

# **CITY OF TUCSON**

## **NOTICE OF REQUEST FOR QUALIFICATIONS**

**REQUEST FOR QUALIFICATIONS NUMBER:** 071039

**MATERIAL OR SERVICE:** LEGAL SERVICES FOR INDIGENT DEFENDANTS

**SUBMITTAL DUE DATE:** OPEN AND CONTINUOUS

**SUBMITTAL LOCATION:** Department of Procurement  
255 W. Alameda, 6<sup>th</sup> Floor, Tucson, AZ 85701

This solicitation and possible future amendments may be obtained from our Internet site at: [www.tucsonaz.gov/procure](http://www.tucsonaz.gov/procure) by selecting the Bid Opportunities link and the associated solicitation number.

Internet access is available at all Tucson - Pima Public Libraries. Any interested offerors without Internet access may obtain a copy of this solicitation by calling (520) 791-4217, or a copy may be picked up during regular business hours at the Department of Procurement, 255 W. Alameda, 6<sup>th</sup> Floor, Tucson, AZ.

The City of Tucson takes no responsibility for informing recipients of changes to the original solicitation document. It is the Offeror's responsibility to obtain a copy of any amendment relevant to this solicitation. Failure to submit amendments with the solicitation response may be grounds for deeming a submittal non-responsive.

If you experience any problems receiving this Request for Qualifications, please call (520) 791-4217 or (520) 791-4704.

# CITY OF TUCSON

## REQUEST FOR QUALIFICATIONS

REQUEST FOR QUALIFICATIONS NUMBER: 071039  
SUBMITTAL DUE DATE: OPEN AND CONTINUOUS  
SUBMITTAL LOCATION: DEPARTMENT OF PROCUREMENT  
255 W. ALAMEDA, 6<sup>TH</sup> FLOOR, TUCSON, AZ 85701

MATERIAL OR SERVICE: LEGAL SERVICES FOR INDIGENT DEFENDANTS

CONTRACT OFFICER: CHRISTINA SCHIPANSKY  
TELEPHONE NUMBER: (520) 837-4131  
Christina.Schipansky@tucsonaz.gov

Interested offerors may obtain a copy of this complete solicitation by calling (520) 791-4217. A copy of this solicitation and possible future amendments may be obtained from our Internet site at: [www.tucsonaz.gov/procure](http://www.tucsonaz.gov/procure) by selecting the Bid Opportunities link and the associated solicitation number.

Sealed submittals for the specified material or service shall be received by the Department of Procurement, 255 W. Alameda, 6th Floor, Tucson, Arizona 85701, until the date and time cited.

Submittals must be submitted in a sealed envelope. The Request for Qualifications number and the offeror's name and address should be clearly indicated **on the outside** of the envelope. All submittals must be completed in ink or typewritten. Questions must be addressed to the Contract Officer listed above.

CS/sd

PUBLISH DATE: November 30, 2006

## INTRODUCTION

The City of Tucson intends to establish contracts to provide mandated legal defense services to indigent persons arrested for or charged with misdemeanors committed within the City of Tucson, as well as, on occasion, provide such services for indigents in probation violation proceedings, appeals, contempt proceedings and/or other legal matters involving potential loss of liberty and which legally require the appointment of counsel.

## SCOPE OF WORK

### I. PURPOSE, ADMINISTRATION, STATUS OF ATTORNEY

- A. Purpose:** The purpose of this Contract is to provide counsel to afford mandated legal defense services to indigents in the City in connection with the legal matters described above.
- B. Administration:** the Presiding Judge, Presiding Magistrate or designee shall serve as Contract Representative on the part of the City.
- C. Relationship of the Parties:** The status of Attorney shall be that of an independent contractor. Attorney shall not be considered to be an employee of the Court or the City of Tucson for any purpose and shall not be entitled to receive any benefits that the Court or the City of Tucson provides its employees and will not be subject to the provisions of the City of Tucson Merit System. Attorney shall be responsible for payment of all bar dues and federal, state and local taxes associated with compensation received pursuant to this Contract. The Court neither agrees to use the Attorney exclusively or to guarantee Attorney a specific number of appointments. The Attorney shall not be restricted by the Contract from engaging in the practice of law beyond the scope of this Contract.

### II. SCOPE OF WORK BY THE ATTORNEY

- A. Nature of Work:** The Attorney shall provide legal assistance and representation to those eligible persons as appointed by the Court. Assignments will normally be limited to misdemeanor trial cases and appeals but may, as required by the Court, include such matters as probation violation proceedings, material witness representation or other legal matters involving potential loss of liberty and which legally require the appointment of counsel.
- B. Scope of Work:** Representation shall be from the date of appointment and continue through every stage of the legal proceedings at the trial court level, including sentencing and the processing of notice of appeal, subject only to withdrawal or substitution permitted under Rule 6.3 of the Arizona Rules of Criminal Procedure.

The duty of representation continues until the charges are terminated by dismissal with prejudice or until the defendant is acquitted or sentenced except that Attorney will be required to continue to represent the defendant for any restitution or other hearing set at the time of sentencing. Some cases will not so terminate until after the expiration date of the Contract. If requested by the defendant Attorney must file a Notice of Appeal and Designation of Record in all cases in which the defendant has a right to appeal.

The Contract does not extend to representation of the client on appeal or in post-conviction relief proceedings. The Attorney shall continue to represent the client in interlocutory appeals.

Requests from defendant for assistance from the Attorney received after time for representation under the Contract has passed are not within the scope of this Contract and the Attorney is not entitled to additional compensation from the City for such work unless specifically appointed by the Court to do so.

- C. Case Allocation and Assignment:** No maximum or minimum number of case assignments is anticipated. Appointments shall be made at the sole discretion of the Court. Cases in which a single defendant has, either under the same or different cause number, several counts or charges pending at any one time shall constitute one case assignment regardless of the number of counts or charges and regardless of the number of cause numbers, unless they are tried as separate cases or the Court or Magistrate authorizes additional payment. Should Attorney determine that the work to be done in a case assignment is exceptional, Attorney may make

application to the Court to designate the case as an extraordinary case and set terms for additional compensation as set forth in Section VI B below.

- D. Professional Standards:** The professional services provided by the Attorney shall be consistent with the Arizona Rules of Professional Conduct, state and local court rules and the written administrative and procedural policies and procedures established by the Court. The Attorney shall devote such time to the cases assigned so as to provide competent, effective and timely legal assistance and representation to persons the Attorney is appointed to represent.

The Attorney shall have at least two years of legal experience including experience in the practice of criminal law. Attorney shall comply with all mandatory continuing legal education requirements of the State Bar of Arizona. Pursuant to such compliance, the Attorney shall attend at least twelve (12) hours of continuing legal education in the area of criminal law and/or procedure during the term of this contract. Documentation of attendance shall be furnished to the Court upon request.

- E. Compliance with Laws, Rules and Regulations:** The Attorney shall, throughout the term of this Contract, comply with all applicable City, County, state and federal laws, ordinances, rules, regulations and statutes.

### III. ASSIGNMENT, WITHDRAWAL, SUBSTITUTE REPRESENTATION

- A. Assignment of Cases:** Appointments and substitution of counsel will be made by the Court staff on a rotating basis from a list of attorneys selected and approved by the Court. The Court reserves the right to appoint counsel outside of the rotation at its discretion. Attorneys appointed to handle appeals will be assigned from a separate list. The Attorney shall accept all assignments made by the Court except where a conflict of interest prevents the Attorney from ethically representing a defendant or the Attorney's caseload is such that it would interfere with the rendering of quality representation or lead to the breach of professional obligation. Immediately upon assignment, the Attorney will make every effort to determine whether a conflict of interest exists, and if so, will promptly notify the Court.
- B. Deferring Assignments Temporarily:** The Attorney may defer acceptance of assignments for any period of time up to six (6) months without terminating this Contract by notifying the Department of Procurement and the Court. The Department of Procurement shall maintain a current list of attorneys available for appointments under the terms of this Contract and shall provide the same to the Court. This list shall be used to make appointments.
- C. Discontinuance of Appointments, Termination of Representation by the Court:** The Court may discontinue appointing the Attorney to cases with or without cause and it may terminate the Attorney's representation for good cause.
- D. Withdrawal from Cases:** In the event that a conflict of interest or other circumstances which the Attorney believes justify the reassignment of any appointed case, the Attorney shall notify the Court prior to withdrawal from the case. The Court will give the Attorney the name of the next available attorney on the rotation list. The attorney will then immediately file the motion to withdraw. In the motion to withdraw, the Attorney must aver that he/she contacted the Court and was informed of the name of the next available attorney on the rotation list. The Attorney shall state the name of the next available attorney. Compensation for cases in which the Attorney withdraws is set forth below.
- E. Substitute Representation:** In the case of scheduling conflicts, vacations or other short term unavailability of the Attorney, the Attorney may arrange for duties to be handled by a competent, duly licensed attorney. The Court will not provide any additional compensation for such substitute representation.

### IV. REDETERMINATION OF INDIGENCY, PRIVATE COMPENSATION

- A. Continued Eligibility of Defendants:** The Attorney shall schedule a hearing before the assigned judge or Presiding Magistrate to review the indigence of a defendant if the Attorney becomes aware of assets, income or change in circumstances of a client such that a question as to the defendant's continued eligibility to receive counsel at the public's expense exists. This section shall not require the disclosure of any privileged information

that is considered a confidential communication under Court Rules or the Arizona Rule of Professional Conduct. The inquiry and decision as to the client's eligibility will be the responsibility of the assigned judge, Magistrate or the Presiding Judge.

- B. Private Compensation:** The Attorney shall not charge or accept any fee or other compensation for services rendered pursuant to this Contract except as provided herein. The Attorney may not represent the client for a fee on an appointed case without prior written approval of the Court. The Attorney must notify the Court of any change in status.

## V. COMPENSATION AND METHOD OF PAYMENT

**In consideration of the provision of professional services rendered under this Contract, the Court shall make payment to the Attorney as follows:**

- A. Compensation:** For each case assignment, the Attorney shall receive a flat rate payment plus reimbursement of reasonable, pre-approved, costs associated with a particular case.

**Non-trial Disposition: \$350.00**

**Trial (1/2 day or disposition on trial date): \$500.00**

**Trial (1/2 day to days): \$750.00**

**Appeals: \$750.00**

**Revocation of Probation: \$40.00 per hour up to \$450.00**

**Trial day:** "Trial day" as used to compute trial days under this agreement will consist of two half trial days. One of the half trial days will include trial activity between the period from 8:30 AM to 1:00 PM and the other half will include significant trial activity from 1:00 PM to 5:30 PM. Therefore, if a trial begins at 1:30 PM and concludes at 3:30 PM the next day, the trial days would be 1.5 days. A trial day begins when jury selection begins, or opening statements if a court trial, and ends when the case is submitted to the trier of fact.

**Dismissal Prior to Pre-trial:** Appointments made by the Court that are subsequently dismissed prior to a pre-trial being held shall not be compensated as a case under the terms of this Contract. Counsel so assigned shall submit a pay claim for payment of services rendered at \$50.00 per hour, not to exceed \$100.00, together with the services provided and the time spent on each service and costs incurred.

**Withdrawal, Substitution of Counsel:** Cases in which the Attorney subsequently withdraws shall not be compensated as an assigned case under the terms of this Contract. Upon withdrawal from an assigned case, the Attorney shall submit a pay claim for services rendered at the rate of \$50.00 per hour, not to exceed \$100.00, together with an itemization for the services provided and the time spent on each service.

**Exceptions:** In cases where a conflict is discovered that could not reasonably have been discovered prior to the Attorney spending a substantial number of hours on the case or in which private counsel is retained by the defendant, the Attorney may submit a pay claim for payment for services rendered at \$50.00 per hour not to exceed the base compensation rate together with an itemization of the specific services provided and the time spent on each service. After review of the documentation, the Magistrate will determine the amount of the Attorney's compensation.

**Miscellaneous Assignments:** This Contract includes assignment of misdemeanor trials, but may require representation in such matters as material witness representation, probation violations, extradition, drug court cases and other matters involving potential loss of liberty and that legally require the appointment of counsel. If appointed to such a matter, the Attorney will be compensated at the rate of \$50.00 per hour, not to exceed \$250.00 unless prior approval is obtained from the Court. Applications requesting such approval shall demonstrate good cause and make a reasonable projection of the time necessary to adequately and competently complete the appointed matter.

- B. Extraordinary Case Compensation:** If a case is extraordinary because of its complex or protracted nature, the Attorney may file a petition with the Presiding Judge or Presiding Magistrate requesting that the case be

designated as extraordinary for purposes of compensation. A copy of the petition must be submitted to the assigned trial judge and the Court. If the Court grants the petition, the terms of the Attorney's compensation will be specified in the court order.

- C. Change in Rates of Compensation:** The rates of compensation established above are subject to the provisions of A.R.S. 13-4013. In that regard, if the Court, through its Presiding Judge or designee, determines that it is necessary to change the rates of compensation, the Court shall pay the Attorney at the rates established by the Court. Payments in excess of the compensation cap will be paid under the provisions described below.

**D. Expenses**

**Ordinary Expenses Not Reimbursable:** Ordinary expenses involved in the representation of criminal defendants are not reimbursable but are included in the flat rate Contract price. Ordinary expenses include, but are not limited to office overhead, mileage within a fifty (50) mile radius of the Court, postage, facsimiles, computer and Westlaw/Lexis charges, messenger service and office supplies. If the Attorney believes there is a reasonable basis for the reimbursement of an ordinary expense, the Attorney follow the procedure for Extraordinary Expenses described below.

**Transcriptions:** With prior approval of the Court, the Attorney may be reimbursed for the cost of transcriptions at a rate not to exceed \$3.75 per page.

**Subpoenas:** The Court will reimburse the Attorney for one subpoena per witness.

**Extraordinary Expenses:** In the event that an Attorney wishes to be reimbursed for any extraordinary expenses including, but not limited to. Travel beyond a fifty (50) mile radius of the Court, an unusual number of copies or telephone calls, a rush rate for transcriptions, trial clothing for a defendant, use of law clerks, paralegals or Westlaw, the Attorney must make specific application to the Court prior to incurring the expenses. All expenses shall be in accordance with guidelines established by the Court and shall not exceed rates set by those policies unless specifically authorized by order of the Court.

**Expert Witness, Investigators:** Prior to retaining such services, application for appointment of expert witness or investigators must be made to and approved by the Court. The fees charged by such expert witnesses and investigators are not to exceed rates approved by the Court. The Court may require that the Attorney review and initial all invoices for services rendered by approved experts and investigators before they are submitted to the Court for payment.

**Interpreters:** Qualified interpreters for non-English speaking indigents for all in-court proceedings and out-of-court interviews shall be provided by the Court through the Office of the Court Interpreter. For out-of-court interviews, the Attorney shall contact the Interpreter's Office at least forty-eight (48) hours in advance.

- E. Failure to Obtain Prior Review and Approval by Court:** Failure to obtain prior approval for certain expenditures as set forth above shall constitute a waiver of the Attorney's right to additional compensation for same. However, the Court retains the right to allow additional compensation to prevent manifest injustice.

The Court may review decisions of the Court to deny or limit requests for any additional expenditure by motion filed within ten (10) days of the date of the decision.

Upon filing a claim, the Attorney shall include a copy of the Court approval or order authorizing compensation under this section and an itemization of the specific services provided with the time spent on each particular service.

- F. Compensation Cap:** The total amount of fees and costs under this Contract shall not exceed \$25,000.00 per year. In the event that the Attorney is reaches the \$25,000.00 cap prior to the termination, extension or amendment of this Contract and the Attorney continues to provide statutorily mandated representation, the Court must specifically approve any additional fees or claims for additional fees and costs.

**G. Payment Procedure:** All bills for the Attorney's services and reimbursement under this Contract must be submitted to the Court on a Pay Claim Form with appropriate documentation in accordance with the Contract and/or the Guidelines for Allowable Fees and Expenses established by the Court. The Court will review and verify all invoices and documentation and may contact the Attorney for additional documentation or explanation. When the invoice is reviewed and approved, the Court will send the approved invoice to Accounts Payable for payment. There will be no reimbursement for unnecessary or excessive fees and costs.

**H. Timely Submission of Pay Claims:** All pay claims must be submitted to Court no later than 30 days after the termination of the case. Pay claims received by the Court after 30 days may not be reimbursed at the Court's discretion. The Court will not honor any claim for payment submitted more than six months after the date of the provision of the last service for which payment is sought.

**I. Claims not to be Submitted Before Case is Terminated:** Pay claims may not be submitted prior to the termination of a case with the exception of the following:

**After Completion of Trial or Change of Plea but Before Sentencing:** The Attorney will continue representation until the case is terminated at no additional cost.

**Upon Dismissal of Case Without Prejudice, Acceptance into Diversion or Issuance of a Warrant:** The Attorney will continue to represent the defendant if and when the case resumes. If the Attorney does not wish to continue representation, the Attorney will file a Motion to Withdraw with the Court and, if granted, will be compensated as described above.

**Monthly:** In the event that a chase has been designated and extraordinary case.

**J. Audit and Audit Disallowance:** In the event that the Court determines that a cost for which payment has been made is a disallowed cost, the Court shall notify the Attorney in writing of the disallowance and the required course of action. The Court shall have the option to adjust any future claim submitted by the Attorney by the amount of the disallowance or to require payment of the disallowed amount to the City of Tucson by the Attorney.

## VI. RECORD KEEPING

**A.** The Attorney shall keep accurate and complete files and records including final disposition of records for each case assigned under this Contract. The Attorney shall submit written monthly status reports in a form approved by the Court on or before the last day of each month in which the Attorney has open cases before the Court. All records shall be made available to the Court for inspection and duplication upon request. The Attorney shall keep and preserve each record of cases assigned under this Contract for the period prescribed by the Arizona State Bar Association or other applicable statute or rule. This section does not require the disclosure of any privileged information that is considered a confidential communication under Court Rules or the Arizona Rules of Professional Conduct.

## INSTRUCTIONS TO OFFERORS

### 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.

**Director of Procurement:** 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 submittal 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 submittal 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 submittal without the information.

2. **PRE-SUBMITTAL CONFERENCE:** If scheduled, the date and time of a Pre-Submittal 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-Submittal Conference questions may be submitted in writing. Offerors are encouraged to submit written questions, via electronic mail or facsimile, at least five days prior to the Request for Qualifications due date to the Contract Officer listed above. The purpose of this conference will be to clarify the contents of this Request for Qualifications in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this Request for Qualifications 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 Qualifications. Oral statements or instructions will not constitute an amendment to this Request for Qualifications.
3. **INQUIRIES:** Any question related to the Request for Qualifications 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 or facsimile, at least five days prior to the submittal due date. Any correspondence related to a solicitation should refer to the appropriate Request for Qualifications number, page and paragraph number. An envelope containing questions should be identified as such, otherwise it may not be opened until after the official submittal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Qualifications will be binding.
4. **AMENDMENT OF REQUEST FOR QUALIFICATIONS:** The Offeror shall acknowledge receipt of a Request for Qualifications Amendment by signing and returning the document by the specified due date and time.
5. **FAMILIARIZATION OF SCOPE OF WORK:** Before submitting, 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 offer 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.
6. **PREPARATION OF SUBMITTAL:**
  - A. All submittals shall be on the forms provided in this Request for Qualifications package. It is permissible to copy these forms as required. Facsimiles or electronic mail submittals shall not be considered.
  - B. The Offer and Acceptance form, the Price Page and any solicitation amendments must be signed and returned with the submittal.
  - 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, Amendment(s), or cover letter accompanying the submittal 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 submittal shall initial erasure, interlineations or other modifications on the submittal.
  - E. In case of error in the extension of prices in the submittal, 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 Qualifications package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting. Negligence in preparing a submittal 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.
- 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.
- 8. TAXES:** The City of Tucson is exempt from federal excise tax, including the federal transportation tax.
- 9. SUBMITTAL FORMAT: An original and 4 copies (5 total) of each submittal** should be submitted on the forms and in the format specified in the RFQ. Offerors shall also submit one electronic copy of the submittal on cd, disc or zip disc in MS Office97 or .pdf format. Any confidential information shall be submitted on a separate cd, disc or zip disc. The original copy of the submittal should be clearly labeled "Original" and shall be single-sided, three hole punched and in a binder. The material should be in sequence and related to the RFQ. **The sections of the submittal should be tabbed, clearly identifiable and should include a minimum of the following sections: the completed Offer and Acceptance Form, all signed Amendments, a copy of this RFQ document and the Offeror's response to the Evaluation Criteria.** Failure to include the requested information may have a negative impact on the evaluation of the offeror's submittal.
- 10. EXCEPTIONS TO CONTRACT PROVISIONS:** A response to any Request for Qualifications is an offer to contract with the City based upon the contract provisions contained in the City's Request for Qualifications, 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 Qualifications cannot be modified without the express written approval of the Director or his designee. If a submittal 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 Qualifications shall prevail.
- 11. PUBLIC RECORD:** Offers submitted in response to this Request for Qualifications shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.
- 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 submittal, 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.
- 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.

- 14. WHERE TO SUBMIT:** In order to be considered, the Offeror must complete and submit its submittal to the City of Tucson Department of Procurement at the location indicated, prior to or at the exact date and time indicated on the Notice of Request for Qualifications page. The Offeror's submittal shall be submitted in a sealed envelope. The words "SEALED SUBMITTAL" with the REQUEST FOR QUALIFICATIONS TITLE, REQUEST FOR QUALIFICATIONS NUMBER, DUE DATE AND TIME and OFFEROR'S NAME AND ADDRESS shall be written on the envelope.
- 15. LATE SUBMITTALS:** Late submittals will be rejected.
- 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 submittal due date and time.
- 17. WITHDRAWAL OF SUBMITTAL:** At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the submittal by a written letter, facsimile or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.
- 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 submittal in order to clarify an offer and assure full understanding of, and responsiveness to, solicitation requirements.
- 19. 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 offers submitted by competing offerors.
- 20. VENDOR APPLICATION:** Prior to the award of a Contract, the successful offeror shall register with the City's Department of Procurement. Registration can be completed at [www.tucsonaz.gov/procure](http://www.tucsonaz.gov/procure) by clicking on Vendor Services.
- 21. 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.
- 22. AWARD OF CONTRACT:** Notwithstanding any other provision of the Request for Qualifications, the City reserves the right to:
- (1) waive any immaterial defect or informality; or
  - (2) reject any or all submittals, or portions thereof; or
  - (3) reissue the Request for Qualifications.
- A response to this Request for Qualifications is an offer to contract with the City based upon the terms, conditions and Scope of Work contained in the City's Request for Qualifications. Submittals do not become contracts unless and until they are executed by the City's Director of Procurement 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 Qualifications, unless any of the terms and conditions are modified by a Request for Qualifications amendment, a Contract Amendment, or by mutually agreed terms and conditions in the Contract documents.
- 23. SUBMITTAL RESULTS:** The name(s) of the successful offeror(s) will be posted on the Procurement Department's Internet site at [www.tucsonaz.gov/procure](http://www.tucsonaz.gov/procure) upon issuance of a Notice of Intent to Award or upon final contract execution.
- 24. PROTESTS:** A protest shall be in writing and shall be filed with the Director of Procurement. A protest of a Request for Qualifications shall be received at the Department of Procurement not less than five (5) working days before the Request for Qualifications 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 Qualifications 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.

## EVALUATION REQUIREMENTS

Submittals received in response to this Request for Qualifications will be reviewed and scored by the Evaluation Committee. Submittals receiving a score of 80 or better from the majority of the Evaluation Committee members will be recommended for contract award.

The Evaluation Committee will meet for the first submittal review session within thirty days of the publication date of this RFQ. Subsequent review sessions will take place on a monthly basis for the five months following the first review session. After the first six review sessions, subsequent review sessions will take place on a quarterly basis.

Submittals received by the Department of Procurement at least three (3) business days prior to a scheduled review session will be reviewed at that session. Submittals received less than three (3) business days prior to a scheduled review session will be reviewed at the next scheduled review session.

**I. EVALUATION CRITERIA**

A. Qualifications and Experience

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

**A. Qualifications and Experience**

1. Documentation of membership, Arizona State Bar including disciplinary history
2. Documentation of two (2) years' practice including misdemeanor representation
3. Proof of insurance
4. Resume

**B. Payment Proposal**

1. As stated in the Instructions to Offerors, 7. Discounts, the price(s) herein can be discounted by \_\_\_\_\_%, if payment is made within \_\_\_\_\_ days.
2. a. Indicate if payment will be accepted via credit card. If so, may credit card payment(s) be made online?  
b. Convenience Fee (if allowable, per Section 5.2.E of the Visa Operating Regulations) \$\_\_\_\_\_

**III. GENERAL**

**A. 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.

**B. 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.

**C. Prior Experience:**

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

**D. Multiple Awards:**

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

#### MWBE PROVISIONS

THE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE ("MBE/WBE") PROGRAM WAS ADOPTED ON AUGUST 5, 1996, AND AMENDED EFFECTIVE JANUARY 1, 2003 BY THE CITY OF TUCSON'S MAYOR AND COUNCIL. THE MBE/WBE PROGRAM AND POLICIES ARE CODIFIED IN CHAPTER 28, ARTICLE XIV OF THE CITY PROCUREMENT CODE. IT IS THE RESPONSIBILITY OF ALL CONTRACTORS, VENDORS, SUPPLIERS AND OTHERS WHO ARE INTERESTED IN CONTRACTING WITH THE CITY OF TUCSON TO READ AND BECOME FAMILIAR WITH THIS SECTION OF THE CITY CODE. IN ORDER TO RECEIVE THE APPLICABLE PRICE PREFERENCE FOR GOODS, MATERIALS, AND GENERAL SERVICES IN ACCORDANCE WITH ARTICLE XIV OF THE TUCSON PROCUREMENT CODE, ALL CERTIFIED MBE/WBE FIRMS ARE REQUIRED TO SUBMIT A COPY OF THEIR MBE/WBE CERTIFICATE WITH THEIR BID OR PROPOSAL.

- 1. PRICE PREFERENCE FOR GOODS, MATERIALS/SERVICES OFFERED BY A CERTIFIED MBE/WBE:** In accordance with Article XIV of the Tucson Procurement Code, up to a seven percent (7%) price preference will be given to local certified minority and women-owned firms who submit a bid or proposal for goods, materials, and general services and are eligible to receive such preference based on disparity. In determining the lowest responsive and responsible bid or lowest fee proposal, any offer submitted by a local certified MBE/WBE firm shall be evaluated by reducing the price(s) of such offer by up to seven percent (7%) for contracts between the formal solicitation threshold amount and one hundred fifty thousand dollars (\$150,000) and five percent (5%) for contracts exceeding one hundred fifty thousand dollars (\$150,000) and ranging up to two hundred fifty thousand dollars (\$250,000), provided that the MBE/WBE is certified at the time of the bid opening or proposal due date. This adjustment shall be solely for the purpose of establishing the apparent low bidder or assigning fee points for proposal evaluation. The actual value of any contract award shall be the amount of the actual offer submitted by the MBE/WBE. **TO BE ELIGIBLE FOR THE PRICE PREFERENCE, MBE/WBE FIRMS MUST BE CERTIFIED PRIOR TO THE SUBMITTAL DUE DATE AND PROOF OF CERTIFICATION MUST BE PROVIDED WITH THE BID/PROPOSAL DOCUMENTS.**
- 2. PRICE PREFERENCE FOR JOINT VENTURES INVOLVING CERTIFIED MBE/WBE FIRMS:** In accordance with Article XIV of the Tucson Procurement Code, any qualified joint venture shall receive up to a seven percent (7%) price preference for contracts between the formal solicitation threshold amount and one hundred fifty thousand dollars (\$150,000) and five percent (5%) for contracts exceeding one hundred fifty thousand dollars (\$150,000) and ranging up to two hundred fifty thousand dollars (\$250,000) where MBE/WBE participation equals or exceeds thirty-five percent (35%) of the joint venture. The MBE/WBE joint venture partner must be responsible for a clearly defined portion of the work to be performed, and share in the ownership control, management responsibilities, risks and profits of the joint venture. The portion of the MBE/WBE joint venture partner's work shall be set forth in detail separately from the work to be performed by the non-MBE/WBE joint venture partner. The MBE/WBE joint venture partner's portion of the contract must be assigned a commercially reasonable dollar value and use its own employees and equipment. The bidder/offeror shall provide the city access to review all records pertaining to joint venture agreements before and after the award of a contract, to the extent reasonably necessary to assess compliance with this article. **TO BE ELIGIBLE FOR THE PRICE PREFERENCE, THE JOINT VENTURE MUST BE APPROVED PRIOR TO THE BID OPENING AND PROOF OF EEO APPROVAL MUST BE PROVIDED WITH THE BID DOCUMENTS.**

To be considered, the bidder/offeror must so state in writing with their submittal, their intention to perform the contract under a Joint Venture arrangement with a certified local MBE/WBE firm. Contact the Equal Opportunity Office at 791-4593 to apply for approval as an MBE/WBE Joint Venture.

#### 3. DEFINITIONS

**Certified MBE or WBE** - A local disadvantaged business enterprise (DBE) minority or woman-owned business enterprise which has completed the certification application process for certification and has met the requirements set forth in Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26) – the United States Department of Transportation Office of Small and Disadvantaged Business Enterprise. All criteria and definitions relative to DBE and/or MBE/WBE certification shall be followed in accordance with 49 CFR Part 26 (and as it may be amended).

**Commercially Useful Function** - The performance of real and actual services in the discharge of any contractual endeavor. An MWBE subcontractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved.

**Eligible Contract Relative to General Procurement of Goods, Services and Materials** - Any contract, unless otherwise precluded by law, for goods, materials, or general services of which the estimated cost exceeds the formal solicitation threshold, but does not exceed two hundred and fifty thousand dollars (\$250,000). Eligible Contracts do not include sole source contracts, petty cash purchases, small purchases, emergency purchases, contracts with nonprofit agencies, contracts for construction or construction services, contracts for professional services, contracts for architectural and engineering services, or contracts for non-competitive purchases, as provided under provisions of the City's Procurement Code.

**Joint Venture** - An association of two or more persons, partnerships, corporations, business enterprises or any combination of these entities, established to form a single business enterprise, but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the Joint Venture shall be in writing. The MBE or WBE partner(s) must be responsible for a clearly defined portion of the work performed, which is set forth in detail separately from the work to be performed by the non-MBE/WBE partner, and which is assigned a commercially reasonable dollar value. Furthermore, the MBE/WBE's interest shall be based on sharing real economic interest in the venture, include proportionate control over management, interest in capital acquired by the Joint Venture and interest in earnings.

**Minority Business Enterprise (MBE)** - A local disadvantaged MBE which is an independent and continuing business for profit, performing a commercially useful function, owned and controlled by one or more minority persons who possess an interest of 51% or more in the business in accordance with 49 CFR Part 26.

**Woman-owned Business Enterprise (WBE)** - A local disadvantaged WBE which is an independent and continuing business for profit, performing a commercially useful function, owned and controlled by one or more non-minority women who possess an interest of 51% or more in the business in accordance with 49 CFR Part 26.

- 4. APPLICABILITY:** The seven percent (7%) price preference is available for contracts between the formal solicitation threshold amount and one hundred fifty thousand dollars (\$150,000) and five percent (5%) is available for contracts exceeding one hundred fifty thousand dollars (\$150,000) and ranging up to two hundred fifty thousand dollars (\$250,000) provided that the MBE/WBE is certified at the time of the bid opening or proposal due date and eligible to receive such preference based on disparity. Bid preference percentages shall only be available to those MBE/WBEs where it is determined that there is significant underutilization.

**NOTICE: THE PROCESS OF BECOMING A CERTIFIED MBE/WBE FIRM BY THE OFFICE OF EQUAL OPPORTUNITY PROGRAMS TAKES SEVERAL WEEKS. PLEASE CONTACT THE OFFICE OF EQUAL OPPORTUNITY PROGRAMS AT 791-4593, IF YOU ARE INTERESTED IN MBE/WBE CERTIFICATION.**

## SPECIAL TERMS AND CONDITIONS

1. **TERM AND RENEWAL:** The Contract term shall commence upon award and remain in effect until June 30 of the same calendar year. Subsequent renewal terms shall begin on July 1 and end on June 30. All contracts awarded and subsequent renewals shall expire on June 30, 2011. The City shall have the option to extend this Contract for additional one (1) year periods through June 30, 2011. Any extension or modification of this Contract shall be made in writing and executed by the parties hereto. Nothing herein shall be construed to guarantee that the Court will subsequently extend or award a Contract.

### 2. **INSURANCE:**

The Attorney 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 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.

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Professional Liability Insurance (Errors and Omissions)	\$500,000 (Minimum) Combined Single Limit

Attorney will present to the City written evidence (Certifications of Insurance) of compliance with Items A and C above. Said evidence shall be to the City Procurement Director's satisfaction.

## STANDARD TERMS AND CONDITIONS

1. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Director of Procurement.
2. **AFFIRMATIVE ACTION:** Contractor shall abide by the provisions of the Tucson Procurement Code Chapter 28, Article XII.
3. **AMERICANS WITH DISABILITIES ACT:** 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.
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.
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.
6. **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.
7. **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.
8. **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.
9. **CONTRACT AMENDMENTS:** This Contract shall be modified only by a written contract amendment signed by the City's Director of Procurement and persons duly authorized to enter into contracts on behalf of the Contractor.
10. **CONTRACT:** The Contract shall be based upon the Request for Qualifications issued by the City and the Offer submitted by the Contractor in response to the Request for Qualifications. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Qualifications. 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, submittals, negotiations, purchase orders, or master agreements in any form.
11. **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.
12. **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.
13. **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.

**14. 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.

**15. 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.

**16. HUMAN RELATIONS:** Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.

**17. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless the 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.

**18. 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, paid vacation or sick days 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.

**19. 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.

**20. INTERPRETATION-PAROLE 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.

**21. 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.

- 22. 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.
- 23. 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.
- 24. 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.
- 25. 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.
- 26. 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 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.

- 27. 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 a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.
- 28. 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.
- 29. RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.
- 30. 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.
- 31. 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.
- 32. RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's submittal 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.

- 33. 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.
- 34. SHIPMENT UNDER RESERVATION PROHIBITED:** 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.
- 35. 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.
- 36. 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 Procurement is received by the parties to this Contract, unless the notice specifies a later time.
- 37. 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.

- 38. 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.
- 39. 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 Qualifications 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. 071039 - \_\_\_\_\_.

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF TUCSON**, a municipal corporation

Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

\_\_\_\_\_  
Mark A. Neihart, C.P.M., CPPB, A.P.P., CPM  
As Director of Procurement and not personally