



City of Phoenix

Notice of Professional Services Request for Proposal (RFP)

City Manager's Department; Office of Environmental Programs

Service: Material Safety Data Sheet Database Management

Proposals Due Date and Time: April 2, 2012 at 2:00 PM

Proposal Submittal Location:

**City of Phoenix
Office of Environmental Programs
200 West Washington Street, 14th Floor
Phoenix, AZ 85003**

Contract Representative:

Jeff Page, Environmental Quality Specialist

Phone: (602) 256 3446

Email: jeff.page@phoenix.gov

Department Website:

<http://phoenix.gov/environment/businessoep/index.html>

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I. INTRODUCTION

The City of Phoenix, Office of Environmental Programs, City Manager's Department, invites sealed proposals for MSDS Database Services for a 1 – 3 year period beginning on or about June 1, 2012.

The City currently uses an on-line database to enable employees to find and view Material Safety Data Sheets (MSDSs) in compliance with OSHA's Hazard Communication Standard (Hazcom). The database is available through the City intranet portal. City database managers add new MSDSs to the database as needed.

The City will review responses to the RFP ('proposals') from firms specializing in hosting and administering databases and related services for the purposes of Hazcom compliance.

The goal is to secure the services of a qualified provider that can upload the existing system, provide web hosting, archive data, update MSDSs as manufacturers revise them, and provide a seamless transition for City users.

The contract for this service will be awarded to one Proposer; contract extensions are possible (up to five years total).

II. EVALUATION CRITERIA AND REQUIREMENTS

Proposals will be scored as follows:

30 Points—Qualifications and Experience

This section will address the relative qualifications and experience of Proposers.

30 Points—Method of Approach

This section will discuss how Proposers will approach different aspects of the project.

20 Points – Product Features

This section will discuss beneficial features of both the software product and the company.

20 Points—Pricing

A set of system characteristics, such as the number of active MSDSs and inventory locations, will be provided in the Submittal Section. These are provided to form a

baseline for price comparisons and may not represent the final characteristics of the system. There will be an opportunity to provide pricing for minimal, comparable and optimal systems, for both 1 year and 3 year contract terms. In the Pricing Section, these are referred to as **Options A** (minimal), **B** (the same as), and **C** (as suggested by Proposer). The intent is to review similar products featuring minimal, comparable and optimal indexed fields (and other features) compared to what the City is now using. “Optimal” means that the Proposer should suggest the number of indexed fields they recommend to best meet the needs of the City.

Proposers may provide pricing for only one system option and only one contract term. Proposals that provide the most options will be scored higher, however.

It should be noted that all cost triggers should be documented in the proposal. No invoices for costs other than those documented will be honored by the City. **Once submitted, Proposer responses to this RFP become contract terms.** Refer to instructions in the Submittal Section.

The Submittal Section will describe the proposal format and provide a price sheet.

Certificates of Insurance are required with the proposal. Where an endorsement would be needed to fulfill an insurance requirement, a current certificate is acceptable with a statement from a broker or agent that such requirements can be met in the event of contract award. Proposals that lack required elements such as Certificates of Insurance will not be evaluated. For this solicitation, the contract representative is: Jeff Page, Environmental Quality Specialist; phone (MST) 602 256 3446; jeff.page@phoenix.gov

III. SUBMITTAL FORMAT AND INSTRUCTIONS

1) Schedule of events:

Proposal Issue Date	March 1, 2012
Proposer’s Written Inquiries Due	March 15, 2012
Proposal Due Date	April 2, 2012 by 2:00 PM, MST
Finalist Demonstrations (If required)	April 16, 2012
Evaluation Panel Makes Selection (Estimated)	April 23, 2012
City Council Approval and Award (Estimated)	May 15, 2012

The written submittal and four (4) copies must be delivered. A CD of all text and graphic files represented in the printed submittal must accompany one (1) submittal. Submittals must be sent to:

Jeff Page, CHMM
City of Phoenix
Office of Environmental Programs
200 West Washington Street, 14th Floor
Phoenix, AZ 85003

This location is also where any finalist demonstrations or interviews will take place, as well as where printed copies of this RFP will be available by appointment with Jeff Page only. Any written correspondence regarding the RFP should be mailed to this address. The City reserves the right to change dates and locations as necessary.

2) Submittal Contents

The Proposal must contain:

- a) Signature page and Offer and Acceptance page (see pages 14, 16)
- b) Insurance documentation.
- c) Qualifications and Experience, Method of Approach and Product Features narratives.
- e) Any Amendments or Modifications
- f) Price sheet (see page 17)

A) The Qualifications and Experience narrative should discuss the following topics in sections with tabs or headings:

1) Business History

The Proposer shall provide a history of the business including the date established, the type of ownership or legal structure of the business (sole proprietor, partnership, corporation, etc.), the length of time that the firm has been operating as the legal entity and the length of time the firm has been providing the requested services. Discuss the areas of expertise and resources available both nationally and locally to provide the requested services.

2) Key Personnel

List the proposed key members of staff to be assigned to the City's contract including Project Manager and Technical Support Manager. Attach resumes of these staff. Include education and training. Resumes shall state clearly any experience specifically related to the Scope of Work and list any similar work successfully completed. [Limit one page

per resume.] Resumes for additional personnel may also be included, but are not required for optimal scores in this area.

3) Adverse Actions/Potential Impact

State whether the company is currently involved in any litigation, threatened litigation, investigation, reorganization, receivership, filing, strike, audit, corporate acquisition, unpaid judgments or other action that could have an adverse impact on your ability to provide the required RFP needs. If so, please describe the nature of the item and its potential impact.

4) Government/Corporate Experience

State your firm's experience in providing services to large public entities or large corporate entities. List other government contracts that you have now or have had in the past 3 years including the City of Phoenix.

5) Sample Projects

Describe sample projects (not to exceed 3) which best illustrate the firm's qualifications for the scope of the services; identifying any projects accomplished by current staff while conducted under the employment of others. Projects must be of similar complexity, completed, and demonstrate the Proposer's ability and experience to successfully perform the services.

6) Customer References

Proposer shall furnish as references a minimum of three (3) references but no more than five [5] from firms or government organizations for which the Proposer is currently furnishing services; or in the past five years has completed services. References from large public entities or large corporate entities are preferred.

Please provide for each reference: Name of Company or Government Entity, Name of Reference, Address, Telephone Number and E-mail Address [if available].

7) Budget Controls

Describe the fiscal accounting processes and budgetary controls that you will use to ensure the responsible use and management of contract funds and accurate invoicing. State how costs incurred under this project will be appropriately accounted for and only applicable project expenses will be billed to the city of Phoenix. State your fiscal reporting and monitoring capabilities (e.g. spreadsheets, automated fiscal reports, quality controls, checks and balances), to ensure contract funds are managed responsibly.

Describe the procedures that you will take to ensure that the City receives satisfactory products and services at low costs, i.e., how will your firm strive to provide the best value at the lowest price.

8) Other Relevant Information

Submit any other information which documents other skills or experience relating to the requirements of this RFP which you believe may be relevant including brochures and descriptions.

B) The Method of Approach narrative should discuss the following topics in sections with tabs or headings:

System Description:

This section describes the existing City of Phoenix MSDS management system (Note – this is NOT to be used for pricing. The example system to be used for pricing is found in the Pricing Sheet section).

The system is available on the City intranet website and can be viewed by an unlimited number of users without an additional log-in. There are 3 system managers who data-enter MSDSs. Managers use a permission function to create Administrators who can edit site inventories and some basic site information; managers also assign specific sites to specific administrators. There are about 150 administrators.

The system has approximately 13,000 MSDSs files, which are in pdf format with unique file names. This includes all historic MSDSs. It is not known what the actual active inventory is, but it is expected to be less.

Current data exists in an Oracle 10G database with web-based user interface with additional and reporting capabilities developed in Microsoft Access. All MSDSs are pdf files with unique file names. Database storage requirements as of 11/2011 were 104MB.

There are 21 City Departments and approximately 1200 locations with MSDSs. There are approximately 600 unique physical addresses. For example, one site has over 80 chemical storage locations with inventories and MSDSs. This site has 2 administrators that may edit inventories of all 80 locations.

The system may be searched by facility name, product name, manufacturer, MSDS number, or constituent.

There are user-defined and indexed fields in the database for quantity (with units of measure in drop-down boxes) and a 'Green Product Rating'.

Proposers will be provided a CD with data samples from the existing system if they **first** sign the Confidentiality Agreement found on the web page and mail it to the contract representative.

Method of Approach Narrative Topics:

1) Seamless Upload

The existing system shall be uploaded by the Proposer into their web-hosted or cloud system. System locations, departments, administrators, etc. shall be translated. A complete working product shall be available within 90 days of executing the contract (see 7).

2) Ease of Use

Viewers shall be able to use the Proposer system, finding and printing MSDSs or inventory lists, without special training. Administrators shall be able to submit, using simple email commands or the equivalent, new MSDSs as pdf files for uploading. Proposer products that also make it easier for Administrators and Managers to find the MSDSs they need (pre-indexed collections) will be rated more highly. It is preferred that Administrators be able to edit some parts of their location data such as address, building name, contact person, etc. Administrators shall manage the inventories of their locations with little or no training, using prompts or instructions from the software. Viewers must be able to search the system by site name, chemical product name, and department. Managers shall be able to assign editing permission of individual sites to Administrators. MSDS images produced by the system shall be of excellent visual quality, both on the screen and as printed documents. It is desirable that the City be able to work with the Proposer and approve the layout of the initial user screen of the system, but not required.

3) Minimum Functionality

At a minimum, Proposer systems shall provide:

- a) Inventory lists for individual locations, with links to MSDSs for all items on the inventory as a minimum.
- b) The ability to designate with a permissions system Managers (maximum capability), Administrators (less capability), and Viewers (View-only capability).
- c) Managers shall be able to assign permissions, approve MSDSs for addition to the City collection, perform all Administrator functions, archive MSDS and remove them from the main collection, access any system reports or 'dashboard' system status screens,

access Proposer Technical Support staff. The City requires one (1) primary and two (2) additional Managers.

d) Administrators shall be able to email requests for additional MSDS, along with the MSDS as a pdf attachment, to Managers and/or the vendor company for inclusion into the City collection.

e) Administrators shall be able to search and view all locations and inventories they are assigned to, edit inventory location details, edit inventory quantities (if that indexed field is used, which is not mandatory), add or subtract line items from the inventory of their locations, and view and print a report and/or list of all their assigned locations and the associated inventories.

f) All users shall be able to search (and print) by location name, product name and department.

g) Additional functionalities may be described in the **C) Product Features** narrative.

4) Archiving

Managers shall be able to download the City MSDS collection at least monthly for archiving. Downloaded data must include all elements of the system in use at the time: site name, chemical product name, department, etc. Data must be in a format that is easily usable if the service contract is not in use (e.g., Microsoft Excel or comparable). Downloaded MSDSs must each be pdf files with unique file names. The intent is to preserve City information in a format that can be easily accessed regardless of contract status. Proposers shall specify the configuration of downloaded archive files in the RFP.

5) Technical Support

Technical support shall be available to managers during the business week. More availability will be rated higher. Training materials shall be specified in the RFP and shall include in-depth training for Managers. Manager training may be web-based and must include the opportunity for live use of the Proposer system or an equivalent training version. Once the contract is signed and the Proposer has the active MSDS list, Proposer must deliver a working system with all MSDSs within 90 calendar days (see 7).

6) Updating

Proposers shall replace City MSDSs with revisions as manufacturers offer them. The method, quality and frequency of MSDSs updating will be scored on a point system; the highest quality updating process, which may include manufacturer contact dates, quality control processes, guaranteed time periods, etc; will be scored higher. Describe all steps and quality control measures in the updating process.

If the City submits a new product MSDS to the Proposer, it must be loaded into the City collection and available for the City to assign to a location within 3 business days of receipt.

7) MSDS Purging

The City's goal is to reduce the overall number of active MSDSs for billing and Hazcom compliance purposes. To achieve this, the existing collection of archived and active MSDS must be reduced to only active MSDSs. Only chemicals that are in use by the City should have an MSDS. Once a copy of the City database has been provided, the successful Proposer shall provide the City a list of active MSDSs, in an acceptable file format such as Excel. Duplications and MSDSs for which there is no corresponding inventory line item shall be eliminated. Additionally, the City shall administratively remove MSDSs from the collection. The final list of active MSDSs shall be provided to the Proposer before the 90-day stand-up period begins. Final pricing shall be based upon the number of 'active' MSDSs in the City collection. For purposes of the RFP, a figure of 8,500 MSDSs is standard (see Price Sheet). Proposers are encouraged to suggest additional ways to establish the list of active MSDSs.

8) IT Requirements

a) Availability – 24/7/365 availability is desired. Proposer shall describe engineering, programming and other methods of assuring system availability. The preference is for the proposed system to feature redundant access paths/multiple connection paths. Failover system availability will be scored higher.

b) Data Storage – Proposer shall disclose where hosting hardware is housed.

c) Data Protection – Proposer shall describe data protection and security measures.

d) Data Backup/Recovery – Proposer shall describe the backup/recovery process followed including frequency.

e) Password setting requirements for Administrators and Managers (configurable, including initial and re-setting)

- Passwords must be at least 8 characters for all accounts.
- Passwords must contain a combination of at least three of the following:
 - Uppercase character (A-Z)
 - Lowercase character (a-z)
 - Number (0-9)
 - Special character (e.g. !, @, #). Do not use ?, %, or *
- The system must force the password to change at least every 60 days.
- Passwords must be encrypted in storage and in transit.
- Passwords must be masked or hidden upon logging into the system so they cannot be seen in clear text.
- Passwords must not be stored as clear text in scripts, programs, or files.
- Systems must track password history for at least the last 12 password changes.
- The system must force the user to change their password after initial sign-in (new account) and Failed login attempts must be trackable.

- After a maximum of six (6) unsuccessful logon attempts, the system must force an automatic session termination and suspend the User ID for a minimum of 30 minutes or until re-activated by a system or security administrator after verifying the user's identity.
- User access list reports should contain user ID, username, date of last login, and sites the user can administer.

C) The Product Features narrative should discuss the following topics in sections with tabs or headings:

In this section Proposers should discuss features of both the proposed software and company. The Features Narrative may discuss features not elsewhere covered; augment topics already treated elsewhere; or otherwise illustrate beneficial aspects of the product. If features differ with Pricing Options A, B or C, the differences should be clarified in this section's narrative. Emphasis should be placed on those features likely to be compatible with the approach stated in System Description.

D) Pricing – Proposers should complete the following worksheet and submit it with the Narrative sections.

Pricing Worksheet

The intent of the City is to review pricing for products providing 3 levels of indexed fields: **Options A** (minimal), **B** (the same as), and **C** (as suggested by Proposer). The intent is to review similar products featuring minimal, comparable and optimal indexed fields (and other features) compared to what the City is now using. The parameters below shall be used in each scenario. Proposers must submit pricing for at least one but possibly all of scenarios A, B or C. Please provide pricing for a one-year contract, if offered, and a 3-year contract term. Options to extend to 5 years are available for all contracts. In each scenario, the per-MSDS price X 8500 MSDSs + any other fees = contract value for comparison purposes.

	Parameters for Pricing Purposes
1	Unlimited system Viewers who can view and print MSDSs or inventories for their location without a password.
2	150 system Administrators that can add or remove items from location inventories and submit MSDS for inclusion in the master collection.
3	3 system Managers with full privileges. Normally, only 1 primary Manager/contact will relate to Proposer tech staff.
4	8500 active MSDSs
5	1200 locations at 600 physical addresses.

These parameters are estimated and are specified only to establish a uniform basis for unit pricing. The City reserves the right to, using various management approaches, limit or minimize the number of active MSDSs and other units that accrue charges.

For example, if during the first contract year the number of active MSDSs is reduced to 5,000; then the unit price per MSDS provided below shall be applied. Pricing that allows the City the most flexibility for cost reduction will be scored higher.

The base product or service level must remain unchanged regardless of the number of MSDS in the system, in other words, no substitution of a product with fewer features is permitted – the product characterized by the Submittal shall remain in use and fully functional for the contract term.

Pricing below is for products with differing numbers of indexed fields and contract terms. Offerors may choose to submit pricing for only **A, B or C**.

The City's intent is to require any and all charges to be documented on the Submittal. Charges not documented on the pricing worksheet, or by a Change Order, will not be honored by the City. **This Submittal will be the operating contract once signed, submitted and accepted by the City.**

A) Price for a product that provides a minimal number of indexed fields:

Unit Pricing per MSDS for 1-year contract term: _____.

Unit Pricing per MSDS for a 3-year contract term: _____.

Other contract fees, if any: _____.

B) Price for a product that provides the same indexed fields as the existing database:

Unit Pricing per MSDS for 1-year contract term: _____.

Unit Pricing per MSDS for a 3-year contract term: _____.

Other Contract Fees, if any: _____.

C) Price for a product that provides an optimal number of indexed fields (as suggested by the Proposer) to best meet the needs of the City:

Unit Pricing per MSDS for 1-year contract term: _____.

Unit Pricing per MSDS for a 3-year contract term: _____.

Other Contract Fees, if any: _____.

Any narrative or discussion needed to clarify or add to the Pricing Worksheet should be included in the narrative submission for Section C) Product Features.

Signature Page/ Offer and Acceptance Page:

Offer and Acceptance:

To the City of Phoenix:

The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of this Request for Proposals and any written exceptions in the offer.

Arizona Sales Tax No.

Use Tax No. for Out-of State Suppliers

City of Phoenix Sales Tax No.

Proposer certifies that Proposer has read, understands, and will fully and faithfully comply with this Request for Proposals, any attachments and any referenced documents. Proposer also certifies that the prices offered were independently developed without consultation with any of the other Proposers or potential Proposers.

Authorized Signature

Date

Printed Name and Title

Proposer's Contact Information:

Company Name _____

Address _____

City, State and Zip Code _____

Telephone Number _____

Company's Fax Number _____

Company's Toll Free # _____

Email Address _____

Website _____

Payment Address: (If different from above)

NOTE: Any assignment of proceeds must go through the City of Phoenix, Division of Accounts, and formal assignment procedure. Please also refer to the Assignment Provision, item 5.2 of Section VI - Standard Terms and Conditions.

Name _____

Address _____

City, State and Zip Code _____

Payment Address: (If different from above)

Note: Any assignment of proceeds must go through the City of Phoenix, Division of Accounts, and formal assignment procedure. Please also refer to the Assignment Provision, item 5.2 of Section VI, Standard Terms and Conditions.

Name _____

Address _____

City, State and Zip Code _____

Acceptance of Offer (For City Use Only)

The Offer is hereby accepted.

The Proposer is now bound to sell materials or services listed by the attached contract and based upon the Request for Proposal including all terms, conditions, specifications, amendments, and exhibits and the Proposer's Offer as accepted by the City.

This Contract shall henceforth be referred to as Contract No. _____. The Proposer is cautioned not to commence any billable work or provide any material or service under this Contract until Proposer receives a purchase order, or contract documentation.

CITY OF PHOENIX, a municipal corporation,

David Cavazos, City Manager

_____ Department Director

Awarded this _____ day of _____.

City Clerk

Approved as to form: _____

IV. REQUIREMENTS, TERMS AND CONDITIONS

1) Pricing Component

Note: Prices offered in the Proposer's proposal or bid shall not include applicable taxes. For purposes of determining the lowest price proposal or bid, the City will not take any applicable tax into consideration. Once a contract is awarded, all applicable taxes will apply. Applicable taxes, if any, must be listed as a separate item on all invoices submitted to the City and shall remain the sole responsibility of the Proposer to calculate and make payment.

Cost is a factor in awarding the contract, however, only those proposals that meet all the mandatory criteria in the RFP will be given consideration. The contract will not be awarded solely on the basis of price. After a composite technical score, based upon narratives, interviews, investigations, etc; for each Proposer has been established, the pricing score will be considered and additional points will be added to the technical score to determine the RFP total score.

Proposers shall submit prices in accordance with the Pricing Worksheet included herein on Page 14. This Pricing Worksheet represents the City of Phoenix's official request for price quotation and **MUST** be completed by the Proposer. The pricing stated herein **must be a firm fee**. Unless otherwise and specifically provided, the price is all-inclusive and must include all necessary costs including, but not limited to, materials, labor, travel, copying costs, incidentals, equipment, space, taxes, profit, insurance and any other items necessary to effectively conduct and complete the Scope of Work.

2) Proposer Inquiries

All questions that arise relating to this RFP shall be directed in writing to the Department contract representative designated in the Introduction to this RFP:

Jeff Page, CHMM, Environmental Quality Specialist
City of Phoenix
Office of Environmental Programs
200 West Washington St., 14th Floor
Phoenix, AZ 85003

To be considered, written inquiries shall be received at the above address by the date indicated in Section III. Inquiries received will then be answered by an addendum and published at the Department website:

<http://phoenix.gov/environment/businessoep/index.html>

No informal contact initiated by Proposers on the requested service will be allowed with members of City's staff from date of distribution of this RFP until after the closing date and time for the submission of proposals. All questions concerning or issues related to this RFP shall be presented in writing.

3) Amendment of Request for Proposal

The Proposer shall acknowledge receipt of a Request for Proposal amendment by signing and returning the document by the specified due date and time. It is the Proposal's responsibility to obtain a copy of any amendment relevant to this solicitation. Failure to submit amendments with the solicitation response may be grounds for deeming a submittal no responsive.

4) Familiarization of Scope of Work

The Method of Approach section details the City's existing MSDS Management System as well as the elements of transitioning to a new system. **This serves as the Scope of Work for the RFP.** It is the responsibility of all Proposers to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time. The Proposer shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of the contract requirements. The submission of a proposal will constitute a representation of compliance by the offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

5) Preparation of Proposal

- A. All proposals shall be on the forms and in the format set forth the Request for Proposal package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals shall not be considered.
- B. The Offer and Acceptance form, the Pricing Worksheet and any solicitation amendments must be signed and returned with the proposal.
- C. The Offer and Acceptance form shall be signed by a person authorized to submit an Offer. An authorized signature on the Offer and Acceptance page, Proposal Amendment(s), or cover letter accompanying the proposal documents shall constitute an irrevocable offer to provide the service specified herein.
- D. Erasures, interlineations, or other modifications of your proposal shall be initialed in original ink by the authorized person signing the proposal.
- E. In case of error in the extension of price in the proposal, unit price shall govern when applicable.
- F. Periods of time, stated as a number of days, shall be in calendar days.

G. The City shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation. All materials and proposals submitted in response to this solicitation become the property of the City and will not be returned.

6) Proposal Format

The written proposal shall be signed by an individual authorized to bind the Proposer. The proposal shall provide the name, title, address and telephone number of individuals with authority to contractually bind the company and who may be contacted during the period of the Contract. All fees quoted shall be firm and fixed for the full contract period. Please see Section VII – Submittal, for further information. Each response shall be:

- a) Typewritten for ease of evaluation.
- b) Submitted in an 8½ x 11 inch loose leaf three-ring binder preferably using double-sided copying and at least 30% post consumer content paper, set forth in the same sequence as identified in Section III 'Submittal' (i.e., Proposers should respond to this RFP in sequence and each narrative response should reference the applicable section of Section III.
- c) Signed by an authorized representative of the Proposer.
- d) Submitted with the name(s), title, address, and telephone number of the individual(s) authorized to negotiate a contract with the City.
- e) Appended with any exceptions to the Terms and Conditions clearly stated.

7) Exceptions to the Contract Provisions

A response to any Request for Proposal is an offer to contract with the City based upon the contract provisions contained in the City's Request for Proposal, including, but not limited to, the specifications, scope of work and any terms and conditions. Proposers who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language.

These modifications must be clearly stated in a section/or attachment to the RFP narrative submittal titled "Request for Consideration of Alternate Terms." This narrative section shall be identified by tabs or headings and shall be submitted as the last narrative section before the Pricing Sheet.

The provisions of the Request for Proposal cannot be modified without the express written approval of the Department Manager or designee. If a proposal is submitted with modifications to the contract; the contract provisions contained in the City's Request for Proposal shall prevail unless the Proposal's proposed alternative provisions are expressly approved in writing by the Department Manager or designee.

If provisions of the detailed specifications (i.e., the RFP as it was originally published) preclude an otherwise qualified proposer from submitting a proposal, a written request for modification must be received by the Department contact listed on the front of this solicitation, at least seven (7) calendar days prior to the proposal due date. The City may issue an addendum to this solicitation of any approved specification changes.

8) Public Record

All proposals submitted in response to the Request for Proposal shall become the property of the City and shall become a matter of public record available for review pursuant to Arizona state law after the award notification.

9) Confidential Information

The City of Phoenix is obligated to abide by all public information laws. If a Proposer believes that a specific section of its proposal is confidential, the Proposer shall isolate the pages marked confidential in a specific and clearly labeled section of its proposal. The Proposer shall include a written basis for considering the marked pages confidential including the specific harm or prejudice if disclosed and the Department will review the material and make a determination.

10) Certification

By signature in the offer section of the Offer and Submittal portion of Section III, Proposer certifies:

- a) The submission of the offer did not involve collusion or other anti-competitive practices.
- b) Proposer will not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- c) Proposer has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.
- d) Proposer does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.
- e) Proposer is financially stable and solvent and has adequate cash reserves to meet all financial obligations while waiting reimbursement from the City.

11) Submission of Proposal

Proposals must be in the actual possession of the City at the designated location, on or prior to, the exact time and date indicated in the Schedule of Events. Late proposals shall not be considered. The prevailing clock shall be the City's clock at the location designated for delivery of the proposal.

Proposals must be submitted in a sealed fashion and the following information should be noted on the outside:

Proposer's Name

Proposer's Address (as shown on the Certification Page)

RFP Title

Proposal Opening Date

All proposals must be completed in ink or typewritten. Include the number of copies indicated in Section III.

12) Late Proposals

Late proposals shall be rejected regardless of the reason, including mail delivery problems beyond Proposer's control. Proposers mailing their responses should allow sufficient time to insure delivery by the date and time specified.

13) Non-Responsive Proposals

Proposals deemed non-responsive will not be evaluated or considered for award.

The following proposals will not be evaluated:

- Proposals submitted unsigned.
- Proposals that do not conform to the minimum specifications stated in the scope of work.
- Proposals submitted without complete pricing.
- Proposals that contain altered or conditional cost information.
- Proposals submitted by a Proposer who does not have valid certifications and/or licenses required by state, federal or local law or regulations to perform the service requested at the time of the submittal.
- Proposals that fail to contain the required bonds, security assurances or insurance certificates as specified in this RFP.
- Proposals not received by the designated due date, place and time.

Proposals may be deemed non-responsive at anytime in the evaluation process if in the sole opinion of the City:

- Proposer does not meet the minimum required skill, experience or other conditions or terms set forth in this RFP.
- Proposal does not comply with the submission requirements including any specified page limits.
- Proposer does not have a past record of sound business integrity and a history of fulfilling contractual obligations.

- Proposer is not financially stable, solvent, or have cash reserves to meet all financial obligations while waiting reimbursement from the City. (A Proposer who is borrowing any or all of the monies necessary to meet initial expenses between the start of the contract period and receipt of the first payment must provide a Letter of Commitment from the Proposer's creditor).
- Proposal contains false, inaccurate, or misleading statements that in the opinion of the City, is intended to mislead the City in its evaluation of the proposal.

14) Responsive Proposals

Proposals must meet all material requirements of the solicitation. All required elements of a sealed proposal will be evaluated on a pass/fail basis. The use of scoring or ranking cannot be used to evaluate non-responsive proposals. Only those proposals determined to be responsive will be evaluated and scored by members of an evaluation committee in accordance with the criteria set forth in this RFP.

In addition, the committee MAY request a formal presentation from the highest ranked Proposers before a final recommendation is made. If presentations are requested and presented, the evaluation team will re-convene, review, and re-score the evaluation categories based on the expanded information.

In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The City shall not reimburse the Proposer for the costs associated with the interview process. The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any Proposer submitting a proposal. Experiences with the City and entities that evaluation committee members represent may be taken into consideration when evaluating qualifications and experience.

If two or more finalists are tied, the finalist with the lowest cost proposal score will be awarded the contract.

Note: In addition to the foregoing information submitted by Proposers, the City shall have the right to consider other verifiable information bearing on financial stability and strength including without limitation, information provided by former employees and/or creditors.

15) Compliance With Equal Employment Opportunity Requirements

Proposers must be in compliance with Phoenix City Code, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Any questions in regard to these requirements should be directed to the Equal Opportunity Department, (602) 262-6790. The City of Phoenix extends to each individual, firm, Supplier, and Proposer an

equal economic opportunity to compete for City business and strongly encourages voluntary utilization of small or disadvantaged businesses.

16) Offer and Acceptance Period

In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for [120] days after the proposal due date and time.

17). Discussions

The City reserves the right to conduct discussions with Proposers for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure full understanding of, and responsiveness to solicitation requirements. If such a discussion is deemed necessary, the only City staff that is authorized to contact the Proposer is the contract representative listed on the front of this proposal. The contract representative shall document any such discussion in the City's file.

18) Withdrawal of Offer

At any time prior to the solicitation due date and time, a Proposer (or designated representative) may withdraw the proposal by submitting a request in writing and signed by a duly authorized representative. Facsimiles, telegraphic or mailgram withdrawals shall not be considered.

19) Proposal Results

Proposals will be opened on the proposal due date, time and location indicated in the Schedule of Events at which time the name of each Proposer shall be read. Proposals and other information received in response to the Request for Proposal shall be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Proposals are not available for public inspection until after award recommendation has been posted on the City's website.

20) Evaluation Criteria

Proposals will be evaluated and scored by members of an evaluation committee in accordance with the criteria stated in Section IV, consisting of technical component(s) and a pricing (or "cost") component.

In addition, the committee MAY request a formal presentation from the highest ranked Proposers before a final recommendation.

21) The City's Right to Disqualify for Conflict of Interest

The City reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposal submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Proposer submitting a proposal herein waives any right to object now or at any future time, before any body or agency, including but not limited to, the City Council of the City of Phoenix or any court.

22) Award

The Proposer whose proposal receives the highest score will be recommended for the contract award.

Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all proposals or portions thereof; or (3) reissue a solicitation.

A response to this solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Such a proposal does not become a contract until it is executed by the Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, unless any of the terms, conditions, or specifications is modified by an addendum or contract amendment. The terms and conditions set forth in this RFP and the selected Proposer's Offer shall form the entire contract between the City and the Proposer.

23) Protest of Award Nomination

Protest of an award recommendation must be filed within seven (7) calendar days following release of City's "Intent to Award" letter. The City retains the right to reject all protests not timely filed or those found to be without merit. Protests shall be in writing and filed with Office of Environmental Programs Manager Phil McNeely and shall include all of the following:

- A. The name, address and telephone number of the protester;
- B. The signature of the protester or its representative; Identification of the RFP number
- C. A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and,
- D. The form of relief requested.

24) Employee Identification

Proposer agrees to provide an employee identification number or social security number to the City of Phoenix for the purposes of reporting to appropriate taxing authorities, monies paid by the City of Phoenix under the awarded contract. If the federal identifier of the Proposer is a social security number, this number will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

25) Shortlist

The City reserves the right to shortlist the Proposers on all of the stated criteria. However, the City may determine that shortlisting is not necessary.

26) Interviews/Demonstrations

The City reserves the right to conduct interviews and/or interviews with some or all of the Proposers at any point during the evaluation process. However, the City may determine that interviews/demonstrations are not necessary. In the event interviews/demonstrations are conducted, information provided during the interview/demonstration process shall be taken into consideration when evaluating the stated criteria. The City shall not reimburse the Proposer for the costs associated with the interview process.

Demonstrations, if scheduled, will be held at a time and place specified by the City. Each of the Proposer's key project team members, including any subProposers who will be assigned to the project, are strongly encouraged to attend the interview/demonstration.

27) Additional Investigations

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any Proposer submitting a proposal including, without limitation, information provided by former employees and/or creditors.

28) Prior Experience

Experiences with the City and entities that evaluation committee members represent may be taken into consideration when evaluating the qualifications and experience.

29) Overall Evaluation of the Proposal Response The overall completeness, accuracy and quality of the proposal may be taken into consideration when evaluating the qualifications and experience.

30) Method of Invoicing

Invoices must include the following:

- A. City contract agreement number.
- B. Description of services.
- C. Applicable tax and fees, itemized separately.
- D. Invoice number and date.

31) Method of Payment

The City will pay the fees as stated on a monthly basis in arrears.

32) Indemnification Clause

Proposer shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Proposer or any of its owners, officers, directors, agents, employees or subProposers. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Proposer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Proposer from and against any and all claims. It is agreed that Proposer will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Proposer agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Proposer for the City.

33) Insurance Requirements

Proposer shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Proposer, his agents, representatives, employees or subProposers.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way

warrants that the minimum limits contained herein are sufficient to protect the Proposer from liabilities that might arise out of the performance of the work under this contract by the Proposer, his agents, representatives, employees or subProposers and Proposer is free to purchase additional insurance as may be determined necessary.

A) Minimum Scope and Limits of Insurance.

Proposer shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1) Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate

\$2,000,000

Products

Completed Operations Aggregate

\$1,000,000

Personal and Advertising Injury

\$1,000,000

Each Occurrence

\$1,000,000

a.) The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Proposer".

2) Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
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Employers' Liability	
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Each Accident	\$100,000
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Disease – Each Employee	\$100,000
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Disease – Policy Limit	\$500,000
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a. Policy shall contain a waiver of subrogation against the City of Phoenix.

b. This requirement shall not apply when a Proposer or subProposer is exempt under A.R.S. 23-901, **AND** when such Proposer or subProposer executes the appropriate sole proprietor waiver form.

3) Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim \$1,000,000

Annual Aggregate \$2,000,000

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Proposer warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B) Additional Insurance Requirements

The policies shall include, or be endorsed to include, the following provisions:

a. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by the Proposer even if those limits of liability are in excess of those required by this Contract.

b. The Proposer's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C) Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Proposer must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand delivered or sent by facsimile transmission to Jeff Page.

D) Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Proposer from potential insurer insolvency.

E) Verification of Coverage

Proposer shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to Jeff Page. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

F) SubProposers

Proposers' certificate(s) shall include all subProposers as additional insureds under its policies **or** Proposer shall furnish to the City separate certificates and endorsements for each subProposer. All coverages for subProposers shall be subject to the minimum requirements identified above.

G) Approval

Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

H) Option to Extend

The City may, at their option and with approval of the Proposer, extend the period of this up to four (4) additional year(s), in increments of one year. The maximum contract term is five (5) years.

I) Performance Interference

Proposer shall notify the department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract, and confirm it in writing within twenty-four (24) hours.

J) Proposer's Performance

Proposer shall use those efforts which a skilled, competent, experienced, and prudent person or organization would use to perform and complete the requirements of this Contract in a timely and professional manner conforming to the standards and quality generally recognized and accepted within the profession throughout the United States.

Proposer shall furnish all necessary labor, tools, equipment, and supplies to perform the required services.

The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the Contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City shall notify the Proposer.

The Proposer will have ten (10) days from that time to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the City shall have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover from any balances due or to become due the Proposer. Repeated incidences of unsatisfactory performance may result in cancellation of the Contract for default.

K) Account Staffing

The Proposer agrees to assign experienced personnel to provide for successful and timely accomplishment of the Scope of Work. The City reserves the right at any time and for any reason during the Contract to reject any Proposer staff from performing services on behalf of the City.

34) Time is of the Essence

The parties agree that time is of the essence in the performance of the Scope of Work.

35) Applicable Law

This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in Federal or State courts in Maricopa County, State of Arizona.

36) Implied Contract Terms

Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

37) Contract Order of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below:

- a) Special Terms and Conditions
- b) Standard Terms and Conditions
- c) Statement or Scope of Work
- d) Specifications
- e) Attachments
- f) Instructions to Proposers
- g) Other documents referenced or included in the Request for Proposal.

38) Severability

The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

39) Non-Waiver of Liability

The City of Phoenix, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Proposer agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.

40) Parole Evidence

This Contract 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 this Contract. No course of prior dealings between the parties and no usage in the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

41) Records

All books, accounts, reports, files and other records relating to the Contract shall be subject at all reasonable times to inspection and audit by the City for five years after completion of the Contract. Such records will be produced at a City of Phoenix office as designated by the City.

42) Confidentiality and Data Security

All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Proposer in connection with this Agreement is

confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, the Proposer shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager, or his/her designee.

Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Proposer must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by the Proposer in connection with this Agreement is believed to have been compromised, Proposer shall notify the City Privacy Officer immediately. Proposer agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Proposer agrees that the requirements of this Section shall be incorporated into all subProposer agreements entered into by the Proposer. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

Proposer shall indemnify, defend, save and hold harmless the City and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and cost of claims processing, investigation and litigation) for any loss caused, or alleged to be caused, in whole or in part, by Proposer's or any of its owners', officers', directors', agents' or employees' failure to comply with the requirements of this section. This indemnity includes any claim arising out of the failure of Proposer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

The obligations of Proposer under this Section shall survive the termination of this Agreement.

43) Equal Employment Opportunity Requirements

Proposer agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended.

Any Proposer/subProposer in performing under this Contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The Proposer/subProposer will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex or national origin, age or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Proposer/subProposer further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract.

Proposer/subProposer further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or assignments of this Contract entered into by Proposer/subProposer.

44) Licenses and Permits

Proposer shall possess at the time of submittal and shall keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Proposer as applicable to this Contract.

45) Advertising

Proposer shall not advertise or publish news releases concerning this Contract without the prior written consent of the Department Director, and the City shall not unreasonably withhold permission.

46) Exclusive Possession

All research and materials created, developed, compiled or produced pursuant to or as a result of this contract (including but not limited to all reports) will be considered ordered and commissioned by the City as works made for hire under the copyright laws and made in the course of services rendered.

All services, information, computer program elements, reports, and other deliverables which may be created under this Contract are the sole property of the City of Phoenix and shall not be used or released by the Proposer or any other person except with prior written permission by the City.

47) Health, Environmental and Safety Requirements

The Proposer's products, services and facilities shall be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City. The City shall have the right to inspect operations conducted by the Proposer or subProposer in the performance of this Contract.

48) Compliance with Laws

Proposer agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether or not they are referred to by the City. Proposer agrees to permit City inspection of Proposer's business records, including personnel records to verify any such compliance

Because the Proposer will be acting as an independent Proposer, the City assumes no responsibility for the Proposer's acts.

49) Continuation During Disputes

Proposer agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, the Proposer shall continue to perform the obligations required of Proposer during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

50) Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

51) Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any Proposer who fails, or whose subProposers fail, to comply with A.R.S. § 23-214(A). Therefore, Proposer agrees that:

a) Proposer and each subProposer it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

b) A breach of a warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.

c) The City retains the legal right to inspect the papers of the Proposer or subProposer employee(s) who work(s) on this Agreement to ensure that Proposer or subProposer is complying with the warranty under paragraph 1.

52) Lawful Presence Requirement

Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships or limited liability companies.

53) Commencement of Work

The Proposer is cautioned not to commence any billable work or provide any material or service under this Contract until Proposer receives a purchase order of otherwise directed to do so, in writing by the City.

54) Payment Deduction Offset Provision

Proposer acknowledges that the City Charter requires that no payment be made to any Proposer as long as there is an outstanding obligation due to the City. Proposer agrees that any obligation it owes to the City will be offset against any payment due to the Proposer from the City.

55) Late Submission of Claim by Proposer

The City will not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.

56) No Advance Payments

Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received.

57) Fund Appropriation Contingency

The Proposer recognizes that any agreement entered into shall commence upon the day first provided and continue in full force and effect until termination in accordance with

its provisions. The Proposer and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Phoenix, which fiscal year ends on June 30 of each year, shall be subject to the approval of the budget of the City of Phoenix providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

58) IRS W9 Form

In order to receive payment the Proposer shall have a current IRS W-9 form on file with the City of Phoenix. The form can be downloaded at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

59) Contract Amendments

Contracts shall be modified only by a written contract amendment signed by the Department Director and persons duly authorized to enter into contracts on behalf of the Proposer.

60) Assignment and Delegation

No right or interest in this Contract nor monies due hereunder shall be assigned in whole or in part without written permission of the City, and no delegation of any duty of Proposer shall be made without prior written permission of the Department Director, which may be withheld for good cause. Any assignment or delegation made in violation of this section shall be void.

61) On Exclusive Contract

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Phoenix. The City reserves the right to obtain like goods or services from another source when necessary.

62) Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: a) specifications; b) implementation schedule. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the Department Director prior to the institution of the change.

63) Title and Risk of Loss

The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction shall not release Proposer from any obligation hereunder.

64) Acceptance

All service is subject to final inspection and acceptance by the City. Noncompliance shall conform to the cancellation clause set forth in this document.

65) Indemnification – Patent, Copyright and Trademark

The Proposer shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract.

The Proposer agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Phoenix and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Contract and the Proposer further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires. It is expressly agreed by the Proposer that these covenants are irrevocable and perpetual.

66) Force Majeure

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure shall not include late performance by a subProposer unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a

specific reference to this provision, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

67) Organization – Employment Disclaimer

The Contract resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in the Contract. The parties agree that no persons supplied by the Proposer in the performance of Proposer's obligations under the Contract are considered to be City's employees and that no rights of City civil service, benefits, retirement or personnel rules accrue to such persons. The Proposer shall have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the City harmless with respect thereto.

68) Loss of Materials

The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.

69) Damage to City Property

Proposer shall perform all work so that no damage to City IT resources results. Proposer shall repair any damage caused to the satisfaction of the City at no cost to the City.

70) Quality

Proposer expressly warrants that all goods or services furnished under this Contract shall conform to the specifications and appropriate standards.

71) Responsibility for Correction

It is agreed that the Proposer shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance.

72) Liens

Proposer shall hold the City harmless from claimants supplying labor or materials to the Proposer or its subProposers in the performance of the work required under this Contract.

73) Professional Responsibility

Proposer shall use those efforts which a skilled, competent, experienced, and prudent person or organization would use to perform and complete the requirements of this Contract in a timely manner conforming to the standards and quality generally recognized and accepted within the profession throughout the United States.

74) Right to Assurance

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 this intent to perform. In the event that a 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 this Contract.

75) Non-Exclusive Remedies

The rights and remedies of the City under this Contract are non-exclusive.

76) Default

In case of default by the Proposer, the City may, by written notice, cancel this Contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the proposal and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

77) Covenant Against Contingent Fees

Proposer warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the Proposer for the purpose of securing business. For breach or violation of this warranty, the City shall have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

78) Cost Justification

In the event only one response is received, the City may require that the Proposer submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the proposal price is fair and reasonable.

79) Gratuities

The City may, by written notice to the Proposer, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Proposer or any agent or representative of the Proposer, to any officer or employee of the City making any determinations with respect to the performing of such 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 from the Proposer the amount of the gratuity.

80) Conditions and Causes for Termination

This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice to Proposer. The City at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Proposer shall submit detailed cost claims in an acceptable manner and shall permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

The City reserves the right to cancel the whole or any part of this Contract due to failure of Proposer to carry out any term, promise, or condition of the Contract. The City will issue a written notice of default to Proposer for acting or failing to act as in any of the following:

In the opinion of the City, Proposer provides personnel who do not meet the requirements of the Contract;

In the opinion of the City, Proposer fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

In the opinion of the City, Proposer attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality;

In the opinion of the City, Proposer fails to furnish the required service and/or product within the time stipulated in the Contract;

In the opinion of the City, Proposer fails to make progress in the performance of the requirements of the Contract and/or give the City a positive indication that Proposer will not or cannot perform to the requirements of the Contract.

81) Contract Cancellation

All parties acknowledge that this Contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

82) Definitions

For purposes of this solicitation, the following definitions shall apply:

Amendment: Means a written document issued by the City and signed by the Proposer which alters the contract and identifies the following: (i) a change in the Work (ii) a change in the Contract Amount (iii) a change in the time allotted for performance and /or (iv) an adjustment to the Agreement terms

City: The city of Phoenix.

Contract: The legal agreement executed between the City of Phoenix, AZ and the Proposer.

Contract Representative: The City employee or employees who have specifically been designated to act as a contact person or persons to the Proposer, and responsible for monitoring and overseeing the Proposer's performance under this Contract.

Proposer: The individual, partnership, corporation, limited liability company, joint venture, or other business entity who, as a result of the competitive process, is awarded a contract by the City of Phoenix.

Department Director: The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.

Days: Means calendar days unless otherwise specified.

Deputy Director: The Deputy Director over the Department.:

Employer: Any individual or type of organization that transacts business in this State, that has a license issued by an agency in the State and employs one or more employees in this state. Employer includes this State, any political subdivision of this State and self-

employed persons. In the case of an independent Proposer, employer means the independent Proposer, and does not mean the person or organization that uses contract labor.(A.R.S. 23-211).

May: Indicates something that is not mandatory but permissible.

Offer: Means proposal or quotation.

Proposer/Offeror: Means a Proposer who responds to the Request for Proposal.

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of proposal as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Proposer fails to provide recommended information, the City may, at its sole option, ask the Proposer to provide the information or evaluate the offer without the information.

Solicitation: Means a Request for Proposal (RFP).

SubProposer: Means an individual, firm, partnership, corporation, limited liability company, joint venture, or any other business entity having a contract, purchase order, or agreement with the Proposer, or with any SubProposer, of any tier for the performance of any part of the Agreement. When the City refers to SubProposer(s) in this document, for the purpose of this Agreement and unless otherwise expressly stated, the term “SubProposer” includes, at every level, and/or tier, all subProposers, sub-consultants, suppliers and material men.

Suppliers: Firms, entities or individuals furnishing goods or services directly to the City.

Proposer: A seller of goods or services.