CITY OF TUCSON
REQUEST FOR PROPOSAL

REQUEST FOR PROPOSAL NUMBER:	**100405**
PROPOSAL DUE DATE:	**February 24th, 2010, AT 4:00 P.M. LOCAL AZ TIME**
PROPOSAL SUBMITTAL LOCATION:	**Department of Procurement** **255 W. Alameda, 6th Floor, Tucson, AZ 85701**
MATERIAL OR SERVICE:	**Golf Instructions and Golf Club Repair Services**
PRE-PROPOSAL CONFERENCE DATE:	**February 11, 2010**
TIME:	**2:00 P.M.**
LOCATION:	**Parks & Rec Administration, 900 S. Randolph Way** **Mesquite Room, Tucson AZ**
CONTRACT OFFICER:	**Ruth Estrada**
TELEPHONE NUMBER:	**(520) 837-4132** **ruth.estrada@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 also be obtained from our Internet site at: http://www.tucsonprocurement.com/ by selecting the Bid Opportunities link and the associated solicitation number.

Competitive sealed proposals 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.

Proposals 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 proposals shall not be considered. The prevailing clock shall be the City Department of Procurement clock.

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

******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.

RE:ts

PUBLISH DATE: February 3, 2010

INTRODUCTION

The City of Tucson is seeking proposals from qualified firms to operate and manage all golf training and instruction programs and provide golf club repair services for patrons at three (3) Tucson Parks and Recreation Department's golf (Tucson City Golf) facilities. The Contractor will be accorded exclusive privilege and obligation for golf instruction with the following exceptions:

- El Rio Golf Course
- The First Tee golf instruction
- Southern Arizona Junior Golf instruction

SCOPE OF WORK

A. GENERAL

1. FACILITES: The Contractor's Golf training and instruction programs and golf club repair services are to be provided at the following three (3) Tucson City Golf's facilities:

- Fred Enke Golf Course, 8251 East Irvington Road, Tucson, AZ 85730
- Randolph Golf Complex, 600 South Alvernon Way, Tucson, AZ 85711
- Silverbell Golf Course, 3600 North Silverbell Road, Tucson, AZ 85745

The estimated annual play at these three Tucson City Golf courses is approximately 240,000 rounds per year.

a. PRACTICE TEES: At the Randolph driving range up to four (4) practice tees and at Silverbell and Fred Enke ranges up to two (2) practice tees will be designated for the Contractor's priority and use.

b. OTHER PRACTICE AREAS: Additional practice tees, practice chipping area, or practice green may be made available to the Contractor upon 48-hour advance request.

c. CLUB REPAIR AND STORAGE FACILITES: Fifty (50) square feet of space in the Randolph Range Building shall be made available for the storage of supplies and equipment utilized to provide club repair services. The Contractor is solely responsible for providing all supplies and equipment necessary for golf club repairs.

2. GOLF CLASSES: Traditionally, Tucson City Golf has hosted both credit and non-credit golf classes for Pima Community College and the University of Arizona. Pending approval and agreement with these institutions, these classes may be facilitated by the Contractor. Any resulting agreements between the Contractor and Pima Community College and/or the University of Arizona shall be entirely outside their previous agreements with the City and the City will have no obligations or duties with respect to those agreements.

3. EXCLUSIONS: The Contractor has no right of appeal in these exclusions. Due to contractual, legal and other considerations Offerors are hereby made aware of the following:

a. The El Rio Golf Course, located at 1400 West Speedway Boulevard, shall not be available for golf instruction programs and golf club repair services as described in this Request for Proposal.

b. Programming, including golf instruction provided by The First Tee for its students, employees, volunteers, or other agents shall not be affected or otherwise restricted by the terms of this contract or subsequent agreements.

c. Programming, including golf instruction provided by Southern Arizona Junior Golf for its students, employees or volunteers shall not be affected or otherwise restricted by the terms of this contract or subsequent agreements.

B. CONTRACTOR RESPONSIBILITIES

1. GOLF INSTRUCTION PROGRAMS: The Contractor shall be allowed to engage in the following activities:

a. Private Golf Lessons

b. Group Golf Lessons

c. Golf Clinics

d. Golf Schools

e. On-course Playing Lessons

f. Specialized Classes (Mental Game, Exercise, Stretching, Nutrition, Specialty Shots, Theme Related Group / Clinic Topics)

g. Other golf training and instruction activities may be considered upon written request of the Contractor.

2. GOLF CLUB REPAIR SERVICES: The Contractor shall be allowed to engage in the following activities:

a. Club fitting

b. Re-gripping

c. Re-shafting

d. Refinishing

e. Re-chrome

f. Re-groove

g. Rebalancing

h. Re-whipping

i. Check loft

j. Check lie

k. Re-bending

l. Hosel repair

m. Ferrule repair

n. Adjusting club length

o. Head tightening

p. Other golf club repair services may be considered upon written request of the Contractor.

3. QUALIFICATIONS:

a. Golf training and instruction programs: The Contractor shall ensure that they and their representatives engaged in training and instruction activities are PGA or LPGA members.

b. Custom Club Fitting: The Contractor shall ensure that they and their representatives engaged in custom club fitting shall be certified by each manufacturer for whom they custom fit clubs.

c. Golf club repair services: The Contractor shall ensure that they and their representatives engaged in general club repair activities are capable and qualified.

4. AVAILABILITY: The Contractor shall allow business levels to determine appropriate hours to be personally represented at the City's golf facilities. The Contractor will not be required to maintain specific hours of operation, but the Contractor's golf instruction programs and golf club repair services shall be scheduled within regular operating hours at each Tucson City Golf facility. Regular operating hours are (hours may vary due to weather conditions):

- Fred Enke Golf Course – sunrise to 8 p.m.
- Randolph Golf Complex – sunrise to 9 p.m.
- Silverbell Golf Course – sunrise to 8 p.m.

The Contractor accepts that each of the Tucson City Golf facilities may be closed periodically throughout the year for routine golf course maintenance activities such as aerification and overseeding, and for other seasonal periods. Other closures may occur due to emergent issues. The City shall provide the Contractor sixty (60) days notice for any other foreseeable closure.

5. MARKETING

a. The Contractor shall supply rate sheets and other pertinent information to Tucson City Golf for distribution and internal use.

b. All of the Contractor's advertising and promotional materials to be used in connection with their instruction and training efforts, and golf club repair services at Tucson City Golf facilities must be approved by Tucson City Golf before it is posted or otherwise distributed.

c. At a minimum, once every twelve (12) months the Contractor shall submit a written marketing plan, outlining their activities to Tucson City Golf. The marketing plan must be approved by Tucson City Golf.

6. REPORTING

a. On a quarterly basis (Quarters end March, June, September and December), the Contractor will be required to provide Tucson City Golf with reports of the amount of monthly gross revenue received from the following:

- List of Golf Instruction Programs provided
- Golf Instructional Fees
- Golf Club Repair Service Fees
- Golf Instructional Revenues
- Golf Club Repair Service Revenues

b. On an annual basis, the Contractor will be required to provide the Tucson City Golf with a certified audit of the results of operation for that period.

C. TUCSON CITY GOLF RESPONSIBILITIES

1. EXCLUSIVITY:

a. Tucson City Golf shall not knowingly permit any other golf instructors or golf school to instruct or train at any of the facilities listed in Section A, Paragraph 1 of the Scope of Work. Those personnel and activities specifically cited in Section A, Paragraph 3 of the Scope of Work shall not be considered a violation of the this exclusivity provision.

b. Tucson City Golf shall not knowingly permit any other person or vendor to engage in golf club repair services at any of the facilities listed in Section A, Paragraph 1 of the Scope of Work.

c. Tucson City Golf shall not permit solicitation by its professional staff other than solicitation of the instruction and repair services provided by the Contractor.

2. MARKETING AND PROMOTION: Tucson City Golf will promote the Contractor's training and instruction activities. These efforts may include:

a. Inserts, brochures and/or other promotional materials placed or posted in golf shops, clubhouses and driving range facilities.

b. Phone calls, e-mails, over-the-counter, and other inquiries received by Tucson City Golf pertaining to golf instruction, training or golf club repair shall be forwarded to the Contractor in a timely manner.

c. Tucson City Golf shall attempt to coordinate its special events and other activities with the Contractor's marketing plan.

3. TUCSON CITY GOLF PROFESSIONAL STAFF: The City recognizes that Tucson City Golf staff have served as instructors to many City Golf patrons and the Contractor may want to take advantage of this already established relationship. Therefore, the City has reviewed the issue and concluded that there is not a conflict of interest should the Contractor choose to subcontract with or hire directly Tucson City Golf professional staff. However, any resulting relationships between the Contractor and the individual(s) shall be entirely outside the Golf professional's employment with the City and the City will have no obligations or duties with respect to those relationships.

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 proposal in response to a solicitation.
Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at the City's sole discretion, result in the rejection of a proposal as non-responsive.
Should: Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.

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

3. **INQUIRIES:** Any question related to the Request for Proposal shall be directed to the Contract Officer whose name appears above. An offeror shall not contact or ask questions of the department for whom the requirement is being procured. The Contract Officer may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail or facsimile, at least five days prior to the proposal due date. Any correspondence related to a solicitation should refer to the appropriate Request for Proposal number, page and paragraph number. An envelope containing questions should be identified as such, otherwise it may not be opened until after the official proposal 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 Proposal will be binding.

4. **AMENDMENT OF REQUEST FOR PROPOSAL:** The Offeror shall acknowledge receipt of a Request for Proposal Amendment by signing and returning the document by the specified due date and time.

5. **FAMILIARIZATION OF SCOPE OF WORK:** Before submitting a proposal, each offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a proposal will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

6. PREPARATION OF PROPOSAL:

A. All proposals shall be on the forms provided in this Request for Proposal package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals shall not be considered.
B. At a minimum, your proposal should include the signed Offer and Acceptance form, signed copies of any solicitation amendments, completed Price Page and your response to all evaluation criteria.
C. The Offer and Acceptance page shall be signed by a person authorized to submit an offer. An authorized signature on the Offer and Acceptance page, Proposal Amendment(s), or cover letter accompanying the proposal documents shall constitute an irrevocable offer to sell the good and/or service specified herein. Offeror shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.
D. The authorized person signing the proposal shall initial erasure, interlineations or other modifications on the proposal.
E. In case of error in the extension of prices in the proposal, unit price shall govern when applicable.
F. Periods of time, stated as a number of days, shall be in calendar days.
G. It is the responsibility of all offerors to examine the entire Request for Proposal package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time.
H. The City shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.
I. Offeror must list any subcontractors to be utilized in the performance of the services specified herein. For each subcontractor, details on respective qualifications must be included.

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. PROPOSAL/SUBMITTAL FORMAT: An original and 4 copies (5 total) of each proposal should be submitted on the forms and in the format specified in the RFP. Offerors shall also submit one electronic copy of the proposal 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 proposal 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 RFP. **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 RFP document and the Offeror's response to the Evaluation Criteria including the completed Price Page.** Failure to include the requested information may have a negative impact on the evaluation of the offeror's proposal.

10. EXCEPTIONS TO CONTRACT PROVISIONS: A response to any Request for Proposal is an offer to contract with the City based upon the contract provisions contained in the City's Request for Proposal, including but not limited to, the specifications, scope of work and any terms and conditions. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language. The provisions of the Request for Proposal cannot be modified without the express written approval of the Director or his designee. If a proposal or offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Director or his designee, the contract provisions contained in the City's Request for Proposal shall prevail.

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

12. CONFIDENTIAL INFORMATION: The City of Tucson is obligated to abide by all public information laws. If an Offeror believes that any portion of a proposal, offer, specification, protest or correspondence contains information that should be withheld, a statement advising the Contract Officer of this fact should accompany the submission and the information shall be so identified wherever it appears. The City shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.

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 PROPOSALS: In order to be considered, the Offeror must complete and submit its proposal 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 Proposal page. The Offeror's proposal shall be submitted in a sealed envelope. The words "SEALED PROPOSAL" with the REQUEST FOR PROPOSAL TITLE, REQUEST FOR PROPOSAL NUMBER, PROPOSAL DUE DATE AND TIME and OFFEROR'S NAME AND ADDRESS shall be written on the envelope.

15. LATE PROPOSALS: Late proposals 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 proposal due date and time.

17. WITHDRAWAL OF PROPOSAL: At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the proposal by a written letter, 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 proposal 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 proposals submitted by competing offerors. Exclusive or concurrent negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. In the event the City deems that negotiations are not progressing, the City may formally terminate these negotiations and may enter into subsequent concurrent or exclusive negotiations with the next most qualified firm(s).

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 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.

21. 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.

22. 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 Proposal, the City reserves the right to:
(1) waive any immaterial defect or informality; or
(2) reject any or all proposals, or portions thereof; or
(3) reissue the Request for Proposal.

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

23. PROPOSAL RESULTS: The name(s) of the successful offeror(s) will be posted on the Procurement Department's Internet site at http://www.tucsonprocurement.com/ 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 Proposal shall be received at the Department of Procurement not less than five (5) working days before the Request for Proposal due date. A protest of a proposed award or of an award shall be filed within ten (10) days after issuance of notification of award or issuance of a notice of intent to award, as applicable. A protest shall include:

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

PROPOSAL EVALUATION REQUIREMENTS

I. PROPOSAL EVALUATION CRITERIA – (listed in relative order of importance)

A. Proposed Payment Schedule

B. Method of Approach

C. Qualifications & Experience

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

A. Price Proposal

1. State the proposed payment schedule to the City. Offerors should propose a guaranteed flat annual fee and a commission or percentage of gross receipts, net of tax. Offerors may propose a different commission rate for the various services provided and may also propose a graduated schedule (one that increases with time or activity. Payment to the City should be made on a monthly basis by the 10th day of each month.
2. Does your firm have a City of Tucson Business License? _____Yes _____No
   If yes, please provide a copy of your City of Tucson Business license.

B. Method of Approach

1. Provide a proposed method of satisfying the requirements of this contract. This should be accomplished by covering the Scope of Work requirements on a point by point basis. The Offeror may utilize a written narrative or any other printed technique to demonstrate the ability to satisfy the Scope of Work.
2. Provide a marketing plan. This plan, at a minimum, should include the following:
   - Proposed promotional efforts
   - Strategy for securing clients
3. State your firm's operating philosophies.
4. Describe your firm's staffing/management considerations. At a minimum, how many staff members/ instructors will be required?
5. Describe your method of accounting, including tracking of all lessons and repairs. Provide a sample quarterly report and annual report as described in the Scope of Work.
6. Describe your customer service philosophy.
7. Provide a specific plan to maintain and monitor customer satisfaction.

C. Qualifications & Experience

1. Detail the firm's experience on at least three (3) projects of similar nature with the dates of completion, agency name, contact person and telephone number.
2. Identify proposed staff that would be used to perform the services outlined in the Scope of Work. For each staff member provide a resume and state what his/her specific assignment would be. State who would act as the designated manager.
3. Describe the key personnel's experience on at least three (3) contracts dealing with a golf course environment, or activities similar in nature, with reference names, dates of completion, and telephone numbers.

III. GENERAL

A. Shortlist:

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

B. 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.

C. Additional Investigations:
The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any offeror submitting a proposal.

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

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

SPECIAL TERMS AND CONDITIONS

1. 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.

Coverage Afforded	Limits of Liability
Workmen's Compensation	Statute
Employer's Liability	$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.

2. KEY PERSONNEL: It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions.

The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to and subsequent concurrence by the City.

If key personnel are not available for work under this Contract for a continuous period exceeding thirty calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

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

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 Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of 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 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.

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 proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

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.

OFFER AND ACCEPTANCE

OFFER

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

_____
Company Name

_____
Address

_____
City State Zip

_____
Signature of Person Authorized to Sign

_____
Printed Name

_____
Title

For clarification of this offer, contact:

Name:_____

Title: _____

Phone: _____

Fax: _____

E-mail: _____

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