

CITY OF NEW BRAUNFELS



COMPETITIVE SEALED PROPOSALS

Real Estate Broker Services Solicitation # CSP 22-019

Date Issued: April 20, 2022

**RESPONSES MUST BE RECEIVED NO LATER THAN:
3:00 P.M. CST May 11, 2022**

New Braunfels Purchasing Department: Phone: 830-221-4389
Email: bcoleman@nbtexas.org



SOLICITATION AND OFFER

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

Solicitation Number: CSP 22-019

Real Estate Broker Services

Invitation for Bid (IFB)

Competitive Sealed Proposals (CSP)

Date Issued:

April 20, 2022

SOLICITATION

Questions may be submitted until close of day **May 2, 2022, 5:00 P.M. (Central Time)**

Respondents must submit sealed Proposals containing one (1) signed original hardcopy and one (1) in electronic format (USB). Proposals will be received until: **3:00 P.M. (CST), May 11, 2022** at the office of the City Secretary at the address shown above or electronic bid through BidNet Direct: <https://www.bidnetdirect.com/texas/city-of-new-braunfels>.

Proposals received after the time and date set for submission will be returned, unopened, upon request.

For information regarding this solicitation, contact:

Barbara Coleman
Purchasing Manager
830-221-4389

Email: BColeman@nbtexas.org

(NO collect calls, Telegraphic, Email, On-Line or Fax offers accepted)

5% Proposal Bond Required: YES NO

100% Payment Bond Required: YES NO

100% Performance Bond Required: YES NO

OFFER

(This portion must be fully completed by Proposer.)

CSP's must be submitted by persons authorized to commit the responding qualified Realtor Service to a procurement contract or agreement. By submitting your written proposal, you represent and warrant that your submitted proposal does not contain information that will violate the rights of any third party.

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

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

SIGNATURE IS MANDATORY; **MANUALLY SIGN** ORIGINAL DOCUMENT, SIGNATURE SHOULD ALSO BE REFLECTED ON USB COPY OR ELECTRONIC SUBMISSION.

Name
and
Address
of Respondent:

Name and Title of Person Authorized to Sign Offer:

E-Mail Address:

Phone Number:

Fax Number:

Signature:

Date:

Name, Address and Telephone Number of Person authorized to conduct negotiations on behalf of Respondent.

(Applies to Request for Proposal only)

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SECTION 3

CSP INSTRUCTIONS FOR PROPOSAL

3.1 PURPOSE

This Competitive Sealed Proposal (CSP) is issued by the City of New Braunfels, (hereinafter referred to as the "City"). The purpose of this CSP is to request proposal submissions from interested and qualified State of Texas licensed Commercial Real Estate Brokers (Offeror(s)) and their designated agent(s) to provide commercial real estate brokerage services for the sale of real property owned by the City and located in the City of New Braunfels and more specifically described in Section 4 of this CSP.

The CSP contains submission requirements, the scope of service, period of service, terms and conditions and other pertinent information for submitting the proper and responsive proposal.

3.2 AVAILABLE DOCUMENTS

Solicitation documents may be obtained from:

- the BidNet Direct website: <https://www.bidnetdirect.com/texas/city-of-new-braunfels>
- the City of New Braunfels' website: <https://www.nbtexas.org/2694/Active-Solicitations>
- or upon request by email: BColeman@nbtexas.org

Questions relating to definitions, interpretations, and/or requests for clarification must be in writing and directed to: BColeman@nbtexas.org

3.3 PROPOSED SOLICITATION SCHEDULE

DATE	MILESTONE
April 20, 2022	CSP issued on https://www.bidnetdirect.com/texas/city-of-new-braunfels and https://www.nbtexas.org/2694/Active-Solicitations
April 29, 2022	Site Tour – 10 am to 11 am. At address reference in Section 3.5
May 2, 2022	Deadline to receive questions shall be 5:00 P.M.
May 11, 2022	Proposal submission deadline – 3:00 P.M.
May 2022	City Evaluation
May 2022	Anticipated Contract Award

3.4 SUBMISSION OF PROPOSALS

- (a) Electronic Bidding. The City of New Braunfels has partnered with its third-party vendor, Texas Purchasing Group (BidNet Direct) as its e-procurement site. For this Competitive Sealed Proposal, electronic bid submission is another option available to Proposers. The link to BidNet Direct website: <https://www.bidnetdirect.com/texas/city-of-new-braunfels>.

You must register on their site prior to your electronic submission. If you have any problems completing your vendor registration or submitting your electronic bid, please contact BidNet at (800) 835-4603, Option 2, to speak with live customer support.

If submitting an electronic bid through BidNet, an original hardcopy and USB will not be required.

- (b) Deliver your Proposal, or changes to your Proposal, in SEALED ENVELOPES OR PACKAGES identified on outside as a Competitive Sealed Proposal to Owner, with Respondent's name and address, and solicitation name. Failure to submit Proposal in this

manner may subject Respondent to disqualification. **Proposal may be delivered in person to the New Braunfels City Hall, or by Express Mail or delivery service to:**

**City of New Braunfels
City Secretary's Office/Front Lobby
ATTN: Purchasing
550 Landa Street
New Braunfels, TX 78130**

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

**"CSP 22-019 "Real Estate Broker Services"
Proposal Due Date: May 11, 2022, 3:00 P.M. CT"**

It is the sole responsibility of the respondent to ensure timely delivery of the Proposal. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the respondent. **PROPOSALS RECEIVED AFTER THE CLOSING DATE AND TIME WILL NOT BE ACCEPTED OR CONSIDERED.**

- (c) An authorized official of the firm must print or type their name and **MANUALLY SIGN THE ORIGINAL PROPOSAL, AND USB COPY MUST REFLECT THE SAME SIGNATURE.**
- (d) Proposals may not be withdrawn after the time set for the closing, unless approved by the City.
- (e) Your offer or a modification to your offer is LATE if received after the time set for Proposal opening and will not be considered.
- (f) To achieve a uniform review process and to obtain a maximum degree of comparability, the City of New Braunfels requires that Proposals be submitted with **one (1) original master (marked 'original'), and one signed USB electronic copy of all documents listed below. If submitting an electronic bid through BidNet, an original hardcopy and USB will not be required.**

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

- **TAB 1 - Solicitation and Offer Form:** Complete and sign form located on Page 1.
- **TAB 2 - Acknowledgment of any Addendum issued on this solicitation,** if applicable.
- **TAB 3 - Cover Letter** - Name and address of the Respondent, as well as a brief description of the company and its history, and how this makes the Proposer qualified for this bid.
- **TAB 4 - Experience, Qualifications, Key Personnel, and Resources** – (Refer to Section 5.1.A)
- **TAB 5 - ATTACHMENT B – COMPANY INFORMATION AND CERTIFICATIONS**
- **TAB 6 - Local Ties and Knowledge** - (Refer to Section 5.1.B)
- **TAB 7 - Cost Proposal for Commission Structure** – Attachment A with attached Listing Agreement (Refer to Section 5.3.1 C)
 - **NOTE: Failure to submit Attachments A and B will deem your proposal non-responsive**
- **TAB 8 - Additional Supporting Documentation**
 - Prime and Sub-Respondents: Conflict of Interest Form (per Section 3.14)
 - Prime Respondent: Certificate of Interested Parties – Form 1295 (per Section 3.15)

- Prime Respondent: Proof of Insurance: One copy completed and signed. A “for information purposes only” copy is acceptable. The awarded Respondent will be required to provide their certificate of insurance prior to contract award.
- Attach copies of respondent’s license, certifications, or any other documentation not referenced under another tab.
- **TAB 9 - Deviations from CSP** – (Reference Attachment C- EXCEPTIONS AND ALTERNATIVES FORM
 - Proposer is to indicate any deviations being offered in lieu of specified language referenced in the solicitation.

3.5 SITE TOUR

A site tour will be hosted on April 29, 2022 from 10 – 11:00 am at the below described property. All brokers are welcome to tour the site only during this time.

- Property address is 1488 S. Seguin Ave., New Braunfels, TX 78130. Legal Description is Lot 4A, Shopping Plaza Subdivision, New Braunfels, Comal County, Texas 78130.

3.6 CONTACT QUESTIONS

All *questions* concerning this solicitation shall be in writing, on or before **May 2, 2022**, to:

Purchasing Representative: Barbara Coleman, Purchasing Manager, via email BColeman@nbtexas.org

All questions and/or clarification submittals shall identify the CSP in the subject line of the email message as follows:

Questions – CSP 22-019 Real Estate Broker Services

All prospective respondents are hereby instructed to not contact any member of the City of New Braunfels’ City Council, City Manager, evaluation committee, or City of New Braunfels’ staff members other than the noted contact person regarding this solicitation on page 1. Any such contact may be cause for rejection of your Proposal.

3.7 RESPONSES TO QUESTIONS/INQUIRIES

Responses to questions/inquiries that directly affect an interpretation or change to this CSP will be issued in writing by Purchasing as an addendum and posted at:

- <https://www.bidnetdirect.com/texas/city-of-new-braunfels> and
- the City’s website <https://www.nbtexas.org/2694/Active-Solicitations>.

All such addenda issued by the Purchasing Representative before the time that Proposals are received shall be considered part of the CSP.

Only those inquiries the Purchasing Office replies to by addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect.

3.8 SOLICITATION UPDATES

Respondents shall be responsible for monitoring the City’s website or BidNet Direct for any updates pertaining to the solicitation described herein. Various updates may include addendums, cancelations, notifications, and any other pertinent information necessary for the submission of a correct and

accurate response. The City will not be held responsible for any further communication beyond updating the website.

3.9 EXCEPTIONS AND DEVIATIONS

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

3.10 COMPETITIVE PROPOSALS

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

3.11 PROPOSALS AND MATERIALS SUBMITTED

All Realtor Services who choose to participate in the selection process or respond to the CSP agree that the City owns all rights related to the materials submitted in response to this CSP. Such materials will not be returned to the respondents and may be used by the City and its designees as may be in its best interest in any manner and in any media whatsoever.

3.12 SAFEGUARDING OF INFORMATION AND DATA

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

3.13 WHAT IS NOT ACCEPTED

A Proposal submitted by facsimile transmission (FAX) or by electronic mail (EMAIL) will **NOT** be accepted. A Proposal response received **AFTER** the deadline (as stated above) for submitting the Proposal response will **NOT** be considered under any circumstances and will be returned unopened to the submitter.

3.14 NON-NEGOTIABLE TERMS

The following terms or conditions are not negotiable:

- a. **Unfunded Liability.** The City will not incur a debt or obligation to pay selected Proposer any amounts the City does not have the current funds available to pay, unless the contract includes a provision for the City to appropriate funding for the debt or obligation.
- b. **Advance Payments.** The City will not make advance payments to a selected Proposer or any third party pursuant to this CSP or resulting contract.
- c. **Gift of Public Property.** The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Proposer.
- d. **Procurement Laws.** The City will not agree to any terms or conditions that cause the City to violate any federal, Texas, or local procurement laws, including its own charter.

- e. **Limitation of Liability.** The City will not agree to allow the selected Proposer to limit its liability for breach or default of contract to the contract amount or to the amount the City has paid up to the time of the breach or default.
- f. **Attorney's fees; Legal Costs.** The City will not agree to pay the selected Proposer attorney's fees or other legal costs under any circumstances.
- g. **Delinquent Payments; Interest.** The City will not consider a payment delinquent, which is made within 30 days of receipt of the selected Proposer's approved invoice, in accordance with Texas law. If the City does not pay what is due and owing within the 30 days, the City will not agree to pay more than 1% interest per month on the overdue amount, in accordance with Texas law.
- h. **Venue; Applicable Law.** This CSP and any resulting contract will be governed and construed according to the laws of the State of Texas. The terms and conditions of the contract awarded pursuant to the CSP are fully performable in Comal County, Texas and venue for any dispute regarding contract shall be in Comal County, Texas.

3.15 MISCELLANEOUS

- 3.15.1. All costs directly or indirectly related to the preparation of a response to this Proposal shall be the sole responsibility of and shall be borne by the Proposer.
- 3.15.2. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from Proposer, or to allow corrections of errors or omissions.
- 3.15.3. The City reserves the right to retain all proposals submitted and to use non-confidential information in a Proposal regardless of whether or not that CSP is selected.
- 3.15.4. Each CSP shall state that it is valid for a period of one hundred twenty (120) days from the date of opening of the CSP by the City.

3.16 CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ)

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

Form CIQ is available from the Texas Ethics Commission by accessing the following web address: https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm

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

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

If requested in the solicitation document, all Respondents are to submit a completed Conflict of Interest

Questionnaire (Form CIQ) with their response **in addition to** submitting a completed Form CIQ to the office of the City Secretary located at 550 Landa Street; New Braunfels, Texas 78130.

3.17 CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

A proponent that will be awarded a contract that is greater than \$25,000 is required to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission ("TEC") website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and submit a signed copy of the form to the City prior to the award of the contract. A contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.

SECTION 4

PROJECT DESCRIPTION AND SCOPE OF WORK

4.1 BACKGROUND:

The City of New Braunfels is situated in Comal County, between the Nation's seventh largest city, San Antonio, to the south, and the Texas Capital, Austin, to the north, with easy access to each along Interstate Highway 35. Interstate Highway 10, less than ten miles to the south, provides access to Houston, three hours to the east.

Consistently ranked by the U.S. Census Bureau in the top 10 fastest growing cities in the Nation, New Braunfels has a 2020 population of over 90,403, an increase of nearly 57%, in comparison to the 2010 population. Founded in 1845, New Braunfels has a rich history and, in light of the tremendous growth, still retains its cultural heritage which influences its architecture, community activities, branding, pride of citizenship, and way of life.

The City of New Braunfels is a home-rule city operating under a council-manager form of government. All powers of the City are vested in an elected council, consisting of a mayor and six council members. The City Council enacts local legislation and determines City policies. The City government provides a broad range of goods and services to its citizens, operates with 17 departments/divisions and has over 650 full time employees.

4.2. SCOPE OF SERVICES

The City of New Braunfels is seeking a qualified firm to sell:

Property address is 1488 S. Seguin Ave., New Braunfels, TX 78130. Legal Description is Lot 4A, Shopping Plaza Subdivision, New Braunfels, Comal County, Texas 78130.

The selected Broker/Realtor will be expected to contract with the City to provide the following services.

1. Assistance determining property valuation on the parcel to be sold;
2. Assist the City and its in developing a strategic plan for the marketing and sale of this property, including a potential website for marketing of property;
3. Perform market analysis;
4. Provide the City's Real Estate Manager with periodic activity reports;
5. Provide Broker's Opinions for the property;
6. Provide Marketing materials;
7. Negotiate with buyers on behalf of the City;
8. Coordinate real estate appraisals;
9. Coordinate real estate transaction closing;
10. Handle all customary activities associated with the sale of real property transaction.

Depending on circumstances, the selected Realtor Service may also be required to:

1. Present at public meetings; and
2. Consult with the City's Legal Counsel on any real property deed restrictions that may be present on the property to be sold.

4.3 REALTOR SERVICE RESPONSIBILITIES

In all circumstances, all Realtor services shall be provided in keeping with all applicable Federal, State, and local laws and requirements.

4.4 PERFORMANCE REQUIREMENTS

The Realtor Service will faithfully pursue the marketing and sale of the identified property the City requests to place on the market. Said Service will provide adequate personnel hours to meet the requirements set forth under the 'Objective' heading.

4.5 REQUIRED MEETINGS

The Realtor Service shall provide representatives to meet with City officials as may be requested, for the purpose of providing status reports on the marketing and sale of the property listed by the City.

The Realtor Service agrees to accompany City officials to meetings which may affect the sale of the property listed by the City, if the need to attend such a meeting may arise.

4.6 FEE STRUCTURE

The Fee Structure shall be submitted on the respondents listing agreement attached to the Cost Proposal Form and presented in TAB 7. The Proposed Fee should be structured as a percentage commission sought for the Realtor Services. The proposed fee schedule shall include the following items:

1. State your commission rate for the selling of properties.
2. State any other costs the City may anticipate relating to the real estate services to be provided.

4.7 INSURANCE REQUIREMENTS

For proposal purposes, proposers must submit copies of certificates of insurance for professional liability. The successful respondent must provide original certificates prior to commencing services.

SECTION 5

QUALIFICATIONS AND EVALUATION CRITERIA

5.1 SELECTION PROCESS

It is the intent of the City to make one award to the respondent offering the best value to the City, based on evaluation criteria listed in this solicitation and proposer's submitted proposal.

The City's evaluation team will rank respondents meeting the evaluation criteria and the requirements of the needed services outlined in the solicitation and as outlined in the respondent's proposal.

The respondent selected for award will be awarded an Agreement to provide services as specified.

5.2 BROKER'S QUALIFICATIONS – Respondents to this CSP shall have the following qualifications:

1. Must be licensed and in good standing with the State of Texas, provide license(s) number(s) obtained by Assigned Broker(s).
2. Proposer must have recent experience (within the last three (3) years) representing commercial property sales in the City of New Braunfels, Texas.
 - The lead Broker and other key real estate professional(s) assigned to market the property ("Assigned Broker(s)") by Respondent must be licensed real estate brokers / salespersons in the State of Texas.
3. Must have an excellent reputation in the real estate community.
4. Must be knowledgeable in the local real estate market and have experience with small and large commercial properties.
5. Must be knowledgeable in the use of all public real estate records.
6. Work with other local municipalities is highly recommended although not required.

5.3 EVALUATION CRITERIA:

Limit response to 4 double-sided or 8 single-sided pages and minimum 10-pt font.

5.3.1 Defined Criteria:

A. 30 Points: Experience, Qualifications, Key Personnel, and Resources– PROVIDE IN TAB 4

1. Experience and Qualifications: In reviewing this criterion, the City will look at the Realtor Service's prior experience with real estate transactions similar to those the Service would be contracting with the City to perform, and the effectiveness of the Service's proposed property transaction process as viewed through a municipal context. The Service's experience with Commercial Real Estate transactions will also be taken into account.
2. Key Personnel and Resources: In reviewing this criterion, the City will assess Realtor Service's personnel for their competence and experience for performing real estate work and services, including, specifically, their experience with Commercial Real Estate Transactions.
3. Provide references from three (3) of Proposer's clients from the past three (3) years for services that are similar in scope, size and complexity to the services described in this CSP. Provide the following information for each client:
 - a. Client (company) name and address

- b. Contact name with email address and phone number
- c. Date of execution and date of closed transaction
- d. Short description of property

B. 20 Points: Local Ties and Knowledge – PROVIDE IN TAB 6

- a) This portion of the criteria will be based on the Realtor Service's ties to the City, including, but not limited to, the breadth of their real estate dealings within the City, their expressed knowledge of the City's real estate climate, and the ties of those personnel to be assigned to the project with the City itself.

C. 50 Points: Cost for Commission Structure –PROVIDE IN TAB 7

The costing will be based off of the commission structure. Provided costing in your firms listing agreement which shall be attached to Attachment A - Cost Proposal Form and included in TAB 7.

D. TOTAL POSSIBLE POINTS: 100

- E. **OPTIONAL-** The City may determine that it is necessary to interview short-listed firms prior to making a recommendation to the City Council. The City reserves the right to determine whether an interview will be conducted for every solicitation/project.

- F. **Pass/Fail: Availability (PROVIDE IN TAB 2)** –The firm must be able to start the project immediately and complete all work as specified. Please include availability and ability to commit to successful and expeditious completion of the management and administrative work.

5.3.2 Other Considerations. The City reserves the right to request additional information or consider historical information and facts, whether gained from the Proposal, references, or any other source, in the evaluation process, including Respondent's past working or business relationship with the City, if any. The City further reserves the right to consider a respondent's background, personnel, experience, financial and other references, management practices, exceptions to the CSP or subsequent contract, and any working relationships, past or present, a respondent may have with its other clients.

5.3.3 Respondent should be aware that the contents of the successful Proposal response will become part of subsequent contractual documents.

5.3.4 Opened Proposal. A submittal may not be opened before the closing date for the purpose of changing or amending the submittal or to correct an error in the submittal terms or conditions. If the submittal is opened before the closing date by anyone other than the City, the submittal may be rejected in its entirety by the City.

5.3.5 Additional Information. At your option, provide in your Qualifications any contractual language, terms, conditions, considerations, or contingencies your company would request or require to be included in the negotiated contract between the City and the selected submitter, should your company be awarded a contract. Approval of such language, terms, conditions, considerations, or contingencies offered by a submitter remains with the City and in all cases the City's decision is final.

5.4 LIMITATIONS

- 5.4.1 Right to Accept or Reject.** The City reserves the right to reject any or all submittals, to waive informalities and accept the submittal that the Owner believes is the most advantageous to the public interest and in keeping with the local government project procedures. The CSP does not commit the City to award a contract, issue a purchase order, or pay any costs incurred in the preparation of a submission in response to this CSP.
- 5.4.2 Solicitation to Remain Subject to Acceptance.** All solicitations will remain subject to acceptance for one hundred ninety (90) days after opening without taking action.
- 5.4.3 City Council Approval Required.** The City of New Braunfels City Council must approve the respondent selected to provide the services requested in this CSP. The City reserves the right to authorize contract negotiations to begin without further discussion with respondents submitting a response. Therefore, each Proposal should be submitted as completely and accurately as possible. The City reserves the right to request additional data, oral discussions, or presentations in support of the written Proposal.
- 5.4.4 Respondent's Obligation Regarding Evaluation:**
- a. Submission of Information. Submitters are cautioned that it is each respondents sole responsibility to submit information related to the evaluation categories, and the City is under no obligation to solicit such information if it is not included with the Proposal. Failure of a respondent to submit such information may cause an adverse impact on the evaluation of the specific Proposal.
 - b. Submitter Review of CSP. Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the CSP and their responses. Failure to do so will be at the respondents' risk and will not be a determinative factor when awarding the contract for services.
- 5.4.5 Oral Non-Binding.** Any non-written representations, explanations, or instructions given by City staff or City agents are not binding and do not form a part of, or alter in any way, the CSP, a written agreement pertinent to the CSP, or the awarding of the contract.
- 5.4.6 Lobbying Prohibited.** Proponents are prohibited from directly or indirectly communicating with City Council members regarding the Proponent's qualifications or any other matter related to the eventual award of a contract for the services requested under this CSP. Proponents are prohibited from contacting city staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Any violation will result in immediate disqualification of the proponent from the selection process.

5.5 PROPOSAL SPECIFICATIONS

- 5.5.1 Modification or Withdrawal of Proposal.** Proposals cannot be altered or amended after the submittal deadline. Proposals may be modified prior to the deadline only by providing a written notice (by mail or email) to the Purchasing Representative at the address shown herein. A submitter's Proposal may also be withdrawn in writing by providing the same notice by a submitter or the submitter's authorized agent, providing the agents identify is made known and the agent signs the request to withdraw Proposal. **HOWEVER, IN THE EVENT OF WITHDRAWAL, THE SUBMITTER WILL NOT BE ALLOWED TO RESUBMIT.** This provision

does not change the common law right of a proposer to withdraw a Proposal due to a material mistake in the Proposal.

5.5.2 Inquiries. In order to ensure fair and objective evaluation, all questions related to this CSP should be addressed only to the persons named in Section 3.1 of this solicitation.

5.5.3 CSP Interpretation; Addendum. Any interpretations, corrections, or changes to this CSP will be made by addenda through:

- <https://www.bidnetdirect.com/texas/city-of-new-braunfels>
- and the City Website: <http://nbtexas.org/DocumentCenter/Home/Index/139>

Submitters shall acknowledge receipt of all addenda per the instructions to be attached to addenda.

SECTION 6

CONTRACT TERMS AND CONDITIONS

6.1 CONTRACT TERM

Contract Term – If a Contract is awarded to a RESPONDENT, it shall be for a initial term of six (6) months unless otherwise terminated extended pursuant to this Contract. CITY OF NEW BRAUNFELS reserves the right to extend the contract period for one or more additional six (6) month periods should such an extension be mutually agreeable to the CITY and the RESPONDENT with a written notice.

The preliminary notice does not commit the CITY to the extension unless and until the extension is agreed to in writing by an amendment executed by the parties.

6.2 GENERAL TERMS AND CONDITIONS

By submitting a proposal response, RESPONDENT is agreeing that it is willing and able to enter into an agreement for services with the City containing at least the following minimum Standard Terms and Conditions unless RESPONDENT expressly indicates a term it will not agree to and explains the reason for the disagreement in Attachment C. Failure to agree to all terms may, at City's option, result in rejection of a RESPONDENT.

6.3 STANDARDS

The awarded RESPONDENT shall agree that the performance of work and services under this CSP shall conform to high professional standards.

Incorporation of Representations of RESPONDENT into Contract – All representations made in the respondent's proposal and listing agreement will be incorporated into any contract that may be awarded as a result of this CSP unless otherwise agreed by the parties in writing.

6.4 ELEMENTS OF CONTRACT

6.4.1 CSP. This Competitive Sealed Proposals is an invitation for individuals and companies to submit Proposal.

6.4.2 Award is Acceptance. The selection of a respondent and award of an agreement by the New Braunfels' City Council based upon acceptance on the part of the City, thereby resulting in a binding agreement between the City and the selected respondent or individual.

6.4.3 Consideration. Consideration consists of the services to be performed under the contract awarded in exchange for compensation, based upon a final negotiated price, to be paid by the City to the selected respondent.

6.5 ASSIGNMENT

RESPONDENT shall not assign or sublet this Agreement or any part thereof, without the written consent of CITY. Sale of more than 50% ownership shall be construed as an assignment.

6.6 SUBCONTRACTING PROPOSAL

If subcontracting with another company or an individual on this project, this must be identified in your proposal, and the subcontractor's credentials must be submitted with your proposal for the City's review and evaluation consideration.

6.7 TERMINATION FOR CAUSE

Without prejudice to any other legal or equitable right or remedy that CITY would otherwise possess hereunder or as a matter of law, CITY, upon giving the awarded respondent five (5) calendar days prior written notice of termination shall be entitled to terminate this Agreement, in its entirety at any time for the following:

1. If the awarded respondent becomes insolvent, files for bankruptcy protection, or makes a general assignment for the benefit of creditors, or if a receiver, trustee or liquidator, is appointed for any of respondent's property or income; or
2. If the awarded respondent shall fail to perform the work, or any part thereof, with diligence necessary to ensure its progress and completion as prescribed by the time schedules; or
3. If the awarded respondent shall fail to remedy any default within thirty (30) calendar days after CITY provides respondent with a written notice of said default; or
4. If the awarded respondent commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this agreement, the exclusive right to determine if respondent is in substantial default under the contract.

6.8 OTHER TERMINATION

This Contract may be terminated at any time and for any reason by either the CITY or the awarded respondent with thirty (30) days prior written notice.

6.9 FORCE MAJEURE

- a. In the event performance by the selected Proposer of its obligations under this contract shall be interrupted or delayed by or as a consequence of a fire, flood, or other act of God, war, insurrection, civil disturbance, or act of state, the selected Proposer shall be excused from such performance for the period of time such occurrence shall have lasted or such period as is reasonably necessary to rebuild or take other action necessary to resume performance. The period of time reasonably necessary to rebuild or take other action necessary to resume performance shall be as determined by the agreement of the parties, which agreement shall be negotiated and arrived at in good faith.
- b. Selected Proposer shall notify the City of any matter covered above, the occurrence of which interferes or threatens to interfere with the performance of any of its obligations under the contract. Upon such notice, the selected Proposer and the City shall consult and cooperate as to measures which may be taken to overcome the interference or as to alternative measures which may be undertaken by the parties with a view to the continued performance of the contract.

6.10 SUSTAINED DAMAGES

In the event the City terminates the awarded contract for any reason, the selected Proposer shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the contract by the selected Proposer or otherwise, and the City may withhold any payments to the selected Proposer for the purpose of an offset until such time as the amount of damages due the City from the selected Proposer can be determined.

6.11 INDEMNIFICATION

Respondent hereby agrees to protect, indemnify and hold harmless the City, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnitees"), from and against suits,

actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of Respondent, its officers, employees, servants, agents or subcontractors, or anyone else under Respondent's, direction and control, and arising out of, resulting from, or caused by the performance or failure of performance of any work or services called for by this Agreement, or from conditions created by the performance or non-performance of said work or services. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, Respondent shall be obligated to indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

Respondent is not responsible for the actions of the City's contractor to perform the construction of the improvements covered under this Agreement.

Acceptance and approval of Proposer's documents received by the City shall not constitute nor be deemed a release of this responsibility and liability of Respondent, its employees, associates, agents and respondents for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by Respondent, its employees, contractor, agents and respondents.

Respondent agrees that it is an independent contractor and not an agent of the City, and that Respondent is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve City of any responsibility or liability from treating Respondent's employees as employees of City for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. Respondent further agrees to indemnify and hold City harmless and reimburse it for any expenses or liability incurred under said Statutes in connection with employees of Respondent.

Respondent shall defend and indemnify Indemnitees against and hold City and the premises harmless from any and all claims, suits or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation and management costs incurred by Respondent in performing this Agreement.

6.12 INDEPENDENT RESPONDENT

The selected Proposer will be an independent respondent under the contract. Professional services provided by the selected Proposer shall be by the employees or authorized subcontractors of the selected Proposer and subject to supervision by the selected Proposer, and not as officers, employees or agents of the City. Selected Proposer will be required and agrees to comply with all state and federal employment laws as well as all other federal, state and local laws, rules and regulations affecting the performance of all obligations taken herein.

6.13 INSURANCE

The selected contract, if any, shall provide proof of liability insurance to the City in an amount sufficient to cover the risk of activities undertaken under the Contract, as determined by the City, with the City listed as an additional insured.

6.14 CONFIDENTIALITY OF DOCUMENTS

- a. ALL PROPOSALS SUBMITTED WILL BE SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT.
- b. In the event a request for public information is filed with the City, which involves a Proposer's proprietary information submitted to the City in a proposal, the Proposer affected by such public information request will be notified by the City of the request in order to give the affected Proposer an opportunity to respond to the request.
- c. On each page where confidential information appears, the Proposer must label the confidential information. Failure to so label the confidential information shall be considered as a waiver of any confidentiality rights or interests by said Proposer.
- d. Marking your entire Proposal *CONFIDENTIAL/PROPRIETARY* is **not** in conformance with the Texas Open Records Act.

ATTACHMENT A

COST PROPOSAL

Failure to complete this form may result in your Proposal being deemed non-responsive and rejected without any further evaluation.

OFFER TO: CITY OF NEW BRAUNFELS:

The Undersigned hereby offers and agrees to furnish the services in compliance with all terms, scope of work, conditions, specifications, and addenda in the Competitive Sealed Proposal. Having carefully examined all the specifications and requirements of this CSP and any attachments thereto, the undersigned proposes to furnish the required services pursuant to the above-referenced CSP upon the terms quoted (firm fixed percentage) in the Respondents Listing Agreement to be attached.

ADDENDA:

The undersigned hereby acknowledges receipt of the following addenda to the provisions and requirements of which addenda have been taken into consideration in the preparation of this Proposal.

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

OBLIGATION:

The undersigned, by submission of this Offer, hereby agrees to be obligated, if the Offer is accepted by the City of New Braunfels, to enter into a Contract to provide the stated goods and/or services for the term as stated herein in accordance with the Scope of Work, Specifications, and Terms and Conditions, together with any written Addenda as specified above and any negotiated terms. If this offer is accepted and signed by the City of New Braunfels, this CSP document, together with any written Addenda and any negotiated terms shall be (collectively) the contract.

NON-COLLUSION:

The undersigned, by submission of this Proposal Form and other required forms, hereby declares that this Proposal is made without collusion with any other business making any other Proposal, or which otherwise would make a Proposal.

SUBMITTAL REQUIREMENTS:

The undersigned certifies it has attached a complete response to each of the submittal requirements listed in the Evaluation Criteria and Submittal Requirements section of this CSP.

COST PROPOSAL:

Broker shall provide costing information in their proposed listing agreement which they should attach to this Attachment A and include as TAB 7. They will only be scored based off of their commission structure assuming a sales price of appraised value of \$2.7 million.

Required Signatures are on the next page

No proposal may be accepted which has not been signed in the appropriate space below:

I certify, under penalty of perjury, that I have the legal authorization to bind the Respondent/firm hereunder:

Company Name

Date

Signature of Person Authorized to Sign

Title

Printed Name

Email: _____

ATTACHMENT B

COMPANY INFORMATION AND CERTIFICATIONS

1. Company Information:

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

2. Subrespondent(s), if applicable:

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

Subrespondent Name: _____

Percentage (%) of Total Contract: _____

Mailing Address: _____

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

Name: _____

Title: _____

Office Location: _____

Mailing Address: _____

* Telephone Number: _____ Fax Number: _____

Email Address: _____

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

*** A representative of the company must be available to answer phone calls from City Monday through Friday, 8:00 A.M. to 5:00 P.M. (Central Time).**

4. If awarded, Respondent shall indicate preferred method for which City is to notify Awarded Respondent of purchase orders:

Purchase Orders shall be communicated via: *(check all that apply)* ___ Phone ___ Fax ___ Email

Contact Person: _____

Phone: _____

Fax: _____

Email Address: _____

VENDOR CERTIFICATIONS

DEBARMENT/SUSPENSION INFORMATION:

1. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity or is Respondent listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>?
 Yes **No**

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

CERTIFICATIONS:

1. Respondent certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. **Yes** **No**
 - A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process or in the Contract execution;
 - B. "fraudulent practice" means an intentional misrepresentation of facts made
 1. to influence the solicitation process or the execution of the Contract to the detriment of Owner,
 2. to establish Cost Proposal or Contract prices at artificial non-competitive levels, or
 3. to deprive Owner of the benefits of free and open competition.
 - C. "collusive practice" means a scheme or arrangement between two or more Respondents, with or without the knowledge of Owner, a purpose of which is to establish Cost Proposals at artificial, non-competitive levels; and
 - D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

2. NON-COLLUSION CERTIFICATION:

- A. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company's cost Proposal? **Yes** **No**
1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation;
 2. That your cost Proposal is genuine and is not a collusive or sham Cost Proposal;
 3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other respondent, firm or person to submit a collusive or sham cost Proposal, or to refrain from responding, or sought by communication or conference with any other respondent, firm or person to fix the prices, overhead, profit, or any cost element in your cost Proposal or in any other cost Proposal, or to secure through any collusion, conspiracy, or agreement any advantage against the City of New Braunfels or any other respondent; and
 4. The prices quoted in your cost Proposal are fair and proper and are not affected by any collusion, conspiracy, connivance or unlawful agreement on the part of your company or anyone acting on its behalf.

3. GOVERNMENT CODE TITLE 10 SUBTITLE F VERIFICATIONS:

- A. Respondent shall verify that it's named company, under the provisions of Subtitle F Title 10 Government Code Chapter 2270: **Yes** **No**
1. Does not boycott Israel currently; and
 2. Will not boycott Israel during the term of the contract.
- B. Pursuant to Sections 2270.001, 2270.002, 808.001, Texas Government Code:
1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
 2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.
- C. Pursuant to subtitle F, Chapter 2252, Texas Government code, respondent shall not do business with Iran, Sudan or a foreign terrorist organization while providing products or services to the City of New Braunfels. **Yes** **No**

SEE NEXT PAGE FOR ACKNOWLEDGEMENT

ACKNOWLEDGEMENT

THE STATE OF _____
COUNTY OF _____

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

Company's Name

Signature, Authorized Representative of Respondent

Title

ATTACHMENT C

EXCEPTIONS AND ALTERNATIVES FORM

Failure to complete this form may result in your Proposal being deemed non-responsive and rejected without any further evaluation.

Proposers are to comply with all requirements of this solicitation, otherwise the proposal may be deemed non-responsive. Exceptions may be considered if they are presented with the proposal and if the City determines that the exception does not materially alter the intent of this solicitation or that it exceeds the requirements of this solicitation.

No Exceptions Taken

Exceptions Taken – *See attached (Include in Tab 9)

**Note that if any exceptions are taken, all required information must be submitted as an attachment*

In the event the Proposer takes exception to any language in this solicitation, they may set forth alternatives by presenting each exception separately by stating:

a) The specific item or clause for which an exception is requested (citing the page and item number).

b) The suggested change to the exception, inclusive of proposed new language if applicable.

c) An explanation as to how the proposed change would benefit the City and/or why the exception is necessary.

Except as may be indicated above, Proposer is in complete agreement with this entire solicitation including any proposed terms, conditions and business arrangements described herein.

(Authorized Signature)

Date

(Title)