspections and tests. All inspections, tests, and approvals will be performed by firms selected by the Owner. The Owner will pay for initial tests and inspections, and the Contractor will pay for all retests and failed inspections. The Owner may withhold the cost of all failed inspections and retests from payments to the Contractor and may remit these amounts to the inspection or testing firm. The Contractor will furnish the Owner with all required certificates of inspection, testing, and approval. The inspections by the Owner and any inspections, tests, or approvals by firms other than the Owner will not relieve the Contractor from its obligations to perform the work in accordance with the Contract Documents.

6.4.3 Uncovering of Work

If any work is covered contrary to the Contract Documents or the direction of the Owner, the Contractor will uncover the work at the Owner's request and replace the work thereafter at the Contractor's expense. If any work required to be inspected, tested, or approved is covered without the written approval of the Owner, the Contractor will uncover the work at the Owner's request at the Contractor's expense unless the Contractor has given the Owner adequate notice of the Contractor's intention to cover the work, and the Owner has not responded with reasonable promptness to that notice. If the Owner considers it necessary to uncover work that was covered in conformity with the Contract Documents work and any directions of the Owner, the Contractor will uncover, expose, or otherwise make the work available to be observed, inspected, or tested as directed by the Owner, furnishing all necessary labor, material, and equipment. If any defective work is found, the Contractor will bear all expenses of the uncovering and of the observation, inspection and testing, including compensation for additional professional services, and a deductive change order will be issued. If the work is not found to be defective work, the Contractor may submit a claim for an increase in the Contract Price or an extension of the Contract Time, or both as the increases are directly attributable to the uncovering. The Contractor will correct any uncovered work that is found to be defective at the expense of the Contractor.

6.4.4 Correction or Removal of Defective Work

The Contractor will promptly correct or remove any defective work, including fabricated, installed, or completed work, and replace it with non-defective work, as determined by the Owner, without cost to the Owner, before approval of final payment. Additional sampling or testing required by a correction to defective work will be withheld from any money due or to become due to the Contractor. Final payment will not be made until all additional sampling and testing have been invoiced to the Owner and deducted from the Contractor's final payment. If the Contractor does not correct or remove and replace any defective work within a reasonable time as specified in a written notice from the Owner, the Owner may have the defective work corrected or removed and replaced. All direct, incidental, and consequential costs of the correction or removal and replacement, including compensation for additional professional services, will be charged to the Contractor. The Contractor will also bear the expenses of making good all work of others destroyed or damaged by the correction, removal, or replacement of the Contractor's defective work.

6.4.5 Access to Work

The Contractor will provide the Owner and its representatives with access to the work at all times. The Contractor will provide proper and safe facilities for this access and for observation, inspection, and testing of the work.

6.4.7 One (1) Year Warranty Against Defective Work

If any of the work, including fabricated, installed, or completed work, is found to be defective work within one (1) year after the Owner's approval of final payment, the Contractor will

promptly correct the defective work, or remove it from the site and replace it with non-defective work, as determined by the Owner, without cost to the Owner. If the Contractor does not correct or remove and replace the defective work within the time specified in a written notice from the Owner, the Owner may have the defective work corrected or removed and replaced. The Owner will immediately repair any defects in an emergency situation and will invoice the Contractor for the work. All direct, incidental, and consequential costs of the correction or removal and replacement, including compensation for additional professional services, will be paid by the Contractor within thirty (30) days of the Owner's submission of a statement to the Contractor. This provision does not limit any other obligations of the Contractor under the Contract Documents or serve as an exclusive remedy of the Owner. This bid defines the Contractor's obligation to correct defective work; it does not relate to the time within which the Contractor's obligations under the Contract Documents may be enforced, or within which proceedings may be commenced to establish the Contractor's liability. The term of the performance bond extends to include this warranty period.

6.4.8 Acceptance of Defective Work

The Owner may choose to accept defective work instead of requiring the Contractor to correct or remove and replace it. If the Owner's acceptance occurs before approval of final payment, a change order may be issued incorporating necessary revisions in the Contract Documents and a reduction in the Contract Price. If the acceptance occurs after approval of final payment, the Contractor will pay the amount of the reduction in Contract Price to the Owner within thirty (30) days of the Owner's submission of a statement to the Contractor. The Owner will determine the amount of the reduction in the Contract Price based on the defective work.

6.4.9 Work Neglected by Contractor

If the Contractor fails to carry out the work in accordance with the Contract Documents, including any requirements of the progress schedule, the Owner may correct the deficiencies without prejudice to any other remedy, and all direct, indirect, and consequential costs and damages incurred as a result, including compensation for additional professional services, will be deducted from the Contractor's subsequent pay request. If the payments due the Contractor are not sufficient to cover the amount, the Contractor will pay the difference to the Owner within thirty (30) days of the Owner's submission of a statement for the amount to the Contractor.

6.5 FEDERALLY FUNDED PROJECTS:

City-authorized projects supported by this contract may be funded in full or in part with Federal funds, including, but not limited to, Community Development Block Grant (CDBG) or Community Development Block Grant - Disaster Recovery (CDBG-DR) funds which are Federal funds provided to the City by the U.S. Department of Housing and Urban Development (HUD). Such funded projects are subject to the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards contained in 2CFR, Part 200, Appendix II, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards."

As applicable, Contractor shall be responsible for complying with all Federal, State, County, and City laws, codes, and ordinances applicable to the performance of any federally funded work resulting from this solicitation. Contractor is also required to adhere to all applicable local environmental ordinances and federal and state laws and standards. Ignorance on the part of the Contractor will in no way relieve the Contractor from responsibility.

The bidder is responsible to be informed of, and the bidder awarded the contract shall comply with, all federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, without limitation, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, permits, fees, and similar subjects.

6.6 CONTRACTOR CERTIFICATIONS:

Contractor certifies that 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:

- 6.6.1 “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;
- 6.6.2 “fraudulent practice” means an intentional misrepresentation of facts made to influence the bidding process or the execution of the Contract to the detriment of Owner, to establish Bid or Contract prices at artificial non-competitive levels, or to deprive Owner of the benefits of free and open competition;
- 6.6.3 “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
- 6.6.4 “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.

6.7 PAYMENT OF SERVICES

Contractor shall submit their invoice for payment after completion of each project to the identified City representative at the pre-construction meeting. Please ensure your invoice is itemized and references your purchase order number on the invoice.

Exact arrangement for emailing invoice electronically by email to select City employees will be established at the pre-construction meeting to ensure prompt payment by the City. The City is NET 30 and a tax-free entity.

6.8 MISCELLANEOUS CONDITIONS AND REQUIREMENTS

- a. The Contractor or its designee shall personally supervise all work as specified in the contract. If the Contractor cannot or will not personally supervise the work a competent supervisor is to be assigned the responsibilities of supervision of all work in progress as specified in the contract.
- b. The Contractor will be required to designate, in writing, to the City, the name and cell phone and/or pager number of anyone serving as supervisor in the absence of the supervisor, or Contractor’s designee. The designated supervisor may not commence work duties until approved by the City.
- c. The designated supervisor will be given full authority and power to act for the Contractor on items pertaining to overall work performance, management, coordination, and supervision, whenever work specified herein is being performed.
- d. The designated supervisor may also serve as the Quality Control Inspector; provided that his/her job performance is maintained at an acceptable level to the City.
- e. The supervisor and/or Quality Control Inspector will be required to have a copy of the bid requirements in their possession at all time work is in progress for referral concerning questions of contracting responsibility.
- f. The Contractor shall provide supervision of technician(s) work while performing work under this contract. Personal supervision is not required provided that communication equipment or other means are provided that enable the technician(s) to communicate with the Contractor at all times. Each work crew shall have a designated person on the work site that has the authority to respond to inquiries about work details or priorities.

6.9 EQUIPMENT

Any equipment provided by Contractor must be new and functional, and must comply with all applicable local, State, Federal and OSHA safety regulations.

6.10 INSPECTIONS

The Contractor is responsible for establishing and maintaining an adequate quality control system to satisfactorily inspect and ensure that all work performed is in full compliance with applicable codes. The Contractor's technicians shall verify contractual services are being performed as required by industry standards.

6.11 DAMAGES

- The City assumes no responsibility for the Contractor's equipment, tools or supplies used in the performance of services.

- The City shall not be liable for any loss or damage sustained by the Contractor. The Contractor shall save the City whole and harmless from any and all claims for liability or damage of whatsoever nature and kind, including cost of court and attorney's fees, suffered or asserted to have been suffered by any person or to any property of any person whomsoever, growing out of or resulting from or in any way connected with the performance of work under this agreement.

6.12 CITY'S RESPONSIBILITIES TO CONTRACTOR

The City of New Braunfels shall:

- Provide the Contractor with contact information of City's Project Manager for each job, including telephone number and email address to send correspondence and/or invoices to City.
- Work with the Contractor to coordinate and schedule all contractual services.
- Reserves the right to inspect and deem acceptable all Contractor's furnished materials and workmanship used to accomplish the work.
- Reserves the right to reject Contractor's furnished materials and workmanship which does not conform to specifications.
- Be responsible for timely payment of services performed by Contractor.
- Provide successful Contractor(s) with the City's tax exemption form, upon request.

ATTACHMENT A – COST PROPOSAL

CSP 21-006 - DEMOLITION WORK FOR THE CITY OF NEW BRAUNFELS

The City has the option to select a contractor for each proposed project, based on cost for the combined work item(s) as requested, and the availability and past performance of the contractor. The firm's undersigned representative hereby declares that he (she) has carefully examined the Contract Documents relating to the materials covered by the above bid or bids. If applicable, Traffic Control Devices shall be provided by the CONTRACTOR and shall comply with all TMUTCD regulations.

It is the intent of the City to make multiple awards to ensure contractor availability for City jobs. The City also reserves the right to award all or some of the line items below to multiple contractors. City shall be the sole judge of equality and suitability of comparable products. A quantity of one (1) is being used to capture pricing as specified.

ATTACHMENT A - COST PROPOSAL				
CSP 21-006 - DEMOLITION SERVICES FOR THE CITY OF NEW BRAUNFELS				
Item	Description	Unit of Measurement	Qty	Price per Unit of Measurement
1	Residential Structures WITHOUT Asbestos			
1A	Up to 1,000 sq. ft.	SQ. FT.	1	\$
	1,001 up to 3,000 sq. ft.	SQ. FT.	1	\$
	Over 3,000 sq. ft.	SQ. FT.	1	\$
2	Residential Structures WITH Asbestos			
2A	Up to 1,000 sq. ft.	SQ. FT.	1	\$
2B	1,001 up to 3,000 sq. ft.	SQ. FT.	1	\$
2C	Over 3,000 sq. ft.	SQ. FT.	1	\$
3	Commercial Structures			
3A	Up to 1,000 sq. ft.	SQ. FT.	1	\$
3B	Over 1,500 sq. ft.	SQ. FT.	1	\$
4	Emergency Service Surcharge			
4A	Within a 24-Hour Notification	EACH	1	\$
5	Backfilling of Excavation	CUBIC YARD	1	\$

ATTACHMENT B
COMPANY INFORMATION

1. Company Information:

- Company name: _____
- Company address: _____
- Year established: _____
- Number of years in business under present name: _____
- Form of ownership: Proprietorship Partnership Corporation Other (specify)
- When organized: _____
- If a corporation, where incorporated: _____
- Federal Employer Identification Number: _____
- Texas Comptroller's Taxpayer Number, if applicable: _____
- DUNS NUMBER: _____

Complete **A** below if you are a non-resident Respondent (your company's principal place of business is not in Texas). **Resident Respondents must check box B.**

- A:** Company is a non-resident Respondent. Its principal place of business is the State of _____.

Check one of the following options:

 - Non-resident Respondents in the state of our principal place of business are required to propose ____% (percent) lower than resident Respondents by state. A copy of the statute is attached.
 - Non-resident Respondents in the state of our principal place of business are not required to underbid resident Respondents in order to secure contract awards.
- B:** Company's principal place of business or corporate offices is in the State of Texas.

2. Subcontractor(s), if applicable:

- Subcontractor(s) will not be used to complete this contract.
- Subcontractor(s) will be used to complete this contract. (*Attach a list if additional space is necessary.*)

Subcontractor Name: _____

Percentage (%) of Total Contract: _____

SPECIFY WHAT SERVICES WILL BE SUBCONTRACTING OUT:

Mailing Address: _____

3. If applicable, provide a list of officers of the company who, while in the employ of the company or the employ of previous companies, were associated with contracts which resulted in law suits, contracts defaulted or filed for bankruptcy.

4. Your company certifies that the Project Manager you propose for this contract has sufficient knowledge, skills and experience in similar contract work: **Yes** **No**

If **no**, explain: _____

5. Your company certifies that it is able to meet the insurance requirements and provide Certificates of Insurance as specified in the General and Supplemental Conditions of this contract.

Yes **No**

If **no**, explain _____

6. List three (3) organizations of similar size that your company has provided as a prime Contractor or Subcontractor within the last three (3) years. You may attach your own list if it contains all of this information.

Services Provided	Owner Name, Address, and Telephone	Dates of Service	Annual Contract Value

7. References:

Provide three (3) references that Respondent has provided services to within the past five (5) years. The contact person named should be familiar with the day-to-day management of the contract and be willing to respond to questions regarding the type, level, and quality of service provided.

A. Reference No. 1:

Firm/Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: _____

Fax Number: _____

Email Address: _____

Date and Type of Service(s) Provided: _____

B. Reference No. 2:

Firm/Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: _____ Fax Number: _____

_____ Email Address: _____

Date and Type of Service(s) Provided: _____

C. Reference No. 3:

Firm/Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number _____ Fax Number: _____

Email Address: _____

Date and Type of Service(s) Provided: _____

8. If awarded, Respondent's primary point of contact for City account is:

Name: _____

Title: _____

Office Location: _____

Mailing Address: _____

* Telephone Number: _____ Fax Number: _____

Email Address: _____

** Emergency Contact Number for After-Hours Service: _____

*** A representative of the company must be available to answer phone calls from City Monday through Friday, 8:30 A.M. to 4:30 P.M. (Central Time).**

9. Is Respondent authorized and/or licensed to do business in Texas? Yes No

If yes, list authorizations/licenses.

10. If awarded, Proposer shall indicate preferred method for which City is to notify Awarded Contractor of purchase orders:

Purchase Orders shall be communicated via: *(check all that apply)*

Phone Fax Email

Email Contact Person: _____

Email Address: _____

Phone: _____

Fax: _____

11. Does your company have these products on a cooperative contract? YES NO

If so, who is your cooperative contract with, and what is your cooperative contract number, and specify the line items on this bid that are the same.

**ATTACHMENT C
RESPONDENT CERTIFICATIONS**

To demonstrate qualifications to perform the scope of services, each Respondent is required to submit the following information to Owner for consideration.

Answer all questions. Provide responses that are clear and comprehensive. Attach any additional information provided on separate sheets.

DEBARMENT/SUSPENSION INFORMATION:

1. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity or is Respondent listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>?

Yes **No**

If yes, identify in an attachment the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, or listed at [epls.gov](http://www.epls.gov) and state the reason for or circumstances surrounding the debarment, suspension or ineligible for federal procurement, including but not limited to the period of time for such debarment, suspension or ineligibility.

CERTIFICATIONS:

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

Yes **No**

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

2. NON-COLLUSION CERTIFICATION:

A. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company's cost Proposal?

Yes No

1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation;
2. That your cost Proposal is genuine and is not a collusive or sham cost Proposal;
3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other respondent, firm or person to submit a collusive or sham cost Proposal, or to refrain from responding, or sought by communication or conference with any other respondent, firm or person to fix the prices, overhead, profit, or any cost element in your cost Proposal or in any other cost Proposal, or to secure through any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other respondent; and
4. The prices quoted in your cost Proposal are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf.

3. HOUSE BILL 89 VERIFICATION:

A. Contractor shall verify that it's named company, under the provisions of Subtitle F Title 10 Government Code Chapter 2270:

Yes No

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Sections 2270.001, 2270.002, 808.001, Texas Government Code:

1. "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; and
2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

4. CERTIFICATION REGARDING LOBBYING:

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person

for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an Officer or employee of Congress, or an employee of a Member of Congress in connection with the Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

3. The undersigned shall require that the language in this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any persons who fail to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. CERTIFICATE OF NONDISCRIMINATION OF EMPLOYEMENT:

The Bidder certifies that Bidder has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if Bidder has not participated in a previous contract of this type, or if Bidder has had previous contract or subcontracts and has not filed, Bidder will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Yes No

Note—The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)) and must be submitted by Bidders and proposed Subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations. Proposed prime Contractors and Subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such Contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

6. SAFETY RECORD QUESTIONNAIRE AND STATEMENT OF BIDDER'S SAFETY EXPERIENCE:

Pursuant to Section 252.0435 of the Local Government Code, the City of New Braunfels will consider the safety records of potential contractors prior to awarding bids on City contracts. The City of New Braunfels follows written definitions and criteria for accurately determining the safety record of a Bidder prior to awarding bids on City contracts. The term "Bidder" includes the firm, corporation, partnership, or other legal entity represented by the Bidder or anyone acting for such firm, corporation, partnership or other entity submitting the bid. The definitions and criteria for determining the safety record of a Bidder are:

"Citations" include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments. Notice of Violations and Notice of Enforcement received from the TCEQ shall include those classified as major violations and moderate violations under the TCEQ'S regulations for documentation of Compliance History, 30 Texas Administrative Code, Chapter 60.2 (c) (1) and (2).

"Environmental Protection Agency" includes, but is not limited to the Texas Commission on Environmental

Quality (TCEQ), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Texas Department of Health, the Texas Parks and Wildlife Department, the Structural Pest Control Service, agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States.

If the Bidder's response to the following questions reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Bidder for serious violations of Occupational Safety & Health Administration (OSHA) regulations within the past five (5) years, the City will, at its discretion, determine whether to disqualify the Bidder.

If the Bidder's response to the following questions reveals more than one (1) case in which Bidder has received a citation or for which final orders have been entered from an environmental protection agency for violations within the past five (5) years, the City will, at its discretion, determine whether to disqualify the Bidder.

If the Bidder's response to the following questions reveals that the Bidder has been convicted of a criminal offense within the past ten (10) years or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily harm or death, at its discretion, the City will determine whether to disqualify the Bidder.

The City may consider the responses to each question listed below separately when making a discretionary determination of whether to disqualify a Bidder and it may consider the cumulative impact of the information generated by the Bidder's responses in making the determination. **1. Has the Bidder or sub contractors' companies received any Citations for violations of OSHA within the past five (5) years?**

Yes No

2. Has the Bidder or sub contractors' companies received any Citations for violations of environmental protection laws or regulations within the past five (5) years?

Yes No

3. Has the Bidder or sub contractors' companies ever been convicted, within the past ten (10) years, of a criminal offense or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily injury or death?

Yes No

If the Bidder or sub contractors' companies have indicated "Yes" to any question above, the Bidder must provide to the City, with its bid submission, the following information:

Date of Citation or offense and location where violation or offense occurred, type of violation or offense, final disposition of violation or offense, if any, and penalty assessed.

CONTRACTOR'S ASSURANCE (Subcontracts – Federal Aid Projects):

By signing this proposal, the contractor is giving assurances that all subcontract agreements will incorporate the Standard Specification and Special Provisions, all subcontract agreements exceeding \$2,000 will incorporate the applicable "Wage Determination Decision", and, all subcontract agreements of \$10,000 or more will incorporate the following:

Special Provision "Certification of Nondiscrimination in Employment"
Special Provision "Measurement and Payment" (Article 9L)

Special Provision "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" (Executive Order 11246)

Special Provision "Standard Federal Equal Employment Opportunity Construction Contract Specifications" (Executive Order 11246)

Special Provision "Disadvantaged Business Enterprise in Federal Aid Contracts"

Form FHWA 1273 "Required Contract Provisions Federal-Aid Construction Contracts"
(Form FHWA 1273 must also be physically attached to subcontracts and purchase orders of \$10,000 or more)

SEE NEXT PAGE FOR ACKNOWLEDGEMENT

ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF COMAL

I certify that I have read all of the specifications and general contract requirements and do hereby certify that all items submitted meet specifications. I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my response to this solicitation to be rejected.

Company's Name

Signature, Authorized Representative of Respondent

Title