



Purchasing

REQUEST FOR PROPOSALS # 2008198

Mesa Arts Center Web Site Design Services

December 9, 2008

NOTICE IS HEREBY GIVEN that sealed proposals will be received by the City of Mesa until **3:00 PM, Local Time, January 6, 2009** to provide **Mesa Arts Center Web Site Design Services**.

Brief Description: The Mesa Arts Center is seeking proposals from qualified firms to design, develop, implement, and host a new web site. The current web site will remain active until the new site is ready to go live. Firms will work closely with Mesa Arts Center staff, other City staff, affiliates, and other related parties during all phases of the project.

Proposals must be in accordance with the provisions, specifications and instructions set forth herein and will be received by Purchasing until the above noted time, when they will be publicly acknowledged and accepted.

Please read the entire solicitation package and submit the offer in accordance with the instructions. This document (less this invitation and the instructions) and any required response documents, attachments, and submissions will constitute the offer.

Questions concerning this solicitation should be directed to the following project contacts:

General or Process Questions:

Pat Fels
Buyer Aide
Purchasing
(480) 644-2545
(480) 644-2655 Fax
pat.fels@mesaaz.gov

Technical Questions

Darryl Woodson	or	Robert Schultz
Senior Buyer		Assistant Director
Purchasing		Mesa Arts Center
(480) 644-3261		(480)-644-6602
(480) 644-2655 Fax		(480) 644-6503
darryl.woodson@mesaaz.gov		robert.schultz@mesaartscenter.com

11/12/08

V11/1/08

20 East Main Street Suite 150
PO Box 1466
Mesa Arizona 85211-1466
480.644.2301 Tel
480.644.2655 Fax
www.mesaaz.gov

INSTRUCTIONS

i.1 SUBMIT OFFERS TO:

City of Mesa
Attn: Purchasing
20 E. Main Street, Suite 150
Mesa, AZ 85201
PO Box 1466
Mesa, AZ 85211-1466

Use label at the end of this solicitation package

Offers will be received publicly at this address. You may mail or hand deliver offers. E-mail or fax submissions will not be accepted. The City must actually receive submissions as specified. No responsibility will attach to the City of Mesa, its employees or agents for premature opening of a proposal that is not properly addressed and identified.

i.2 DUE DATE & TIME FOR SUBMISSION AND OPENING: (Also see Section i.15)

Date: January 6, 2009

Time: 3:00 P.M. (Local Time)

i.3 NUMBER OF COPIES:

Submit a signed original and 2 copy/copies of the offer in a sealed container.

- Proposals **may not** be e-mailed or faxed.

Electronic Format Requested No

i.4 OFFER FIRM TIME: 120 Days from Opening

Offers shall remain firm and unaltered after opening for the number of days shown above. The City may accept the offer, subject to successful contract negotiations, at any time during the offer firm time.

i.5 SECURITY: Proposal: \$ 0.00 Performance: \$ 0.00

i.6 VENDOR CONFERENCE / SITE VISIT: ☐ Yes ☒ No

i.7 QUESTIONS. All questions regarding the contents of this solicitation, and solicitation process (including requests for ADA accommodations), shall be directed solely to the Project Contacts listed on Page 1 or the Procurement Services Director. Questions received less than seven calendar days prior to the due date and time may be answered at the discretion of the City.

i.8 LOBBYING. The Offeror, his/her Agent, or Representative shall not contact, orally or in written form, any other City of Mesa employee, or appointed or elected Official regarding the contents of this solicitation or this solicitation process. The Procurement Services Director shall disqualify an Offeror's proposal for a violation of this provision. This provision shall not prohibit public comment at City Council meetings.

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- i.9 **ADDENDA.** The City shall not be responsible for any oral changes to these specifications made by any employees or officer of the City. Any changes to the specifications will be in the form of an addendum. Addenda are posted on the City website and mailed to those who are on the City's bid list and to those who register on the City website when downloading solicitations. The City cannot be held responsible if Offeror fails to receive any addenda issued. Failure to acknowledge receipt of an addendum may result in disqualification of a proposal.
- i.10 **RESPONSIBILITY TO READ AND UNDERSTAND.** Failure to read, examine and understand the solicitation will not excuse any failure to comply with the requirements of the solicitation or any resulting contract, nor shall such failure be a basis for claiming additional compensation. If Offeror suspects an error, omission or discrepancy in this solicitation, Offeror must immediately and in any case not later than five (5) business days in advance of the offer due date notify the contact on page 1. The City is not responsible for and will not pay any costs associated with the preparation and submission of the offer. Offerors are cautioned to verify their proposals before submission, as amendments to or withdrawal of proposals submitted after time specified for opening of proposals may not be considered. The City will not be responsible for any Offeror errors or omissions.
- i.11 **PROPOSAL SECURITY.** If required herein, a Proposal Security in the amount specified must be submitted with the proposal. The Security may be submitted in any one of the following forms: an executed surety bond issued by a firm licensed and registered to transact such business with the State of Arizona; cash; certified check, or cashier's check payable to the City of Mesa (personal or company checks are not acceptable); an irrevocable letter of credit; certificate of deposit or any other form of deposit issued by a financial institution and acceptable to the City. Such Proposal Security shall be forfeited to the City of Mesa should the Offeror selected fail to execute a contract when requested.
- i.12 **FORM AND CONTENT OF OFFERS.** Unless otherwise instructed or allowed, proposals shall be submitted on the forms provided. An original and the designated number of copies of each offer are required. Offers, including modifications, must be submitted in ink, typed, or printed form and signed by an authorized representative. Please line through and initial rather than erase changes. If the proposal is not properly signed or if any changes are not initialed, it may be considered non-responsive. In the event of an error in a price extension calculation, the unit cost will prevail. The City may require that offers be submitted on disk, CD or DVD. The offer must provide all information requested and must address all points. The City does not encourage exceptions. The City is not required to grant exceptions and depending on the exception, the City may reject the offer.
- i.13 **SPECIFICATIONS.** When the specification calls for "Brand Name or Equal," the brand name product is acceptable. Other products will be considered upon showing the other product meets stated specifications and is equivalent to the brand product in terms of quality, performance and desired characteristics. Minor differences that do not affect the suitability of the supply or service for the City's needs may be accepted. Burden of proof that the product is equal, is on the Offeror. Technical specifications define the minimum acceptable standard. The City reserves the right to reject offers that the City deems unacceptable.
- i.14 **OFFER RECEIPT.** The City will receive all offers properly and timely submitted, and will record the names and other information specified by law and rule. All offers become the property of the City and will not be returned except in the case of a late submission. Results, as read at the bid opening, will be posted on the City website. Once a contract has been awarded by the City, proposals are available for inspection by contacting Purchasing (also see Section S.25).
- i.15 **LATE OFFERS.** The Offeror assumes responsibility for having the proposal deposited on time at the place specified. All proposals received after the date and time specified shall not be considered and will be returned unopened to the Offeror. The Offeror assumes the risk of any delay in the mail or in handling of the mail by employees of the City of Mesa, or any private courier, regardless whether sent by mail or by means of personal delivery. You must allow adequate time to accommodate all registration and security screenings at the delivery site. A valid photo I.D. may be required. It shall not be sufficient to show that you mailed or commenced delivery before the due date and time. All times are Mesa, Arizona local times. The Offeror agrees to accept the time stamp in the City Purchasing Office as the official time.

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- i.16 **MODIFICATION / WITHDRAWAL OF OFFER.** Written requests to modify or withdraw the offer received by the City prior to the scheduled opening time will be accepted and will be corrected after opening. No oral requests will be allowed. Requests must be addressed and labeled in the same manner as the offer and marked as a MODIFICATION or WITHDRAWAL of the offer. Requests for withdrawal after the due date will only be granted upon proof of undue hardship and may result in the forfeiture of any proposal security. Any withdrawal after the due date shall be allowed solely at the City's discretion.
- i.17 **EVALUATION PROCESS.** Offers will be reviewed by a screening committee comprised of City employees and/or authorized agents. Offerors, who, in the opinion of the committee, are best qualified and whose proposals appear to be in the best interest of the City, will be evaluated on the written proposal as well as any supplemental material or information requested by the screening committee. The City staff may or may not initiate discussions with Offerors for clarification purposes. Clarification is not an opportunity to change the offer. Offerors shall not initiate discussions with any City employee or official. Points and other such evaluation methods are tools the City uses to aid in the evaluation process, but are not always definitive.
- i.18 **PRESENTATIONS/INTERVIEWS.** Offeror must provide a formal presentation/interview upon request. The City at its sole discretion may create a short list of the highest scored Offerors based on a preliminary evaluation against the evaluation criteria published in the solicitation. Only those short-listed Offerors would be invited to give presentations/interviews. Upon conclusion of any presentations/interviews, the City will finalize the scoring against the criteria published in the solicitation.
- i.19 **CRITERIA FOR EVALUATION AND AWARD.** The City evaluates four categories of information: responsiveness, responsibility, the technical proposal and the price proposal. All offers, regardless of the type of solicitation, must meet the following responsiveness and responsibility criteria.
- a) **Responsiveness.** The City will determine whether the offer complies with the instructions for submitting offers including completeness of offer which encompasses the inclusion of all required attachments and submissions. The City must reject any offers that are submitted late. Failure to meet other requirements may result in rejection.
 - b) **Responsibility.** The City will determine whether the Offeror is one with whom it can or should do business. Factors that the City may evaluate to determine "responsibility" include, but are not limited to: excessively high or low priced offers, past performance, references (including those found outside the offer), compliance with applicable laws-including tax laws, Offeror's record of performance and integrity- e.g. has the Offeror been delinquent or unfaithful to any contract with the City, whether the Offeror is qualified legally to contract with the City, financial stability and the perceived ability to perform completely as specified. An Offeror must at all times have financial resources sufficient, in the opinion of the City, to ensure performance of the contract and must provide proof upon request. City staff may also use Dun & Bradstreet and/or any generally available industry information. The City reserves the right to inspect and review Offeror's facilities, equipment and personnel and those of any identified subcontractors. The City will determine whether any failure to supply information, or the quality of the information, will result in rejection.
 - c) **Technical Proposal.** The City will determine how well offers meet its requirements in terms of the response to the specifications and how well the offer addresses the needs of the project. The City will rank offers, without consideration of price, from best to least qualified using a point ranking system (unless otherwise specified) as an aid in conducting the evaluation. References may be considered again in this portion of the evaluation. Offerors who do not meet the responsiveness and responsibility requirements and/or do not rank sufficiently high in the evaluation of their technical response need not be considered for price evaluation and award.
 - d) **Pricing Proposal.** We will then evaluate the pricing proposals for offers that have met the requirements above

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The point evaluation system is described below.

The total number of points for the Technical Proposal is **100**. Offerors who do not receive **50** of the total points need not be considered for price evaluation and award. The elements that will be evaluated and their relative weights are:

Element	Points
Portfolio of web sites designed and implemented by the vendor	50
References from previous clients	25
Length of professional experience in the field of web design	25

The total number of points for the Pricing Proposal is **100**. Price will be a weighted element and we will determine "price" points using the following formula:

$$\frac{\text{Lowest Proposal Cost}}{\text{Proposal Cost being evaluated}} \times \text{Price Points Possible} = \text{Pricing Score}$$

The maximum number of points is 200 (Technical 100 plus Price 100).

- i.20 **BEST & FINAL OFFERS.** The City may request best & final offers if deemed necessary, and will determine the scope and subject of any best & final request. However, Offeror should not expect that the City will ask for best & finals to give Offeror an opportunity to strengthen Offeror's proposal. Therefore, Offeror must submit Offeror's best offer based on the terms and conditions set forth in this solicitation.
- i.21 **CONTRACT NEGOTIATIONS AND ACCEPTANCE.** Offeror must be prepared for the City to accept the offer as submitted, but the City may require contract negotiations if necessary or desirable. If negotiations do not result in an acceptable agreement, the City may reject the offer or revoke the award, and may begin negotiations with another Offeror. If Offeror fails to sign all documents necessary to successfully execute the final contract within a reasonable time as specified, the City may reject offer or revoke the award, and may begin negotiations with another Offeror. The City is charged by its Charter to make an award that is in the best interest of the City. Final contract terms must be approved or signed by the appropriately authorized City official(s). No binding contract will exist between the Offeror and the City until the City executes a written contract or purchase order.
- i.22 **COMMENCEMENT OF WORK.** If Offeror begins any billable work prior to the City's final approval and execution of the contract, Offeror does so at its own risk.
- i.23 **RESERVATIONS.** The City reserves the right to reject any or all offers or any part thereof; to rebid the solicitation; to reject non-responsive or non-responsible offers; to reject unbalanced offers; to reject offers where the terms, prices, and/or awards are conditioned upon another event; to reject individual offers for failure to meet any requirement; to award by item, part or portion of an item, group of items, or total; to make multiple awards; to waive minor defects/technicalities or form errors or other informalities in any proposal. The City may seek clarification of the offer from Offeror at any time, and failure to respond is cause for rejection. Submission of an offer confers on Offeror no right to an award or to a subsequent contract. All decisions on compliance, evaluation, terms and conditions shall be made solely at the City's discretion and made to favor the City.
- i.24 **PROTESTS.** If Offeror objects to any provision of the solicitation, and/or believes the City improperly rejected its offer, or believes the selected offer is not in the City's best interests, Offeror may submit a written protest.

Protests must be received within seven (7) calendar days after the protester knows or should have known of the facts giving rise to the protest.

Offeror must submit the protest to the City's Procurement Services Director who will act as the Protest Officer. Only written protests submitted properly and within the time allowed and that are

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based on legal and/or factual grounds will be considered. The Protest Officer will issue a written decision.

PROTEST APPEAL. If Offeror believes the Protest Officer's decision is arbitrary or capricious and/or is not based on legal or factual grounds, an appeal may be made to the City Manager. Appeals must be submitted within seven (7) calendar days of the Protest Officer's decision. The Appeal must be based on factual or legal errors in the Protest Officer's decision and not simply a disagreement with that decision.

The City Manager or designee will review the record and all documents submitted to the Protest Officer to determine whether the decision should be sustained. The City Manager, at his/her sole discretion, has the option of referring the Appeal to the City Council for review. If referred by the City Manager, the Council will review the record and all documents submitted to the Protest Officer to determine whether the decision should be sustained. The City Manager or designee will issue a written response to the Appeal and this determination is final.

Protest and Appeal responses will be made by the City in as timely a manner as possible. The Protest Officer will have the sole discretion to stay the contract process until a Protest or Appeal is resolved. Concerns raised seven (7) calendar days or more after award are not subject to this Protest/Appeal process and should be addressed to the Procurement Services Director. Protests and Appeals that do not follow the processes contained in this section will be rejected.

PROTEST OFFICER:

Edward Quedens
Procurement Services Director
20 East Main Street, Suite 150
PO Box 1466
Mesa, Arizona 85211-1466
Fax: (480) 644-2655

APPEALS:

Christopher J. Brady
City Manager
20 East Main Street
PO Box 1466
Mesa, Arizona 85211-1466
Fax: (480) 644-2175

DETAILED SPECIFICATIONS

1. **PROJECT MISSION.** We are dedicated to providing superior services to our customers in order to improve the quality of life for Mesa residents, businesses and visitors. We are looking for vendors who share that dedication and will help us meet that goal.
2. **PROJECT GOAL.** To design, implement, and host a new Mesa Arts Center (MAC) web site to replace the current MAC web site.
3. **BACKGROUND.** The Mesa Arts Center (MAC) has been in operation since 1980. In 2005, the Center moved into its current facility at One East Main Street. The MAC is housed in several buildings totaling 212,000 square feet, on a campus of approximately seven acres, with about 55 full time staff, dozens of part-time and contract staff, and 500 volunteers. The MAC requires a new web site that is less complex, easy to update, and includes the latest technology, interactive features, and visual elements for promoting the MAC and its programs and activities. The site will be accessed by the general public, program participants, vendors, donors, arts professionals, artists, affiliates and their audiences, board members, general membership, and City staff and elected officials. The site will be housed and maintained off the City of Mesa's server.
4. **SCOPE OF WORK.** The MAC seeks proposals from qualified firms or individuals to design, develop, implement, and host a new web site. This site must be attractively designed, be easy and intuitive for users to navigate, interactive in nature, and include the latest Web 2.0 technological advances (i.e. Flash, etc.) to effectively promote the MAC and its programs and activities. The design of the site must complement and reflect the high profile of the MAC in the community, the Valley, the state, and nationally. The site must be designed and programmed to allow simple, quick, and direct manipulation and updating of contained information by MAC staff, as well as ease of use when adding new information, text, images, and other enhancements. The selected vendor will work closely and regularly with a team of MAC staff, City staff, and others as the project is conceived, initiated, developed, tested, modified, and finally implemented. Major sections of the web site will include comprehensive and detailed information on the MAC's major program functions: Performing Live, Rentals, Stageworks, Mesa Contemporary Arts, Arts Education, Volunteers, Box Office, Development, Marketing, Administration, Mesa Arts Center Foundation, The Store, affiliate organizations, and potentially others. Other non-programmatic sections may include, but not be limited to, About Us, Buy Tickets, Calendar, Visit Us, News, Media Access, Support the Center, Join Mailing List, About the Center, Site Map, Parking, User Survey, Privacy Policy/Disclaimer, and potentially others. Final determination of all sections, pages, information, images, and links will be developed during the design phase. All sections will include in-depth information and images and/or streaming video. A considerable portion of the information contained on the current web site will be reviewed, updated, and transferred to the new site. The site must allow for on-line purchasing of tickets and other secure financial transactions, and the ability/method for individuals to make monetary donations and purchase memberships. A desirable trait will be to include virtual tours of rental spaces, art galleries, and other components of the MAC facility. The site will include a substantial number of links to the web sites of other City of Mesa and non-City organizations. The site will include a number of existing logos. THE CURRENT WEB SITE ADDRESS: www.mesaartscenter.com
5. **MINIMUM QUALIFICATIONS.** Five (5) years professional experience in the design and implementation of web sites; Three (3) or more positive references from past clients for whom the vendor has designed and implemented web sites; portfolio of web sites designed and implemented by the vendor.
6. **RESPONSE ELEMENTS.**
 - Portfolio of web sites designed and implemented by the vendor
 - Hourly rate charged
 - Estimated total cost to design and implement the project
 - Estimated cost of hosting the web site including client-requested changes/additions for a period of one year after completion of the project
 - Estimated annual cost of hosting the web site including client-requested changes/additions for each additional year thereafter
7. **INSURANCE REQUIREMENTS.**

Contractor shall maintain coverage for all general, contractual and products liability risks normally associated with the goods and materials and/or services covered by this contract.

DETAILED SPECIFICATIONS

The Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statute.

When the City requires a Certificate of Insurance to be furnished, the Contractor's insurance shall be primary of all other sources available. When the City is a certificate holder, the Contractor agrees that no policy shall expire, be canceled or materially changed to affect the coverage available without thirty (30) calendar days advance written notice to the City.

All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Manager.

MILESTONES

TENTATIVE TIMELINE:

Publish RFP – December 9, 2008

RFP Due Date & Time – January 6, 2009, 3:00 P.M. (Local Time)

BEGINNING AND END DATE OF INITIAL TERM: January 1, 2009 to December 31, 2011.

If the commencement of performance is delayed because the City does not execute the contract on the start date, the City may adjust the start date, end date and milestones to reflect the delayed execution.

EXTENSION:

The City reserves the right to extend the term of this contract, provided however, that the City shall give written notice of its intentions to extend this contract no later than thirty (30) days prior to the expiration date of the contract.

RENEWAL:

At the end of the initial term of this contract, the City may initiate renewal(s) as provided. The decision to renew a contract rests solely with the City. The City will give written notice of its intention to renew the contract no later than thirty (30) days prior to the expiration.

1 Two-Year renewal possible at the City's option, per proposal documents

PRICE:

All pricing shall be firm for the initial term except where otherwise provided by the specifications, and include all transportation, insurance and warranty costs. The City shall not be invoiced at prices higher than those stated in any contract resulting from this bid.

The Contractor certifies that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions. The Contractor further agrees that any reductions in the price of the goods or services covered by this bid and occurring after award will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

During the 60- day period prior to each annual anniversary of the contract effective date, the Contractor may submit a written request that the City increase the prices in an amount for no more than the twelve month change in the ***Consumer Price Index for All Urban Consumers*** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

At the end of the initial term, pricing may be adjusted for amounts other than inflation based on mutual agreement of the parties after review of appropriate documentation. Renewal prices shall be firm for at least one year, and may be adjusted thereafter as outlined in the previous paragraph.

No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing division.

STANDARD TERMS AND CONDITIONS

- S.1 **CITY OF MESA ARIZONA:** Whenever the term "City" is used herein, it is referring to the City of Mesa, Arizona.
- S.2 **CONTRACTOR.** Whenever the term "Contractor" is used herein, it is referring to the Contractor as well as any subcontractors. The Contractor is fully responsible for subcontractor's compliance with the Terms and Conditions herein as well as any resultant contract.
- S.3 **SUBCONTRACTING AND JOINT VENTURES.** The City intends to contract with one entity per contract and that one entity shall be contractually responsible for performance. The Contractor may not subcontract work for a contract without the express written permission of the City. If the Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the agreement shall comply with its provisions and it is expressly understood that all persons employed by the Contractor, either directly or indirectly, shall be considered employees or agents of the Contractor and not the City. Nothing contained in any contract or joint venture agreement shall create any contractual relationships between any subcontractor and Mesa, nor shall the same create any obligation on the part of Mesa to pay any subcontractor. For any joint venture to be acceptable, Contractor must take full contractual responsibility for the obligation.
- S.4 **CONTRACTOR BUSINESS REQUIREMENTS.** The Contractor shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. The Contractor must stay fully informed of existing and future Federal, State and Local laws, ordinances and regulations that in any manner affect the fulfillment of this contract and shall comply with the same. The Contractor's personnel, facilities and equipment shall be in full compliance with all applicable federal, state and local health, environmental and safety laws, regulations, standards, ordinances, and privilege license and permit requirements, whether or not they have been referenced by the City.

Employee compensation shall meet all applicable requirements of the Fair Labor Standards Act and Federal and Arizona minimum wage laws.

The Contractor shall comply with all applicable OSHA regulations. The Contractor bears full responsibility for employee training, safety, and providing necessary equipment to achieve compliance prior to the contract commencement date. Upon request, Contractor shall demonstrate to the City's satisfaction any programs, procedures and other activities used to ensure compliance.

The Contractor shall be compliance with A.R.S., Title 37, Chapter 2, Articles 7 and 9 which prohibit the Contractor from having scrutinized business operations in Sudan or Iran.

The Contractor shall be in compliance with all applicable tax requirements and shall be current in payment of such taxes.

The Contractor will be responsible for any damages to property when such property is the responsibility of or in the custody of the Contractor or its employees.

Upon request, the City may inspect or request copies of any such records it deems necessary to determine compliance with this section.

- S.5 **COMPLIANCE WITH FEDERAL AND STATE IMMIGRATION LAWS.** The Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City or its agents to inspect personnel records to verify such compliance. The Contractor shall ensure and keep appropriate records to demonstrate that all employees have a legal right to live and work in the United States.

Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

STANDARD TERMS AND CONDITIONS

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

Neither the Contractor nor any of Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

S.6 **EMPLOYMENT PRACTICES.** Contractor asserts that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and asserts that it complies with all applicable Federal, state and local laws and executive orders regarding employment. The Contractor, its employees and subcontractors will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.

S.7 **DRUG FREE WORKPLACE PROGRAM.** Contractors are hereby advised that the City of Mesa has adopted a policy establishing a drug free workplace for itself and as a requirement for Contractors doing business with the City, to ensure the safety and health of employees working on City contracts/projects.

The Contractor shall require a drug free workplace for all employees working under the contract. Specifically, all Contractor employees who are working under this contract shall be notified in writing by the Contractor that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace. The Contractor agrees to prohibit the use of intoxicating substances by all employees and shall ensure that employees do not use or possess illegal drugs while in the course of performing their duties.

Failure to require a drug free workplace in accordance with the Policy may result in termination of the contract and possible debarment from bidding on future City of Mesa contracts/projects.

S.8 **BACKGROUND CHECK:** The City may conduct criminal and driver history background checks of Contractor's officers, employees or agents who would supervise or physically perform the Contract requirements, and/or who will have access to the City's information, data, and/or facilities. Any officer, employee or agent deemed unsuitable by the City must be replaced immediately.

S.9 **FOB POINT & RISK OF LOSS.** All deliveries shall be FOB destination unless otherwise agreed. The Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction shall not release Contractor from any obligation hereunder. Freight charged/terms shall be as agreed.

S.10 **CONTRACT ADMINISTRATION.** The contract shall be administered by the Procurement Services Director and/or an authorized representative from the using department. All questions regarding the contract shall be referred to an administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrator(s).

S.11 **NON-EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through the awarding of the contract.

S.12 **TAX EXEMPTION.** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request. The City is not exempt from State and Local sales/use taxes.

S.13 **ASSIGNMENT.** No contract awarded by the City may be assigned either in whole or in part

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without first receiving written consent of the City. Any attempted assignment, either in whole or in part, without such consent shall be null and void and in such event the City shall have the right at its option to terminate the contract. No granting of consent to any assignment or subcontracting shall relieve the Contractor from any of its obligations and liabilities under the agreement. Any subcontracting in violation of this section shall also be void.

S.14 **DEFAULT, TERMINATION AND OTHER REMEDIES.** The City reserves the right to terminate any part or all of a contract resulting from this solicitation if the Contractor fails to carry out any term, promise, or condition of the contract. The City will issue a written Notice of Default to the Contractor if in the opinion of the City, the Contractor:

- Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the contract resulting from this solicitation;
- Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) days;
- Fails to obtain and/or keep any required bonds and insurance policies in full force and effect at all times during the term of the contract;
- Provides services that do not meet the requirements of the contract or conducts business in an unethical or illegal manner;
- Fails to complete the required work or fails to perform required services within the time frame stipulated.
- Fails to materially perform or comply with the terms and conditions of the contract resulting from this solicitation.

Failure of the Contractor to remedy any problems noted by the City's deadline set in the Notice of Default or to otherwise bring performance to satisfactory levels that are within the requirements of the contract shall give the City cause to cancel this contract. In addition, any Contractor who is the recipient of three or more Default Notices during any twelve-month period, or five or more during the entire term of the contract, shall give the City cause for termination.

If the City terminates the contract, the Contractor will be provided with a written notice that specifies the effective date of the termination. After receipt of the Notice of Termination, the Contractor agrees to perform under the terms and conditions of this contract up to and including the date of termination as though no termination has been made. In case of default and/or termination, the City reserves the right to purchase the services required under the contract from the open market, to complete required work itself or have it completed at the expense of the Contractor. The City may recover any actual excess costs by (1) deduction from an unpaid balance due to the Contractor; (2) collection against the proposal and/or performance security; if any; (3) collection against liquidated damages (if applicable); or (4) a combination of the aforementioned remedies or other remedies as provided by law.

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

S.15 **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate any resulting order or contract in part or in whole upon thirty (30) days written notice. The City will be responsible only for those goods and/or services that conform to the requirements of the contract and that have been delivered and/or performed and accepted.

S.16 **FUNDS APPROPRIATION.** The City is a governmental agency, which relies upon the appropriation of funds by its governing body to satisfy its obligations. In the event that an appropriation is not granted and operating funds are not otherwise legally available for the City to meet its obligations under any contract(s) resulting from this request, the City shall have the right to terminate the contract without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date. The City will pay the Contractor all charges incurred through the termination date.

Due to ongoing budgetary constraints, certain tasks, performance frequencies, or both may be

STANDARD TERMS AND CONDITIONS

- permanently reduced or eliminated by the City upon providing the Contractor with thirty (30) calendar days advance written notice during any term of this contract.
- S.17 **WARRANTY.** The Contractor warrants that all services will be performed in a good, workman-like and professional manner. Unless otherwise agreed, the Contractor warrants that supplies shall be new, unused, of most current manufacture and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and shall perform in accordance with manufacturer's published specifications. The Contractor warrants it has title to, or the right to allow the City to use, the supplies and services being provided and that the City may use same without suit, trouble or hindrance from the Contractor or third parties.
- S.18 **CONFLICT OF INTEREST.** Pursuant to A.R.S. § 38-511, the City Manager or his authorized agent may cancel any contract(s) resulting from this request within three years after award, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the contract for the City becomes an employee or agent of the Contractor.
- S.19 **QUANTITIES.** Any listing in this request referencing quantities or performance frequencies represent the City's best estimate of current requirements, but shall not bind it to purchase, accept or pay for services which exceed its actual needs.
- S.20 **INDEMNIFICATION/LIABILITY.** The Contractor agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' and expert witnesses' fees, and expenses incident thereto, relating to bodily injuries to persons (including death) and for loss of, damage to, or destruction of real and/or tangible personal property (including property of the City) and all other types of claims resulting from the actual or alleged negligence, misconduct, or fault of the Contractor resulting from the acts or omissions of the Contractor, its employees, agents, or subcontractors in the performance of the contract. The Contractor shall assume risk of loss until delivery to the City's facility. The Contractor shall do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and shall at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery. In any instance where the Contractor has accepted a tender from the City, the Contractor agrees to update the City during the course of the litigation and to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by the tender.
- Without limiting the foregoing, the Contractor shall, without limitation, at its expense defend the City against all claims asserted by any person that anything provided by the Contractor infringes a patent, copyright, trade secret or other intellectual property right and shall, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment shall be obtained against the City's use or operation of the items provided by the Contractor hereunder or any part thereof by reason of any alleged infringement, the Contractor shall, at its expense and without limitation, either (a) modify the item so that it becomes non-infringing; or (b) procure for the City the right to continue to use the item; or (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount shall be calculated on a useful life not less than 5 years, and plus any additional costs the City may incur to acquire substitute supplies or services.
- The City assumes no liability for actions of the Contractor and shall not indemnify or hold the Contractor or any third-party harmless for claims based on this contract or use of the Contractor provided supplies or services.
- Neither party shall be liable for incidental, special or consequential damages.
- S.21 **INSPECTION OF RECORDS, FACILITIES AND EQUIPMENT.** The Contractor shall preserve

STANDARD TERMS AND CONDITIONS

the records required under this contract for a minimum of two years after the expiration of the contract. The City or its authorized agent reserves the right to inspect any records, facilities and equipment used or proposed to be used by the Contractor for the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by the Contractor in relation to the contract. The Contractor shall permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at the Contractor's place of business or at City of Mesa offices, as determined by the City.

- S.22 **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of the Contractor to the City shall be that of an independent Contractor.

The Contractor assumes full responsibility for all of the duties and responsibilities of the contract. The City assumes no liability or responsibility for work performed by any subcontractor. The Contractor shall notify the City any time a subcontractor is hired, and the City shall have the right to require the Contractor to submit an affidavit for settlement of claims prior to receiving payment for subcontracted work.

The Contractor shall pay all just claims due for services performed by employees or subcontractors, and for all material and equipment furnished or rented which is actually used in the performance of this contract. Upon request, the Contractor shall furnish satisfactory evidence that all of said persons have been fully paid.

- S.23 **SUBSTITUTION OF GOODS OR SERVICES.** Should the Contractor fail to meet its contractual obligations, at its option and without notice the City may secure substitute services or goods. If the cost of obtaining substitute services or goods exceeds the contract price, the difference shall be charged back to the Contractor, or if no monies are owed the contractor/vendor, it shall promptly reimburse the City for such costs. The Contractor shall reimburse the City for any and all costs, fees, and expenses incurred in obtaining substitution services/goods and expended in obtaining reimbursement, including but not limited to administrative expenses, attorney's fees and costs.

- S.24 **PERFORMANCE SECURITY.** If required herein, the successful Offeror, simultaneously with the execution of the Contract, will be required to furnish a Performance Security (Refer to i.5). The Security may be submitted in one-year increments and in any one of the following forms: an executed surety bond issued by a firm licensed and registered to transact such business with the State of Arizona; cash; certified check, cashier's check or money order payable to the City of Mesa (personal and company checks are not acceptable); an irrevocable letter of credit; certificate of deposit or any other form of deposit issued by a financial institution and acceptable to the City. If the Contractor fails or refuses to fully comply with the terms and conditions of the contract, the City shall have the right to use all or such part of said Security as may be necessary to reimburse the City for loss sustained by reason of such breach. The balance of said Security, if any, will be returned to Contractor upon the expiration or termination of the contract.

- S.25 **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. The contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by others.

- S.26 **PUBLIC RECORDS.** The Offeror acknowledges that the City is a public entity, subject to Arizona's public records law (A.R.S. § 39-121 et. seq.). Submission of a proposal may result in the disclosure of any aspect, part or portion of the proposal. Offeror hereby grants the City permission to copy all parts of its proposal, including without limitation any documents and/or materials copyrighted by the Offeror. The City's right to copy shall be for internal use in evaluating the proposal, or in response to a public records request under Arizona's public records

STANDARD TERMS AND CONDITIONS

- law or to a subpoena or other judicial process.
- S.27 **EXCLUSIVE POSSESSION.** All data provided by the City as well as all services, information, computer program elements, reports and other deliverables, which may be created under this contract, are the sole property of the City and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
- S.28 **RESERVATIONS.** No term or provision of the contract shall be deemed to be waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of or payment for any goods or services hereunder, or approval of design, shall not release the other party of any of the warranties or other obligations of the contract and shall not be deemed a waiver of any such rights or remedies.
- S.29 **FORCE MAJEURE:** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, fire, flood, explosion, legislation, and governmental regulation.
- The party whose performance is so affected shall promptly notify the other party of all pertinent facts and take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. It is understood and agreed that settlement of strikes or other labor disputes shall be at the sole discretion of the party encountering the strike or other dispute and that the inability of Contractor or its subcontractors to meet the requirements of this Agreement as a result of labor strikes or disputes shall not be deemed to be a Force Majeure.
- S.30 **USE OF NAME.** Contractor shall not use the name of Mesa in any advertising or publicity without obtaining the prior written consent of Mesa.
- S.31 **SUPERSEDING EFFECT.** The contract documents resulting from this solicitation shall supersede all prior oral or written agreements, if any, between the parties, and shall constitute the entire agreement between the parties with respect to the work to be performed.
- S.32 **APPLICABLE LAW.** This contract shall be governed by the law of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona.
- S.33 **OFFICIAL SOLICITATION DOCUMENT.** Changes to the solicitation document made by an Offeror may not be acknowledged or accepted by the City. Award or execution of a contract does not constitute acceptance of a changed term, condition or specification unless specifically acknowledged and agreed to by the City. The copy maintained and published by the City shall be the official solicitation document.
- S.34 **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing division.

VENDOR QUESTIONNAIRE

GENERAL	
Years in Business providing similar services:	
Contractor's License No(s): (Submit a copy with the proposal)	
Type:	
Number of employees at location serving this contract:	
Provide Names, contact and telephone numbers of three (3) organizations that have received similar services from our company. At least one reference should be comparable in size to Mesa's proposed contract.	
Firm/Government Agency Name:	
Contact Person:	Phone:
Address:	Fax:
	E-Mail Address:
\$ Value of Work, Supplies/Services and Dates Provided:	
Firm/Government Agency Name:	
Contact Person:	Phone:
Address:	Fax:
	E-Mail Address:
\$ Value of Work, Supplies/Services and Dates Provided:	
Firm/Government Agency Name:	
Contact Person:	Phone:
Address:	Fax:
	E-Mail Address:
\$ Value of Work, Supplies/Services and Dates Provided:	
Vehicle/ Equipment Inventory which is available for this contract:	

Vendor Name _____

Date: _____

VENDOR QUESTIONNAIRE

List any additions to equipment or personnel you anticipate if awarded this contract:	
Subcontractors: List subcontractor that will participate in carrying out the obligations of any resulting contract.	
Subcontractor Contact Name:	Phone:
Contractor License Type:	Type/Number:
Subcontractor Contact Name:	Phone:
Contractor License Type:	Type/Number:
Subcontractor Contact Name:	Phone:
Contractor License Type:	Type/Number:
Subcontractor Contact Name:	Phone:
Contractor License Type:	Type/Number:
List any other information which may be helpful in determining your qualifications for this contract:	
FINANCIAL	
Company Management: Provide names and years with the Company:	
President:	
Controller:	
Contractor/Representative (Who would handle this account: submit resume with proposal):	
Yearly sales volume at location serving this contract:	
Banking References:	
Bank:	
Location:	
Officer	

Vendor Name _____

Date: _____

VENDOR QUESTIONNAIRE

Bank:	
Location:	
Officer:	
Credit References: Provide names and telephone numbers of at least three (3) organizations that your company deals with on a day-to-day basis (i.e. suppliers)	
Firm/Government Agency Name:	
Contact Person:	Phone:
Address:	Fax:
	E-Mail Address:
Supplier of:	
Firm/Government Agency Name:	
Contact Person:	Phone:
Address:	Fax:
	E-Mail Address:
Supplier of:	
Firm/Government Agency Name:	
Contact Person:	Phone:
Address:	Fax:
	E-Mail Address:
Supplier of:	
Insurance: Provide name of insurance carriers that provide coverage for your company.	
Automobile:	
General/Contractor Liability:	
Bonding:	

Vendor Name _____

Date: _____

PRICING AND COMPENSATION

Pursuant to all the contract specifications enumerated and described in this solicitation, we agree to furnish **Mesa Art Center Web Site Design Services** to the City of Mesa at the price(s) stated below.

Item No.	Description	Unit Price	Qty	Total Price
1	Web site design and implementation	\$	1 each	\$
2	Initial year to host web site	\$	1 each	\$
3	Each additional year to host web site	\$	4 years	\$
4	Annual maintenance fee, if applicable	\$	1 each	\$
5	Hourly rate if additional work is required beyond current scope of proposal	\$		

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the offer prices.

FOB: Destination

Freight Costs: Unit prices should include all Shipping and Transportation Costs

No fuel surcharges will be accepted.

Payment terms (not less than net 30 days): _____

Does Offeror agree to honor the prices, terms and conditions to other agencies as specified in section S.25?

_____ Yes _____ No (A "no" answer will not disqualify your offer.)

Vendor Name _____

Date: _____

EXCEPTIONS, CONFIDENTIAL & ADDITIONAL MATERIALS

Offerors shall indicate any and all exceptions taken to the provisions or specifications in this solicitation document.

Exceptions (mark one):

- _____ No exceptions
- _____ Exceptions taken (describe--attach additional pages if needed)

Confidential/Proprietary Submittals (mark one):

- _____ No confidential/proprietary materials have been included with this offer
- _____ Confidential/Proprietary materials included. Offerors should identify below any portion of their offer deemed confidential or proprietary (see Standard Terms and Conditions, section S.25). Identification in this section does not guarantee that disclosure will be prevented but that the item will be subject to review by the Offeror and the City prior to any public disclosure. Requests to deem the entire offer as confidential will not be considered.

Additional Materials submitted (mark one):

- _____ No additional materials have been included with this offer
- _____ Additional Materials attached (describe--attach additional pages if needed)

Vendor Name _____

Date: _____

CONTRACT FORM AND SIGNATURES

By signing and submitting this offer, the Vendor certifies that:

- a) It is under no legal prohibition on contracting with the City of Mesa.
- b) It has no known, undisclosed conflicts of interest.
- c) It has read, understands, and is in compliance with the specifications, terms and conditions stated herein, as well as its attachments, and any referenced documents.
- d) The prices offered were independently developed without consultation or collusion with any of the other Offerors or potential Offerors or any other anti-competitive practices.
- e) It grants the City of Mesa permission to copy all parts of this Offer, including without limitation any documents and/or materials copyrighted by the Offeror, for Mesa's internal use in evaluating Offeror's Proposal, or in response to a public records request under Arizona's public records law (A.R.S. section 39-121 et. seq.) or other applicable law, subpoena, or other judicial process; provided that Mesa agrees not to change or delete any copyright or proprietary notices.
- f) No offer of gifts, payments or other consideration were made to any City employee, officer, elected official, or consultant who has or may have had a role in the procurement process for the services and or goods/materials covered by this contract.
- g) It will provide the materials or services specified in compliance with all Federal, State, and Local Statutes and Rules if awarded by the City.
- h) It is current in all tax obligations due to the City.
- i) The signatory is an officer or duly authorized agent of the Offeror with full power and authority to submit binding offers for the goods or services as specified herein.
- j) It will accept such terms and conditions in a resulting contract if awarded by the City.

ACCEPTED AND AGREED TO:

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

VENDOR INFORMATION

Company Legal/Corporate Name: _____

Doing Business As (if different than above): _____

Address: _____

City: _____ State: _____ Zip: _____ - _____

Phone: _____ Fax: _____

E-Mail Address: _____ Website: _____

Taxpayer Identification Number: _____

Remit to Address (if different than above):

Address: _____

City: _____ State: _____ Zip: _____ - _____

Contact for Questions about this proposal:

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

Day-to-Day Project Contact (if awarded):

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

Sales/Use Tax Information (check one):

_____ Bidder is located outside Arizona and does NOT collect Arizona State Sales/Use Tax (The City will pay use tax directly to the AZ Dept of Revenue)

_____ Bidder is located outside Arizona is authorized to collect Arizona Sales/Use Taxes (The Bidder should invoice the applicable sales tax and remit to the appropriate taxing authorities)

State Sales Tax Number: _____

City Sales Tax Number: _____ City of: _____, AZ

Sales Tax Rate: _____

_____ Bidder is located in Arizona (The Bidder should invoice the applicable sales tax and remit to the appropriate taxing authorities)

State Sales Tax Number: _____

City Sales Tax Number: _____ City of: _____, AZ

Sales Tax Rate: _____

_____ Certified Small Business Certifying Agency: _____

_____ Certified Minority, Woman or
Disadvantaged Business Enterprise Certifying Agency: _____

SEALED PROPOSAL

Submitted by:
Company Name:
Address:
City, State, Zip:

**RFP # 2008198 Mesa Art Center Web Site
Design Services**
Due Date: **January 6, 2009, at 3:00 p.m.**

City of Mesa
Attn: **Purchasing**
20 E. Main St., Suite 150
Mesa, AZ 85201
PO Box 1466
Mesa, AZ 85211-1466