

# CITY OF TUCSON

## REQUEST FOR PROPOSAL

**PROPOSAL NUMBER:** 212816

**PROPOSAL SUBMISSION DEADLINE:** SEPTEMBER 14, 2021, 2:00 P.M. LOCAL AZ TIME

**PROPOSAL SUBMITTAL LOCATION:** **\*\*ELECTRONIC SUBMITTALS REQUIRED\*\***  
<https://www.tucsonaz.gov/bsol/>

**MATERIAL OR SERVICE:** HEAVY EQUIPMENT, PARTS, ACCESSORIES,  
SUPPLIES AND RELATED SERVICES

**PRE-PREPOSAL DATE:** TUESDAY, AUGUST 17, 2021  
**TIME:** 12:30 P.M. – 1:30 P.M. LOCAL AZ TIME  
**LOCATION:** [Click Here to Join Meeting](#)

Or call in (audio only)  
[+1 213-293-2303,312216198#](tel:+12132932303312216198#)  
United States, Los Angeles  
Phone Conference ID: 312 216 198#

**CONTRACT OFFICER:** Cynthia Thompson, NIGP-CPP, CPPB  
**TELEPHONE NUMBER:** (520) 837-4134  
[Cynthia.Thompson@tucsonaz.gov](mailto:Cynthia.Thompson@tucsonaz.gov)

A copy of the solicitation and any possible amendments may be downloaded from our Internet site at: <http://www.tucsonprocurement.com/> by selecting the Bid Opportunities link and the associated solicitation number. The City does not mail out Notices of available solicitations via the U.S. Postal Service. Email notifications are sent to those interested offerors who are registered with us and who have selected email as their preferred delivery method. To register, or to update an existing vendor record, please visit [www.tucsonprocurement.com](http://www.tucsonprocurement.com), click on Vendors, then click on Vendor Registration to access the City's vendor registration system. You may also call the Shared Services Procurement Division of the Business Services Department at (520) 791-4217 if you have questions.

Competitive sealed bids for the specified material or service shall be received electronically by the Business Services Department at: <https://www.tucsonaz.gov/bsol/> until the date and time cited. **In order to allow for any issues that may be encountered, (i.e. slow internet, internet outage, uploading large documents, differing system requirements, etc.), Offerors should ensure sufficient time to upload proposal documents. Responses not in "Submitted" Status by the Due Date and Time stated in the solicitation WILL be rejected.**

Offerors shall submit their Proposal to the Business Services Department on or before the day and hour set for the Proposal Due Date identified above, as may be modified by amendments to this solicitation. Responses to this solicitation shall only be accepted via electronic submission through the City's online bidding system. Instructions to submit a response to this solicitation can be found at the following link: <https://tucsonprocurement.com/assets/OnlineBiddingProceduresManual.pdf>.

It is the sole responsibility of the Bidder to submit their Bid before the scheduled time, as reflected in the City's online bidding system. No Bid shall be accepted after the scheduled opening time.

Questions must be addressed to the Contract Officer listed above.

PUBLISH DATE: August 10, 2021

## REQUEST FOR PROPOSAL

### Heavy Equipment, Parts, Accessories, Supplies and Related Services

- A. INTRODUCTION**
- B. SCOPE OF WORK**
- C. INSTRUCTIONS TO OFFERORS**
- D. PROPOSAL EVALUATION CRITERIA**
- E. VENDOR RESPONSE**
- F. SPECIAL TERMS AND CONDITIONS**
- G. INSURANCE REQUIREMENTS**
- H. STANDARD TERMS AND CONDITIONS**

#### **ATTACHMENTS:**

##### **A – Exhibit B - OMNIA Partners Exhibits**

**Attachment A, Exhibit A - Response for National Cooperative Contract**

**Attachment A, Exhibit B - Administration Agreement (Example)**

**Attachment A, Exhibit F - Federal Funds Certifications**

**Attachment A, Exhibit G - New Jersey Business Compliance**

##### **B – City of Tucson - Certification of Living Wage Payments Form**

## **A. INTRODUCTION**

### **A.1. Summary**

The City of Tucson (herein referred to as the City) is requesting proposals from qualified and experienced firms to provide **HEAVY EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES AND RELATED SERVICES**. The City requires a contractor who provides a diverse and extensive supply of equipment for purchase and/or rental to various locations in the Tucson metropolitan area and Participating Public Agencies, as well as representative(s) to provide product and service consultations, demonstrations, and training.

Heavy equipment will include, but not be limited to, the following equipment categories: Landfill, Construction, and Material Handling. The City has approximately 150 pieces of heavy equipment that falls under the heavy equipment category. The Contractor will have a sophisticated infrastructure including strategically located nationwide distribution centers and employ professional sales representatives to provide effective, timely service to the City of Tucson and to Participating Public Agencies.

Requirements and qualifications are defined in detail in the Scope of Services Section of this Request for Proposal (RFP).

### **A.2. Background**

#### **NATIONAL CONTRACT REQUIREMENTS**

The City of Tucson as the Principal Procurement Agency, defined in Attachment A, has partnered with OMNIA Partners, Public Sector ("OMNIA Partners") to make the resultant contract (also known as the "Master Agreement" in materials distributed by OMNIA Partners) from this solicitation available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies"), through OMNIA Partners' cooperative purchasing program. The City of Tucson is acting as the contracting agency for any other Public Agency that elects to utilize the resulting Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners (a "Participating Public Agency") and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of a Master Intergovernmental Cooperative Purchasing Agreement, a form of which is attached hereto on Attachment A, or as otherwise agreed to. Attachment A contains additional information about OMNIA Partners and the cooperative purchasing program.

OMNIA Partners is the largest and most experienced purchasing organization for public and private sector procurement. Through the economies of scale created by OMNIA Partners public sector subsidiaries and affiliates, National IPA and U.S. Communities, our participants now have access to more competitively solicited and publicly awarded cooperative agreements. The lead agency contracting process continues to be the foundation on which we are founded. OMNIA Partners is proud to offer more value and resources to state and local government, higher education, K-12 education, and non-profits.

OMNIA Partners provides shared services and supply chain optimization to government, education and the private sector. With corporate, pricing and sales commitments from the Supplier, OMNIA Partners provides marketing and administrative support for the Supplier that directly promotes the Supplier's

products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies on a national basis. Participating Public Agencies benefit from pricing based on aggregate spend and the convenience of a contract that has already been advertised and publicly competed. The Supplier benefits from a contract that generally allows Participating Public Agencies to directly purchase goods and services without the Supplier's need to respond to additional competitive solicitations. As such, the Supplier must be able to accommodate a nationwide demand for services and to fulfill obligations as a nationwide Supplier and respond to the OMNIA Partners documents (Attachment A).

The City anticipates spending approximately \$8.5 million over the full potential Master Agreement term for Heavy Equipment, Parts, Accessories, Supplies and Related Services. While no minimum volume is guaranteed to the Supplier, the estimated annual volume of heavy equipment, parts, accessories, supplies and related services purchased under the Master Agreement through OMNIA Partners is approximately \$25,000,000. This projection is based on the current annual volumes among the City of Tucson, other Participating Public Agencies anticipated to utilize the resulting Master Agreement to be made available to them through OMNIA Partners, and volume growth into other Public Agencies through a coordinated marketing approach between the Supplier and OMNIA Partners.

### **A.3. Contact Information**

**Cynthia Thompson, NIGP-CPP, CPPB**

Principal Contract Officer

Email: [Cynthia.Thompson@tucsonaz.gov](mailto:Cynthia.Thompson@tucsonaz.gov)

Phone: [\(520\) 837-4134](tel:(520)837-4134)

**Department:**

Business Services

## **B. SCOPE OF WORK**

### **B.1. GENERAL REQUIREMENTS**

**1. QUALIFIED FIRMS:** Offerors should meet the minimum qualifications:

- a. Have a strong national presence in the heavy equipment industry.
- b. Have a distribution model capable of delivering heavy equipment nationwide.
- c. Have a demonstrated sales presence.
- d. Be able to meet the minimum requirements of the cooperative purchasing program detailed herein.
- e. Be able to provide the full range of products, equipment, parts, materials and services to meet the demands of the City and Participating Public Agencies.

**2. PRODUCTION REPORTS:** The Contractor or associated dealer must have the ability to furnish the agency or Participating Public Agency ordering equipment with MONTHLY progress reports confirming status of delivery dates as agreed upon. These reports shall include, but not be limited to, the following:

- a. Copy of Contractor's order to the factory.
- b. Copy of factory acknowledgment of order indicating scheduled date of production and shipment from factory.
- c. Factory generated computer status reports.
- d. Notification to the City or Participating Public Agency of any changes in production or shipping dates.
- e. Any special information the Contractor shall have that would affect the timely delivery of the vehicles ordered in accordance with original delivery date promise.

In lieu of written reports submitted to Operations/Fleet Services, the Contractor may provide access to an Internet based on-line order tracking system. Any on-line system provided must provide the information required above. The Contractor must provide all access codes necessary to view this information.

**3. DELIVERY and DELIVERY DOCUMENTATION:** The City and each Participating Public Agencies will establish their own delivery schedule based upon its own requirements and the Contractor's specified time to deliver after receipt of an order. The following documents are due upon delivery of the completed vehicles to the City:

- a. Invoice
- b. Warranty document
- c. Level 1 Inspection
- d. Required manuals
- e. Title and Registration per State requirements

Upon contract award, the Contractor will be required to supply a delivery ticket specifying the purchase order number of each vehicle.

Delivery to the City of Tucson: All deliveries shall be made Monday through Friday from 8:00 a.m. to 3:00 p.m. The Contractor shall be required to give the General Services Department/Fleet Services

Division a minimum of 24-hour notification prior to delivery with the anticipated time of delivery and quantity of units to be delivered.

**4. VEHICLE INSPECTION:** The purchasing agency will assist the Contractor or the authorized dealer in arranging for inspection of each piece of equipment purchased. Each vehicle delivered shall be subject to a complete inspection by the General Services Department/Fleet Services Division staff prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. If delivered equipment is returned to the Contractor prior to acceptance for any reason, all corrections shall be made without any inconvenience to the City.

**5. TRAINING:** The Contractor shall provide, at no additional cost, training for each basic unit of equipment purchased. This training shall be adequate to the needs of the typical equipment operator and service technician in order to assure proper operation, utilization and maintenance of the equipment supplied. Any manuals necessary to perform the required training shall be furnished by the Contractor. The trainer shall be factory-trained and thoroughly knowledgeable in equipment operator and service technician functions. Training shall be presented in a quality suitable for videotaping. The City reserves the right to videotape part or all of the training provided at no additional cost to the agency.

**6. REPAIRS:** The Contractor will be responsible for transport of vehicles to and from his place of business for repairs, at no additional cost to the City, until such time as the City of Tucson places the vehicle in service. Transport of the vehicle will not be delayed more than one working day from date of notification.

**7. WARRANTIES:** Offeror shall warrant that all equipment and parts furnished in their offer are newly manufactured and free from defects in material and workmanship from the date the City places the equipment into service. Warranty shall also guarantee accepted trade standards of quality, fitness for the intended uses, and conformance to promises or specified specifications. No other express or implied warranty shall eliminate the vendor's liability as stated herein.

Total Maintenance and Repair (TMR's) must be agreed upon and presented to the City prior to the purchase of equipment and/or rebuilds.

**8. VENDOR SERVICE AND MAINTENANCE:** Contractor will provide and maintain a factory authorized parts and service facility within a reasonable distance to the purchasing location.

For the City, the parts and service facility must be within a 125-mile radius of the City of Tucson Price Service Center (4004 S. Park Avenue, 85714). If warranty service is not provided within the Tucson metro area, the Contractor shall be responsible for all costs, including fuel and labor, of transporting vehicle(s) between the City's Price Service Center and the Contractor's service center. The method of transportation must be mutually agreed to by the Contractor and the City prior to transport.

For service calls, the Contractor must provide a response within 60 minutes.

**Additional Requirement for City of Tucson Landfill:** A service technician must be on-site each morning, Monday-Friday (except holidays) to service and maintain the City of Tucson landfill equipment located at 5300 E. Los Reales Road, Tucson, AZ.

**9. VEHICLE RECALL NOTICES:** In the event of any recall notice, technical service bulletin, or other important notification affecting a vehicle purchased from this contract, a notice shall be sent to the purchasing agency's representative. For the City of Tucson, all notices shall be sent to General Services, Fleet Services Division, 4004 S. Park Avenue, Building 1, Tucson, AZ 85714.

## **B.2. EQUIPMENT AND PRODUCT REQUIREMENTS**

- 1. EQUIPMENT:** A complete and comprehensive line of new and used Heavy Equipment to support various needs of agencies is requested.

The categories include, but are not limited to, the following:

|                             |                               |
|-----------------------------|-------------------------------|
| Landfill Equipment:         | Loaders / Tracked             |
| Landfill Dozers             | Loaders / Wheeled             |
| Landfill Compactors         | Motor Graders                 |
| Landfill Scraper            | Patcher Truck                 |
| Material Handling           | Paver / Tracked               |
| Fork Lift                   | Paver / Wheeled               |
| Crane / Wheeled             | Rollers / Drum / Vibrate      |
| Crane / Track               | Rollers / wheeled / Pneumatic |
| Construction Equipment:     | Rollers / Drum / Wheeled      |
| Air Compressor              | Scrapers                      |
| Articulated Dump Truck      | Skid Steer Loaders            |
| Asphalt Cold Planer         | Soil Compactors               |
| Asphalt Rotary Mixer        | Sweeper / Scrubber            |
| Bucket Truck                | Sweeper / Street              |
| Cement Mixer                | Sweeper / walkway             |
| Chip Spreader               | Telehandlers                  |
| Crack Sealer                | Trailer / Tilt                |
| Dozers / Tracked            | Trailer / Flatbed             |
| Dozers / Wheeled            | Trailer / Drop Neck           |
| Dump Trucks                 | Trailer / Utility             |
| Excavators / Tracked        | Trencher                      |
| Excavators / Wheeled        | Water Truck                   |
| Ice Resurfacers             | Water Wagon                   |
| Loaders / Backhoe / Wheeled |                               |

**2. BALANCE OF LINE/OTHER CATEGORIES:** Each offeror awarded an item under this solicitation may offer their complete product and service offering/a balance of line for heavy equipment, parts, accessories, supplies and related services. Pricing for complete product offering/balance of line items will be determined by a percentage discount off the offeror's retail price list. The pricing percentage discount offered must be entered in the offeror's response. The City reserves the right to accept or reject any or all balance of line items offered. A successful offeror will not be awarded complete product offering/balance of line items that are awarded as an item to another vendor as part of this solicitation.

**3. CURRENT EQUIPMENT AND PRODUCTS:** All equipment and products being offered in response to this solicitation shall be in current and ongoing production; shall be formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

**4. PRICING:** Offerors shall provide a verifiable pricing model that may include, but not be limited to, a discount from a verifiable price index, a reduced net pricing schedule, a hybrid or other supplier specific pricing model. The pricing model shall remain firm and will include all charges that may be incurred in fulfilling requirement(s) for the twelve-month period following contract award. Where applicable, pricing shall be determined by applying Offerors discounts to the prices listed on their manufacturer's price lists, retail price sheets, catalogs or by utilizing the reduced net pricing schedule.

**Special Offers/Promotions:**

In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, Contractor may conduct sales promotions involving price reductions for a specified lesser period. Contractor may offer Participating Public Agencies competitive pricing which is lower than the not-to-exceed price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract. Provide details of and propose additional discounts for volume orders, special manufacturer's offers, minimum order quantity, free goods program, total annual spend, etc.

**B.3. SERVICE REQUIREMENTS**

**1. SERVICES:** The City is seeking the inclusion of value-add services. These services may be provided by the authorized manufacturer or dealer and sample categories include, but are not limited to:

**a. Repair Services:** The ability to provide repair services through authorized manufacturer's facilities or dealers. Repair services may include, but not be limited to, hourly rate for repairs in shop, hourly rate for repairs in field, weld repairs, machining work, etc.

**b. Maintenance Services:** The ability to provide various maintenance services and options through authorized manufacturer's facilities or dealers. Maintenance services may include scheduled services based upon the manufactures recommended guidelines to include, but not be limited to, daily scheduled services, daily fuel dispensing, major/minor machine cleaning, etc. Maintenance services may also include mobile maintenance.

For landfill equipment, if the City has purchased the maintenance services from the manufacturer's dealer, the City requires loaner or rental equipment if the machine is down for more than 24 hours. If the equipment is down due to no fault of the City, the loaner shall be provided at no additional cost.

**c. Warranties:** The ability to provide a full range of extended warranties.



**d. Lease/Financing Options:** The ability to provide financing options. Identify direct or third party financing or both.

**e. Trade-In or Buyback Options:** The ability to trade-in used equipment or obtain a guaranteed buy back price at the time of purchase.

**f. Rental:** The ability to rent heavy equipment through the manufacturer or dealer.

**g. Incorporation of New Business Enterprises:** The ability to incorporate certain business enterprises (as requested by the City or Participating Public Agencies) into your distribution, and sales channels.

**h. Green/Sustainability Program:**

1. Policies: Efforts and policies pertaining to green and sustainability.
2. Products: Impact on product offerings.
3. Distribution: Impact in distribution.
4. Certifications: The industry recognized certifications and standards obtained.

**i. Training & Education:** The ability to provide on-site and/or online training and educational programs/seminars as well as providing technical product knowledge and support.

**j. Customer Support Services:** The policies on replacements, returns, restocking charges, after hours service, after sales support, out of stock, order tracing, technical feedback, quality assurance for orders and drop shipments.

**k. Other Services/Programs:** Other value-add services not included in above categories.

## C. INSTRUCTIONS TO OFFERORS

### C.1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION

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

**City:** The City of Tucson, Arizona

**Contract:** The legal agreement executed between the City and the Contractor/Consultant. The Contract shall include this RFP document incorporated herein by reference, all terms, conditions, specifications, scope of work, Amendments, the Contractor's offer and negotiated items as accepted by the City.

**Contractor/Consultant:** The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City.

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

**Business Services Director:** The contracting authority for the City, authorized to sign contracts and amendments thereto on behalf of the City.

**May:** Indicates something that is not mandatory but permissible.

**Offeror:** The individual, partnership, or corporation who submits a proposal in response to a solicitation.

**Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at the City's sole discretion, result in the rejection of a proposal as non-responsive.

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

### C.2. PRE-PROPOSAL CONFERENCE

If scheduled, the date and time of a Pre-Proposal conference is indicated on the cover page of this document. Attendance at this conference is not mandatory. Written minutes and/or notes will not be available, therefore attendance is encouraged. If an Offeror is unable to attend the Pre-Proposal Conference questions may be submitted in writing. Offerors are encouraged to submit written questions, via electronic mail at least nine days prior to the Request for Proposal due date to the Contract Officer listed above. The purpose of this conference will be to clarify the contents of this Request for Proposal in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this Request for Proposal or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine the appropriate action necessary, if any, and may issue a written amendment to the Request for Proposal. Oral statements or instructions will not constitute an amendment to this Request for Proposal.

### C.3. INQUIRIES

Any question related to the Request for Proposal shall be directed to the Contract Officer whose name appears above. An offeror shall not contact or ask questions of the department for whom the

requirement is being procured. The Contract Officer may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail at least nine days prior to the proposal due date. Any correspondence related to a solicitation should refer to the appropriate Request for Proposal number, page and paragraph number. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Proposal will be binding.

#### **C.4. AMENDMENT OF REQUEST FOR PROPOSAL**

The Offeror shall acknowledge receipt of a Request for Proposal Amendment by signing and returning the document by the specified due date and time.

#### **C.5. FAMILIARIZATION OF SCOPE OF WORK**

Before submitting a proposal, each offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror 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 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.

#### **C.6. PREPARATION OF PROPOSAL**

- A. All proposals shall be on the forms provided in this Request for Proposal package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals shall not be considered.
- B. At a minimum, your proposal should include the signed Offer and Acceptance form, signed copies of any solicitation amendments, completed Price Page and your response to all evaluation criteria.
- C. The Offer and Acceptance page 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 sell the good and/or service specified herein. Offeror shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.
- D. The authorized person signing the proposal shall initial erasure, interlineations or other modifications on the proposal.
- E. In case of error in the extension of prices 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. It is the responsibility of all offerors to examine the entire Request for Proposal package 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.
- H. The City shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.

- I. Offeror must list any subcontractors to be utilized in the performance of the services specified herein. For each subcontractor, details on respective qualifications must be included.

## **C.7. PAYMENT DISCOUNTS**

Payment discount periods shall be computed from the date of receipt of the material/service or correct invoice, whichever is later, to the date City's payment warrant is mailed. Unless freight and other charges are itemized, any discount provided shall be taken on full amount of invoice. Payment discounts of twenty-one calendar days or more shall be deducted from the proposed price in determining the price points. However, the City shall be entitled to take advantage of any payment discount offered by a vendor provided payment is made within the discount period. The payment discount shall apply to all purchases and to all payment methods.

## **C.8. TAXES**

The City of Tucson is exempt from federal excise tax, including the federal transportation tax.

## **C.9. PROPOSAL/SUBMITTAL FORMAT**

A proposal should be submitted on the forms and in the format specified in the RFP. Any information that the offeror requested to held as confidential information shall be clearly marked as such. The material should be in sequence and related to the RFP. The sections of the submittal should be organized, clearly identifiable, and should include a minimum of the following sections: the completed Offer and Acceptance Form, all signed Amendments, a copy of this RFP document, and the Offeror's response to the Evaluation Criteria including the completed Price Page. Failure to include the requested information may have a negative impact on the evaluation of the offeror's proposal.

## **C.10. EXCEPTIONS TO 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. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language. The provisions of the Request for Proposal cannot be modified without the express written approval of the Director or his designee. If a proposal or offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Director or his designee, the contract provisions contained in the City's Request for Proposal shall prevail.

## **C.11. PUBLIC RECORD**

All proposals submitted in response to this Request for Proposal shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.

## **C.12. CONFIDENTIAL INFORMATION**

The City of Tucson is obligated to abide by all public information laws. If an Offeror believes that any portion of a proposal, offer, specification, protest or correspondence contains information that should be withheld, a statement advising the Contract Officer of this fact should accompany the submission and the information shall be so identified wherever it appears. The City shall review all requests for

confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.

### **C.13. CERTIFICATION**

By signature on the Offer and Acceptance page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Offeror certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
- C. The Offeror 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, meal or service to a public servant in connection with the submitted offer.
- D. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to bind the Offeror to the Contract.

### **C.14. WHERE TO SUBMIT PROPOSALS**

Competitive sealed proposals for the specified material or service shall be received electronically by the Business Services Department at <https://www.tucsonaz.gov/bsol/> until the date and time cited.

Offerors shall submit their Proposal to the Business Services Department on or before the day and hour set for the Proposal Due Date identified above, as may be modified by amendments to this solicitation. Responses to this solicitation shall only be accepted via electronic submission through the City's online bidding system. Instructions to submit a response to this solicitation can be found at the following link: <https://tucsonprocurement.com/assets/OnlineBiddingProceduresManual.pdf>.

**NOTE: RESPONSES MUST BE IN "SUBMITTED" STATUS (SEE THE INSTRUCTION MANUAL THAT IS ACCESSIBLE ON THE LINK ABOVE FOR FURTHER DETAILS) IN ORDER TO BE CONSIDERED. RESPONSES THAT HAVE BEEN CREATED IN THE SYSTEM, BUT THAT ARE NOT IN "SUBMITTED" STATUS AT THE DUE DATE AND TIME WILL NOT BE CONSIDERED.**

### **C.15. LATE PROPOSALS**

Late proposals will be rejected. It is strongly advised that offerors create their responses in the City's online bidding system well in advance of the Due Date and Time in order to allow for unforeseen circumstances such as slow internet speed, internet outage, etc. Proposals that are not in "Submitted" status at the Due Date and Time will NOT be considered.

### **C.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 ninety (90) days after the proposal due date and time.

## **C.17. WITHDRAWAL OF PROPOSAL**

At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the proposal by a written letter or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.

## **C.18. DISCUSSIONS**

The City reserves the right to conduct discussions with offerors 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.

## **C.19. TAX OFFSET POLICY**

If applicable, in evaluating price proposals, the City shall include the amount of applicable business privilege tax, except that the amount of the City of Tucson business privilege tax shall not be included in the evaluation.

## **C.20. CONTRACT NEGOTIATIONS**

Exclusive or concurrent negotiations may be conducted with responsible offeror(s) for the purpose of altering or otherwise changing the conditions, terms and price of the proposed contract unless prohibited. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors. Exclusive or concurrent negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. In the event the City deems that negotiations are not progressing, the City may formally terminate these negotiations and may enter into subsequent concurrent or exclusive negotiations with the next most qualified firm(s).

## **C.21. VENDOR APPLICATION**

Prior to the award of a Contract, the successful offeror shall register with the City's Business Services Department. Registration can be completed at <http://www.tucsonprocurement.com/> by clicking on Vendor Services. Please note that email notifications of newly published solicitations and amendments will be provided to those vendors that select email as their preferred delivery method in their vendor record.

## **C.22. CITY OF TUCSON BUSINESS LICENSE**

It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at <http://www.tucsonaz.gov/etax>. For questions contact the City's Business License Section at (520) 791-4566 or email at [tax-license@tucsonaz.gov](mailto:tax-license@tucsonaz.gov).

### **C.23. UPON NOTICE OF INTENT TO AWARD**

The apparent successful offeror shall sign and file with the City, within five (5) days after Notice of Intent to Award, all documents necessary to the successful execution of the Contract.

### **C.24. AWARD OF CONTRACT**

Notwithstanding any other provision of the Request for Proposal, the City reserves the right to:

- A. waive any immaterial defect or informality; or
- B. reject any or all proposals, or portions thereof; or
- C. reissue the Request for Proposal.

A response to this Request for Proposal is an offer to contract with the City based upon the terms, conditions and Scope of Work contained in the City's Request for Proposal. Proposals do not become contracts unless and until they are executed by the City's Director of Business Services and the City Attorney. A contract has its inception in the award, eliminating a formal signing of a separate contract. All of the terms and conditions of the contract are contained in the Request for Proposal, unless any of the terms and conditions are modified by a Request for Proposal amendment, a Contract Amendment, or by mutually agreed terms and conditions in the Contract documents.

### **C.25. PROPOSAL RESULTS**

The name(s) of the successful offeror(s) will be posted on the Business Services Department's Internet site at <http://www.tucsonprocurement.com/> upon issuance of a Notice of Intent to Award or upon final contract execution.

### **C.26. PROTESTS**

A protest shall be in writing and shall be filed with the Director of Business Services. A protest of a Request for Proposal shall be received at the Department of Business Services not less than five (5) working days before the Request for Proposal due date. A protest of a proposed award or of an award shall be filed within ten (10) days after issuance of notification of award or issuance of a notice of intent to award, as applicable. A protest shall include:

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

## **D. PROPOSAL EVALUATION REQUIREMENTS**

### **D.1. PROPOSAL EVALUATION CRITERIA – (listed in relative order of importance)**

- A. Method of Approach
- B. Qualifications & Experience
- C. Price Proposal

### **D.2. Interviews**

The City reserves the right to conduct interviews with some or all of the offerors at any point during the evaluation process. However, the City may determine that interviews are not necessary. 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 offeror for the costs associated with the interview process.

### **D.3. 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 offeror submitting a proposal.

### **D.4. Prior Experience**

Experiences with the City and entities that evaluation committee members represent and that are not specifically mentioned in the solicitation response may be taken into consideration when evaluating offers.

### **D.5. Multiple Awards**

To provide adequate contract coverage, at the City's sole discretion, multiple awards may be made.

### **D.6. Shortlist**

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



## E. VENDOR RESPONSE

**E.1 REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA:** The narrative portion and the materials presented in response to this Request for Proposal should be submitted in the same order as requested and must contain, at a minimum, the following:

### A. Method of Approach

#### 1. Provide a response to the national program.

- a. Include a detailed response to **Attachment A, Exhibit A - Response for National Cooperative Contract**. Responses should highlight experience, demonstrate a strong national presence, describe how Offeror will educate its national sales force about the contract, describe how products and services will be distributed nationwide, include a plan for marketing the products and services nationwide, and describe how volume will be tracked and reported to OMNIA Partners.
- b. The successful Offeror will be required to sign **Attachment A, Exhibit B, OMNIA Partners Administration Agreement, (Example) prior to Contract award**. The Agreement shall be signed no later than issuance of the City of Tucson's Notice of Intent to Award letter. Offerors should complete all reviews of the document prior to submitting a response. Offeror's response should include any proposed exceptions to the OMNIA Partners Administration Agreement.
- c. Include completed **Attachment A, Exhibit F. Federal Funds Certificate and Exhibit G. New Jersey Business Compliance**.

#### 2. Distribution Network

- a. Describe how your firm proposes to distribute the equipment, accessories, parts, repair and services nationwide. Describe any parts the distribution network will have "on-hand" and those that must be ordered.
- b. Identify all other companies/distributors/dealers that will be involved in processing, handling or shipping the products/services to Participating Public Agencies.
- c. Provide the number, size and location of your firm's manufacturing facilities, distribution facilities, warehouses, service facilities and dealer networks as applicable. State the estimated dollar value of your inventory. Include a map showing heavy equipment distribution network coverage nationwide.
- d. Describe your dealer network and their role in providing products, services, etc. under this contract.

### **3. Product**

- a.** Provide a detailed written response illustrating how the equipment, accessories, parts, supplies and related services offered will meet the requirements of this solicitation. Offerors shall identify and describe their heavy equipment categories. For each proposed category, describe in detail and provide at a minimum the following types of information:
  1. Identification and description of equipment categories offered.
  2. Identification and description of subcategories.
  3. Identify accessories, parts, services, etc. that are available through the manufacturer.
  4. Identify accessories, parts, services, etc. that are available through the authorized dealer.
  5. Provide descriptions, catalog(s) or website links for accessories, parts and supplies offered.
  6. Do you offer color choices for each product listed?
- b.** Describe descriptions, catalog(s) or website links for accessories, parts and supplies offered, including:
  1. Types of warranties available (by category or equipment).
  2. Description of your warranty claims procedures.
  3. Description of your policy addressing warranty issues related to:
    - i. Major Component Failures
    - ii. Engineering Deficiencies
    - iii. Describe your firm's standard response time to address warranty failure issues.
- c.** Is there a dedicated support representative that the City should contact? If yes, provide their name and complete contact information.
- d.** Provide information which details the costs, types, and extents of available extended warranty coverage for heavy equipment.
- e.** Describe how your firm is anticipating and ensuring compliance with the Environmental Protection Agency (EPA) emission changes.
- f.** Submit all information that will aid the City in evaluating your proposal.

### **4. Service**

- a.** Provide a detailed written response illustrating how your firm or the authorized dealers will provide services to meet the requirements of this solicitation. Offerors shall provide the proposed services that will meet the Service Requirements section of the Scope of Work outlined in this solicitation. For each proposed category, describe and/or provide details explaining your capabilities. In your response include information such as:
  1. Provide detailed information explaining your service capabilities.
  2. Provided detailed information explaining the service capabilities of your authorized dealers.

3. Describe the maintenance programs offered. If a maintenance program is selected by the City, will your firm provide a loaner or rental machine if the machine is down for more than 24 hours?
4. Describe your training programs, addressing, at a minimum, the following:
  - i. How will equipment training be conducted?
  - ii. Describe the training curriculum for the equipment operators.
  - iii. Describe the training curriculum for the service technicians.
  - iv. How will you accommodate various work shifts?
  - v. What type of documentation is provided with the proposed training?
  - vi. Is a “train the trainer” program available? Is this training different than the regular initial training? Can training sessions be recorded for future use by the agency?
  - vii. Is the training provided by the manufacturer, dealer or both?

## **5. Ordering and Invoices**

- a. Describe your order process.
- b. How do agencies work with your firm to determine appropriate equipment needs?
- c. Describe the equipment delivery process and your delivery commitment.
- d. What is your standard equipment delivery timeframes?
- e. How does your firm communicate order cut off dates to your customers?
- f. Identify and describe any exceptions or challenges.
- g. Provide details of the capabilities of your E-Commerce website including ability to display contract pricing, on-line ordering, order tracking, search options, order history, technical assistance, lists, technical data and documentation, identification of alternate green products, etc.
- h. Describe your invoicing process. Is electronic invoicing available? Is summary invoicing available? Are there other options on how an agency receives an invoice? Submit sample invoices.
- i. Describe how problems – such as a customer ordering a wrong product; a customer receiving a defective or wrong product; etc. – are resolved.
- j. Describe how your firm measures performance including identification, calculation, tracking and reporting of measurements.
- k. Titles- will equipment be provided with proof of registration with the state?
- l. Will each product be delivered free of distributor advertising?

## **6. Other**

- a. Describe any government rebate programs that may be applicable.

## **B. Qualifications & Experience**

- 1) Provide a brief history and description of your company. Describe your market position in the local government, educational and medical market spaces. Include your current distribution model capable of delivering products nationwide, including the number, size and location of your company's distribution facilities, warehouses, and retail network, where applicable. Describe your coverage of the United States.
- 2) Describe your dealer network and their role in providing products and services under this contract.
- 3) Provide a listing of key personnel who will be assigned to the City's contract. Include their title within your organization and the description of the type of work they may perform. Please identify an executive corporate sponsor who will be responsible for the overall management of the awarded Master Agreement.
- 4) Summarize your experience in providing equipment, products and services similar to that outlined in the Scope of Work. Provide a minimum of three references for which you have provided similar products and services. References from other public agencies, particularly municipal governments, are preferred. Please include company name, address, phone, email, and contact person.
- 5) Please submit any additional information that you feel is applicable to your qualifications and experience.
- 6) Provide the qualifications of technicians that will be servicing equipment throughout the nation.
- 7) Describe your quality control program including but not limited to: what is your quality control procedures, who performs the quality control inspection? What are the qualifications of the inspectors? What items are inspected / tested? Etc.

## **C. Price Proposal**

- 1) Provide a Price Proposal. Submit the Price Proposal as a separate and clearly identified document. The Price Proposal shall minimally include the following: Offerors shall submit pricing based on the Equipment, Product Requirements and Service Requirement categories identified on the Scope of Services. Pricing should be based upon a verifiable pricing structure, such as a fixed percent discount from an index or indices or established price list, etc. Where applicable, Offerors shall provide pricing for all product and services offered. Describe how pricing is determined for a base model equipment purchase and how pricing is determined for options, accessories and services. Identify the price list being used and include an electronic copy (or website link) so that net prices can be determined.

The price proposal should include pricing for equipment, accessories and options, parts, service and any additional value-add goods or services available such as financing, rental and used equipment for purchase from the vendor. Vendors must indicate if discounts are based on manufacturer price lists or dealer price lists.

In order to allow ordering flexibility for equipment that is mounted to a chassis, Offerors should provide a separate pricing structure for each the chassis and the truck, in addition to a total pricing structure for the complete piece of equipment.

- 2) Based on your distribution network, explain how freight is calculated.
- 3) The discount structure provided by the supplier is intended to remain constant throughout the term of the Contract. Discuss how often price lists are updated and provide a listing of price list changes that have taken place over the last 3 years. Discuss any known future price list changes or industry changes that will effect pricing over the next 5 years.
- 4) State if pricing is most favorable offered to government agencies. Describe how your firm will ensure this contract will continually offer the best pricing available to Participating Public Agencies.
- 5) Provide details of and propose additional discounts for volume orders, special manufacturer's offers, minimum order quantity, free goods program, total annual spend, etc.
- 6) Provide information on any ordering methods – such as electronic ordering or payment via pCard or EFT – or other criteria which entitle the using agency to additional discounts.
- 7) As stated in the Instructions to Offerors, Discounts, the price(s) herein can be discounted by \_\_\_\_\_%, if payment is made within \_\_\_\_\_ days. These payment terms shall apply to all purchases and to all payment methods.
- 8) Will payment be accepted via commercial credit card? \_\_\_\_\_ Yes \_\_\_\_\_ No
  - a. If yes, can commercial payment(s) be made online? \_\_\_\_\_ Yes \_\_\_\_\_ No
  - b. Will a third party be processing the commercial credit card payment(s)? \_\_\_\_\_ Yes \_\_\_\_\_ No
  - c. If yes, indicate the flat fee per transaction \$\_\_\_\_\_ (as allowable, per Section 4.9 of the MasterCard Transaction Processing Rules).
  - d. If “no” to above, will consideration be given to accept the card? \_\_\_\_\_ Yes \_\_\_\_\_ No
- 9) Does your firm have a City of Tucson Business License? \_\_\_\_\_ Yes \_\_\_\_\_ No
  - a. If yes, please provide a copy of your City of Tucson Business license.

## **E.2 Forms to Be Filled out by Vendor**

Please ensure that all required information is included with your offer:

- A. Living Wage Certification Form (If applicable)
- B. Pricing Proposal
- C. Any Solicitation Amendment(s)
- D. Offer and Acceptance Form
- E. OMNIA Partners - Exhibits

## **F. SPECIAL TERMS AND CONDITIONS**

**F.1. FEDERAL, STATE AND LOCAL TAXES, LICENSES AND PERMITS:** The Supplier shall comply with all Federal, State, and local licenses and permits required for the operation of the business conducted by the Supplier as applicable to this Contract. The Supplier shall, at no expense to the City, OMINA, or other Participating Public Agencies, procure and keep in force during the entire period of the Agreement all such permits and licenses.

**F.3. PAYMENTS:** All payments made by the City of Tucson for goods or services will be made to the vendor named on the Offer and Acceptance form. If you do not wish payment to be made to that address, you must submit an attached sheet indicating the proper mailing address with this proposal.

**F.4. RIGHT TO TERMINATE FOR CHANGE IN OWNERSHIP OR MATERIAL RESTRUCTURE OF THE CONTRACTOR:** In addition to the Termination of Contract clause in the Standard Terms and Conditions section of this solicitation and resulting contract, the City reserves the right to cancel the whole or part of this contract within 60 days written notice of the completion of any material change of ownership in the Contractor's company, including its sale, merger, consolidation, or dissolution.

**F.5. TERM AND RENEWAL:** The term of the Contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled, or extended as otherwise provided herein. The Contractor agrees that the City shall have the right, at its sole option, to renew the Contract for four (4) additional one-year periods or portions thereof. In the event that the City exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.

Any, project agreements or maintenance agreements executed against this Master Agreement during the effective term may survive beyond the expiration of the Master Agreement as established and agreed to by both parties.

**F.6. PRICE ADJUSTMENT:** The City will review fully documented requests for price adjustment after any Contract has been in effect for one (1) year. Any price adjustment will only be made at the time of Contract renewal and/or extension and will be a factor in the extension review process. The City will determine whether the requested price adjustment or an alternate option, is in the best interest of the City. Any price adjustment will be effective upon the effective date of the Contract extension.

**F.7. MODIFICATION OF TERMS:** A Participating Agency who wishes to piggyback on this Contract may present alternate terms to the Contractor as a condition of their intended purchase transaction. If the Contractor chooses to accept the alternate terms, it shall be as a condition of the Participating Agency's purchase transaction and shall not constitute a modification of this contract.

**F.8. BRAND OR TRADE NAMES** Any manufacturer's names, trade names, brand names or catalog numbers used in the solicitation are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict any bid/offer

by any vendor but is only listed in order to advise potential bidders/offerors of the requirements of the City. Any bid/offer which proposes like quality, design or performance will be considered.

#### **F.9. CANCELLATION OF LEASE DUE TO INSUFFICIENT FUNDING**

The successful Bidder/Offeror will be required to agree to the following:

The City reasonably believes that sufficient funds can be obtained to make all payments during each of the renewal terms. The City hereby covenants that it will do all things lawfully within its power to obtain and maintain funds from which the payments may be made, including making provisions for such payments to the extent necessary in each annual fiscal year budget submitted for the purpose of obtaining funding or by obtaining separate funding by a third party.

If after formal written budget request submitted by the City, the Mayor/Council does not allocate funds necessary to continue payments for the renewal term, the City may terminate this agreement at the end of the fiscal year term. Parties acknowledge and agree that it is their intent that funding by the City shall continue throughout the term of this agreement, but the parties recognize that such funding is subject to the provisions of A.R.S. Sec. 42-301, et seq. in the event of non-allocation of funds. Lessor shall have only the right and remedy of taking possession of the equipment.

#### **F.10. COOPERATIVE PURCHASING**

Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Business Services Department or registered with OMNIA Partners are eligible to participate in any subsequent Contract. See [http://www.tucsonprocurement.com/coop\\_partners.aspx](http://www.tucsonprocurement.com/coop_partners.aspx) and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.mesaaz.gov/home/showdocument?id=23638> for a listing of participating agencies. The parties agree that these lists are subject to change.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each Participating Public Agency. The Contractor may negotiate additional expenses incurred as a result of Participating Public Agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Business Services upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

#### **F.11. CONFLICTS OF INTEREST**

An Offeror responding to this RFP acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure a Contract that may be awarded pursuant to this RFP upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the City of Tucson Mayor and Council or any employee of the City has any financial interest in Offeror's firm. In addition, all communications regarding this solicitation shall be directed to

the Department of Business Services. Interested Offerors shall refrain from engaging in any communication (written or verbal) regarding this solicitation or the matters involving this solicitation or TCC operations with any other City staff, Mayor & Council or staff of Mayor & Council.

The City reserves the right to disqualify an Offeror from further participation in the RFP process in the event the City determines that Offeror has an actual or apparent conflict of interest with the purposes of this RFP or has violated this Conflict of Interest.

Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Offeror, or any agent or representative of Offeror, to any officer or employee of the City, including the Mayor and Council and their staff, for the purpose of securing a Contract that may be awarded pursuant to this RFP, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of a Contract that may be awarded under this RFP, the City, may, by one (1) calendar day provide written notice to Offeror, terminate the right of Offeror to proceed under this RFP; provided that the existence of the facts upon which the City made such finding shall be an issue and may be litigated in an Arizona court of competent jurisdiction.

#### **F.12. FOB DESTINATION FREIGHT PREPAID**

Prices shall be FOB Destination Freight Prepaid to the delivery location designated. Contractor shall retain title and control of all goods until they are delivered, and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The City will assist the Contractor in arranging for inspection.

#### **F.13. LIVING WAGE REQUIREMENTS**

In accordance with the Tucson Procurement Code, Chapter 28, Article XV, providing for a living wage requirement for all employees supplying specific service to the City of Tucson, this solicitation, and the resulting Contract, is subject to the referenced Article. By signing the Offer and Acceptance page, Bidder/Offeror agrees to comply with the requirements of the Article. Such requirements include, but are not limited to:

A wage of no less than \$10.86 per hour (with health benefits being provided to employees); or

A wage of no less than \$12.15 per hour (without health benefits being provided to employees); and If health benefits are offered, an eligible contractor shall pay no less than 50% of the eligible employee's health benefits premium.

In accordance with Sec. 28-157 (f) of the Tucson Procurement Code, if health benefits are offered to an eligible employee under an eligible Contract, proof of the above compliance shall be provided by the successful Bidder/Offeror upon notification by the City of its intent to award a Contract.

Notwithstanding the Severability clause, under Standard Terms and Conditions, if the provisions of this clause become unenforceable for any reason, the City reserves the right to terminate this Contract without penalty or liability. In the event the City negotiates an adjustment to the terms, conditions, or price acceptable to the parties, then this Contract shall continue until expiration.

**Compliance with Wage Requirement:** The City's Director of Business Services shall monitor compliance, including the investigation of claimed violations, and may promulgate administrative rules and regulations to implement and enforce this Article. In the event of any violation of the provisions set forth in this Article, the responsible Contractor and any applicable subcontractors shall be liable for the unpaid wages and shall pay the eligible employee any amounts underpaid. The City's Director of



Business Services is additionally authorized to take any one or more of the following remedies in the event of a written determination of noncompliance:

- Liquidated damages paid to the City in the amount of \$50.00 for each incidence of non-compliance for each day of non-compliance and/or each day it continues;
- Suspension of further payments under the Contract until the violation has ceased;
- Suspend and/or terminate the Contract for cause; and/or
- Debar or suspend the Contractor or subcontractor from future City contracts pursuant to Tucson Procurement Code, Chapter 28, Article IX.

Protests or appeals of the Director's remedies for non-compliance shall be in accordance with Article IX.

**Records for Wage Requirement:** The Contractor and any applicable subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the City's Director of Business Services, and shall permit such representatives to interview employees during working hours on the job. If the Contractor and any applicable subcontractor fails to submit the required records or make them available, the Director may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to Article IX.

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all eligible employees. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

All inquiries regarding the Living Wage program may be directed to the Contract Officer responsible for this solicitation.

## **G. INSURANCE REQUIREMENTS**

### **G.1. The Contractor agrees to:**

- A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation, or reduction in coverage in any policy.
- B. The Commercial General Liability, Commercial Automobile Liability and umbrella policies where applicable will include the City as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- C. Provide and maintain minimum insurance limits as applicable.

### **G.2. Commercial General Liability**

Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability:

Each Occurrence: \$1,000,000

General Aggregate: \$2,000,000

Products & Completed Operations Aggregate: \$2,000,000

Personal and Advertising Injury: \$1,000,000

Blanket Contractual Liability: \$1,000,000

### **G.3. Commercial Automobile Liability**

Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.

Combined Single Limit: \$1,000,000

### **G.4. Worker's Compensation (Applicable to the State of Arizona)**

Per Occurrence: Statutory

Employer's Liability: \$1,000,000

Disease Each Employee: \$1,000,000

Disease Policy Limit: \$1,000,000

### **G.5. Garage Liability & Garage Keepers Liability – In addition to I, II, III**

Garage Liability Limit \$1,000,000

## Garage Keeper's Liability – Direct Primary Coverage

Each Auto Limit: \$500,000

Each Occurrence Limit: \$1,000,000

\*Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

## **G.6. Claims Made Insurance Coverage**

If any or part of the required insurance is written on a claims-made basis, any policy retroactive date must precede the date of the contract and the Contractor must maintain such coverage for a period not less than three (3) years following contract expiration, termination or cancellation.

## **G.7. Additional Insurance Requirements**

All Policies, excluding Employment Practices Liability and Professional Liability (Errors & Omissions), shall include or be endorsed to include the following provisions:

- A. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor (Including Worker's Compensation).
- B. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
- C. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

## **G.8. Notice of Coverage Modifications**

Any changes material to compliance with this contract in the insurance policies above shall require (10) days written notice from the contractor to the City of Tucson. Such notice shall be sent directly to the Procurement Division.

## **G.9. Acceptability of Insurers**

Contractors' insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

## **G.10. Verification of Coverage**

Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after

completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Procurement Division.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

### **G.11. Subcontractors**

Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

### **G.12. Exceptions**

In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance.

## **H. STANDARD TERMS AND CONDITIONS**

### **H.1. ADVERTISING**

Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Business Services Director.

### **H.2. AFFIRMATIVE ACTION**

Contractor shall abide by the provisions of the Tucson Procurement Code Chapter 28, Article XII.

### **H.3. AMERICANS WITH DISABILITIES ACT (ADA)**

The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.

### **H.4. APPLICABLE LAW**

This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.

### **H.5. ASSIGNMENT-DELEGATION**

No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Business Services. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.

### **H.6. CHILD/SWEAT-FREE LABOR POLICY**

The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.

### **H.7. CLEAN UP**

The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat, and workmanlike condition.

### **H.8. COMMENCEMENT OF WORK**

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

## **H.9. CONFIDENTIALITY OF RECORDS**

The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.

## **H.10. CONTRACT AMENDMENTS**

The Business Services Department has the sole authority to:

- A. Amend the contract or enter into supplemental verbal or written agreements;
- B. Grant time extensions or contract renewals;
- C. Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Department of Business Services. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Business Services Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

## **H.11. CONTRACT**

The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of Business Services, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

## **H.12. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH**

Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.

## **H.13. DUPLEXED/RECYCLED PAPER**

In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.

## **H.14. EQUAL PAY**

The Contractor shall comply with the applicable provisions of the Equal Pay Act of 1963 (Pub.L. 88-38, 29 U.S.C. section 206(d)); Title VII of the Civil Rights Act of 1964 (Pub.L. 88-352, 42 U.S.C. 2000e et.seq.; and, the Lily Ledbetter Fair Pay Act of 2009 (Pub.L. 111-2).

## **H.15. EXCLUSIVE POSSESSION**

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

## **H.16. FEDERAL IMMIGRATION LAWS AND REGULATIONS**

Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

## **H.17. 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 subcontractor 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 article, 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.

## **H.18. GRATUITIES**

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

## **H.19. HUMAN RELATIONS**

Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.

## **H.20. INDEMNIFICATION**

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractors agrees to waive all rights of subrogation against the City of Tucson, it's agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

## **H.21. INDEPENDENT CONTRACTOR**

It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such



expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees.

## **H.22. INSPECTION AND ACCEPTANCE**

All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

## **H.23. INTERPRETATION-PAROL EVIDENCE**

This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

## **H.24. ISREAL BOYCOTT DIVESTMENT**

Acceptance of the contract warrants that the vendor is in compliance with A.R.S. § 35-393 and does not participate in a boycott of Israel as that term is defined within A.R.S. § 35-393.

## **H.25. LICENSES**

Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

## **H.26. LIENS**

All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.

## **H.27. NO REPLACEMENT OF DEFECTIVE TENDER**

Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.

## **H.28. NON-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 Tucson. The City reserves the right to obtain like goods or services from another source when necessary.

## **H.29. OVERCHARGES BY ANTITRUST VIOLATIONS**

The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

## **H.30. PAYMENT**

The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice. The invoice shall not be dated prior to the receipt of goods or completion of services.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

## **H.31. PROTECTION OF GOVERNMENT PROPERTY**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of Business Services. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

## **H.32. PROVISIONS REQUIRED BY LAW**

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 be amended to make such insertion or correction.

## **H.33. RECORDS**

Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. Contractor shall maintain books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract in accordance with generally accepted accounting principles and practices consistently applied and other applicable local, state or federal regulations.

Contractor shall, at all times during the term of this Contract and for a period of three years after the completion of this Contract, maintain such records, together with such supporting or underlying documents and materials.

Contractor shall ensure City has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to City.

### **H.34. RIGHT TO AUDIT**

The City and its authorized representatives shall have the right, upon reasonable written notice to Contractor, to cause an audit to be made of the Contractor's books and records which relate to its operations under this Contract. The audit shall be limited to the term of this Contract. The City shall have the right to examine and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors and subcontractors. Such records shall include, but not be limited to, accounting records, subcontractor records, payment vouchers and invoices.

The Contractor shall at any time requested by City, whether during or after completion of this Contract, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by City. Such records shall be made available to City during normal business hours at the Contractor's office, place of business, an agreed to location, mailed or provided electronically.

If, as a result of such audit, the Contractor is liable to the City for the payment of any sum, Contractor shall promptly pay such sum to the City together with interest thereon at the rate of one percent (1%) per month from the date such sums should have been paid. Payment shall be made within 90 days from presentation of City's findings to Contractor.

If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, City may recoup the costs of the audit work from the Contractor. The City's rights under this provision shall survive the expiration or termination of the Contract

### **H.35. RIGHT TO ASSURANCE**

Whenever one party to this Contract has reason to question, in good faith, 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 the other party's intent not to perform and as a cause for possible Contract termination.

### **H.36. RIGHT TO INSPECT**

The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.

### **H.37. RIGHTS AND REMEDIES**

No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict

performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required 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.

### **H.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 valid provision or application.

### **H.39. SHIPMENT UNDER RESERVATION**

No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.

### **H.40. SUBCONTRACTS**

No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Business Services.. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.

### **H.41. SUBSEQUENT EMPLOYMENT**

The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Business Services is received by the parties to this Contract, unless the notice specifies a later time.

### **H.42. TERMINATION OF CONTRACT**

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. 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.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

- In the opinion of the City, the Contractor provides personnel that do not meet the requirements of the Contract;

- In the opinion of the City, the Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;
- In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;
- The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;
- In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;
- The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

#### **H.43. 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, unless otherwise provided within this Contract.

#### **H.44. WARRANTIES**

Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

## OFFER AND ACCEPTANCE

### OFFER

#### TO THE CITY OF TUCSON:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

\_\_\_\_\_  
Company Name

Name: \_\_\_\_\_

\_\_\_\_\_  
Address

Title: \_\_\_\_\_

\_\_\_\_\_  
City State Zip

Phone: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Authorized to Sign

Fax: \_\_\_\_\_

Printed Name

E-mail: \_\_\_\_\_

\_\_\_\_\_  
Title

### ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as **Contract No. 212816**.

**CITY OF TUCSON**, a municipal corporation

Approved as to form:

Awarded:

This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
As Tucson City Attorney and not personally

\_\_\_\_\_  
As Director of Business Services and not personally

CITY OF TUCSON  
BUSINESS SERVICES DEPARTMENT  
SHARED SERVICES PROCUREMENT DIVISION  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701

**PROPOSAL NO. 212816**

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CONTRACT OFFICER: CYNTHIA THOMPSON, NIGP-CPP, CPPB

PH: (520) 837-4134

## **OMNIA Partners Exhibits**