City of BROWNSVILLE Texas

On the Border By the Sea and Beyond

REQUEST FOR PROPOSALS FOR: TEMPORARY STAFFING AGENCIES

RFP#: 101-26-ODHR-RFP

RFP CLOSING DATE: Tuesday, February 24, 2026
RFP CLOSING TIME: 3:00 P.M CT

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1 General Information

1.1 Invitation Summary

The City of Brownsville (the "City") is soliciting sealed proposals from qualified firms to provide the services described in this Request for Proposals (RFP). All proposals must be prepared and submitted in accordance with the instructions in this solicitation All dates and times referenced in this RFP are Central Standard Time (CST).

Proposers are responsible for ensuring their response is complete and submitted electronically through the City's Bonfire portal at https://brownsvilletx.bonfirehub.com by the deadline stated in this solicitation. Late responses will not be accepted.

For questions or assistance, please contact the designated Buyer listed in Section 1.4 (Point of Contact).

1.2 Legal Advertisement Notice

* B/P/Q (Bid/Proposal/Qualifications)

Description	NUMBER	Pre-Bid Meeting	OPENING
REQUEST FOR PROPOSALS FOR: TEMPORARY STAFFING AGENCIES	*P 101-26-ODHR-RFP	Tuesday, January 27, 2026 @ 10:00 A.M CT TEAMS VIRTUAL MEETING	Tuesday, February 24, 2026 @ 3:00 P.M CT TEAMS VIRTUAL MEETING

Sealed, bids/proposals must be submitted electronically via the City's Bonfire portal, at City of Brownsville (bonfirehub.com)

Copies of the bid documents consisting of detailed specifications, general requirements or other information may be obtained at

http://www.brownsvilletx.gov City of Brownsville (bonfirehub.com)

Interested Bidders/Proposers are invited to attend the Pre-Bid/Pre-Proposal and the Bid/Proposal opening Virtually on the dates specified. Presence is not mandatory. Specifications may also be viewed and downloaded at: City of Brownsville (bonfirehub.com)

1.3 Calendar of Events

Release Date	Saturday, January 17, 2026
Pre-Proposal Meeting	Tuesday, January 27, 2026 at 10:00 A.M CT The Proposal meeting is open to the public. Participants may attend via Microsoft Teams (link below).

	Microsoft Teams Link: https://teams.microsoft.com/meet/26978578667538?p=6k6W5dFpSkuw0BblfR Meeting ID: 269 785 786 675 38 Passcode: b7CG6Pd2
Questions Due Date	Tuesday, February 3, 2026 at 3:00 P.M CT
Addenda Issue Date	Tuesday, February 10, 2026 at 5:00 P.M CT
Proposal Closing Due Date	Tuesday, February 24, 2026 at 3:00 P.M CT
Proposal Opening Meeting	Tuesday, February 24, 2026 at 3:00 P.M CT The Proposal Opening meeting is open to the public. Proposal Opening meeting participants may attend via Microsoft Teams (link below). Microsoft Teams Link: https://teams.microsoft.com/meet/2708930154176?p=pE0lk5oqV16xglP65Q Meeting ID: 270 893 015 417 6 Passcode: cR3Fs78o
Evaluation Period	Week of March 2, 2026
Interviews (If Applicable)	Tentative: Week of March 9, 2026
Anticipated City Commission Award	Tentative: Tuesday, April 21, 2026

This timeline is subject to change at the sole discretion of the City. Potential Proposers will be notified via addendum if a change in the schedule is made by the City.

1.4 Project Overview

The City of Brownsville ("City") is seeking sealed proposals from qualified and experienced temporary staffing agencies ("Contractor" or "Agency") to provide temporary personnel on an as-needed basis to support various municipal departments. The selected Agency shall furnish all labor, supervision, administrative services, and related support required to supply qualified temporary personnel in accordance with the specifications set forth in this Request for Proposals (RFP).

The City intends to award a contract to the Agency or Agencies whose proposal best meets the requirements of this RFP and demonstrates the ability to provide high-quality, timely, and cost-effective staffing services.

1.5 Contract Term

The initial term of the agreement resulting from this RFP shall commence on approval by the City Commission or its designee and be for one (1) year with an option to renew for up to four (4) one-year renewals, unless terminated earlier in accordance with the contract provisions. The City reserves the right to renew the contract for additional periods, subject to mutual agreement and availability of funds.

The City reserves the right to make a single award, multiple awards, or no award, as determined to provide the best value to the City and consistent with the evaluation criteria in this RFP.

1.6 Point of Contact

For information regarding bidding procedures contact Ms. Alondra Palacios, Buyer or Mr. Damian Espinoza, Procurement Director, via Bonfire or email at purchasing@brownsvilletx.gov

1.7 Unauthorized Communication

Any oral communications are considered unofficial and non-binding with regard to this RFP. After the release of this solicitation, Proposer(s) are prohibited from contacting or communicating with any City officer, employee, or representative regarding this RFP other than (i) the point of contact designated herein. No officer, employee, agent, or representative of the Proposer(s) shall, directly or indirectly through others, have any contact or discussion, oral or written, with any members of the City Commission; members of the RFP evaluation, interview, or selection panels; City staff or City's consultants, or seek to influence any City Commission Member, RFP evaluator, City staff, or City's consultants regarding any matters pertaining to this solicitation, except as expressly provided herein. **IF A REPRESENTATIVE OF ANY PROPOSING COMPANY VIOLATES THE FOREGOING PROHIBITION BY CONTACTING ANY OF THE ABOVE-LISTED PARTIES WITH WHOM CONTACT IS NOT AUTHORIZED, SUCH CONTACT MAY RESULT IN THE PROPOSER BEING DISQUALIFIED FROM THE IFB/RFP/RFQ/OR ANY OTHER PROCUREMENT RELATED PROCESS.**

1.8 Submission of Clarifications or Changes

All requests for clarifications must be submitted in Bonfire no later than the date specified in the Calendar of Events.

1.9 Submission of Proposals

Respondents are responsible for ensuring their RFP response is complete and submitted in a timely manner. Proposals received after the deadline will not be opened, evaluated, or considered, regardless of circumstances. The City of Brownsville reserves the right to negotiate with proposers within a competitive range and to reject any and all proposals. At the sole discretion of the City, the events and dates listed in this solicitation are subject to change or cancellation, with notice provided through addenda posted on the Bonfire portal. The contents of the proposal will become part of the resulting contract; therefore, Proposers should ensure that all information is accurate, complete, and free of conditions that might limit the City's rights.

1.10 Budget Information

No Budget Disclosed
The City of Brownsville will not be disclosing budget information for this project. Proposers are expected to submit their most competitive pricing in response to this RFP.

1.11 Funding Notice

Local funds will be used and shall comply with all applicable local procurement laws, regulations, and policies.

1.12 Equal Employment Opportunity

The City of Brownsville is an Affirmative Action/Equal Opportunity Employer. Minority Business Enterprises, Small Business Enterprises, Women Business Enterprises, and Labor Surplus Area firms are encouraged to submit proposals.

2 Scope of Work

2.1 Project Description

The selected Agency shall provide qualified temporary personnel to support administrative, clerical, professional, technical, and labor needs across municipal departments. Services shall be provided on an as-needed basis and may include short-term, long-term, seasonal, project-based, and temp-to-hire assignments.

2.2 Scope of Services

Overview

The selected Agency shall provide qualified temporary personnel to support administrative, clerical, professional, technical, and labor needs across municipal departments. Services shall be provided on an as-needed basis and may include short-term, long-term, seasonal, project-based, and temp-to-hire assignments.

1. Recruitment, Screening, and Placement

The Agency shall:

1. Recruit and maintain a robust pool of qualified candidates.
2. Conduct the following screenings (at a minimum):
    - Criminal background checks
    - Employment verification
    - Reference checks
    - Education/license verification
    - Drug screening (if required by the City)
3. Submit qualified candidate profiles within 24–48 hours of request (or timeframe specified by the City).
4. Coordinate interviews when requested.
5. Ensure all candidates meet or exceed job requirements.

2. Assignment Management

The Agency shall:

1. Manage onboarding and placement of temporary employees.
2. Ensure assigned staff understand job duties, schedules, and reporting procedures.
3. Replace unsatisfactory employees within 24 hours of notification.
4. Handle all employer-of-record responsibilities including:
    - Payroll
    - Taxes

- Workers' compensation
- Unemployment insurance

3. Job Classifications

Temporary staffing may be required, but not limited to:

- Administrative positions (Secretaries, Receptionists, Executive Assistants)
- Customer Service Representatives (call-center, sales, cashiers, other customer support roles)
- Human Resources Support Staff
- Accounting Clerks / Finance Technicians / Payroll Clerks
- IT Support Technicians
- Engineers / Analysts
- Maintenance Workers / General Laborers (construction, mowing, landfill, streets, parks, concrete and paving crews)
- Public Works Support Staff
- Project Managers / Change Management
- Other positions required by the City (a comprehensive list of what the staffing agency currently has)

The City reserves the right to add or modify classifications throughout the contract term.

4. Compliance Requirements

The Agency must:

1. Comply with federal, state, and local laws (FLSA, OSHA, EEO, etc.).
2. Ensure temporary workers adhere to all the City's policies.
3. Maintain required insurance, including:
    - General Liability
    - Professional Liability
    - Workers' Compensation
4. Maintain confidential information securely and in compliance with law.

5. Reporting Requirements

The Agency shall provide the following reports monthly:

- Usage reports
- Employee assignment rosters by department/division

- Performance or disciplinary updates
- Hours worked and payroll summaries
- Additional reports as requested

6. Invoicing and Billing

Invoices must:

1. Be submitted monthly (preferably through an Agency Portal)
2. Reflect accurate hours worked, classification, and approved bill rate.
3. Detail any additional fees.

Be corrected within the timeframe requested by the City when discrepancies arise.

7. Department Work Environments and Conditions

For informational purposes, the City has included Department Work Environments and Conditions as an attachment to this solicitation. This document provides general descriptions of typical work locations and environmental conditions for selected City departments.

The attached information is not intended to be exhaustive and does not represent all City departments, facilities, or potential work environments. Temporary personnel may be assigned to any City department or location as operational needs arise during the term of the contract.

Proposers are responsible for reviewing the attachment and ensuring their ability to provide qualified personnel capable of working in a variety of municipal environments, in accordance with applicable laws and safety requirements.

2.3 Minimum Qualifications

Each Proposer must provide information demonstrating that it is qualified to perform the services described in the Scope of Work. Proposers must demonstrate their capability to deliver the required services, manage the project effectively, and ensure successful completion in compliance with applicable laws and standards. At a minimum, Proposers must demonstrate the following qualifications:

1. Relevant Experience – A minimum of 3–5 years' experience providing services of comparable size and scope.
2. Past Performance – At least 3–5 completed projects of similar nature within the last 7 years.
3. Key Personnel – Identification of an Account Manager or Staffing Coordinator with proven experience in managing temporary staffing contracts, including recruitment, screening, placement, and client service for public-sector or large-scale clients.
4. Financial Capacity – Sufficient financial strength to successfully perform under the resulting contract (as demonstrated by financial statements or other supporting documentation).

If a Proposer cannot meet one or more of the minimum requirements, the Proposer may provide supporting evidence demonstrating its ability to successfully complete the services, including the experience of management staff on similar contracts.

Insurance and Bonding (if applicable)

- All Proposers must be able to provide insurance coverage meeting the requirements outlined in Section 5 (Terms and Conditions).

2.4 Deliverables

The successful Proposer shall provide all deliverables necessary to ensure timely and effective temporary staffing support for the City. At a minimum, the following deliverables are required:

1. **Candidate Submissions:**
   Submission of qualified candidate profiles **within twenty-four (24) to forty-eight (48) hours** of the City's request, or within another timeframe specified by the City.
2. **Screening Documentation:**
   Completion of all required screenings, including background checks, employment verification, reference checks, education/license verification, and drug testing (if applicable), prior to placement.
3. **Replacement Personnel:**
   Replacement of unsatisfactory temporary workers **within twenty-four (24) hours** of notification by the City.
4. **Monthly Reports:**
   Delivery of monthly usage reports, assignment rosters, performance updates, hours worked, and payroll summaries. Additional reports shall be provided upon request.
5. **Invoicing Deliverables:**
   Submission of accurate monthly invoices reflecting hours worked, classification, approved bill rates, and any additional fees. Corrections must be made within the timeframe required by the City.
6. **Compliance Documentation:**
   Proof of required insurance, adherence to federal/state/local laws, and compliance with City policies.

2.5 Project Schedule

The successful Proposer shall perform all services in accordance with the timelines established by the City. At a minimum, the following schedule requirements apply:

1. **Candidate Response Time:**
   Provide qualified candidate submissions **within twenty-four (24) to forty-eight (48) hours** after receiving a staffing request.
2. **Replacement Timeframe:**
   Provide replacement personnel **within twenty-four (24) hours** when requested by the City.
3. **Monthly Reporting:**
   Submit required monthly reports **no later than the fifth (5th) business day of each month**, unless otherwise directed by the City.

4. **Monthly Invoicing:**
   Submit invoices **monthly**, with all corrections made within the City's specified timeframe.
5. **Contract Start Date:**
   Services shall begin on the date specified in the Notice to Proceed or contract award.

2.6 Performance Requirements

The successful proposer must comply with the following performance requirements, as applicable to the project:

- Provide qualified candidates within the timelines specified by the City (typically 24–48 hours).
- Ensure all temporary personnel meet minimum job requirements and pass required screenings.
- Maintain reliable communication with City departments regarding assignments, performance issues, and schedule changes.
- Promptly replace unsatisfactory personnel within the required timeframe (typically 24 hours).
- Ensure temporary workers comply with all City policies, safety standards, and workplace rules.
- Meet reporting, invoicing, and documentation deadlines as required under the contract.

2.7 Reference to Technical Documents

The following technical documents are incorporated by reference and provided as separate files in the City's Bonfire procurement portal at https://brownsvilletx.bonfirehub.com. Proposers are responsible for reviewing these documents in their entirety prior to submission. Failure to acknowledge or comply with the requirements set forth in these documents may result in disqualification.

- Exhibit A – Job Classification Rates
- Exhibit B – Job Descriptions
- Exhibit C – Department Work Environments and Conditions

3 Proposal Instructions

3.1 General Requirements

All proposals must be submitted electronically through the City's Bonfire portal at https://brownsvilletx.bonfirehub.com no later than the date and time specified in Section 1 (General Information). Proposals received after the deadline will not be opened or considered.

Proposals must be complete, organized, and signed by an officer or other authorized representative of the firm. Any costs incurred in preparing or submitting a proposal are the sole responsibility of the Proposer

3.2 Proposal Format

Proposals shall be organized into chapters. Each chapter should be clearly labeled, and responses should be complete and concise.

Once submitted, proposals become the property of the City and will not be returned. Proposals must be signed by a duly authorized official of the firm or by an authorized agent with written proof of authority. Proposals that fail to follow the required format or omit requested information may be deemed non-responsive and excluded from further evaluation. Proposals transmitted by telegraph, facsimile, or other non-approved electronic means will not be considered. Proposals may not be withdrawn after the closing deadline, except as permitted by law. The City of Brownsville reserves the right to reject any and all proposals, to waive informalities or irregularities in the best interest of the City, and to rely on information contained in the proposal, obtained from references, or secured through other sources as part of its evaluation. Conditional or incomplete proposals may be rejected at the City's sole discretion. At the sole discretion of the City, the events and dates listed in this solicitation are subject to change or cancellation, with notice provided through addenda posted on the Bonfire portal. The contents of the proposal will become part of the resulting contract; therefore, Proposers should ensure that all information is accurate, complete, and free of conditions that might limit the City's rights.

Proposers shall furnish documentation that identifies the following:

Chapter 1 – Letter of Intent

- Signed by an authorized representative, confirming the Proposer's intent to provide services in accordance with this RFP 's terms and conditions, for the Rates (prices) submitted with the Proposal.
- Identify the primary point of contact for the proposal.

Chapter 2 – Experience, Qualifications, and Past Performance

- Company history, years in business, and areas of expertise.
- Relevant experience with projects of similar size and scope within the last 3- 5 years.
- At least three (3) references for comparable projects (include client name, project title, year completed, and contact information).
- Disclosure of any litigation or default history within the last ten (10) years.

Chapter 3 – Staffing and Key Personnel

- Organizational chart showing key personnel and reporting structure.
- Résumés of the **Account Manager**, **Staffing Coordinator**, or other key personnel assigned to the City contract.
- Description of availability and capacity to support the City's staffing needs.
- Identification of subcontractors (if any) and their roles.

Chapter 4 – Project Methodology and Technical Approach

- Narrative description of the Proposer's approach to accomplishing the Scope of Work.
- Description of deliverables and schedule for completing the project.
- Explanation of quality control and project management processes.

Chapter 5 – Budget and Fees

- Itemized fee schedule or cost proposal.
- Hourly rates for staff classifications (if applicable).
- Estimated reimbursable expenses.
- Identification of any cost assumptions or contingencies.

Chapter 6 – Required Forms and Certifications

Proposers must submit all required forms and certifications listed below. Failure to complete and submit these forms may result in the proposal being deemed non-responsive.

- **City-Issued Forms**
  The following forms are provided as separate attachments on the City's Bonfire procurement portal and must be completed and returned with the proposal:
  - Form 1 – Proposal Acknowledgment & Authorized Contact Info
  - Form 2 – Statement Of Conflicts Of Interest
  - Form 3 – Texas Ethics Commission Certificate of Interested Parties (Form 1295)
  - Form 4 – Respondent's Statement of Organization
  - Form 5 – Non-Collusion Affidavit
  - Form 6 – Litigation Disclosure
  - Form 7 – Disclosure of Interest
  - Form 8 – References
  - Form 9 – Proposed Deviations
  - Form 10 – Job Classification Rates
  - Addenda Acknowledgement Form - This form will be issued out by the City when an addendum is issued out.

- **Vendor-Produced Documentation**
  In addition to the City forms, vendors are responsible for providing certain documents that are not prepared or issued by the City. These must be completed by the vendor and uploaded in Bonfire with the proposal response in addition to City-issued forms. Proposers must submit the following documents prepared by the Proposer:
  - Certificate of Insurance (meeting requirements in Section 5 – Terms and Conditions).
  - Financial Statements or Proof of Financial Capacity (if requested under Section 2 – Scope of Work or Section 2.3 – Minimum Qualifications).
  - Description of Recruitment, Screening, and Onboarding Processes, including background checks, reference checks, and any testing procedures used by the agency.
  - Any additional documents specifically requested in this RFP.

3.3 Withdrawal or Modification of Proposals (Prior to Deadline)

Proposals may be withdrawn or modified at any time prior to the submission deadline through the City's Bonfire portal. After the deadline, no changes, additions, or withdrawals will be permitted.

3.4 Confidentiality / Texas Public Information Act

All documents submitted in response to this solicitation are subject to the Texas Public Information Act (Texas Government Code Chapter 552). Proposers must clearly mark any portion of their submission that they consider confidential, proprietary, or trade secret.

The City will honor such designations to the extent allowed by law; however, the final determination of whether such information may be withheld rests with the Texas Attorney General or a court of competent jurisdiction.

4 Evaluation and Award

4.1 General Evaluation Approach

Proposals will be evaluated to determine which Proposer offers the best overall value to the City, considering price and other evaluation factors identified in this RFP. The evaluation process will be conducted in a fair, impartial, and transparent manner consistent with applicable local, state, and federal laws and regulations. Final award and contract execution are subject to approval by the Brownsville City Commission.

4.2 Evaluation Committee

All proposals will be evaluated by an Evaluation Committee composed of City staff and/or subject matter experts. The Committee may consult with other City representatives, legal counsel, or outside advisors as needed.

4.3 Steps in the Evaluation Process

- **Step 1 – Compliance Review**
  Proposals will undergo an initial screening to confirm that they meet the mandatory submission requirements outlined in this RFP. Proposals failing to meet these requirements may be deemed non-responsive and excluded from further consideration.

- **Step 2 – Review and Scoring of Technical Criteria**
  Responsive proposals will be evaluated on technical merit, which may include:
  - Understanding of the project requirements and scope.
  - Methodology, approach, and work plan.
  - Qualifications, abilities, and reputation of the Proposer.
  - Experience of key personnel and project team.
  - Past performance and references.
  - Financial and litigation history.

- **Step 3 – Review and Scoring of Cost Proposal**
  Cost proposals will be evaluated for overall cost-effectiveness. The City may use a variety of methods to assign cost scores, including formula-based scoring, ranked or tiered scoring, range or band scoring, or other approaches that ensure fair and meaningful differentiation between proposals. Where appropriate, the City may also consider life-cycle costs, cost reasonableness, cost realism, and cost balance. The specific approach may vary depending on the number of proposals received, the funding source, and the nature of the procurement. Where federal funds are involved, evaluations will comply with applicable cost principles and procurement requirements under 2 CFR Part 200.

- **Step 4 – Shortlisting (Competitive Range)**
  Based on initial technical and cost evaluations, the Committee may establish a competitive range of the most highly rated proposals. Proposers within this range may be invited to participate in oral interviews, presentations, or clarifications.

- **Step 5 – Negotiations and Best and Final Offer (BAFO)**
  The City may conduct negotiations with Proposers in the competitive range. Following negotiations, the City may request Best and Final Offers (BAFOs). BAFOs will be evaluated against the same criteria, with adjustments based on negotiations and clarifications. The City reserves the right to make an award without negotiations or BAFOs if deemed in the City's best interest.

- **Step 6 – Recommendation and Award**
  The Evaluation Committee will prepare a recommendation to the City Commission. The Commission, at its sole discretion, will make the final award decision. The City reserves the right to reject any or all proposals, waive minor informalities, and award in whole, in part, or not at all.

4.4 Evaluation Criteria and Scoring

Criteria	Points
Minimum Qualifications (Pass/Fail)	–
Experience and Qualifications	40
Proposed Methodology	35
Cost Proposal	25
Total Available	**100**

- **Experience and Qualifications (40 points):** Demonstrated experience providing temporary staffing services of similar size and scope; strength of references; qualifications and availability of key personnel such as the Account Manager and Staffing Coordinator; demonstrated success with public-sector or large-scale clients; and overall financial stability of the firm.
- **Proposed Methodology (35 points):** Strength and clarity of the Proposer's methodology for recruiting, screening, onboarding, assigning, supervising, and replacing temporary personnel; ability to meet required response times; processes for quality assurance and issue resolution; and demonstrated understanding of the City's operational staffing needs.
- **Cost Proposal (25 points):** Total proposed cost and competitiveness of bill rates; clarity and completeness of pricing; cost reasonableness and realism; and overall value to the City considering the quality and reliability of proposed staffing services.

4.5 Oral Interviews, Presentations, and Negotiations

As part of the evaluation process, the City may invite shortlisted Proposers to participate in oral interviews, presentations, or demonstrations. These sessions are intended to clarify proposals, confirm the Proposer's ability to meet project requirements, and provide evaluators with additional insight into the qualifications, methodology, staffing, and technical approach of each Proposer. The Evaluation Committee may adjust scores based on interview results; however, adjustments must be tied to the evaluation criteria in Section 4.4. Interviews should not introduce new evaluation criteria beyond those identified in this RFP.

If negotiations are conducted, they may address technical requirements, terms and conditions, pricing, or other elements of the proposal. Following negotiations, the City may request Best and Final Offers (BAFOs).

Proposers are advised to submit their proposals on the most favorable terms, as the City reserves the right to award a contract without conducting interviews, negotiations, or requesting BAFO.

4.6 Basis of Award

The City may award a contract in whole, in part, or by groupings of services, if such action is determined to provide the best value to the City, consistent with the evaluation criteria set forth in this RFP. The City also reserves the right to make multiple awards when such possibility is stated in this RFP and when consistent with applicable laws and funding requirements. In the event of a tie score, the City will follow the procedures outlined in Texas Local Government Code §271.901. If federal or state funding requirements prohibit the use of local preference in resolving a tie, the City will use a random selection method (such as drawing lots) to determine the award.

4.7 Single Proposal

In the event that only one proposal is received, the City will evaluate the proposal in accordance with the published evaluation criteria to determine whether it represents best value to the City. The City may also conduct a cost and technical analysis to determine whether the proposal is fair and reasonable. Based on this review, the City may make an award, negotiate with the Proposer, or reject the proposal and re-advertise the solicitation.

5 Terms and Conditions

5.1 Standard Terms and Conditions Reference (Exhibit A)

The City of Brownsville's Standard Purchasing Terms and Conditions (Exhibit A) are incorporated herein by reference and shall govern all resulting contracts unless expressly modified by this solicitation. By submitting a proposal, the Proposer acknowledges receipt and acceptance of Exhibit A.

5.2 Proposal Validity / Firm Offer Period

A proposal may not be withdrawn or cancelled by the Proposer for a period of ninety (90) calendar days following the proposal due date, and Proposer so agrees upon submittal. During this period, the City may accept a proposal and negotiate terms consistent with this RFP. Any attempted withdrawal after the deadline and within the irrevocability period may result in forfeiture of any proposal security (if applicable) and may affect the Proposer's responsibility determination in future City solicitations.

5.3 Withdrawal of Proposal

Proposal may not be withdrawn or cancelled by the Proposer after the submission deadline. By submitting a proposal, the Proposer acknowledges and agrees that its proposal shall remain valid and enforceable for the full Pricing Period identified in Section 5.2.

5.4 Proposal Price Revisions (If Applicable)

Unless otherwise stated in this RFP or the resulting contract, prices shall remain firm for the initial contract term. If a price revision mechanism is permitted, revisions may occur only when supported by verifiable market documentation (e.g., published indices or manufacturer notices) and must:

- Be submitted in writing to the City before the revised prices go into effect; and
- Include detailed documentation supporting the revision.

Such revisions must also be supported by continuing written notices for each thirty (30) day period that the revised prices remain in effect.

Discounts, delivery, and services accepted as part of the proposal are not subject to revision.

5.5 Availability of Funds / Non-Appropriation

This procurement is subject to the availability of funding. The City's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the Contract purposes can be made. No legal liability on the part of the City for any payment shall arise until funds are made available to the Contracting Officer for this Contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer. Any award of Contract hereunder will be conditioned upon said availability of funds for the Contract. In the event sufficient appropriation, grants, and monies are not made available to City to pay these services for any fiscal year, this Agreement shall terminate without further obligation of City. In such event, the City Manager of City shall certify to contractor that sufficient funds have not been made available to City to meet the obligations of this Agreement; such certification shall be conclusive upon parties.

5.6 Termination by the City

The City may terminate the contract, in whole or in part, for convenience or cause by providing thirty (30) days' written notice to the Contractor. If terminated for cause due to the Contractor's default, the City may pursue all remedies available under law or equity, including procurement of substitute services at the Contractor's expense.

5.7 Indemnification

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

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

5.8 Insurance Requirements

The Proposer shall, at its own expense, maintain insurance coverage meeting or exceeding the following requirements for the duration of the contract:

- Workers' Compensation: Statutory, with Employer's Liability limits of not less than $500,000 each accident/disease. If Contractor is not legally required to carry Workers' Compensation, Contractor shall provide alternative coverage acceptable to the City.
- Commercial General Liability (CGL): $1,000,000 per occurrence / $2,000,000 aggregate, including premises, operations, independent contractors, products/completed operations, personal injury, and contractual liability coverage.

- Automobile Liability: $1,000,000 combined single limit, covering all owned, hired, and non-owned vehicles.
- Umbrella/Excess Liability: $1,000,000 per occurrence and aggregate.
- Additional Coverages (as applicable): Professional Liability/Errors & Omissions ($1,000,000 minimum); Cyber Liability ($1,000,000 minimum).

Required Endorsements:

- The City of Brownsville shall be named as Additional Insured on the CGL and Auto policies.
- Policies shall include a Waiver of Subrogation in favor of the City.
- Coverage shall be primary and non-contributory to any insurance carried by the City.

Certificates of Insurance:
Contractor shall provide valid certificates of insurance prior to contract execution and upon renewal. Each certificate must state that coverage shall not be canceled, materially changed, or non-renewed without thirty (30) days' prior written notice to the City.

5.9 <u>Protest Procedures</u>

The City of Brownsville maintains a formal protest procedure in accordance with its Procurement Policy.

Prior to Bid/Proposal Due Date:

- If a prospective Proposer/proposer becomes aware of a deficiency in the solicitation or solicitation process before the due date, the Proposer/proposer must notify the **City Attorney's Office in writing** no later than **five (5) calendar days** before the due date. This allows the City to address the situation prior to the closing date.

After Bid/Proposal Due Date:

- A Proposer/proposer may protest the solicitation process or recommended award by:
    1. Filing a written **notice of intent to protest** within **five (5) calendar days** of the date the Proposer/proposer knew or should have known of the facts giving rise to the protest. Failure to file this notice waives the right to protest.
    2. Filing a **formal written protest** within **seven (7) calendar days** after the notice of intent is filed.

The protest must include:

- Name, address, telephone, and email of the protestor;
- The solicitation number;
- A detailed statement of the factual grounds for the protest with supporting documents;
- Signature of the protestor or authorized representative;

- The form of relief requested; and
- A concise and logical presentation of facts.

Review and Hearing:

- Upon receipt of a timely protest, the **City Attorney** will determine whether the grounds are sufficient.
- If sufficient, the Procurement Office will schedule an informal hearing (not subject to the Open Meetings Act) usually within five (5) working days.
- A written decision will typically be issued within **fifteen (15) calendar days** after the hearing.

Exceptions; Restrictions:

- The City will generally not make an award until a protest is resolved.
- However, the City Manager may authorize award without delay if:
    - The City urgently requires the goods or services, or
    - Failure to award promptly will unduly delay delivery or performance.

Federal Agency Review:

- Protestors must exhaust all administrative remedies with the City before appealing to a federal agency.
- Federal review is limited to:
    - Violations of federal law/regulations, or
    - Violations of the City's Protest Procedures for failure to review a complaint.
- Any protest sent to a federal agency outside these grounds will be referred back to the City.

5.10 Restrictions on Lobbying & Political Contributions

A vendor/contractor or their agent is **prohibited** from lobbying activities with City officials, including elected officials, and employees regarding a proposed contract from the time a solicitation (RFP, RFQ, IFB, or other procurement) has been released until the contract is posted as a City Commission agenda item. If contact is required, such contact shall be made only in accordance with the procedures set forth in **Section 1.6** **(Authorized Contact)** of this IFB. Violation of this provision by respondents or their agents, including lobbyists, may result in disqualification of the respondent's offer. A parallel no-contact provision applies to lobbyists and their agents.

Further, the following restrictions apply to all vendors, contractors, and their agents/representatives:

1. **No Personal Obligation**
   A lobbyist or a vendor/contractor, or any of their agents, may not do any act or refrain from any act for the purpose of placing any City official under personal obligation to them.

2. **False Statements**
   No lobbyist, vendor/contractor, or their agents/representatives may knowingly make any false or misleading statement of fact to a City official, or provide a document with false information without notifying the official in writing of the truth. If a registrant learns that a statement made in a registration form or activity report within the previous three (3) years was false, they must correct that statement within thirty (30) days by written notification to the City Secretary.

3. **Use of False Identification**
   No lobbyist, vendor/contractor, or their agents/representatives may communicate with a City official using the name of any fictitious person or the name of a real person without that person's consent.

4. **Improper Influence**
   No lobbyist, vendor/contractor, or their agents/representatives may cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination, or amendment for the purpose of later being employed to secure its granting, denial, confirmation, rejection, passage, or defeat.

Additionally, in accordance with **City Code Sec. 40-7**, contractors are prohibited from making political contributions to City officials or candidates during the contract award period. It shall be unlawful for any contractor to contribute or offer any contribution to a candidate, or for any candidate to solicit or accept any contribution from a contractor during a contract award period.

- **City Code Sec. 40-7:** In the event that a candidate unknowingly accepts a contribution in contravention of this provision, it shall be the duty of the candidate to return the contribution within ten days after he/she becomes aware of the violation.

  Each request for proposal or other document, notice, or advertisement for a contract shall contain a notice regarding this section in a form approved by the city attorney. Each contractor shall be required to submit with any proposal or other submission for the award of any contract a complete list of the persons included in the term "contractor" as defined in this chapter in a form prescribed by the city attorney. It shall be the duty of each city department director to immediately forward each contractor list received to the city secretary, who shall compile and maintain a log of persons who are required to be reported. In addition, the city secretary shall compile, maintain, and post online, by the 14th day after a city commission meeting, a list of contracts awarded at such commission meeting by city commission, including on such list, the date of the initial posting of the request for commission action relative to each specific contract, the name of the contractor, a short description of the contract and the date occurring 180 days after the award of the contract or the determination by city commission or the mayor that the contract would not be awarded to a contractor.

  As used in this section, the term contractor shall not include a subcontractor.

5.11 Conflict of Interest Disclosures

In compliance with Chapter 176 of the Texas Local Government Code, any vendor or person seeking to contract with the City of Brownsville must file a completed **Conflict of Interest Questionnaire (Form CIQ)** with the Office of the City Secretary.

The questionnaire must be filed no later than **seven (7) days** after the earlier of the following:

1. The vendor begins contract discussions or negotiations with the City; or
2. The vendor submits an application, bid, proposal, correspondence, or other writing related to a potential agreement with the City.

The questionnaire requires disclosure of certain business or employment relationships with City Commissioners, the Mayor, and the City Manager. The **Texas Ethics Commission (TEC)** is responsible for drafting the questionnaire, and the most current form is available on the TEC website, with a link posted on the City's ethics webpage.

Failure to comply with Chapter 176 is a violation of Texas law and may result in a **Class C misdemeanor**. Vendors are encouraged to consult their own legal counsel regarding compliance with this statute.

5.12 <u>State and Federal Certifications (As Applicable)</u>

The Contractor certifies the following:

- **Texas Family Code Compliance:** As per Section 14.52 of the Texas Family Code, added by S.B. 84, Acts, 73rd Legislature, R.S. (1993), all Proposers must complete and submit with the bid the following affidavit: I, the undersigned vendor, do hereby acknowledge that NO sole proprietor, partner, majority shareholder of a corporation, or an owner of 10% or more of another business entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement. I understand that under this provision, a sole proprietorship, partnership, corporation or other entity in which a sole proprietor, partner, majority shareholder or a corporation, or an owner of 10% or more of another entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement is NOT eligible to bid or receive a state contract.

- **HB 89 & HB 793 Certifications:** Vendor certifies that is in compliance with all applicable provisions of the House Bill 89. Purchases made in accordance under the provisions of Subtitle F, Title 10, Government Code Chapter 2270 must comply with the following: 1. Does not boycott Israel currently; and 2. Will not boycott Israel during the term of the contract the above-named Company, business or individual with the City of Brownsville.

  Pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response..

- **Debarment and Suspension:** For contracts funded in whole or in part with federal funds, the Contractor certifies that it is not debarred, suspended, or otherwise excluded from participation in federal assistance programs under 2 CFR Part 180. Contractor must maintain an active registration in the System for Award Management (SAM.gov) throughout the term of the contract. Proof of current SAM registration may be required at the time of contract execution

5.13 Public Information Act & Confidentiality

All materials submitted to the City of Brownsville pursuant to this Invitation for Bid/Request for Proposals/Statement of Qualifications become subject to the mandates of the Texas Open Records Act, Government Code, Chapter 552, Subchapter A, §§552.009; Subchapter D, §§552.205; and Subchapter F, §§552.261 through 552.274.

The purpose of this Act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. Almost all "records," as that term is defined in the Act, may be disclosed to the public upon request. Except where specific state or federal statues create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access or reasonable expectation that this information will be kept from public access.

If you believe that any of the information you have submitted to the City pursuant to this Invitation for Bids is confidential under a specific state or federal statute and therefore not subject to the public access, you must comply with the following:

A. Upload said documents/records to Bonfire marked "Confidential" DO NOT label your entire response to the Invitation for Bid as "Confidential" – label only those portions of the response that you feel are made confidential by state or federal law as "Confidential." If only a portion of a document is confidential, please identify specifically the portions of the document you are claiming are confidential. Under the State of Texas Open Records Act, the City is obligated to produce documents for public inspection even if the documents contain a portion which is confidential, but can redact the confidential parts.
B. For each such document for which you are claiming a confidential privilege, identify the federal and/or state law that creates said privilege, e.g., for trade secrets. Should an Open Records request be presented to the City requesting information you have identified as "Confidential," you will be responsible for defending your position in the Court where the proceeding is filed, if needed.

If you fail to identify any records submitted as part of your proposal as "Confidential" within the Bonfire system AND you fail to identify the specific state or federal law creating said privilege, you are irrefutably agreeing that said records are not confidential and are subject to public access.

5.14 Governing Law & Venue

This contract shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any legal action shall lie exclusively in Cameron County, Texas.

5.15 Independent Contractor Status

The Contractor is an independent contractor and not an employee, agent, or representative of the City. Nothing in this contract shall create an employment relationship, joint venture, or partnership.

5.16 Reservation of Rights

The City reserves the right to reject any or all proposals, to waive informalities or irregularities, to cancel the solicitation, and to accept the proposal(s) determined to provide the best value to the City consistent with this RFP.

5.17 Drug-Free Workplace

The Contractor shall maintain a workplace free of unlawful manufacture, distribution, dispensation, possession, or use of controlled substances during the performance of any City contract. The Contractor shall inform its employees in writing of its drug-free workplace policy and the consequences of any violation occurring in the workplace. If the Contractor receives notice of any employee conviction under a criminal drug statute for a violation occurring in the workplace while performing under this contract, the Contractor shall notify the City's Procurement Department within five (5) business days. When this contract is funded in whole or in part with federal funds, the Contractor shall comply with all requirements of the Drug-Free Workplace Act of 1988 (41 U.S.C. §8101 et seq.) and applicable implementing regulations. Failure to comply with this provision shall be considered a material breach of contract and may result in termination, suspension, or debarment from future City contracting opportunities.

5.18 Construction Only Terms and Conditions (If Applicable)

The following provisions apply only when the scope of this RFP involves construction, construction-rehabilitation, or other public works projects subject to Texas Local Government Code Chapter 252 and Texas Government Code Chapter 2253. These clauses do not apply to non-construction procurements.

5.18.1 Materials Testing and Compliance (Construction Only; or Goods/Materials, If Applicable)

The City may, at its option and expense, test materials at any time to ensure compliance with the specifications.

If any test fails to show compliance:

- The Contractor's payment shall be reduced by the full cost of the testing;
- The non-compliant materials shall be removed from the stockpile or roadbed at the Contractor's expense; and
- No payment shall be made for the non-compliant materials.

The quantity of such non-compliant material shall be determined by the City's Engineering and Public Works Director, whose decision shall be final.

5.18.2 Proposal Security/Bid Bond (Construction Only)

When stated in this RFP, a proposal security/bid bond shall be submitted with the proposal issued by a corporate surety company licensed to do business in the State of Texas and acceptable to the City of Brownsville. The bond shall be in an amount not less than five percent (5%) of the greatest total amount of the bid proposal and shall serve as a guarantee that, if awarded the contract, the successful Proposer will promptly execute the contract and furnish required payment and performance bonds.

All bid bonds must be issued by a surety company that:

- Is authorized to do business in the State of Texas, and
- Appears on the U.S. Department of the Treasury's Listing of Approved Sureties (Circular 570).

Electronic bid bonds submitted through the City's Bonfire portal will be accepted if issued by an approved surety provider.

Cash, certified checks, or cashier's checks will **not** be accepted as bid security.

5.18.3 Payment and Performance Bond Requirements (Construction Only) (Exhibit B)

Sec. 252.044. CONTRACTOR'S BOND. (a) If the contract is for the construction of public works, the Proposer to whom the contract is awarded must execute a good and sufficient bond. The bond must be:

1. In the full amount of the contract price;
2. Conditioned that the contractor will faithfully perform the contract; and
3. Executed, in accordance with Chapter 2253 (Exhibit B), Government Code, by a surety company authorized to do business in the state.
4. Repealed by Acts 1993, 73rd Leg., ch. 865, Sec. 2, eff. Sept. 1, 1993.
5. The governing body of a home-rule municipality by ordinance may adopt the provisions of this section and Chapter 2253, Government Code, relating to contractors' surety bonds, regardless of a conflicting provision in the municipality's charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 865, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

A Payment & Performance Bond (Only applies to Construction/Construction-Rehabilitation), in an amount of not less than one hundred percent (100%) of the Contract Price, conditioned upon the faithful performance of the Contract; a Payment Bond, as required by Chapter §2253 of the Texas Government Code, guaranteeing the payment of all persons supplying labor and furnishing materials; and an Extended Warranty Bond, either by separate instrument or incorporated in the foregoing bonds, will be required. Payment and performance bonds provided to the City of Brownsville for these purposes are required to conform with Article 7.19-1 of the Texas Insurance Code. To that end, all bonds provided (i) must be executed by a surety company holding a certificate of authority from the United States secretary of the treasury to qualify on obligations permitted or required under federal law–or- (ii) must be provided by a surety company that is covered by reinsurance for any liability in excess of $100,000.00 from a reinsurer authorized and admitted as a reinsurer in Texas holding a certificate of authority from the United States secretary of the treasury to qualify on obligations permitted or required under federal law. (See Chapter 2253 – Performance and Payment Bond)

A. A listing on the Department of the Treasury Listing of Approved Sureties on the date of bond issuance shall be sufficient proof of the previously mentioned certificate of authority.
B. A copy of the reinsurance contract(s) with accompanying cover letter with original signature shall be sufficient proof of the previously mentioned reinsurance.

Contractor shall provide either a copy of the list as described in "A." above, or the contract(s) and letter described in "B." above, together with the payment and performance bonds.

Bid Bonds, Performance Bonds, Payment Bonds, and Extended Warranty Bonds issued by a corporate surety company not licensed to do business in the State of Texas will not be accepted.

Submittal of Payment and Performance Bonds is not required at the time of bid submission. A Payment and Performance Bonding Capacity Letter may be required at the time of bid submission to demonstrate bonding capability. The successful contractor will be notified after City Commission approval of award and must furnish the required Payment and Performance Bonds within the timeframe specified by the City.

5.18.4 Liquidated Damages (Construction Only)

The undersigned PROPOSER further agrees to complete the project and achieve substantial completion/delivery within 220 consecutive calendar days submittal from the date of Commencement/shipment, unless such time is extended by the City of Brownsville and that one thousand dollars ($1,000.00) per each consecutive calendar day will be the measure of liquidated damages assessed the undersigned for each calendar day in excess required to complete work and/or delivery under the contract for each portion of the project.

5.18.5 Change Orders (Construction/Renovation Only)

For construction contracts, all change orders must comply with Texas Local Government Code §252.048, which limits increases in contract price and scope unless approved by the City Commission.

5.18.6 Application for Progress Payment; Retainage (Construction/Renovation Only)

Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the CONTRACT DOCUMENTS. If Payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER'S interest therein, all of which will be satisfactory to OWNER. Retainage withholding will conform to Texas Government Code § 2252.032 as follows:

- For public works contracts with a total value less than $5,000,000, the City may withhold up to ten percent (10%) of the contract price as retainage.
- For public works contracts with a total value of $5,000,000 or more, the City may withhold up to five percent (5%) of the contract price.
- Retainage shall be released upon substantial completion and acceptance of the work, provided all contractual requirements (including lien waivers, inspections, and closeout documentation) are satisfied.

The retainage shall be held by the owner until all the work has been satisfactorily completed and accepted in writing. At that time the retainage may be released and included in the Final Payment.

5.18.7 Contractor's Warranty of Title (Construction/Renovation Only)

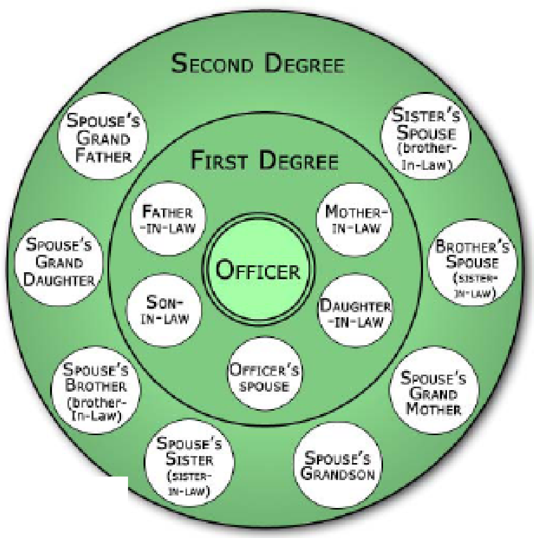
The Contractor warrants and guarantees that title to all work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the City at the time of payment, free and clear of all liens, claims, security interests, or encumbrances.

NEPOTISM CHART

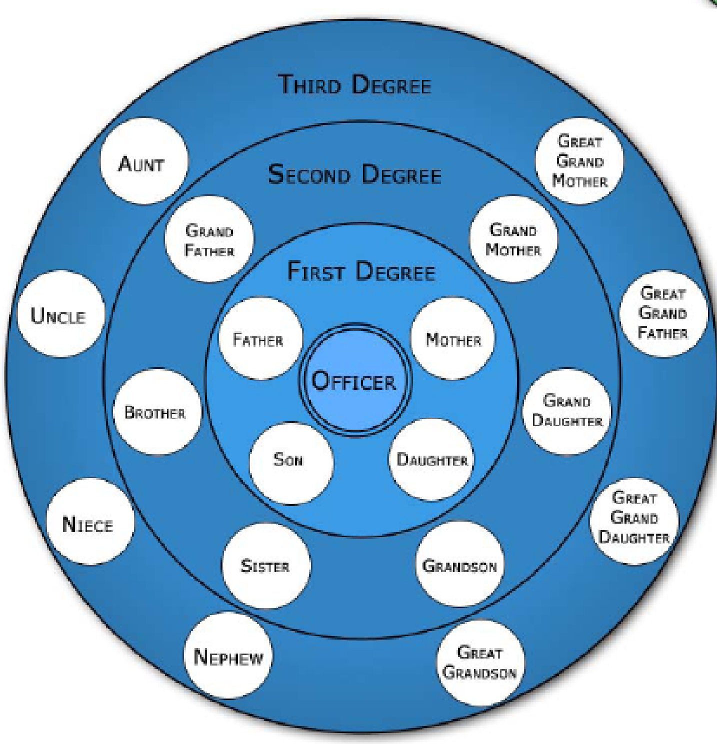
The chart below shows

- **Affinity Kinship** (relationship by marriage)
- **Consanguinity Kinship** (relationship by blood) for purposes of interpreting nepotism as defined in VTCA Government Code, Chapter 573, §§573.021 - .025

AFFINITY KINSHIP
Relationship by Marriage



CONSANGUINITY KINSHIP
Relationship by Blood



6 EXHIBIT "A" - Standard Purchasing Terms and Conditions

By acceptance of a purchase order or agreement, or response to a solicitation, the successful proposer agrees that the following terms and conditions, without modification, will govern:

DEFINITION OF BUYER

The City of Brownsville, its officers, agents, servants, authorized employees, vendors, and subvendors who act on behalf of various City departments, bodies or agencies.

DEFINITION OF SELLER

The consultant, contractor(s), supplier, contractor(s) or other providers of goods and/or services, its officers, agents, servants, employees, vendors and sub vendors who act on behalf of the entity under a contract with the City of Brownsville.

PUBLIC INFORMATION

Any information submitted to the City of Brownsville (the "City") may be requested by a member of the public under the Texas Public Information Act. *See* TEX. GOV'T CODE ANN. §§ 552.002, 552.128(c) (West Supp. 2006). If the City receives a request for a Seller's proprietary information, the Seller listed in the request will be notified and given an opportunity to make arguments to the Texas Attorney General's Office (the "AG") regarding reasons the Seller believes that its information may not lawfully be released. If Seller does not make arguments or the AG rejects the arguments Seller makes, Seller's information will be released without penalty to the City.

PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS

No officer or employee of Buyer shall have a financial interest, direct or indirect, in any contract with Buyer or be financially interested, directly or indirectly, in the sale to Buyer of any land, materials, supplies or services, except on behalf of Buyer as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, expressed or implied, of the person or corporation contracting with the City Commission shall render the contract invalid by the City Manager or the City Commission. (Chapter XXVII, Section 16, City of Brownsville Charter)

ORDERS

No employees of the Buyer or its officers, agents, servants, vendors or sub vendors who act on behalf of various City departments, bodies or agencies are authorized to place orders for goods and/or services without providing approved contract numbers, purchase order numbers, or release numbers issued by the Buyer. The only exceptions are Purchasing Card orders and emergencies pursuant to Texas Local Government Code Section 252.022(a)(1), (2), or (3). In the case of emergencies, the Buyer's Purchasing Division will place such orders.

Acceptance of an order and delivery on the part of the Seller without an approved contract number, purchase order number, or release number issued by the Buyer may result in rejection of delivery, return of goods at the Seller's cost and/or non-payment.

SELLER TO PACKAGE GOODS

Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Seller's name and address: (b) Consignee's name, address and purchase order or purchase change order number; (c) Container number and total number of containers, e.g., box 1 of 4 boxes; and (d) Number of the container bearing the packing slip. Seller shall bear the cost of packaging unless otherwise provided.

Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

SHIPMENT UNDER RESERVATION PROHIBITED

Seller is not authorized to ship the goods under reservation, and no tender of a bill of lading will operate as a tender of goods.

TITLE AND RISK OF LOSS

The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery after inspection and acceptance of the goods.

DELIVERY TERMS AND TRANSPORTATION CHARGES

Freight terms shall be F.O.B. Destination, Freight Prepaid and Allowed, unless delivery terms are specified otherwise in Seller's proposals. Buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's proposals or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs; provided, Buyer shall have the right to designate what method of transportation shall be used to ship the goods.

PLACE OF DELIVERY

The place of delivery shall be set forth in the "Ship to" block of the purchase order, purchase change order, or release order.

RIGHT OF INSPECTION

Buyer shall have the right to inspect the goods upon delivery before accepting them. Seller shall be responsible for all charges for the return to Seller of any goods rejected as being nonconforming under the specifications.

INVOICES

Seller shall submit separate invoices in duplicate, on each purchase order or purchase change order after each delivery. Invoices shall indicate the purchase order or purchase change order number. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, should be attached to the invoice. Seller shall mail or deliver invoices to Buyer's Department and address as set forth in the block of the purchase order, purchase change order or release order entitled "Ship to." Payment shall not be made until the above instruments have been submitted after delivery and acceptance of the goods and/or services.

Seller shall not include Federal Excise, State or City Sales Tax in its invoices. The Buyer shall furnish a tax exemption certificate upon Seller's request.

PRICE WARRANTY

The price to be paid by Buyer shall be that contained in Seller's proposals which Seller warrants to be no higher than Seller's current prices on orders by others for products and services of the kind and specification covered by this agreement for similar quantities under like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the prices contained in Seller's proposals, or in the alternative upon Buyer's option, Buyer shall have the right to cancel this contract without any liability to Seller for breach or for Seller's actual expense. Such remedies are in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee, excepting employees of an established commercial or selling agency that is maintained by Seller for the purpose of securing business. For breach or violation of this warranty, Buyer shall have the right, in addition to any other right or rights arising pursuant to said purchase(s), to cancel this contract without liability and to deduct from the contract price such commission percentage, brokerage or contingent fee, or otherwise to recover the full amount thereof.

PRODUCT WARRANTY

Seller shall not limit or exclude any express or implied warranties and any attempt to do so shall render this contract voidable at the option of Buyer. Seller warrants that the goods furnished will conform to Buyer's specifications, drawings and descriptions listed in the proposal invitation, and the sample(s) furnished by Seller, if any. In the event of a conflict between Buyer's specifications, drawings, and descriptions, Buyer's specifications shall govern.

SAFETY WARRANTY

Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) of 1970, as amended. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at Seller's expense. In the event Seller fails to make appropriate correction within a reasonable time, any correction made by Buyer will be at Seller's expense. Where no correction is or can be made, Seller shall refund all monies received for such goods within thirty (30) days after request is made by Buyer in writing and received by Seller. Notice is considered to have been received upon hand delivery, or otherwise in accordance with Section 29.0 of these terms and conditions. Failure to make such refund shall constitute breach and cause this contract to terminate immediately.

SOFTWARE LICENSE TO SELLER

If this purchase is for the license of software products and/or services, and unless otherwise agreed, Seller hereby grants to Buyer, a perpetual, irrevocable, non-exclusive, nontransferable, royalty free license to use the software. This software is ”proprietary” to Seller, and is licensed and provided to the Buyer for its sole use for purposes under this Agreement and any attached work orders or invoices. The City may not use or share this software without permission of the Seller; however Buyer may make copies of the software expressly for backup purposes.

WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY

The SELLER warrants that all Deliverables, or any part thereof, furnished hereunder, including but not limited to: programs, documentation, software, analyses, applications, methods, ways, and processes (in this Section each individually referred to as a "Deliverable" and collectively as the "Deliverables,") do not infringe upon or violate any patent, copyrights, trademarks, service marks, trade secrets, or any intellectual property rights or other third party proprietary rights, in the performance of services under this Agreement.

SELLER shall be liable and responsible for any and all claims made against the City for infringement of any patent, copyright, trademark, service mark, trade secret, or other intellectual property rights by the use of or supplying of any Deliverable(s) in the course of performance or completion of, or in any way connected with providing the services, or the City's continued use of the Deliverable(s) hereunder.

SELLER agrees to indemnify, defend, settle, or pay, at its own cost and expense, including the payment of attorney's fees, any claim or action against the City for infringement of any patent, copyright, trade mark, service mark, trade secret, or other intellectual property right arising from City's use of the Deliverable(s), or any part thereof, in accordance with this Agreement, it being understood that this agreement to indemnify, defend, settle or pay shall not apply if the City modifies or misuses the Deliverable(s). So long as SELLER bears the cost and expense of payment for claims or actions against the City pursuant to this section 8, SELLER shall have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, City shall have the right to fully participate in any and all such settlement, negotiations, or lawsuit as necessary to protect the City's interest, and City agrees to cooperate with SELLER in doing so. In the event City, for whatever reason, assumes the responsibility for payment of costs and expenses for any claim or action brought against the City for infringement arising under this Agreement, the City

shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, SELLER shall fully participate and cooperate with the City in defense of such claim or action. City agrees to give SELLER timely written notice of any such claim or action, with copies of all papers City may receive relating thereto. Notwithstanding the foregoing, the City's assumption of payment of costs or expenses shall not eliminate SELLER's duty to indemnify the City under this Agreement. If the Deliverable(s), or any part thereof, is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, SELLER shall, at its own expense and as City's sole remedy, either: (a) procure for City the right to continue to use the Deliverable(s); or (b) modify the Deliverable(s) to make them/it non-infringing, provided that such modification does not materially adversely affect City's authorized use of the Deliverable(s); or (c) replace the Deliverable(s) with equally suitable, compatible, and functionally equivalent non-infringing Deliverable(s) at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to SELLER, terminate this Agreement, and refund all amounts paid to SELLER by the City, subsequent to which termination City may seek any and all remedies available to City under law.

OWNERSHIP OF WORK PRODUCT

Seller agrees that any and all analyses, evaluations, reports, memoranda, letters, ideas, processes, methods, programs, and manuals that were developed, prepared, conceived, made or suggested by the Seller for the City pursuant to a Work Order, including all such developments as are originated or conceived during the term of the Contract and that are completed or reduced to writing thereafter (the "Work Product") and Seller acknowledges that such Work Product may be considered "work(s) made for hire" and will be and remain the exclusive property of the City. To the extent that the Work Product, under applicable law, may not be considered work(s) made for hire, Seller hereby agrees that this Agreement effectively transfers, grants, conveys, and assigns exclusively to Buyer, all rights, title and ownership interests, including copyright, which Seller may have in any Work Product or any tangible media embodying such Work Product, without the necessity of any further consideration, and Buyer shall be entitled to obtain and hold in its own name, all Intellectual Property rights in and to the Work Product. Seller for itself and on behalf of its vendors hereby waives any property interest in such Work Product.

NETWORK ACCESS

The City owns and operates a computing environment and network (collectively the "Network"). If Seller requires access, whether onsite or remote, to the City's network to provide services hereunder, and the Seller is required to utilize the Internet, Intranet, email, City database, or other network application, Seller shall separately execute the City's Network Access Agreement prior to providing such services. A copy of the City's standard Network Access Agreement can be provided upon request.

CANCELLATION

Buyer shall have the right to cancel this contract immediately for default on all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof, including warranties of Seller. Such right of cancellation is in addition to and not in lieu of any other remedies, which Buyer may have in law or equity.

TERMINATION

The performance of work or purchase of goods under this order may be terminated in whole or in part by Buyer, with or without cause, at any time upon the delivery to Seller of a written "Notice of Termination" specifying the extent to which performance of work or the goods to be purchased under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of any other termination rights of Buyer as set forth herein.

ASSIGNMENT / DELEGATION

No interest, obligation or right of Seller, including the right to receive payment, under this contract shall be assigned or delegated to another entity without the express written consent of Buyer. Any attempted assignment or delegation of Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph. Prior to Buyer giving its consent, Seller agrees that Seller shall provide, at no additional cost to Buyer, all documents, as determined by Buyer, that are reasonable and necessary to verify Seller's legal status and transfer of rights, interests, or obligations to another entity. The documents that may be requested include, but are not limited to, Articles of Incorporation and related amendments, Certificate of Merger, IRS Form W-9 to verify tax identification number, etc. Buyer reserves the right to withhold all payments to any entity other than Seller, if Seller is not in compliance with this provision. If Seller fails to provide necessary information in accordance with this section, Buyer shall not be liable for any penalties, fees or interest resulting therefrom.

WAIVER

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration in writing and is signed by the aggrieved party.

MODIFICATIONS

This contract can be modified or rescinded only by a written agreement signed by both parties.

THE AGREEMENT

In the absence of an otherwise negotiated contract, or unless stated otherwise, the Agreement between Buyer and Seller shall consist of these Standard Terms and Conditions together with any applicable proposal documents published by the Buyer and Seller's Response to such proposal (the "contract documents"). This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance of or acquiescence in a course of performance under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code (UCC) is used in this Agreement, the definition contained in the UCC shall control. In the event of a conflict between the contract documents, the order of precedence shall be these Standard Terms and Conditions, the Buyer's published proposal documents and the Seller's response. If Buyer and Seller have otherwise negotiated a contract, this Agreement shall not apply.

APPLICABLE LAW / VENUE

This agreement shall be governed by the Uniform Commercial Code wherever the term "Uniform Commercial Code" or "UCC" is used. It shall be construed as meaning the Uniform Commercial Code as adopted and amended in the State of Texas. Both parties agree that venue for any litigation arising from this contract shall be in Brownsville, Cameron County, Texas. This contract shall be governed, construed and enforced under the laws of the State of Texas.

INDEPENDENT CONTRACTOR(S)

Seller shall operate hereunder as an Independent Contractor(s) and not as an officer, agent, servant or employee of Buyer. Seller shall have exclusive control of, and the exclusive right to control, the details of its operations hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, vendors and sub- vendors. The doctrine of respondent superior shall not apply as between Buyer and Seller, its officers, agents, employees, vendors and sub vendors. Nothing herein shall be construed as creating a partnership or joint enterprise between Buyer and Seller, its officers, agents, employees, vendors and sub vendors.

LIABILITY AND INDEMNIFICATION.

LIABILITY - SELLER SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF SELLER, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.

INDEMNIFICATION - SELLER HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY (ALSO REFERRED TO AS BUYER), ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO SELLER'S BUSINESS, AND ANY RESULTING LOST PROFITS) PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, AND DAMAGES FOR CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SELLER, ITS OFFICERS, AGENTS, SUBCONTRACTORS, SERVANTS OR EMPLOYEES.

SEVERABILITY

In case any one or more of the provisions contained in this agreement shall for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, which agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

FISCAL FUNDING LIMITATION

In the event no funds or insufficient funds are appropriated and budgeted in any fiscal period for payments due under this contract, then Buyer will immediately notify Seller of such occurrence and this contract shall be terminated on the last day of the fiscal period for which funds have been appropriated without penalty or expense to Buyer of any kind whatsoever, except to the portions of annual payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available.

NOTICES TO PARTIES

Notices addressed to Buyer pursuant to the provisions hereof shall be conclusively determined to have been delivered three (3) business days following the day such notice is deposited in the United States mail, in a sealed envelope with sufficient postage attached, addressed to Procurement Manager, City of Brownsville, Procurement and Contracting Division, 200 Texas Street, Brownsville, Texas 76102. Notices to Seller shall be conclusively determined to have been delivered three (3) business days following the day such notice is deposited in the United States mail, in a sealed envelope with sufficient postage attached, addressed to the address given by Seller in its response to Buyer's invitation to proposals. Or if sent via express courier or hand delivery, notice is considered received upon delivery.

NON-DISCRIMINATION

This contract is made and entered into with reference specifically to Chapter 17, Article III, Division 3 ("Employment Practices"), of the City Code of the City of Brownsville (1986), as amended, and Seller hereby covenants and agrees that Seller, its employees, officers, agents, vendors or subvendors, have fully complied with all provisions of same and that no employee, participant, applicant, contractor(s)or subcontractor(s)has been discriminated against according to the terms of such Ordinance by Seller, its employees, officers, agents, contractor(s)or subvendors herein.

IMMIGRATION NATIONALITY ACT

City actively supports the Immigration & Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Vendor shall verify the identity and employment eligibility of all employees who perform work under this Agreement. Vendor shall complete the Employment Eligibility Verification Form (I-9), maintain photocopies of all supporting employment eligibility and identity documentation for all employees, and upon request, provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Vendor shall establish appropriate procedures and controls so that no services will be performed by any employee who is not legally eligible to perform such services. Vendor shall provide City with a certification letter that it has complied with the verification requirements required by this Agreement. Vendor shall indemnify City from any penalties or liabilities due to violations of this provision. City shall have the right to immediately terminate this Agreement for violations of this provision by Vendor.

HEALTH, SAFETY, AND ENVIRONMENTAL REQUIREMENTS

Services, products, materials, and supplies provided by the Seller must meet or exceed all applicable health, safety, and the environmental laws, requirements, and standards. In addition, Seller agrees to obtain and pay, at its own expense, for all licenses, permits, certificates, and inspections necessary to provide the products or to perform the services hereunder. Seller shall indemnify Buyer from any penalties or liabilities due to violations of this provision. Buyer shall have the right to immediately terminate this Agreement for violations of this provision by Seller.

RIGHT TO AUDIT

Seller agrees that the Buyer, or Buyer's authorized representative, shall, until the expiration of three (3) years after final payment under this contract, and at no additional cost to Buyer, have access to and the right to examine and copy any directly pertinent books, computer disks, digital files, documents, papers and records of the Seller involving transactions relating to this contract, including any and all records maintained pursuant to Section 31 of this Agreement. Seller agrees that the Buyer shall have access, during normal working hours, to all necessary Seller facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. Buyer shall pay Seller for reasonable costs of any copying in accordance with the standards set forth in the Texas Administrative Code. The Buyer shall give Seller reasonable advance written notice of intended audits, but no less than ten (10) business days.

DISABILITY

In accordance with the provisions of the Americans With Disabilities Act of 1990 (ADA), Seller warrants that it and any and all of its subvendors will not unlawfully discriminate on the basis of disability in the provision of services to general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or employees of Seller or any of its subvendors. Seller warrants it will fully comply with ADA's provisions and any other applicable federal, state and local laws concerning disability and will defend, indemnify and hold Buyer harmless against any claims or allegations asserted by third parties or subvendors against Buyer arising out of Seller's and/or its subvendor's alleged failure to comply with the above-referenced laws concerning disability discrimination in the performance of this agreement.

DISPUTE RESOLUTION

If either Buyer or Seller has a claim, dispute, or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute, or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, either through email, mail, phone conference, in-person meetings, or other reasonable means to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Industry Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

PROHIBITION ON CONTRACTING WITH COMPANIES THAT BOYCOTT ISRAEL

Seller acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. **By signing this contract, Seller certifies that Seller’s signature provides written verification to the City that Seller: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.**

COOPERATIVE USE (CITY OF BROWNSVILLE, TEXAS)

It is the intent of the City of Brownsville, Texas (“City”) that any contract resulting from this solicitation may be made available for use by other governmental entities, to the maximum extent permitted under applicable federal, state, and local laws, including but not limited to Texas Government Code Chapter 791 (Interlocal Cooperation Act) and other applicable joint purchasing statutes. The awarded contractor agrees to extend the same pricing, terms, and conditions of this contract to any eligible public agency, political subdivision, or governmental entity that elects to purchase goods or services under this contract, provided that such entity issues its own purchase order, contract, or interlocal agreement that references the City of Brownsville’s contract. Each participating entity shall be solely responsible for its own contractual obligations, including but not limited to the issuance of purchase orders, receipt of goods or services, and payment of invoices. The City of Brownsville shall not be responsible for the performance, payment, or administration of any obligations incurred by participating entities under this cooperative use provision.

ADMINISTRATIVE FEE

The City of Brownsville will utilize an administrative fee in connection with contracts awarded as a result of this solicitation. The administrative fee shall be assessed as a percentage of sales and shall apply to all purchases made by the City and any participating entities under this contract. The awarded contractor shall remit an administrative fee equal to three percent (3%) of total sales to Civic Marketplace on a quarterly basis, in accordance with program requirements. The contractor shall also submit required quarterly sales reports detailing all contract activity subject to the administrative fee. The administrative fee shall be included in the contractor’s pricing and shall not be invoiced separately to the City or participating entities.

Revised January 13, 2026

7 EXHIBIT "B" - CHAPTER 2253. PUBLIC WORK PERFORMANCE AND PAYMENT BOND

SUBCHAPTER A. GENERAL PROVISIONS

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2253. **PUBLIC WORK PERFORMANCE AND PAYMENT BONDS**

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2253.001. DEFINITIONS. In this chapter:

(1) "Governmental entity" means a governmental or quasi-governmental authority authorized by state law to make a public work contract, including:

(A) the state, a county, or a municipality;

(B) a department, board, or agency of the state, a county, or a municipality; and

(C) a school district or a subdivision of a school district.

(2) "Payment bond beneficiary" means a person for whose protection and use this chapter requires a payment bond.

(3) "Prime contractor" means a person, firm, or corporation that makes a public work contract with a governmental entity.

(4) "Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

(5) "Public work labor" means labor used directly to carry out a public work.

(6) "Public work material" means:

(A) material used, or ordered and delivered for use, directly to carry out a public work;

(B) specially fabricated material;

(C) reasonable rental and actual running repair costs for construction equipment used, or reasonably required and delivered for use, directly to carry out work at the project site; or

(D) power, water, fuel, and lubricants used, or ordered and delivered for use, directly to carry out a public work.

(7) "Retainage" means the part of the payments under a public work contract that are not required to be paid within the month after the month in which the public work labor is performed or public work material is delivered under the contract.

(8) "Specially fabricated material" means material ordered by a prime contractor or subcontractor that is:

(A) specially fabricated for use in a public work; and

(B) reasonably unsuitable for another use.

(9) "Subcontractor" means a person, firm, or corporation that provides public work labor or material to fulfill an obligation to a prime contractor or to a subcontractor for the performance and installation of any of the work required by a public work contract.

Added by Acts 1993, 73rd Leg., Ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., Ch. 62, Sec. 8.20, eff. Sept. 1, 1999.

Sec. 2253.002. EXEMPTION. This chapter does not apply to a public work contract entered into by a state agency relating to an action taken under Subchapter F or I, Chapter 361, Health and Safety Code, or Subchapter I, Chapter 26, Water Code.

Added by Acts 1997, 75th Leg., Ch. 793, Sec. 18, eff. Sept. 1, 1997.

SUBCHAPTER B. GENERAL REQUIREMENTS; LIABILITY

Sec. 2253.021. **PERFORMANCE AND PAYMENT BONDS REQUIRED**. (a) A governmental entity that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the governmental entity:

(1) a performance bond if the contract is in excess of $100,000; and

(2) a payment bond if:

(A) the contract is in excess of $25,000, and the governmental entity is not a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code; or

(B) the contract is in excess of $50,000, and the governmental entity is a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code.

(b) The performance bond is:

(1) solely for the protection of the state or governmental entity awarding the public work contract;

(2) in the amount of the contract; and

(3) conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.

(c) The payment bond is:

(1) solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material; and

(2) in the amount of the contract.

(d) A bond required by this section must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

(e) A bond executed for a public work contract with the state or a department, board, or agency of the state must be payable to the state and its form must be approved by the attorney general. A bond executed for a public work contract with another governmental entity must be payable to and its form must be approved by the awarding governmental entity.

(f) A bond required under this section must clearly and prominently display on the bond or on an attachment to the bond:

(1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

(2) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(g) A governmental entity may not require a contractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker.

(h) A reverse auction procedure may not be used to obtain services related to a public work contract for which a bond is required under this section. In this subsection, "reverse auction procedure" has the meaning assigned by Section 2155.062 or a procedure similar to that described by Section 2155.062.

Added by Acts 1993, 73rd Leg., Ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., Ch. 76, Sec. 5.43(a), eff. Sept. 1, 1995; Acts 2001, 77th Leg., Ch. 380, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., Ch. 614, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., Ch. 1275, Sec. 2(86), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.122, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1304 (H.B. 2515), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 1.01, eff. September 1, 2011.

Sec. 2253.022. PERFORMANCE AND PAYMENT BONDS; INSURED LOSS. (a) A governmental entity shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor, in accordance with this chapter:

(1) a performance bond as described by Section 2253.021(b) for the benefit of the governmental entity; and

(2) a payment bond as described in Section 2253.021(c) for the benefit of the beneficiaries described by that subsection.

(b) The bonds required to be furnished under Subsection (a) must be furnished before the contractor begins work.

(c) It is an implied obligation under a contract of insurance for the insurance company to furnish the bonds required by this section.

(d) To recover in a suit with respect to which the insurance company has furnished or caused to be furnished a payment bond, the only notice required of a payment bond beneficiary is the notice given to the surety in accordance with Subchapter C.

(e) This section does not apply to a governmental entity when a surety company is complying with an obligation under a bond that had been issued for the benefit of the governmental entity.

(f) If the payment bond required by Subsection (a) is not furnished, the governmental entity is subject to the same liability that a surety would have if the surety had issued the payment bond and the governmental entity had required the bond to be provided. To recover in a suit under this subsection, the only notice required of a payment bond beneficiary is a notice given to the governmental entity, as if the governmental entity were the surety, in accordance with Subchapter C. Added by Acts

1997, 75th Leg., Ch. 1132, Sec. 3, eff. Sept. 1, 1997.

Sec. 2253.023. ATTEMPTED COMPLIANCE. (a) A bond furnished by a prime contractor in an attempt to comply with this chapter shall be construed to comply with this chapter regarding the rights created, limitations on those rights, and remedies provided.

(b) A provision in a bond furnished by a prime contractor in an attempt to comply with this chapter that expands or restricts a right or liability under this chapter shall be disregarded, and this chapter shall apply to that bond.

Added by Acts 1993, 73rd Leg., Ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2253.024. INFORMATION FROM CONTRACTOR OR SUBCONTRACTOR. (a) A prime contractor, on the written request of a person who provides public work labor or material and when required by Subsection (c), shall provide to the person:

(1) the name and last known address of the governmental entity with whom the prime contractor contracted for the public work;

(2) a copy of the payment and performance bonds for the public work, including bonds furnished by or to the prime contractor; and

(3) the name of the surety issuing the payment bond and the performance bond and the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.

(b) A subcontractor, on the written request of a governmental entity, the prime contractor, a surety on a bond that covers the public work contract, or a person providing work under the subcontract and when required by Subsection (c), shall provide to the person requesting the information:

(1) the name and last known address of each person from whom the subcontractor purchased public work labor or material, other than public work material from the

subcontractor's inventory;

(2) the name and last known address of each person to whom the subcontractor provided public work labor or material;

(3) a statement of whether the subcontractor furnished a bond for the benefit of its subcontractors and materialmen;

(4) the name and last known address of the surety on the bond the subcontractor furnished; and

(5) a copy of that bond.

(c) Information requested shall be provided within a reasonable time but not later than the 10th day after the receipt of the written request for the information.

(d) A person from whom information is requested may require payment of the actual cost, not to exceed $25, for providing the requested information if the person does not have a direct contractual relationship with the person requesting information that relates to the public work.

(e) A person who fails to provide information required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in getting the requested information.

Added by Acts 1993, 73rd Leg., Ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., Ch. 380, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.123, eff. September 1, 2005.

Sec. 2253.025. INFORMATION FROM PAYMENT BOND BENEFICIARY. (a) A payment bond beneficiary, not later than the 30th day after the date the beneficiary receives a written request from the prime contractor or a surety on a bond on which a claim is made, shall provide to the contractor or surety:

(1) a copy of any applicable written agreement or purchase order; and

(2) any statement or payment request of the beneficiary that shows the amount claimed and the work performed by the beneficiary for which the claim is made.

(b) If requested, the payment bond beneficiary shall provide the estimated amount due for each calendar month in which the beneficiary performed public work labor or provided public work material.

Added by Acts 1993, 73rd Leg., Ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2253.026. COPY OF PAYMENT BOND AND CONTRACT. (a) A governmental entity shall furnish the information required by Subsection (d) to any person who applies for the information and who submits an affidavit that the person:

(1) has supplied public work labor or material for which the person has not been paid;

(2) has contracted for specially fabricated material for which the person has not been paid; or

(3) is being sued on a payment bond.

(b) The copy of the payment bond or public work contract is prima facie evidence of the content, execution, and delivery of the original.

(c) An applicant under this section shall pay any reasonable fee set by the governmental entity for the actual cost of preparation of the copies.

(d) A governmental entity shall furnish the following information to a person who makes a request under Subsection (a):

(1) a certified copy of a payment bond and any attachment to the bond;

(2) the public work contract for which the bond was given; and

(3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.

Added by Acts 1993, 73rd Leg., Ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., Ch. 380, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.124, eff. September 1, 2005.

Sec. 2253.027. LIABILITY OF GOVERNMENTAL ENTITY. (a) If a governmental entity fails to obtain from a prime contractor a payment bond as required by Section 2253.021:

(1) the entity is subject to the same liability that a surety would have if the surety had issued a payment bond and if the entity had obtained the bond; and

(2) a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the public work contract were subject to Subchapter J, Chapter 53, Property Code.

(b) To recover in a suit under Subsection (a), the only notice a payment bond beneficiary is required to provide to the governmental entity is a notice provided in the same manner as described by Subchapter C. The notice must be provided as if the governmental entity were a surety.

Added by Acts 1993, 73rd Leg., Ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., Ch. 515, Sec. 1, eff. Sept. 1, 2003.