

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Planning & Economic Development

AGENDA DATE: September 27, 2011 Consent Agenda

CONTACT PERSON/PHONE: Ernesto Gamboa, Deputy Director 541-4811
Bruce D. Collins, Purchasing Manager, 541-4313

DISTRICT(S) AFFECTED: ALL

SUBJECT:

Request approval for the Purchasing Manager to reject the bid submitted for Solicitation No. 2011-229R, Establish and Operate EB-5 Regional Center, as recommended by Planning and Economic Development Department. Only one bid was received and was not specific enough to address the intended services requested. Planning and Economic Development will rewrite the specifications and scope of services and will rebid with an extended due date.

BACKGROUND/DISCUSSION:

EB-5 visa program is an immigrant investor program administered by U.S. Citizenship and Immigration Services (USCIS) that provides a method of obtaining a green card to foreign nationals who invest money in the United States. The program allows for the establishment of a Regional Center, an area designated by the USCIS as eligible to receive immigrant investor capital, which identifies projects that promote economic growth.

A Request for Proposal, Solicitation No. 2011-229R, Establish and Operate EB-5 Regional Center, was previously issued on May 3, 2011 and amended on May 23, 2011.

PRIOR COUNCIL ACTION:

No.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

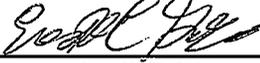
N/A.

BOARD/COMMISSION ACTION:

N/A.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:  _____

(Example: If RCA is initiated by Purchasing, client department should sign also). *Information copy to appropriate Deputy City Manager*

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

REQUEST FOR PROPOSALS
ISSUED BY
THE CITY OF EL PASO
FINANCIAL SERVICES / PURCHASING DIVISION

SOLICITATION NO: 2011-229R

DATE ISSUED: MAY 3, 2011

**TITLE: ESTABLISH AND OPERATE EB-5 REGIONAL CENTER
PLANNING & ECONOMIC DEVELOPMENT**

An original, signed, sealed, OFFER to furnish the goods and/or services set forth below will be received at the place indicated below, until:
2:00 PM, local time, WEDNESDAY, JUNE 8, 2011

NOTICE When used in Request for Proposals, the terms 'Offer' and 'Proposal' and 'Offeror' and 'Vendor' are interchangeable.

**ADDRESS OFFERS TO:
PURCHASING MANAGER
FINANCIAL SERVICES / PURCHASING DIVISION
CITY OF EL PASO**

MAIL TO:

**CITY OF EL PASO OR
FINANCIAL SERVICES DEPARTMENT/PURCHASING DIVISION
2 CIVIC CENTER PLAZA, 7TH FLOOR
EL PASO, TX 79901-1196**

HAND DELIVER TO:

**CITY HALL, 7TH FLOOR
2 CIVIC CENTER PLAZA
FRANKLIN & SANTA FE ST.
EL PASO, TX 79901**

FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICITATION, CONTACT:
PETE DUNAVANT, ADMINISTRATIVE ANALYST
Telephone: [915] 541-4195 FAX: [915] 541-4347 Email: DunavanPP@elpasotexas.gov

EXPIRATION OF OFFERS

The Offeror agrees, to furnish all items [supplies or services] at the prices offered, and delivered at the designated point or points, within the time set forth below, if this offer is accepted within ONE HUNDRED TWENTY [120] consecutive days from the date set for the receipt of offers.

AMENDMENTS TO SOLICITATION

Receipt of all numbered amendments to Solicitations must be acknowledged:

<u>AMENDMENT</u>	<u>DATED</u>	<u>AMENDMENT</u>	<u>DATED</u>	<u>AMENDMENT</u>	<u>DATED</u>	<u>AMENDMENT</u>	<u>DATED</u>
A001	_____	A002	_____	A003	_____	A004	_____
A005	_____	A006	_____	A007	_____	A008	_____

OFFER SUBMITTED BY

COMPANY NAME AS IT APPEARS ON ORGANIZATION CERTIFICATE ISSUED BY STATE IN WHICH COMPANY WAS ORGANIZED)

STREET ADDRESS

P.O. BOX NUMBER

CITY, STATE AND ZIP CODE

TELEPHONE NUMBER

FAX NUMBER

E-Mail address

PLEASE CHECK PREFERRED ADDRESS FOR RECEIVING SOLICITATION DOCUMENTS.

OFFER EXECUTED BY [PLEASE PRINT]

NAME AND TITLE OF PERSON AUTHORIZED TO OBLIGATE COMPANY

SIGNATURE AND DATE OF OFFER

WITHOUT AN ORIGINAL SIGNATURE ON THIS OR OTHER DOCUMENT BINDING THE OFFEROR, THE OFFER WILL BE REJECTED

NOTE: AWARD OF THE CONTRACT RESULTING FROM THIS SOLICITATION WILL BE MADE TO THE SUCCESSFUL OFFEROR BY AN AUTHORIZED WRITTEN NOTICE, WHICH MAY BE IN THE FORM OF A LETTER NOTICE OF AWARD OR A PURCHASE ORDER ISSUED BY THE CITY OF EL PASO. THIS IS A ONE TIME CONTRACT

CITY OF EL PASO, TEXAS
RFP: 2011-229R
REQUEST FOR PROPOSALS
FOR
ESTABLISH AND OPERATE EB-5 REGIONAL CENTER
DUE DATE: JUNE 8, 2011

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PART 1 – GENERAL INFORMATION

- 1.1 **The City of El Paso** – The City of El Paso is a thriving economic hub on the US/Mexico border with a municipal population of 630,000 and is the 22nd-largest city in the country. Please see Exhibit A - El Paso & Area Demographics And Description for additional information.
- 1.2 **Solicitation Purpose** – Select a qualified contractor to Establish an EB-5 Regional Center & perform as the Regional Center Investment Manager. The **EB-5 visa** is for Immigrant Investors and was created by the Immigration Act of 1990. This visa provides a method of obtaining a “green card” for foreign nationals who invest money in the United States, and is administered by the United States Citizenship and Immigration Services (USCIS). This is a component of the United States Department of Homeland Security (DHS).

PART 2 - NOTICES TO PROPOSERS.....

2.1 Public Disclosure Proposal Information

Offerors are cautioned that once a bid is opened, all information contained therein will be available to the **PUBLIC** unless the information is excepted from the requirements of Government Code Section 552.021 pertaining to Open Records.

The exception that allows the City to protect information that, if released, would give advantage to a competitor or bidder does not apply after the bidding is complete and the contract has been awarded. *Trade secrets, commercial or financial background data and privileged or confidential information* may be excepted from public inspection. If any information contained in your offer qualifies for an exception because it falls into one of the categories above it should be clearly marked “CONFIDENTIAL” and the basis of your claim of confidentiality should be stated. Data so identified will be maintained as a protected record. Offerors who claim that information contained in a bid should be protected from public disclosure after the award of the contract may be asked to support such claim if the City receives an Open Records request for the information and requests a determination by the Attorney General. [Rev. 04-03-98]

2.2 Bid Net Notification

If you received your copy of this solicitation from the **BID NET**, or any source other than directly from the City of El Paso, and you plan to respond to it, please notify the City immediately. You will be placed on the active bidders list and will be directly sent all notices pertaining to the solicitation. It would also be helpful if you would supply a contact person's name along with their telephone number, fax number, and E-mail address.

NOTE: ANY CHANGES IN DUE DATE OR MATERIAL CHANGES FOR ANY RFP'S/SOLICITATIONS WILL BE POSTED ON THE SOLICITATIONS PAGE OF THE CITY OF EL PASO PURCHASING DEPARTMENT'S WEBSITE: http://www.elpasotexas.gov/financial_services/invitations.asp

It is the bidder's responsibility to ensure that they have all pertinent information regarding solicitations, including all amendments prior to submitting their offer. Please check the website, even after submitting a bid, to ensure that you have all amendments as they may be posted at any time, up to and including the day of bid opening.

2.3 Communications

2.3.1 Cone of Silence

"Cone of Silence" is imposed upon each RFP, RFQ or Bid after advertising and terminates at the time the Purchasing Manager places a written recommendation on City Council Agenda. The Cone of Silence prohibits any communication regarding RFPs, RFQs or Bids between, among others:

1. Potential vendors, service providers, Offerors, lobbyists or consultants and City's professional staff;
2. Potential vendors, service providers, Offerors, lobbyists or consultants, any member of the City's professional staff, the Mayor, Council Representatives or their respective staff and members of the respective selection committee; and

The provisions do not apply to, among other communications:

1. Oral communications with the Purchasing Manager or Contract Administrator, provided the communications are strictly limited to matters of process or procedure already contained in the solicitation document;
2. The provisions of the Cone of Silence do not apply to oral communications at pre-proposal or pre-bid conferences, oral presentations before selection committees, contract negotiations during duly notice public meeting, public presentations made to the Mayor and Council Representatives during a duly noticed public meeting; or
3. Communications in writing at any time unless specifically prohibited by the applicable RFP, RFQ or bid document.

In addition to any other penalties provided by law, violation of the Cone of Silence by any Offeror shall render that Offeror's RFP, RFQ or bid award voidable. Any person having personal knowledge of a violation of these provisions shall report such violations to the City Attorney.

2.3.2 Request for Clarification

In order to meet the City's schedule it is extremely important that requests for clarification or additional information be submitted in writing no later than **May 16, 2011**. Questions submitted after this date may not elicit a response. All proposals or requests for clarification should be sent to the following:

BY E-MAIL

PETE DUNAVANT
ADMINISTRATIVE ANALYST
Fax: (915) 541-4347
Email: DunavantPP@elpasotexas.gov

IN WRITING (MAIL OR HAND DELIVERY)

City of El Paso
Financial Services Department/Purchasing Division
2 Civic Center Plaza, 7th Floor
El Paso, TX 79901-1196
Attn: PETE DUNAVANT

2.4 Schedule of Events

The following Schedule of Events represents the City's estimate of the timetable that will be followed in connection with this solicitation:

EVENTS	DATE AND/OR TIME
Release Request for Proposal	5/3/2011
Last Day to Submit Written Questions	5/16/2011
Answers provided	5/23/2011
Submission of proposals	6/8/2011
Oral Presentations (If requested)	6/20/2011
Contract Award Date	7/26/2011 (estimated)
Effective date	7/26/2011 (estimated)

The reserves the right, at its sole discretion, to adjust this Schedule of Events as it deems necessary. If necessary, the City will communicate adjustments to any event in the Schedule of Events in the form of an amendment. Amendment to this RFP will only be issued and posted on the City's website at: http://www.elpasotexas.gov/financial_services/invitations.asp

2.4.1 Pre-Proposal Conference

RESERVED

2.5 Contract Period (Initial and Option Terms)

The initial term of this contract shall be for at least **THIRTY-SIX (36) MONTHS** from date of approval of the I-924 application. The contract will include options for the City to extend the contract, at the sole discretion of the City, for an additional three (3) years.

2.6 Notices of Instruction to Offerors

1. Signature of Offer to person Authorized to Sign

All offers shall bear an original signature, in ink, of a responsible officer or agent of the company. Failure to sign the OFFER portion of the SOLICITATION, OFFER AND AWARD form, or to include a substitute signed document binding the offeror, will be the basis for declaring a proposal non-responsive.

2. Effective Period of Proposals

Proposals should expressly state that the offer (including all rate and fee proposals submitted in response to this RFP, as well as the scope and character of the services described in the proposal) will remain in effect until at least 120 consecutive days from the date set for the receipt of offers and may be accepted by the City of El Paso at any time on or before such date.

3. Required Number of Copies

Please see Part 4.2 below.

4. Offer Submission Instructions

OFFER MUST BE SEALED WHEN PRESENTED TO THE PURCHASING DIVISION. Offers will be received by the City of El Paso until **2:00 P.M., local time, on WEDNESDAY, June 8, 2011.** **Proposals will not be publicly opened and read aloud.**

5. **Addressing Instructions**

The envelope containing the offer must be addressed as follows:

CITY OF EL PASO
FINANCIAL SERVICES DEPT/PURCHASING DIVISION
2 CIVIC CENTER PLAZA, 7TH FLOOR
EL PASO, TEXAS 79901-1196
ATTN: PURCHASING MANAGER

6. **Labeling Of Proposals/Bids [Rev 6/15/05]**

The Due Date and Solicitation Number must be written on the outside of the package containing the offer. The City Purchasing Division may open any unlabeled submittal to identify it properly. Offerors are required to identify their package to protect the integrity of their proposals and to fully avail themselves of the evaluation and selection process.

Also, write the Request for Proposal Number, Request for Proposal Title, Proposal Title, and Proposal Opening clearly on a visible section of the envelope.

7. **Offeror Delivery Responsibility**

Bids received at the Purchasing Office after the specified date and time will not be accepted. Package delivery services such as FedEx, UPS, etc. deliver packages addressed to the Purchasing Manager directly to the Purchasing Division. U.S. Postal Service deliveries, including Express Mail, are only delivered to the Mail Room at City Hall and may or may not be delivered by the Mail Room to the Purchasing Division by the time and place proposals are recorded. The offeror accepts all responsibility for delivering its offer to address stated above within the specified time or the offer will be considered non-responsive and will be mailed back unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.

8. **Descriptive Literature**

Descriptive literature, where applicable, containing complete scope of services or other information sufficient for the City to determine compliance with the specifications must accompany each proposal, in DUPLICATE. If an Offeror wishes to furnish additional information more sheets may be added.

The City is not responsible for locating or securing any information that is not identified in the offer and reasonably available to the City, and the City will not be responsible for locating or securing information not included with the offer. In conducting its assessment the City may use data provided by the Offeror and data obtained from other sources, but while the City may elect to consider data obtained from other sources the burden of providing thorough and complete information rests with the Offeror.

9. **Offer Documents, Supporting Literature and Related Data**

Related data, where applicable, will be made part of the proposal. All documents, literature and related data submitted as an offer become the property of the City of El Paso.

10. **Alternate Offers**

The City of El Paso is not accepting alternate proposals for review, evaluation and/or consideration.

11. Solicitation Changes or Clarifications

Requests for changes or clarifications to this solicitation are welcomed by the Purchasing Division for its consideration, provided the requests are made in writing and received before **May 16, 2011** before the proposal due date. Requests received after that time may not elicit a response. Refer to REQUESTS FOR CLARIFICATION in Communication Section for more details.

12. Acknowledgement of Solicitation Amendments

All Amendments will be acknowledged on the *Solicitation of Offers* form (first page of this solicitation). Failure to do so may cause the proposal to be rejected. It is the Offeror's responsibility to ensure that all information regarding the RFP, including all amendments, is included in the offer. Amendments may be posted at any time up to and including the due date.

13. Proposal/Bid Preparation Cost

This solicitation does not commit the City of El Paso to pay any costs incurred in preparing and submitting the proposal or to contract for the services specified. This RFP is not to be construed as a contract or a commitment of any kind, nor does it commit the City of El Paso to pay for any costs incurred in the preparation of a formal presentation, or for any costs incurred prior to the execution of a formal contract.

14. Additional Information

For further procedural information concerning this Request for Proposal contact the point of contact for contract administration (refer to in the Communication Section for contact details).

15. Notification to Unsuccessful Offerors

All awards are made by the City Council of the City of El Paso. All City Council agenda are posted on the City of El Paso's Web Page for review by all Offerors. The URL is: <http://www.elpasotexas.gov>.

16. Acceptance or Rejection of Proposals

The City reserves the right to accept or reject any or all proposals, to waive all minor technicalities, and to accept the proposal or proposal determined to be the most advantageous to the City. Additionally, the City may accept a proposal subject to an exception if, in the sole judgment of the City, the proposal meets or exceeds the City's specifications.

17. Failure to Respond to Solicitations

Any offeror who fails to respond to three consecutive solicitations will be purged from the mailing list. It is the offeror's responsibility to remain on the mailing list under his requested commodity classes.

18. Time

[RESERVED]

19. Debriefing Requests

A written request for a debriefing should be directed to the Analyst identified in **Request for Clarification in Part 2, Item 2.3.2** within five (5) days after the date of award. Debriefing requests will be scheduled with the appropriate evaluation committee and Purchasing representative.

20. Protest/Dispute Procedure

Only an Offeror who has actually submitted a proposal may appeal an award decision.

Failure to follow the requirements of the Protest procedures established by the City of El Paso, Texas, shall constitute a waiver of all protest rights.

Protest must be made after the Council agenda has been posted and by 5 p.m. the day before the Council meeting in which the award will be made. The Offeror must write a letter to Bruce D. Collins, Purchasing Manager, using the phrase "Proposal Protest" to the address listed above. Protest must be sent by certified or registered mail or delivered in person. Note: the recommendation for award is posted on the City's website at least 72 hours before each Tuesdays Council meeting.

The written protest should include 1) the Request for Proposal number and should clearly state, with particularity, the relevant facts believed to constitute an error in the award recommendation, or desired remedy; 2) a specific identification of the statutory or regulatory provision that the Protesting Offeror alleges has been violated and the provisions entitling the Protesting Offeror to relief; 3) a specific factual description, with particularity, of each action by the City that the Protesting Offeror alleges to be a violation of the statutory or regulatory provision that the Protesting Offeror has identified pursuant to item (2) of this paragraph (mere disagreement with the decisions of City employees does not constitute grounds for protest). If there is no disputed issue of the material fact, the Protest must indicate this as well.

Only the information provided within the protest period will be considered for response.

PART 3 - SCOPE OF WORK

3.1 SCOPE OF WORK

The intent of this Request for Proposals ("RFP") is to provide interested and qualified Offerors with sufficient information to submit responses to Establish an EB-5 Regional Center & perform as its Investment Manager.

3.2 MINIMUM REQUIREMENTS

Contractor shall perform the activities 3.2.1 and 3.2.2 concurrently:

- 3.2.1 Assist the City in the preparation and filing of the USCIS Form I-924 for status as an EB-5 Regional Center under the Immigrant Investor Pilot Program to include consulting in structure of ownership and control of Regional Center, administration, oversight, staff and stakeholder education. City will provide applicable resources and work together with Contractor to include: staff time, demographic data, access to local resources and other pertinent information to successfully apply for EB-5 Regional status. City will pay application fee. Contractor will bear the costs to prepare the application for signature of authorized official of the City of El Paso.
- 3.2.2 Establish and operate a Regional Center to both source and deploy equity capital invested by foreign investors who seek to participate in the visa program established under section 203(b)(5)(B) the Immigration Nationality Act (INA). At least one attorney licensed by the State Bar of Texas must be part of project team with primary responsibility for making investment decisions.
- 3.2.3 Contractor must establish a local contact point upon award of Contract. A fully operational office may be established upon approval of the I-924 application.

- 3.2.4 Contractor must possess access to capital of not less than \$1,500,000 for purposes of funding business operations and working capital needs.

PART 4 - PROPOSAL FORMAT AND SUBMISSION.....

4.1 Proposal Format and Structure

All submissions must follow the submission guidelines below. The City reserves the right to reject proposals not in compliance with these requirements.

1. Use fonts no smaller than Times New Roman, 10 point.
2. All pages must be numbered.
3. **Describe the offeror's capabilities and experience associated with the Evaluation Factors in the order presented in PART 5 – PROPOSAL EVALUATION.**
4. Major sections must have page breaks between them and the following sections.
5. The proposal must be signed and titled by a duly authorized representative of the Offeror.

In addition, the City requires that all proposals contain the following:

6. Title Page – Clearly label with the RFP number, RFP title, Offeror's name, mailing address, and fax number, and the name, telephone number, and email address of a contact person.
7. Table of Contents – Identify the page location of each major section.
8. Introduction – Provide brief narrative of background and general qualifications of the Offeror, including any experience with services/products similar in scope and/or size to those requested in this RFP.
9. Offeror's Proposal – Include all pages from this Request for Proposals in addition to any other materials submitted by the Offeror. State in succinct terms the Offeror's understanding of the services to be provided and how the Offeror anticipates being able to meet the scope of work as delineated within Part 3 Scope of Work.
10. Provide a business plan and/or pro forma financial projections for the Proposing Firm covering a period of not less than five (5) years, assuming that the Proposing Firm is selected to manage the CDRC and Proposed EB-5 Fund.
11. Provide evidence that Contractor has access to capital of not less than \$1,500,000 for purposes of funding business operations and working capital needs.
12. Contract Clauses and Forms – Include all pages and completed forms. In addition to the above information, describe any prior or pending litigation, civil or criminal, involving a governmental agency or which may affect the performances of the services to be rendered. This includes any instances in which the Offeror or any of its employees, subcontractors, or sub-consultants is or has been involved within the last three years.
13. Client list – include points of contact and relevant information from three or more organizations that have used your company for similar products/services within the last five years.

14. Response must demonstrate your comprehension of the objectives and services from the RFP. Do not merely duplicate the Scope of Work as presented within this RFP.
15. Appendices – include any additional information that the Offeror deems important to the decision process but that is not specified elsewhere in the RFP.
16. Identify by name and title the individual responsible for the administration of the project. (That is, the individual who has the responsibility to oversee the contract, not a firm's contract negotiator, etc.)
17. Identify the project organization and staffing. A project organizational chart is to be provided, along with resumes of the personnel assigned to the project. Level of staff for work to be performed under this Contract. Proposals must describe the work to be performed by the individuals you name to perform essential functions and detail their specific qualifications and substantive experience directly related to this RFP. A response prepared specifically for this RFP is required. Focus on individual's specific duties and responsibilities and how project experience is relevant to the requirements of this RFP. Describe the ownership structure of your firm and identify any (all) affiliated and subsidiary organization(s).
18. Describe any potential conflicts of interest your firm might have in the management of the proposed EB-5 fund.
19. Describe any claim or litigation or other legal/regulatory proceedings, investigations or disciplinary actions relating to business in which any member of the proposing firm's management as been involved during the prior three (3) year period.
20. List all applicable Federal and State licenses.
21. A list of references that can be contacted to discuss the performance on similar work. If available, provide a sample of comparable data your firm has generated for a similar project.

References that are not relevant to RFP should not be included. Therefore, the References provided should be directly related to the requirements in the statement of work. The City is particularly interested in government references. The City may obtain other information by sending out questionnaires and/or through other sources. References other than those identified by the Offeror may be contacted by the City with the information received used in the evaluation.

22. Additional Information or other issues you may deem relevant. Offerors are asked not to include loose brochures (e.g. general marketing material). **BROCHURE MATERIAL WILL NOT BE CONSIDERED FOR REVIEW.** Only pertinent information should be submitted.

4.2 Copies Required.....

Paper – One (1) complete, original copy (signed in blue ink where required) and **FOUR (4) copies**, both contained in a single sealed submission. All responses shall contain those pages on which prices, other information, or signatures are required.

Electronic – One (1) electronic copy on a CD-ROM or flash drive. Format of the electronic copy must be either .doc (readable by Microsoft Word 2003 or 2007) or .pdf (readable by Adobe Reader 9). The content of the electronic file shall be an exact submission of the hard copies of the proposals (i.e., documents should bear signatures, where applicable and be filled out entirely). In event of discrepancy/conflict between the hard copy and electronic copy will govern.

4.3 Fee Proposal.....

1. Will the Contractor charge a closing fee to investors in the proposed EB-5 fund?

YES NO

Closing Fee _____
(Attach additional pages if needed)

2. Will Contractor charge an ongoing management fee to investors in the proposed EB-5 fund?

YES NO

Management Fee _____
(Attach additional pages if needed)

3. Will the Contractor charge a performance or incentive fee to investors in the proposed EB-5 fund?

YES NO

Performance/Management Fee _____
(Attach additional pages if needed)

4. Will the Contractor establish an EB-5 Regional Center as specified in 3.2.1 above?

YES NO

If NO, what will Contractor charge \$ _____
(Fixed Fee)

PART 5 - PROPOSAL EVALUATION.....

5.1 Evaluation Factors

The proposal evaluation process is designed to award the contract, not necessarily to the Respondent of least cost, but rather to the Respondent with the best combination of attributes (i.e., qualifications and experience, cost) based upon the evaluation factors specifically established for this RFP.

Respondents must provide all information outlined in the Evaluation Factors to be considered responsive. Proposals will be evaluated based on the responsiveness of the Respondent's information to the Evaluation Factors which will demonstrate the Respondent's understanding of the Evaluation Factors and capacity to perform the required services of this Request for Proposals.

Proposals will be evaluated based on the following Evaluation Factors:

EVALUATION FACTORS	MAXIMUM POINTS
A. Establishment of EB-5 Regional Center	20 Points
B. Sourcing and Deploying Equity Capital	20 Points
C. Technical Compliance and Management	30 Points
D. Investment Strategy and Monitoring	10 Points
E. Fee Proposal	20 Points
TOTAL	100 Points

The establishment, application and interpretation of the above Evaluation Factors shall be solely within the discretion of The City. The City reserves the right to determine the suitability of proposals on the basis of all these factors.

5.2 Evaluation Factor Description

Evaluation Factor A - ESTABLISHMENT OF EB-5 REGIONAL CENTER

(20) Points

1	Describe experience in successfully applying for status as an EB-5 Regional Center.	5 Points
2	Describe plan and timeline for the application as Regional Investment Center, establishment and commencement of operations including plans to open and operate an office in El Paso.	15 Points

Evaluation Factor B - SOURCING AND DEPLOYING EQUITY CAPITAL

(20) points

1	Describe experience in sourcing and deploying equity capital invested by foreign investors seeking to participate in the EB-5 program.	10 Points
2	Describe experience in establishing an EB-5 investment fund, to include: underwriting capability; capacity to market the fund; administrative experience related to fund management, USCIS and SEC compliance.	10 Points

Evaluation Factor C - TECHNICAL COMPLIANCE AND MANAGEMENT

(30) points

1	Describe background and experience with foreign and domestic capital investment, and the ability to ensure the program is in compliance with SEC (Securities and Exchange Commission) and USCIS rules.	5 Points
2	Describe firm's personnel with primary responsibility for making investment decisions, to include experience acting as either a principal decision-maker or advisor on investment activities within an EB-5 Fund, and that of the attorney licensed by the State Bar of Texas.	5 Points
3	Describe experience negotiating and executing investments that require local, state and federal regulation and oversight including issues of governance and transparency.	5 Points
4	Describe track record and active participation in working with local governments, community organizations or other non-profits as it relates to investing in businesses located in or originated from low-to moderate-income areas	5 Points
5	Describe firm's experience in establishing an organizational structure that will allow for compliance/internal controls and immigration compliance functions.	5 Points
6	Describe firm's ability to establish client servicing and reporting functions.	5 Points

Evaluation Factor D - INVESTMENT STRATEGY AND MONITORING**(10) points**

1	Describe in detail how the proposing firm expects to source transactions for the proposed EB-5 fund to include a detailed narrative and flowchart showing the process by which the proposing firm will identify and then execute an investment opportunity, including the involvement of an underwriting function, committees, diligence teams, document production staff, etc. Please identify the professionals/key management who will be involved in these roles and for which they will be responsible (to include % of time of each).	5 Points
2	Describe the unique elements of the proposed EB-5 fund's strategy, to include: Will the proposed EB-5 fund act as a lead investor or co-investor in its transactions? Will the fund add value to portfolio companies on a strategic, financial and operating basis? How long will the EB-5 fund hold investments? Will the investments be debt, equity or both? How will the EB-5 fund exit investments?	5 Points

Evaluation Factor E – FEE PROPOSAL (See Section 4.3 - Fee Proposal)**(20) points**

(Ranked based upon lowest fee or cost)

1	Closing Fee	5 Points
2	Ongoing management fee	5 Points
3	Performance/incentive fee	5 Points
4	Cost to establish EB-5 Regional Center	5 Points

5.3 Evaluation and Award Process-General Information

- A. All offers are subject to the terms and conditions of this solicitation. Material exceptions to the terms and conditions, or failure to meet the City's minimum specifications, shall render the offer non-responsive to the solicitation.
- B. Any award made under this solicitation shall be made to the Offeror who provides goods or services, other than professional services as defined by Section 2254.002 of the Government Code, that are determined to be the most advantageous to the City. Factors to be considered in determining the proposal most advantageous to the City are included below.
- C. Prompt payment discounts will be considered when determining the apparent lowest Offeror, providing the City is allowed at least ten (10) days in which to take advantage of the discount.

5.3.1 Evaluation and Award Process

As part of the requirement to establish the responsibility of the Offeror, the City of El Paso may perform a price analysis to determine the reasonableness of the price(s) at which the supplies and/or services are offered. Prices that are significantly lower than the mean of all offers and that appear to be unreasonably low may be determined to be evidence of non-responsibility, and cause the Offer to be rejected.

- A. The Evaluation Committee shall be established to evaluate proposals based solely on the Evaluation Factors set forth below. Factors not specified in the RFP will not be considered. The City reserves the right to waive any minor irregularities or technicalities in the proposals received. Proposals will be evaluated on an individual basis against the requirements stated in the RFP.

- B. Minor problems of completeness or compliance may be called to the attention of Offerors for clarification. Substantial deviations from specifications or other requirements of this RFP will result in disqualification of the proposal.
- C. Cost will not be the only consideration in the selection of short listed proposals. Detailed evaluation of proposals will involve a determination of the most favorable combination of various elements contained in this RFP. The selection of the ultimate winning proposal will be based upon what the evaluators believe to be most advantageous to the City.
- D. During the evaluation process, the City reserves the right, where it may serve in the City's best interest, to request additional information or clarifications from Offerors, or to allow corrections of errors or omissions.
- E. After evaluations, the Evaluation Committee will determine a short list also known as competitive range. The short list/competitive range includes the proposals that have a reasonable chance of being selected for award considering all aspects of the RFP. The City may request Best and Final Offers (BAFO) and negotiate with the Respondent(s) who fall within the short list/competitive range. If required, only those Respondents within the short list/competitive range may be selected for an oral presentation and/or interview.
- F. The presentation/interview process will be arranged to assist the Evaluation Committee in differentiating those Respondents within the short list/competitive range. Points may be deducted from the Respondent's preliminary score as deemed necessary by the Evaluation Committee.
- G. The City reserves the right to negotiate the final scope of services, price, schedule, and any and all aspects of this solicitation with all Respondents in the competitive range. Once negotiations are complete, the City shall establish a common date and time for the submission of Best and Final Offers. If a Respondent does not submit a notice of withdrawal of its offer, or a Best and Final Offer, the Respondent's immediate previous offer shall be construed as its best and final offer.
- H. The best and final offers shall be evaluated in essentially the same manner as the initial offers. The contract shall be awarded to the responsible Respondent whose qualifications, price and other factors considered, are the most advantageous to the City.
- I. The City reserves the right to award this contract to one Respondent, to make multiple awards and to award without discussions. The city may reject any or all offers if such action is in the City's interest, award contract other than to the lowest Respondent, waive informalities and minor irregularities in offers received, and award all or part of the requirements stated.
- J. Proposals that are considered non-responsive will not receive consideration. The City reserves the right at any time during the evaluation process to reconsider any proposal submitted. It also reserves the right to meet with any Respondent at any time to gather additional information. Furthermore, the City reserves the right to delete, add or modify any aspect of this procurement through competitive negotiations up until the final contract signing.
- K. The successful Offeror's proposal will be incorporated into the final contract. Any false or misleading statements found in the proposal will be grounds for disqualification or contract termination. Submission of a proposal indicates acceptance by the Offeror of the conditions contained in this RFP, unless clearly and specifically noted in the proposal and confirmed in the contract between the City and the Offeror selected.

2

PART 6 - MANDATORY SUBMITTALS

6.1 Acknowledgement by Offeror.....

6.2 Business Information Certification

6.3 Non-Collusion and Business Disclosure Affidavit

6.4 Indebtedness Affidavit.....

The undersigned hereby acknowledges and agrees that:

1. The Request for Proposals has been reviewed by the undersigned prior to the execution of this proposal;
2. The City may reject any or all proposals submitted;
3. The City may award the privilege to the Offeror that, in the sole opinion of the City, provides best value to the City and the public interest;
4. The decision of the City in selection of the successful Offeror shall be final, and not subject to review or attack; and
5. This proposal is made with full knowledge of the foregoing and in full agreement thereto.

By submission of this proposal, the Offeror acknowledges that the City of El Paso has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in the proposal and related documents, and authorizes release to the City of El Paso of information sought in such inquiry or investigation.

ATTESTED BY: _____

By: _____

Name: _____

Title: _____

(Corporate seal, if applicable)

BUSINESS INFORMATION CERTIFICATION

Mark all that apply.

- | | |
|---|--|
| <input type="checkbox"/> Manufacturer or Producer | <input type="checkbox"/> Disadvantaged Business Enterprise |
| <input type="checkbox"/> Wholesaler | <input type="checkbox"/> Asian - Pacific American |
| <input type="checkbox"/> Retailer | <input type="checkbox"/> Black American |
| <input type="checkbox"/> Franchised Distributor | <input type="checkbox"/> Hispanic American |
| <input type="checkbox"/> Factory Representative | <input type="checkbox"/> Native American |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Woman Owned Business |
| <input type="checkbox"/> Large Business | <input type="checkbox"/> Handicapped |
| <input type="checkbox"/> Small Business | <input type="checkbox"/> Local Business Enterprise |
| | <input type="checkbox"/> HUB State Certified Historically Underutilized Business
(please furnish copy of Certification) |

SMALL BUSINESS CONCERN: Less than \$1,000,000.00 in annual receipts or fewer than one hundred [100] full time employees.

DISADVANTAGED BUSINESS ENTERPRISE: At least fifty-one percent [51%] owned by one or more socially disadvantaged individuals, or a publicly held corporation with at least fifty-one percent [51%] of the stock owned by one or more such individuals.

WOMAN-OWNED BUSINESS: At least fifty-one percent [51%] owned by a woman, or women, who also control and operate the business. "Control" in this context means making policy decisions. "Operate" in this context means actively carrying on day to day management

HANDICAPPED: At least fifty-one percent [51%] owned by a person or persons with an orthopedic, otic [hearing], optic [visual], or mental impairment which substantially limits one or more of their major life activities.

LOCAL BUSINESS ENTERPRISE: A legal entity, a least fifty-one percent [51%] of which is owned by a resident, or residents of El Paso County, and which concern has been physically located within the legal boundaries of El Paso county for at least twelve [12] months.

HUB [HISTORICALLY UNDERUTILIZED BUSINESS]: A Business Enterprise, which has been granted a Certificate by the State of Texas, as a Historically Underutilized Business. The City of El Paso utilizes information on Historically Underutilized Businesses (HUB), from the State of Texas Comptroller of Public Accounts (CPA), HUB Program, 1711 San Jacinto Ave, P.O. Box 13186, Austin, Texas 78711. The City encourages you to contact the State if you feel you may qualify.

I certify that the foregoing information is a full, true and correct statement of the facts.

Signature of Person Authorized to Sign Application

Title

Date



City Of El Paso
Financial Services Department – Purchasing Division

NON-COLLUSION AND BUSINESS DISCLOSURE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared _____, a person known to me to be the person whose signature appears below; whom after being duly sworn upon his/her oath deposed and said:

1. I am over the age of 18, have never been convicted of a crime and am competent to make this affidavit.
2. I am a duly authorized representative of the following company or firm (the "Offeror") which is submitting a response to 2011-229R
ESTABLISH AND OPERATE EB-5 REGIONAL CENTER - DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT.

(Name of Offeror).

3. **BY SUBMITTING THIS BID, I CERTIFY THAT OFFEROR AND ITS AGENTS, OFFICERS OR EMPLOYERS HAVE NOT DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENTS, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THIS PROPOSAL OR WITH ANY CITY OFFICIAL.**
4. I have listed in Paragraph 10 below all the names the Offeror uses and has used in the past and certify that I have disclosed all such names, including any assumed (DBA) names.
5. **Certificate of Organization.** In completing this Affidavit, I have attached a copy of the organization certificate issued by the Secretary of State of the state in which the company was organized (i.e. Certificate of Formation, Certificate of Good Standing, Statement of Operation or Registration and/or a copy of Assumed Name Certificate if the Offeror/Offeror used a trade name in the Solicitation documents is other than the name under which company was organized).
6. **Material Change in Organization or Operation.** *Except as described in Paragraph 10 below*, I certify that Offeror is not currently engaged nor does it anticipate that it will engage in any negotiation or activity that will result in the merger, transfer of organization, management reorganization or departure of key personnel within the next twelve (12) months that may affect the Offeror's ability to carry out the contract with the City of El Paso.
7. **Debarment/Suspension.** *Except as described in Paragraph 10 below*, I certify that Offeror and its subcontractors, officers or agents are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any covered transactions by any federal, state or local department or agency. If such an event has occurred, state in Paragraph 10 below, the reason for or the circumstances surrounding the debarment or suspension, including but, not limited to, the name of the governmental entity, the period of time for such debarment or suspension and provide the name and current phone number of a governmental contact person familiar with the debarment or suspension.

I understand the Offeror is obligated to immediately inform the City in the event that the Offeror is included in such a debarment/suspension list during the performance of this Contract with the City of El Paso.

8. **Default/Termination of Contracts.** *Except as described in Paragraph 10 below*, I certify that, within the last 24 months, there are no Contract(s) between the Offeror and a governmental entity that have been terminated, with or without the Offeror's default. If such a contract has been terminated within the last 24 months, state in Paragraph 10 below the reason for or circumstances surrounding the termination.
9. **Taxpayer Identification.** In completing this Affidavit, I have also attached a copy of a completed Form W-9 that shows the Offeror's taxpayer identification number (Employer Identification Number or Social Security Number). I understand that failure to provide this information may require the City to withhold 20% of payments due under the contract and pay that amount directly to the IRS.



10. Additional Information (state the number of paragraph

ponds to the information provided)

Multiple horizontal lines for providing additional information.

(Attach additional pages if needed)

Attached are the following:

- Certificate of Organization (required by Paragraph 5)
- Taxpayer Identification (required by Paragraph 9)

I understand that by providing false information on this Affidavit, I could be found guilty of a Class A misdemeanor or state jail felony under the Texas Penal Code, Section 37110. In addition, by providing false information on this Affidavit, the Offeror it could be considered not responsible on this and future solicitations, and such determination could result in the discontinuation of any/all business or contracts with the Offeror by the City of El Paso.

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20_____

Signature

Notary Public

Printed Name

Commission Expires

(Rev. Sept. 2009)

Financial Services Department – Purchasing Division

INDEBTEDNESS AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned authority, on this day personally appeared _____ [FULL NAME] (hereafter “Affiant”), a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed stated as follows:

1. Affiant is authorized and competent to give this affidavit and has personal knowledge of the facts and matters herein stated.
2. Affiant is an authorized representative of the following company or firm: _____ [Contracting Entity's Corporate or Legal Name] (hereafter, “Contracting Entity”).
3. Affiant is submitting this affidavit in response to the following bid: *Solicitation No. 2011-229R ESTABLISH ED-5 REGIONAL CENTER & REGIONAL CENTER INVESTMENT MANAGER - DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT*, which is expected to be in an amount that exceeds \$50,000.00.
4. Contracting Entity is organized as a business entity as noted below (check box as applicable):

For Profit Entity (select below):

- Sole Proprietorship
- Corporation
- Partnership
- Limited Partnership
- Joint Venture
- Limited Liability Company
- Other (Specify type in space provided below):

For Non-Profit Entity or Other (select below):

- Non-Profit Corporation
- Unincorporated Association

5. The information shown below is true and correct for the Contracting Entity. If Contracting Entity is a sole proprietorship or partnership, list all owners of 5% or more of the Contracting Entity. Where the Contracting Entity is an unincorporated association, the required information has been shown for each officer. [Note: In all cases, use FULL name, business and residence addresses and telephone numbers.]

Contracting Entity:

Name	
Business Address [No./Street]	
City/State/Zip Code	
Telephone Number	
Resident Address (if applicable)	
City/State/Zip Code	
Telephone Number	
Federal Tax ID Number	
Texas Sales Tax Number	



5% Owner(s) or Officers of Unincorporated Association, name, state "None":

Name	
Business Address [No./Street]	
City/State/Zip Code	
Telephone Number	
Resident Address (if applicable)	
City/State/Zip Code	
Telephone Number	

****Attach additional pages if necessary to supply the required names and addresses.**

6. Affiant understands that in accordance with Ordinance No. 016529 of the City of El Paso (the "**City**"), the City may refuse to award a contract to or enter into a transaction with Contracting Entity that is an apparent low Offeror or successful Offeror that is indebted to the City.
7. Affiant understands that the term "**Debt**" shall mean any sum of money, which is owed to the City by a Contracting Entity, Owner, or Vendor, that exceeds one hundred dollars (\$100.00) and that has become Delinquent, as defined hereinafter. Such Debt shall include but not be limited to: (i) property taxes; (ii) hotel/motel occupancy taxes; and (iii) license and permit fees.
8. Affiant understands that the term "**Delinquent**" shall mean any unpaid Debt that is past due for sixty (60) days or more and, which is not currently subject to challenge, protest, or appeal.
9. Affiant represents that to the best of its knowledge, the Contracting Entity is not indebted to the City in any amounts as described in Item No. 7 above, as of the date of the submittal. If the Contracting Entity is indebted to the City, the following represents the type and estimated amount of indebtedness:

10. If the Contracting Entity is indebted to the City, describe any payment arrangements that have been entered into to settle the Debt.

11. In the event that the City refuses to do business with a Contracting Entity due to any indebtedness listed above or as determined by the City Financial Services Department, the Contracting Agency may appeal this determination in accordance with the appeal regulations in Ordinance 016529.

Affiant certifies that he is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein; and that the information provided herein is true and correct to the best of Affiant's knowledge and belief. Affiant understands that providing false information on this form shall be grounds for debarment and discontinuation of any/all business with the City of El Paso.

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20____.

Signature

Notary Public

Printed Name

Commission Expires

(Rev. Sept. 2009)

ATTACHMENT A
CONTRACT CLAUSES

1. TYPE AND TERM OF CONTRACT

In the event the City has not obtained another service contractor by the expiration date of the term contract, the City, at its discretion, may extend the contract on a month-to-month basis not to exceed six (6) months until such time as a new contract is awarded.

The term of this agreement shall be for SIXTY (60) MONTHS commencing on the date the Contractor receives a written NOTICE OF AWARD. Delivery of the NOTICE OF AWARD shall be by Certified Mail, and the date of receipt shall be established as the date of Delivery shown on the US Postal Service Domestic Return Receipt form or facsimile confirmation.

2. INVOICES & PAYMENTS

- A. The Contractor will submit invoices, in single copy, on each contract after each delivery. Invoices covering more than one purchase order will not be accepted.
- B. Invoices will be itemized, including serial number of unit; transportation charges, if any, will be listed separately.
- C. Invoices will reflect the Contract Number and the Purchase Order Number.
- D. Do not include Federal Tax, State Tax, or City Tax. The City will furnish a tax exemption certificate upon request.
- E. Discounts will be taken from the date of receipt of goods or date of invoice, whichever is later.
- F. A copy of the bill of lading and the freight waybill when applicable will be attached to the invoice.
- G. Payment will not be due until the above instruments are submitted after delivery and acceptance.
- H. Mail invoices to the City Department indicated in the Invoice Instructions set forth on the Purchase Order.
- I. Contractor shall advise the Comptroller of any changes in its remittance addresses.

3. CONTRACTUAL RELATIONSHIP

Nothing herein will be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and the Contractor's employees. The City will not be subject to any obligations or liabilities of the Contractor or his employees incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein will constitute or designate the Contractor or any of his employees as employees of the City. Neither the Contractor nor his employees will be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

4. **INDEMNIFICATION [Rev. 04-15-99] [Rev. 01-04-04]**
Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY

AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING

BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.

5. GRATUITIES

The City may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

6. WARRANTY-PRICE

- A. The price to be paid by the City will be that contained in the Contractor's bid which the Contractor warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty the

prices of the items will be reduced to the Contractor's current prices on orders by others, or in the alternative, the City may cancel this contract without liability to Contractor for breach or Contractor's actual expense.

B. The Contractor 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 bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the City will have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. RIGHT TO ASSURANCE

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

8. TERMINATION [Rev. 06/07/97]

A. Termination for Convenience

The City of El Paso may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City of El Paso to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of El Paso, the Contractor will account for the same, and dispose of it in the manner the City of El Paso directs.

B. Termination for Default

If the Contractor fails to comply with any provision of the contract the City of El Paso may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. The City shall have the right to immediately terminate the Contract for default if the Contractor violates any local, state, or federal laws, rule or regulations that relate to the performance of this Agreement.

9. ADDITIONAL REMEDIES [New 12/96]

If the City terminates the contract because the Contractor fails to deliver goods as required by the contract, the City shall have all of the remedies available to a buyer pursuant to the *UNIFORM COMMERCIAL CODE* including the right to purchase the goods

from another vendor in substitution for those due from the Contractor. The cost to cover shall be the cost of substitute goods determined by informal or formal procurement procedures as required by the Local Government Code. The City may recover the difference between the cost of cover and the contract cost by deducting the same from amounts owed to Contractor for goods delivered prior to termination or any other lawful means.

10. TERMINATION FOR DEFAULT BY CITY [Rev. 06/09/97]

If the City fails to perform any of its duties under this contract, Contractor may deliver a written notice to the Purchasing Manager describing the default, specifying the provisions of the contract under which the Contractor considers the City to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor at its sole option may extend the proposed date of termination to a later date. If the City fails to cure such default prior to the proposed date of termination, Contractor may terminate its performance under this Contract as of such date.

11. FORCE MAJEURE [Rev. 06/07/97]

If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty. If a party is unable to comply with the provisions of this contract by reason of Force Majeure for a period beyond thirty days after the event or cause relied upon, then upon written notice after the thirty (30) days, the affected party shall be excused from further performance under this contract.

12. ASSIGNMENT-DELEGATION

No right or interest in this contract will be assigned or delegation of any obligation made by the Contractor without the written permission of the City. Any attempted assignment or delegation by the Contractor will be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

13. 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 and is in writing signed by the aggrieved party.

14. INTERPRETATION-PAROL EVIDENCE

This writing 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 contract. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in this contract.

Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this contract 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 is used in this contract, the definition contained in the Code is to control.

15. APPLICABLE LAW

The law of the State of Texas will control this contract along with any applicable provisions of Federal law or the City Charter or any ordinance of the City of El Paso.

16. ADVERTISING

Contractor will not advertise or publish, without the City's prior consent, the fact that the City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

17. AVAILABILITY OF FUNDS

The awarding of this contract is dependent upon the availability of funding. In the event that funds do not become available the contract may be terminated or the scope may be amended. A 30-day written notice will be given to the vendor and there will be no penalty nor removal charges incurred by the City.

18. VENUE

Both parties agree that venue for any litigation arising from this contract will lie in El Paso, El Paso County, Texas.

19. ADDITIONAL REMEDY FOR HEALTH OR SAFETY VIOLATION

If the Manager of Purchasing determines that Contractor's default constitutes an immediate threat to the health or safety of City employees or members of the public he may give written notice to Contractor of such determination giving Contractor a reasonable opportunity to cure the default which shall be a period of time not less than 24 hours. If the Contractor has not cured the violation within the time stated in the notice, the City shall have the right to terminate the contract immediately and obtain like services as necessary to preserve or protect the public health or safety from another vendor in substitution for those due from the Contractor at a cost determined by reasonable informal procurement procedures. The City may recover the difference between the cost of substitute services and the contract price from Contractor as damages. The City may deduct the damages from Contractor's account for services rendered prior to the Notice of Violation or for services rendered by Contractor pursuant to a different contract or pursue any other lawful means of recovery. The failure of the City to obtain substitute services and charge the Contractor under this clause is not a bar to any other remedy available for default.

20. COMPREHENSIVE GENERAL LIABILITY INSURANCE

For the duration of this contract and any extension hereof, Contractor shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

- \$1,000,000.00 – Per Occurrence
- \$1,000,000.00 – General Aggregate
- \$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

Notices and Certificates required by this clause shall be provided to:

City of El Paso
Financial Services Department/Purchasing Division
2 Civic Center Plaza, 7th Floor
El Paso, Texas 79901-1196
Attn: PETE DUNAVANT, ADMINISTRATIVE ANALYST

Please refer to Bid Number/Contract Number and Title in all correspondence.

Failure to submit insurance certification may result in contract cancellation.

21. WORKERS' COMPENSATION

For the duration of this contract and any extension hereof, Contractor shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law: \$500,000.00. Out-of-state Contractors that provide goods through US mail, UPS, etc. are exempt from this requirement.

22. CONTRACT ADMINISTRATION

The point of contact for the administration of this Contract, on behalf of the City of El Paso, is:

Pete Dunavant
Telephone: (915) 541-4195
Fax: (915) 541-4347
Email: DunavantPP@elpasotexas.gov

Mail correspondence should be addressed to:

City of El Paso
Financial Services - Purchasing Division
2 Civic Center Plaza, 7th Floor
El Paso, TX 79901-1196
Attn: Pete Dunavant

Please refer to Bid Number/Contract Number and Title in all correspondence.

23. COMPLIANCE WITH NON-DISCRIMINATION LAWS

The Contractor agrees that it, its employees, officers, agents, and subcontractors, will comply with all applicable federal and state laws and regulations and local ordinances of the City of El Paso in the performance of this Contract, including, but not limited to, the American with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws.

The Contractor further agrees that it, its employees, officers, agents, and subcontractors will not engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, any of the accommodations, advantages, facilities, or services offered to the general public by place of public accommodation.

24. RIGHT TO AUDIT

The Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and copy any directly pertinent books, computer and digital files, documents, papers, and records of the Contractor involving transactions relating to this Contract. Contractor agrees that the City shall have access during normal working hours to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give Contractor reasonable advance notice of intended audits. The City will pay Contractor for reasonable costs of any copying the City performs on the Contractor's equipment or requests the Contractor to provide. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

The Contractor agrees that it will include this requirement into any subcontract entered into in connection with this Contract.

25. COOPERATIVE PURCHASING

When stated specifically in the solicitation, the City of El Paso may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies or agencies of the State of Texas for the purpose of combining requirements to increase the efficiency or reduce administrative expenses. The Contractor must deal directly with each participating governmental entity named in the solicitation concerning the placement of orders, issuance of the purchase order, insurance certificates, contractual disputes, invoicing and payment or any other terms or conditions the participating agency may require. The actual utilization of this contract award by the participating governmental entity is at the sole discretion of that participating entity.

The City of El Paso is acting on behalf of the participating governmental agency for the sole purpose of complying with Texas competitive bidding requirements and shall not be held liable for any costs, damages, etc. incurred by the Contractor with regard to any purchase by the participating agency. The City of El Paso shall be legally responsible only for payment for goods and services in the quantities detailed in the City's own purchase order or contract.

Exhibit A

EL PASO & AREA DEMOGRAPHICS AND DESCRIPTION

El Paso demographics and area: The area to be covered is defined as the City of El Paso. The City of El Paso encompasses 259.82 square miles with a total population of approximately 649,121 and a total population in the MSA of 800,647. 82% of the area's population resides in the city limits.

El Paso is in the midst of an economic transformation. The primary pillars of this transformation are the expansion of Ft. Bliss, extensive downtown redevelopment, a new medical school, and significant investment in the University of Texas at El Paso. Ft. Bliss army base is expanding from approximately 9,000 soldiers to a total of 38,000 troops, plus accompanying spouses and family bringing the total influx to 53,000. Current investment in Downtown El Paso since 2006 totals over \$230 million with the Texas Tech University Paul Foster School of Medicine representing an additional \$160 million and the first medical school along the southern border of the U. S.

El Paso represents a true international Metroplex and shares its downtown with its sister city, Ciudad Juarez, Chihuahua, Mexico. Cross-border retail is fueled by millions spent by Mexican consumers. The impact of purchases in El Paso by Mexican Nationals is substantial and plays a critical role in local retail trade. Ciudad Juarez is home to a maquila (international twin plant manufacturing) industry comprised primarily of U. S. manufacturing companies that employ almost 300,000 workers from both sides of the border. Ciudad Juarez' population totals approximately 1.6 million and the two economies are closely interlinked.

The City's Office of Planning and Economic Development is responsible for job creation and redevelopment and is home to a number of other initiatives, most notably the Business Retention and Expansion program and the Downtown 2015 Redevelopment Plan. The Business Retention and Expansion program is built upon a business visitation and relationship building effort designed to learn about the barriers to growth that businesses experience. Target industry sectors include Advanced Manufacturing, Biomedical, Defense/Aerospace, Creative Class, Alternative Energy, top 50 employers, and top 50 maquiladoras.

El Paso, Texas & Ciudad Juárez Facts & Figures

The greater El Paso Region is positioned in southwestern Texas and south-central New Mexico on the U.S./Mexican border and encompasses an estimated population of more than 2.3 million.

El Paso is the largest metro area on the U.S./Mexican border and the region constitutes the largest bi-national metropolitan area in the Western Hemisphere.

Cd. Juarez is the largest city in the state of Chihuahua and the fifth largest in Mexico. Ciudad Juarez comprises about 40% of the total population in the state of Chihuahua with over 3 million people.

19,245,563 northbound border crossings in 2010 (pedestrians & vehicles)

- 11,806,062 private vehicle
- 7,439,501 pedestrians
- 803,667 trucks
- (14.2% increase in northbound truck traffic from 2009)

Ciudad Juarez contributes approximately \$1.7-\$1.8 billion worth of retail sales in El Paso per year (approx 3,800 retail jobs). The impact of purchases in El Paso by Mexican nationals is substantial in all accounts and plays a critical role in the retail trade sector. Since most of the retail trade conducted is done in cash, it is difficult to document the share of retail spending by Mexican nationals. However, the license plates in the parking lots tell the story.

On average, there are 43,000 private vehicles and 21,000 people crossing the bridges in El Paso daily. (*Source: U.S. Customs & Border Protection*)

Travel automobile spend an average: \$182/visit

Travel by bus spend an estimated minimum: \$80/visit

Travel by airplane spend an average: \$ 2,038/visit

El Paso has 4 International Border Ports of Entry bordering its sister City of Ciudad Juarez and 6 International Border Ports of Entry outside of El Paso:

- Bridge of the Americas
- Ysleta International Bridge (Dedicated Commuter Lane)
- Paso Del Norte Bridge
- Stanton Street Bridge (Dedicated Commuter Lane)
- Santa Teresa/Fabens/Columbus/Presidio

Industrial activity & maquiladoras impact on El Paso & Ciudad Juárez

The El Paso – Cd. Juarez Borderplex is one of the busiest in terms of commercial trade and passenger traffic between the U.S. and Mexico. Cd. Juarez is also the largest production-sharing center in North America.

More than \$69.4 Billion in U.S.-Mexico trade crossed through the ports in the El Paso region in 2010 – a 47% increase from 2009.
(18% of all U.S. Mexico Trade in 2010)

2010 total imports in the El Paso area: \$40.4 Billion

2010 total exports in the El Paso area: \$29.1 Billion

(Source: U.S. Department of Commerce Bureau of the Census, Foreign Trade Division)

Maquila Employment:

10 percent increase in maquiladora output in Ciudad Juarez leads to an increase in El Paso employment as follows:

- 3.0% increase in total employment
- 5.4% in transportation employment
- 1.4% in retail trade employment
- 2.2% in finance, insurance, and real estate employment (FIRE)
- 2.0% in services employment
- (-) 1.2% in manufacturing employment

(Source: Dallas Federal Reserve Bank, El Paso Branch 2011)

More than 50,000 jobs in El Paso tied to Mexico

- An estimated 3,400 managers and engineers live in El Paso and work in Juarez
- Approximately 14,000 direct employment in El Paso related to maquila
- Approximately 30,000 indirect employment in El Paso related to maquila

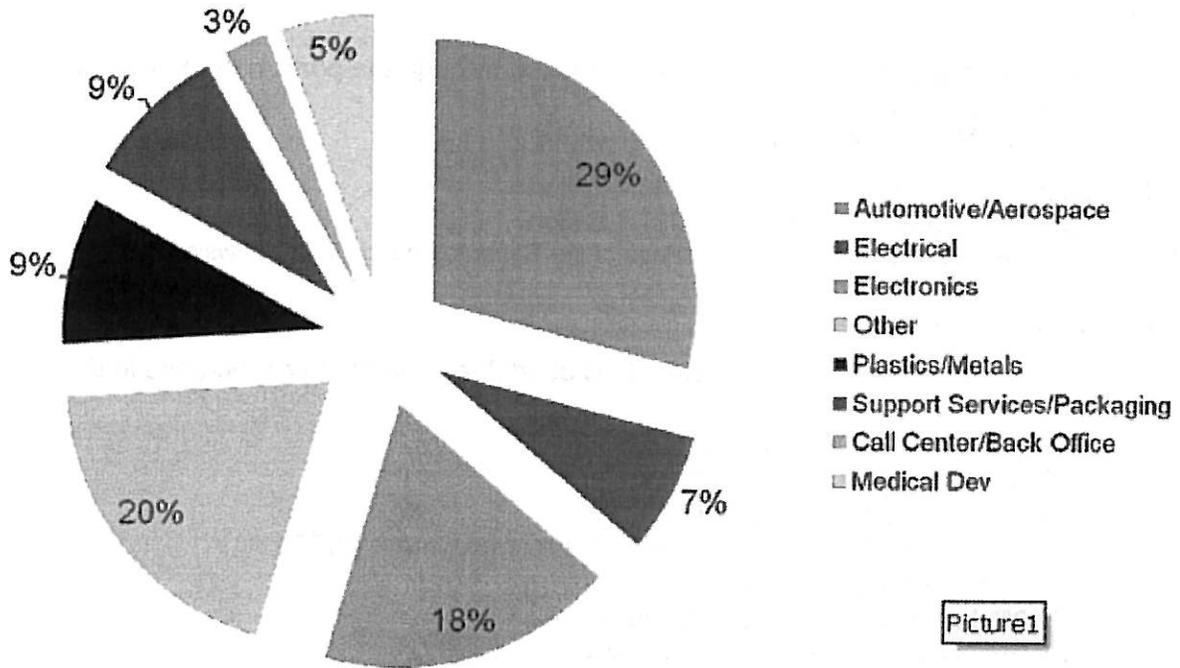
Industry Snapshot:

- 330 maquila plants located within Cd. Juarez
- 70+ Fortune 500 companies
- An estimated 200,000 employees
- 1 of 6 “maquila employees in Mexico”
- \$8 Billion in annual purchases creates other opportunities

Some of the companies include:

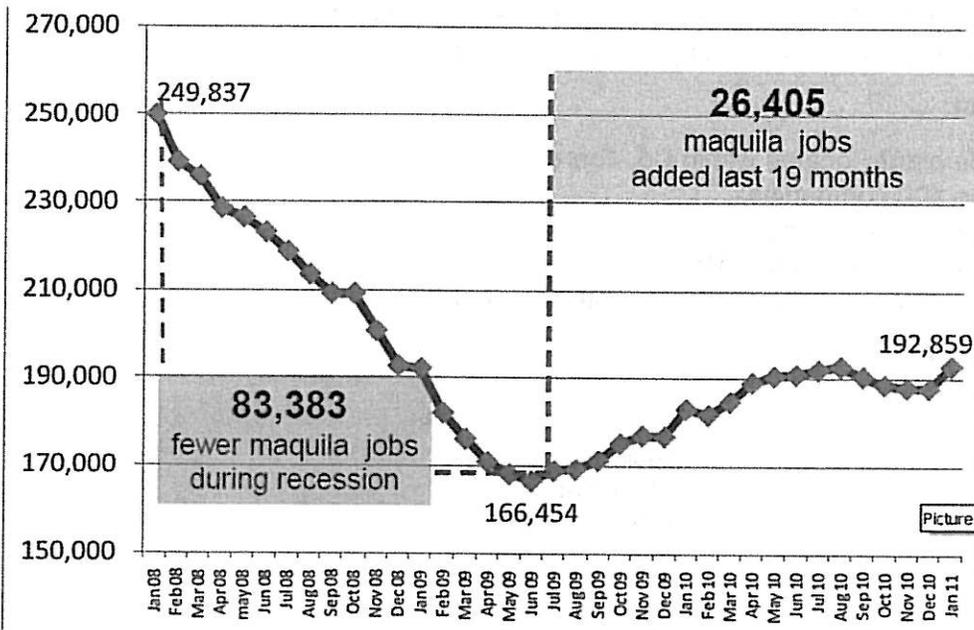
- | | |
|--------------------------------|----------------------|
| • Philips Consumer Electronics | * Flextronics |
| • A.O. Smith | * BRP |
| • Delphi | * Cardinal Health |
| • Honeywell | * Scientific Atlanta |
| • Lear | * Wistron |
| • Johnson & Johnson | * Toro |
| • Lexmark | * Emerson |
| • Robert Bosch | * General Electric |
| • MCS | |

Plants by Industry Segment in Ciudad Juarez
 (Source: Desarrollo Economico de Cd. Juarez 2009)



Picture1

Juarez Maquila Employment from January 2008 – January 2011
 (Source: IMSS Mexico 2011)



Picture1