

CITY OF TUCSON

INVITATION FOR BID

INVITATION FOR BID NUMBER: 100398

BID DUE DATE: FEBRUARY 22, 2010, AT 4:00 P.M. LOCAL AZ TIME

BID SUBMITTAL LOCATION: DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR LOBBY, TUCSON, AZ 85701

MATERIAL OR SERVICE: OVERHAUL OF CATERPILLAR NATURAL GAS ENGINES

PRE-BID CONFERENCE DATE: FEBRUARY 8, 2010
TIME: 10:00 A.M., LOCAL AZ TIME
LOCATION: CITY HALL, ATTORNEY'S CONFERENCE ROOM
255 W. ALAMEDA, 7TH FLOOR, TUCSON, AZ

CONTRACT OFFICER: NATHAN DAOU, CPPB, C.P.M., A.P.P.
TELEPHONE NUMBER: (520) 837-4136
Nathan.Daou@tucsonaz.gov

Interested bidders may obtain a copy of this complete solicitation by calling (520) 791-4217. A copy of the solicitation and any future amendments may also be downloaded from the City of Tucson Procurement Department website at: <http://www.tucsonprocurement.com/> by selecting the Bid Opportunities link and the associated solicitation number.

Competitive sealed bids 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. Bids received by the correct time and date shall be publicly recorded.

Bids must be in the actual possession of the Department of Procurement at the location indicated, on or prior to the exact date and time indicated above. Late bids shall not be considered. The prevailing clock shall be the City Department of Procurement clock.

Bids must be submitted in a sealed envelope. The Invitation for Bid number and the bidder's name and address should be clearly indicated **on the outside** of the envelope. All bids must be completed in ink or typewritten. Questions must be addressed to the Contract Officer listed above.

A preliminary bid tabulation will be posted on the Department of Procurement's website at <http://www.tucsonprocurement.com/> within 2 business days, after bid opening. A final bid tabulation will be posted on the website after contract award and will remain on the website for 60 days after the posting date. Bidders without Internet access may request a copy of the bid tabulation by contacting the Department of Procurement at (520) 791-4217.

******NOTICE******

Effective July 1, 2009, the City will no longer mail Notices of available solicitations via the U.S. Postal Service. Email notifications will be provided to those vendors that have updated their vendor record and selected email as their preferred delivery method. For information on how to update your vendor record, please visit www.tucsonprocurement.com, click on What's New? and read the section titled "Notice of Solicitations." You may also call (520) 791-4217 if you have questions.

ND/sd

ISSUE DATE: JANUARY 28, 2010

THIS BID IS OFFERED BY: _____

INSTRUCTIONS TO BIDDERS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

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

Bidder: The individual, partnership, or corporation who submits a bid in response to a solicitation.

City: The City of Tucson, Arizona.

Contract: The legal agreement executed between the City and the Contractor/Consultant. The Contract shall include this IFB document incorporated herein by reference, all terms, conditions, specifications, scope of work, Amendments and the Contractor's bid 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.

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 the bid as non-responsive.

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

2. PRE-BID CONFERENCE: If scheduled, the date and time of a Pre-Bid 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 a Bidder is unable to attend the Pre-Bid Conference questions may be submitted in writing. Bidders are encouraged to submit written questions, via electronic mail or facsimile, at least five days prior to the Invitation for Bid due date to the Contract Officer listed above. The purpose of this conference will be to clarify the contents of this Invitation for Bid in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this Invitation for Bid 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 Invitation for Bid. Oral statements or instructions will not constitute an amendment to this Invitation for Bid.

3. INQUIRIES: Any question related to an Invitation for Bid shall be directed to the Contract Officer whose name appears above. A bidder 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 to be submitted in writing. Bidders are encouraged to submit written questions, via electronic mail or facsimile, at least five days prior to the bid due date. Any correspondence related to a solicitation should refer to the appropriate Invitation for Bid number, page, and paragraph number. An envelope containing questions should be identified as such otherwise it may not be opened until after the official bid due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written Amendment to the Invitation for Bid will be binding.

3. **INQUIRIES:** Any question related to an Invitation for Bid shall be directed to the Contract Officer whose name appears above. A bidder 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 to be submitted in writing. Bidders are encouraged to submit written questions, via electronic mail or facsimile, at least five days prior to the bid due date. Any correspondence related to a solicitation should refer to the appropriate Invitation for Bid number, page, and paragraph number. An envelope containing questions should be identified as such otherwise it may not be opened until after the official bid due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written Amendment to the Invitation for Bid will be binding.

4. AMENDMENT OF INVITATION FOR BID: The bidder shall acknowledge receipt of an Invitation for Bid Amendment by signing and returning the document by the specified due date and time.

5. FAMILIARIZATION OF SCOPE OF WORK: Before submitting a bid, each bidder shall familiarize itself with the requirements, laws, regulations and other factors affecting contract performance. The Bidder 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 bid will constitute a representation of compliance by the Bidder. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

6. PREPARATION OF BID:

A. All bids shall be on the forms provided in this Invitation for Bid package. It is permissible to copy these forms as required. Facsimile or electronic mail bids shall not be considered.

B. The Offer and Acceptance form, the Price Page and any solicitation amendments must be signed and returned with the bid.

C. The Offer and Acceptance page shall be signed by the person authorized to submit a bid. An authorized signature on the Notice Page, Offer and Acceptance page, Bid Amendment(s), or cover letter accompanying the bid documents shall constitute an irrevocable offer to sell the good and/or service specified herein. Bidder shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.

D. The authorized person signing the bid shall initial erasures, interlineations, or other modifications in the bid.

E. In case of error in the extension of prices in the bid, unit price shall govern. No bid shall be altered, amended or withdrawn after the specified bid due time and date, unless in accordance with the Tucson Procurement Code (§28-17(6)).

F. Periods of time, stated as a number of days, shall be in calendar days.

- G. It is the responsibility of all bidders to examine the entire Invitation for Bid package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid 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. Submission of additional terms, conditions or agreements with the bid document may result in bid rejection.
- J. Bidder must list any subcontractors to be utilized in the performance of the contract specified herein.
- 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 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 bid price in determining the low bid. However, the City shall be entitled to take advantage of any payment discount offered by vendor provided payment is made within the discount period. Unless otherwise specified on the Price Page, a two percent/twenty-one days cash discount will be assumed as allowable and will be considered in determining bid award.
- 8. TAXES:** The City of Tucson is exempt from federal excise tax, including the federal transportation tax. All applicable sales tax shall be indicated as a separate item.
- 9. BID FORMAT:** In addition to the bid submitted at the Invitation for Bid due date and time, the successful bidder may be required to submit an electronic copy of their bid 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.
- 10. PUBLIC RECORD:** All bids submitted in response to this invitation shall become the property of the City and shall become a matter of public record available for review subsequent to the Contract award.
- 11. CONFIDENTIAL INFORMATION:** The City of Tucson is obligated to abide by all public information laws. If a Bidder believes that any portion of a bid, 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 bidder submits a formal written objection.
- 12. CERTIFICATION:** By signature on the Notice Page, Offer and Acceptance page, solicitation Amendment(s) or cover letter accompanying the bid documents, bidder certifies:
- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. The Bidder shall not discriminate against any employee, or applicant for employment in violation of Federal or State law.
- C. The Bidder 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 Bidder hereby certifies that the individual signing the bid is an authorized agent for the bidder and has the authority to bind the Bidder to the Contract.
- 13. WHERE TO SUBMIT BIDS:** In order to be considered, the Bidder must complete and submit its bid 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 Invitation for Bid page. The bid shall be submitted in a sealed envelope. The words "SEALED BID" with the INVITATION FOR BID TITLE, INVITATION FOR BID NUMBER, BID DUE DATE AND TIME and BIDDER'S NAME AND ADDRESS shall be written on the envelope.
- 14. LATE BIDS:** Late bids shall be rejected.
- 15. OFFER AND ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, the City requires a bid in response to this solicitation to be valid and irrevocable for ninety (90) days after the bid due date and time.
- 16. WITHDRAWAL OF BID:** At any time prior to a specified solicitation due date and time, a bidder may formally withdraw the bid by written letter, facsimile or electronic mail from the Bidder or designated representative. Telephonic or oral withdrawals shall not be considered.
- 17. REQUEST FOR ADDITIONAL INFORMATION:** The City reserves the right to contact bidders for the purpose of obtaining additional information and/or clarification that will assure full understanding of, and responsiveness to, solicitation requirements.

- 18. TAX OFFSET POLICY:** If applicable, in evaluating bids and for purposes of determining the low bidder, the City shall include the amount of applicable business privilege tax, except that the amount of the City of Tucson business privilege tax shall not be included in the evaluation.
- 19. VENDOR APPLICATION:** Prior to the award of a Contract, the successful bidder shall register with the City's Department of Procurement. Registration can be completed at <http://www.tucsonprocurement.com/> by clicking on Vendor Services. Please note that email notifications of newly published solicitations and amendments will be provided to those vendors that select email as their preferred delivery method in their vendor record.
- 20. CITY OF TUCSON BUSINESS LICENSE:** Prior to the award of a Contract, the successful offeror must obtain a City of Tucson Business License or a written determination that a business license is not required issued by the City's Business License Section. The business license must remain valid throughout the life of this contract. Contractor must provide a valid copy of the business license or a written determination that a business license is not required prior to award and at contract renewal. Application for a City Business License can be completed at <http://www.tucsonaz.gov/etax>. For questions contact the City's Business License Section at (520) 791-4566 or email at tax-license@tucsonaz.gov.
- 21 UPON NOTICE OF INTENT TO AWARD:** The apparent successful bidder 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:**
- A. Unless otherwise provided within the IFB, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.
 - B. Notwithstanding any other provision of the Invitation for Bid, the City reserves the right to:
 - (1) waive any immaterial defect or informality; or
 - (2) reject any or all bids, or portions thereof; or
 - (3) reissue an Invitation for Bid.
 - C. A response to the Invitation for Bid is an offer to contract with the City based upon the terms, conditions, and Specifications contained in the City's Invitation for Bid. Bids do not become Contracts unless and until they are executed by the City's Director of Procurement and 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 Invitation for Bid, unless any of the terms and conditions are modified by an IFB Amendment, a Contract Amendment, or by mutually agreed terms and conditions in the Contract documents.
- 23. BID RESULTS:** Bid results are not provided in response to telephone, facsimile or electronic mail inquiries. A PRELIMINARY bid tabulation will be posted on the Department of Procurement's Internet site, <http://www.tucsonprocurement.com/> within 2 business days of the advertised bid opening. The information on the PRELIMINARY tabulation will be posted as it was read and prepared during the bid opening. The City makes no guarantee as to the accuracy of any information on the PRELIMINARY tabulation. A FINAL bid tabulation will be posted on the website after Contract award and will remain on the website for 60 days after the posting date.
- 24. PROTESTS:** A protest shall be in writing and shall be filed with the Director of Procurement. A protest of an Invitation for Bid shall be received at the Department of Procurement not less than five (5) working days before the Invitation for Bid 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 Invitation for Bid 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.

SCOPE OF WORK

- 1.0 SCOPE:** The City intends to establish a contract for the one-time overhaul of seven (7) Caterpillar brand natural gas engines for the Tucson Water Department. The serial numbers of the engines are as follows:

6ZM00219 6ZM00220 6ZM00221
6ZM00222 6ZM00 223 6ZM00 224 6ZM00270

The arrangement number for all 7 engines is 1276460. These seven (7) engines have previously been overhauled.

- 1.1 DELIVERY TIME REQUIREMENT:** A maximum of 10 working days after receipt of engine shall be allowed. Tucson Water will notify Contractor 2 days prior to delivery of engine for overhaul.

Contractor shall be responsible for hoisting the engines off their foundation, transported to their facility for rebuilding, and transporting back to our facility and resetting the engine back on the foundation.

Contractor must pick up the engine and deliver it back to the City. Pick up and delivery would occur at the Tucson Water Department, 13,800 W. Mile Road, Tucson, AZ 85743 between the hours of 6:30 AM and 2:00 PM. Contractor will be responsible for loading and unloading the engine.

The City cannot be without any more than one of these engines at any given time. So the most engines the City can give to the Contractor will be one engine at a time.

- 1.2** Contractor shall completely disassemble engine and major components.
- 1.3** Contractor shall clean and inspect components, determine re-usability and replace or restore to original OEM specification for "New", **USING OEM PARTS ONLY.**
- 1.4** All inspected components must be checked for re-usability per OEM specification. Documentation of measurements and inspection must be provided to Tucson Water prior to continuation of overhaul.
- 1.5** Contractor shall flush, test and reseal after-cooler core.
- 1.6** Overhaul must include any and all updates to the engine as recommended by the OEM since new. Costs for these updates must be included in Bidder's offer (in the unit price for line item #1 on the Price Sheet).
- 1.7** All of the following 15 parts **MUST** be replaced:
1. Cylinder packs
 2. Cylinder heads
 3. Water pump(s) – Jacket & Auxillary
 4. Thermostats
 5. Oil cooler core
 6. Turbocharger cartridges
 7. Rod bearings
 8. Main bearings
 9. All gear train bearings and thrust washers
 10. Crankshaft thrust plates
 11. Camshaft follower spring clips
 12. Spark plugs
 13. Front and rear main seals
 14. All gaskets and seals.
 15. Replace all "soft" maintenance parts such as filters, hoses, belts and simple wear items.

Items 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 must all be replaced with new parts. Items 1, 2, 3, 5, and 6 can be replaced with either new or rebuilt parts, provided that the rebuilt parts carry the same warranty as a new part.

1.8 The following 10 components shall be disassembled, inspected, and resealed. They shall be replaced or rebuilt as necessary. None, some, or all of the following may need to be replaced or rebuilt.

1. After-cooler water pump
2. Engine oil pump
3. Spark plug transformers
4. External water lines, manifolds, oil lines, linkages and wiring
5. Natural gas carburetor and regulator
6. Crankshaft
7. Camshaft
8. Gears & drives
9. Electronic ignition components
10. Electronic control components

1.9 The rebuilt engine shall be painted and prepped for shipping. The rebuilt engine shall be painted Caterpillar yellow.

1.10 EPA and Shop supplies fees **must be stated on line item #2 of the Price Sheet of this Invitation for Bid.**

1.11 Contractor shall include technician for start-up of engine on-site, with tooling and knowledge to properly set fuel settings, boost pressures, electronic parameters and emissions related settings. All start-up work and adjustments to be performed per OEM specifications and Pima County ADEQ air quality permit.

1.12 Components **not** included in this specification for rebuild or overhaul include:

1. Electrical attachments such as starter, or alternator.
2. Cylinder block, or any other major component castings such as front and rear covers, valve covers, rocker boxes or major housings. Camshaft and crankshaft are not considered major component castings.
3. After-cooler core

General Requirements

WARRANTY: Bidder/Offeror shall warrant that all equipment, parts, and labor are free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered or installed (unlimited hours). Warranty shall also guarantee accepted trade standards of quality, fitness for the intended uses, and conformance to promises or specified specifications. No other express or implied warranty shall eliminate the vendor's liability as stated herein.

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

DEFECTIVE PRODUCT: All defective products shall be replaced and exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Contractor. All replacement products must be received by the City within seven (7) days of initial notification.

MWBE PROVISIONS

THE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (“MBE/WBE”) PROGRAM WAS ADOPTED ON AUGUST 5, 1996, AND AMENDED EFFECTIVE FEBRUARY 10, 2009 BY THE CITY OF TUCSON’S MAYOR AND COUNCIL. THE MBE/WBE PROGRAM AND POLICIES ARE CODIFIED IN CHAPTER 28, ARTICLE XIII 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 XIII 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 AN ELIGIBLE CERTIFIED M/WBE:** In accordance with Article XIII of the Tucson Procurement Code, up to a seven percent (7%) price preference will be given to an eligible 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. The price of bids or offers received from a Certified M/WBE shall be adjusted by seven (7) percent for Solicitations with a projected contract value between the bid threshold and below one hundred fifty thousand dollars (\$150,000) and five (5) percent for Solicitations with a projected value between one hundred fifty thousand dollars (\$150,000) and five hundred thousand (\$500,000) in the initial term of the contract. This adjustment shall be solely for the purpose of applying the price preference. The actual value of any contract award shall be the amount of the actual offer submitted by the M/WBE. **TO BE ELIGIBLE FOR THE PRICE PREFERENCE, M/WBE FIRMS MUST BE CERTIFIED PRIOR TO THE SUBMITTAL DUE DATE AND PROOF OF CERTIFICATION MUST BE PROVIDED WITH THE BID/PROPOSAL DOCUMENTS.**

2. **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. 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.

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.

3. **APPLICABILITY:** The seven percent (7%) price preference is available for solicitations with a projected contract value between the formal solicitation threshold amount and one hundred fifty thousand dollars (\$150,000) and five percent (5%) is available for solicitations with a projected contract value exceeding one hundred fifty thousand dollars (\$150,000) 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 (520) 791-4593, IF YOU ARE INTERESTED IN MBE/WBE CERTIFICATION.

SPECIAL TERMS AND CONDITIONS

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

2. **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 ten (10) calendar days prior to termination, cancellation, or reduction in coverage in any policy.

B. The Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies will include the City as an additional insured with respect to liability arising out of the performance of this Contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

C. Provide and maintain minimum insurance limits as applicable.

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Workmen's Compensation Employer's Liability	Statute \$100,000
Comprehensive General Liability Insurance Including: (1) Products & Completed Operations (2) Blanket Contractual	\$1,000,000 Bodily Injury Combined Single Limit \$100,000 Property Damage
Comprehensive Automobile Including: (1) Non-Owned (2) Leased (3) Hired Vehicles	\$1,000,000 Bodily Injury Liability Insurance Combined Single Limit \$100,000 Property Damage

Contractor will present to the City written evidence (Certifications of Insurance) of compliance with Items A., B 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. **CERTIFICATION OF COMPLIANCE WITH A.R.S. SEC. 35-393 ET SEQ.:** By signing this contract, the Contractor certifies that it does not have scrutinized business operations in Iran as required by A.R.S. sec. 35-393 et seq. If the City determines that the Contractor has submitted a false certification, the City may impose remedies as provided in the Tucson Procurement Code up to and including termination of this contract.
7. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.
8. **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.
9. **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.
10. **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.
11. **CONTRACT AMENDMENTS:** The Procurement Department has the sole authority to:
 - A. Amend the contract or enter into supplemental verbal or written agreements;
 - B. Grant time extensions or contract renewals;
 - C. Otherwise modify the scope or terms and provisions of the contract.

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

12. **CONTRACT:** The Contract shall be based upon the Invitation for Bid issued by the City and the Offer submitted by the Contractor in response to the Invitation for Bid. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Invitation for Bid. 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.

13. **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.
14. **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.
15. **EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
16. **FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

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

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

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

18. **GRATUITIES:** The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

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

20. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees.

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

The Contractor shall not be entitled to compensation in the form of salaries, 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.

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

- 23. 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.

- 24. 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.

- 25. 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.

- 26. 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.

- 27. 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.

- 28. 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.

- 29. 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.

- 30. 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.

- 31. 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.

- 32. 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.
- 33. 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.
- 34. 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.
- 35. RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's bid 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.
- 36. 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.
- 37. 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.
- 38. 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.
- 39. 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.
- 40. 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.

- 41. 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.
- 42. 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.

PRICE PAGE

*NOTE: Bidder shall indicate the unit price for the overhaul of an engine on line item #1 of this Price Sheet. This shall include all of the required items, as per the Specifications.

Bidder shall indicate the unit price for the replacement of the 10 items described in Paragraph 1.8 of the Specifications, as well as the unit price for the rebuilding of the 10 items described in Paragraph 1.8 of the Specifications, on line items #3 through #22 of this Price Sheet. If some of these items are deemed necessary as part of the overhaul of a particular engine, bidder shall include these items on the invoice.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	EXTENDED PRICE
1.	Overhaul of engine, including all required items described in the Specifications (excluding the 10 items described in Paragraph 1.8 of the Specifications)	7 each	\$ _____/ea.	\$ _____
2.	EPA and Shop Supplies Fee	7 each	\$ _____/ea.	\$ _____
GRAND TOTAL				\$ _____

Optional items, as described in Paragraph 1.8 of the Specifications:

ITEM NO.	DESCRIPTION	UNIT PRICE
3.	Replacement of After-cooler water pump	\$ _____/per engine
4.	Rebuilding of After-cooler water pump	\$ _____/per engine
5.	Replacement of Engine oil pump	\$ _____/per engine

ITEM NO.	DESCRIPTION	UNIT PRICE
6.	Rebuilding of Engine oil pump	\$ _____/per engine
7.	Replacement of Spark plug transformers	\$ _____/per engine
8.	Rebuilding of Spark plug transformers	\$ _____/per engine
9.	Replacement of External water lines, manifolds, oil lines, linkages and wiring	\$ _____/per engine
10.	Rebuilding of External water lines, manifolds, oil lines, linkages and wiring	\$ _____/per engine
11.	Replacement of Natural gas carburetor and regulator	\$ _____/per engine
12.	Rebuilding of Natural gas carburetor and regulator	\$ _____/per engine
13.	Replacement of Crankshaft	\$ _____/per engine
14.	Rebuilding of Crankshaft	\$ _____/per engine
15.	Replacement of Camshaft	\$ _____/per engine
16.	Rebuilding of Camshaft	\$ _____/per engine
17.	Replacement of Gears & drives	\$ _____/per engine
18.	Rebuilding of Gears & drives	\$ _____/per engine

ITEM NO.	DESCRIPTION	UNIT PRICE
19	Replacement of Electronic ignition components	\$ _____/per engine
20.	Rebuilding of Electronic ignition components	\$ _____/per engine
21.	Replacement of Electronic control components	\$ _____/per engine
22.	Rebuilding of Electronic control components	\$ _____/per engine

PROMPT PAYMENT DISCOUNT: As stated in the Instructions to Bidders, Paragraph 7- Discounts, the price(s) quoted herein can be discounted by _____%, if payment is made within _____ days.

NOTE: Unless otherwise specified in the offer, a two percent/twenty-one days (2%/21) cash discount will be assumed as allowable and will be considered in determining bid award.

DELIVERY: Delivery is promised within _____ calendar days after receipt of an order.

SALES TAX PERCENT: _____% (See Instructions to Bidders, Paragraph 8 - Taxes).

CREDIT CARD PAYMENT:

- Will payment be accepted via commercial credit card? _____Yes _____No
- If yes, can commercial payment(s) be made online? _____Yes _____No
 - Will a third party be processing the commercial credit card payment(s)? _____Yes _____No
 - If yes, indicate the flat fee per transaction \$_____ (as allowable, per Section 5.2.E of Visa Operating Regulations).
 - If "no" to above, will consideration be given to accept the card? _____Yes _____No

CITY OF TUCSON BUSINESS LICENSE: _____Yes _____No
 If yes, please provide a copy of your City of Tucson Business License.

HAVE YOU SUBMITTED *ALL* AMENDMENTS? CHECK OUR WEBSITE *NOW!*
 AMENDMENTS MAY BE DOWNLOADED AT <http://www.tucsonprocurement.com/>

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, conditions, specifications, and amendments in the Invitation for Bid.

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. _____.

CITY OF TUCSON, a municipal corporation

Approved as to form this _____ day of _____, 2010.

Awarded this _____ day of _____, 2010.

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