



March 18, 2020

Sent via electronic mail, this day

CITY OF
TUCSON
BUSINESS
SERVICES
DEPARTMENT

Daniel Ceko, Treasurer and Corporate Counsel
Network Services Company dba Waxie Sanitary Supply.
1100 E Woodfield Road, Suite 200
Schaumburg, IL 60173
Email: dceko@networkdistribution.com

**RE: Request for Proposal No. 202329-01, JANITORIAL AND SANITATION SUPPLIES,
EQUIPMENT, AND RELATED SERVICES - Intent to Award**

Dear Mr. Ceko:

It is the City's intent to accept your proposal for the above referenced solicitation for a single contract award.

It shall be your responsibility to forward to this department, **within ten (10) days of the date of this letter and no later than 4:00 p.m., Tuesday, March 31, 2020**, the items noted on the attached Insurance Requirements and Checklist documents.

This Notice of Intent to Award is not a contract and does not establish any contractual relationship. The Insurance Requirement provision, as listed in the Attachment is one condition precedent to contract execution. The contract is not deemed to be executed until it is signed by the City's Director of Business Services and approved as to form by the City Attorney.

If you have any questions regarding this letter, please contact me at (520) 837-6685.

Sincerely,

Andrew Klos, MBA
Senior Contract Officer
Andrew.Klos@tucsonaz.gov

Attachment-Insurance Requirements

INTENT TO AWARD: CONTRACT 202329-01

CITY OF TUCSON INSURANCE REQUIREMENTS CHECKLIST

Date: 2/7/2020

Insurance documentation must meet each the following requirements in order for Offeror to proceed to Final Award of contract **202329-01 Janitorial and Sanitation Supplies, Equipment, and Related Services.**

<input checked="" type="checkbox"/>	Item	Requirement	Location
	Certificate of Insurance (COI)	Must list contract #202329-01	In the description of operations
	COI	Must list contract title – Janitorial and Sanitation Supplies, Equipment, and Related Services	In the description of operations
	COI	Policy Endorsement	30 day notice
	COI	Policy Endorsement	10 day notice
	COI	Additional Insured	Commercial General Liability
	COI	Additional Insured	Commercial Automobile Liability
	COI	Endorsement	Waiver of Subrogation to include Workers Compensation
	COI	Certificate Holder	City of Tucson 255 W Alameda PO Box 27210 Tucson, AZ 85701

INTENT TO AWARD: CONTRACT 202329-01

**CITY OF TUCSON
INSURANCE REQUIREMENTS**

In conjunction with any work or services performed for the City of Tucson, the Contractor must furnish evidence of insurance in limits and coverage as follows:

INSURANCE: 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 30 days prior to termination or cancellation in coverage in any policy, and 10 days notice for cancellation due to non-payment in premium.
- B.** The Commercial General Liability Insurance and Commercial Automobile Liability Insurance policies 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 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:

INSURANCE COVERAGE TABLE	LIMITS OF LIABILITY
I. 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
II. 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
III. Workers' Compensation (applicable to the State of Arizona)*1	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000

*1 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

- D. ADDITIONAL INSURANCE REQUIREMENTS:** Policies shall be endorsed to include the following provisions:

1. 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).
2. 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.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

- E. 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 Department of Procurement.
- F. 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. 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 Department of Procurement.

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.

- H. 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.
- I. 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.



CITY OF
TUCSON

BUSINESS
SERVICES
DEPARTMENT

March 5, 2020

Sent via email, this day

Daniel Ceko, Treasurer & Corporate Counsel
Network Services Company
1100 East Woodfield Rd., Suite 200
Schaumburg, IL 60173
Email: dceko@networkdistribution.com

**Subject: Request for Proposal No. 202329 – Janitorial and Sanitation Supplies,
Equipment, and Related Services
Letter of Concurrence**

Dear Mr. Ceko,

This letter serves as concurrence of the negotiations for the above listed solicitation. The following changes have been mutually agreed upon with deletions in strikethrough and insertions in italics.

SPECIAL TERMS AND CONDITIONS:

3. TERM AND RENEWAL (as amended by Solicitation Amendment #1): The term of the Contract shall commence upon award and shall remain in effect for a period of three (3) years, unless terminated, cancelled or extended as otherwise provided herein. ~~The parties Contractor~~ agrees that the City of Tucson shall have the right, *upon mutual agreement at its sole option*, to renew the Contract for one additional two (2) year period or portion thereof. In the event that the ~~parties City~~ exercise 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.

4. PRICE ADJUSTMENT: The City will review fully documented requests for price adjustment after any Contract has been in effect for one (1) year and for each additional one (1) year *anniversary date* period thereafter, which will be a factor in the renewal 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 *anniversary date* renewal or, in the case of a mid-term adjustment, upon execution of the amendment. *Contractor may propose price adjustments*

semi-annually or based on extreme market fluctuations, in addition to requests at time of renewal or Contract anniversary. Extreme market fluctuations are defined as change in the market prices exceeding ten percent (10%) in a single quarter.

5. FOB DESTINATION FREIGHT PREPAID:

Prices shall be FOB Destination Freight Prepaid to the delivery location designated.

Contractor will provide delivery on a freight free basis to all agency locations that fall within the Contractor's freight free delivery zones per Contractor's 'Geomaster'. Should any locations fall outside the freight free delivery zones, Contractor will contact the applicable agency and review service requirements for those locations in a manner acceptable to both the agency and Contractor including a possible freight fee charged to the applicable agency. Freight charges to the no-freight charge locations shall not exceed actual freight charges incurred by Contractor. 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 (except as otherwise set forth above) shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the agency to Contractor. The City will assist the Contractor in arranging for inspection.

Each individual order placed by an agency must exceed \$400 of products; provided, however, if an individual order is placed by an agency for less than or equal to \$400, Contractor, in its sole discretion, may charge such agency a \$40 fee for a below minimum order.

STANDARD TERMS AND CONDITIONS:

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 Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice. *Notwithstanding the foregoing, the City hereby acknowledges and agrees that the products and services shall be provided by Contractor through its member-distributors and hereby expressly consents to the provision of the products and services by Contractor through its member-distributors, without further notice or permission being required.*

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, *except where exceptions have been negotiated.* 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 Procurement, 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.

12. **DEFAULT IN ON INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials, *except as allowed by this Agreement*. 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.

20. **INDEMNIFICATION:** *Contractor agrees to indemnify and hold harmless the City of Tucson and its affiliates, officers, directors, employees, clients and agents from any and all third party claims, damages, liabilities and costs, losses and expenses (including reasonable attorney's fees and disbursements) which the City of Tucson or any of the said persons shall suffer or incur as a result of or attributable to (i) any and all claims, damages, liabilities, costs, losses and expenses (including reasonable attorney's fees and disbursements) arising out of Contractor's breach of its representations, warranties, obligations or covenants set forth in this Agreement or (ii) Contractor's failure to comply with the terms and conditions of this Contract; provided, however, any such indemnification shall exclude any such losses and expenses caused by the act, omission, breach or gross negligence of the City.*

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, its 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.

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 *within ninety (90) days*. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

30. PAYMENT: *The City will issue a Purchase Order and provide a credit card for payment at the time of ordering. Unless payment is made by credit card at the 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 correct invoice. The Contractor's payment shall apply to all purchases and to all payment methods. All amounts owed by the City are to be received by Contractor within thirty (30) days from invoice date.

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 Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine *the reasonable and actual* cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

39. 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 Procurement. 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. *Notwithstanding the foregoing, the City hereby acknowledges and agrees that the products and services shall be provided by Contractor through its member-distributors and hereby expressly consents to the provision of the products and service by Contractor through its member-distributors, without further notice or approval being required.*

41. 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.

Contractor reserves the right to terminate the whole or any part of this Contract due to the failure of the City to carry out any term or condition of the Contract, if such failure is not cured within ten (10) days of the notice to default. Contractor will issue a written ten (10) day notice of default to the City for acting or failing to act in accordance with the terms or conditions 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.

43. 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. ALL PRODUCTS PROVIDED TO THE CITY UNDER THIS CONTRACT BY CONTRACOTR ARE PROVIDED "AS IS", AND CONTRACTOR MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING ANY PRODUCTS. NOTWITHSTANDING THE FOREGOING, CONTRATOR SHALL PASS THROUGH TO THE CITY ALL WARRANTIES AND INDEMNIFICATIONS, IF ANY (IF AND TO THE EXTENT CONTRACTOR REMAINS PROTECTED THEREUNDER), THAT CONTRATOR RECEIVES FROM THE MANUFACTURERS OF THE PRODUCT~~

Please sign and return the letter to my attention. If you should have any questions, please contact me at (520) 837-6685 or Andrew.Klos@tucsonaz.gov.

Sincerely,



Andrew Klos, MBA
Senior Contract Officer

Concurrence: Daniel Ceko Digitally signed by Daniel Ceko
DN: cn=Daniel Ceko, o=Network Services Company,
ou, email=dceko@networkdistribution.com, c=US
Date: 2020.03.06 16:23:38 -0600 Date: March 6, 2020

Name/Title: Daniel Ceko, Treasurer & Corporate Counsel