



PIMA COUNTY PROCUREMENT DEPARTMENT
130 W. Congress St., 3rd Floor
Mailstop # DT-AB3-126
Tucson, Arizona 85701-1317
Telephone: (520) 740-8161

SOLICITATION ADDENDUM

FAILURE TO EXECUTE THIS SOLICITATION ADDENDUM ACKNOWLEDGEMENT MAY SUBJECT YOUR BID TO REJECTION

Solicitation Number: IFB # 70328
Solicitation Title: Termite Control Services
Commodity /Contracts Officer: Nina Schatz, CPPB

Addendum Number: #1
Addendum Date: November 8, 2012

INSTRUCTIONS:

1. The following clarification and revision shall be incorporated to the above referenced solicitation:

Questions and Answers

Q1: Page 2, Item #2. OFFER AGREEMENT (Contract) Form (Conventional Roofing Services), Cut and paste error? Roofing?

A1: Yes, we will correct the title.

Q2: Offer Agreement, Page 1, Minimum Qualification (MQ), is it necessary to have fumigation license since Section 4.14 stated "It is not anticipated that any building owned by the Count will require fumigation services (testing)...?"

A2: We will accept subcontractor's fumigation license. The fumigation license is required to be in the bid package.

Q3: Offer Agreement, Page 1, MQ, should vendors be also licensed in Category B8, wood destroying insect inspection?

A3: Yes, we will add B8 to the MQ.

Q4: Offer Agreement, Page 2, Section 4.4, Bait Systems, what specific bait stakes you would like us to bid?

A4: Advance Termite Colony Elimination System or equal. Equal brands must be submitted to the County no later than November 14, 2012 for approval.

Q5: What are the conditions for bait system?

A5: Some of bait systems are not in the best condition. Prospective bidders are encouraged to visit each site to check the site condition. If you need assistance on a particular site please contact this office.

Q6: Offer Agreement, Page 4, Section 4.13, Liquid Treatments, 4th paragraph, Termidor has changed their instruction on the depth of drilled holes. It is now 18" instead of 14".

A6: We will change the depth of drill hole per current label.

Revisions

Revision #1: Covering Page, License requirements.
Remove the license requirements in its entirety and **REPLACE WITH**
“**The following licenses are required: State of Arizona Office of Pest Management (AZOPM) Business License Class B-1 General Pest Control and Class B-2 Wood Destroying Pests, B-8 Wood Destroying Insect Inspection, Class B-4 Fumigation Control and AZOPM Applicator License.**”

Revision #2: Page 2, Item 2, Change Title:
From: “OFFER AGREEMENT (Contract) Form (Conventional Roofing Services)”
To: “**OFFER AGREEMENT (Contract) Form (Termite Control Services)**”

Revision #3: Page 3, Item 4, Submission of Bids, 4th paragraph.
Remove 1st sentence in its entirety and **REPLACE WITH**
“**All line items in Exhibit B: Unit Prices must be bid in order to be considered for evaluation and award.**”

Revision #4: Remove Offer Agreement: Termite Control Services in its entirety and **REPLACE WITH**
Addendum #1 Offer Agreement: Termite Control Services. Changes are in **Red Bold** letters.

Revision #5: Remove IFB 70328 Exhibit B: Unit Prices (NET 30 DAY PAYMENT TERMS) in its entirety and replace with **Addendum #1 IFB 70328 Exhibit B: Unit Prices (NET 30 DAY PAYMENT TERMS).**

We have added one more location for liquid treatment. **Changes are in Red Bold letters.**

All other terms and conditions remain the same.

2. Check **ONLY** one of the following categories and fax or e-mail one properly executed acknowledgement **(2 pages)** prior to the “Due In and Opens” date and time, **Attention: Nina Schatz, Fax (520) 791-6511; E-Mail Nina.Schatz@pima.gov.**

- Bid has **NOT** been mailed and **ANY CHANGES** resulting from this addendum will be included in our offer.
- Bid has already been mailed. **NO CHANGES** resulted from this addendum.
- Bid has already been mailed. A revised proposal resulting from this addendum will be submitted prior to the *BID DUE IN AND OPENS* date and time.

ADDENDUM ACKNOWLEDGMENT EXECUTION:

OFFEROR’S COMPANY NAME: _____

AUTHORIZED SIGNATURE: _____ DATE: _____

PRINTED NAME AND TITLE OF AUTHORIZED OFFEROR REPRESENTATIVE EXECUTING ACKNOWLEDGMENT

1. INTENT:

This document is intended to establish an indefinite delivery/indefinite quantity (IDIQ) "Master" purchase agreement contract to provide Pima County ("County") with termite control services as the County may order from time to time by issue of purchase orders pursuant to a resulting executed and effective agreement. As defined by the attached Pima County Standard terms and Conditions (STC) this agreement is non-exclusive and may be terminated for any reason without penalty or cost to Pima County.

All Goods and Services offered or provided pursuant to the resulting executed and effective agreement shall conform to the requirements defined by or referred to by the solicitation documents including *Solicitation Addenda, Instructions to Bidders, Standard Terms and Conditions* and this *Offer Agreement* all of which are incorporated herein.

It is the intent of all parties to this agreement that this document, including all attachments and documents incorporated by reference, constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

Throughout this agreement and referenced documents the terms Blanket Contract and Master Agreement, Purchase Order and Delivery Order are used interchangeably and considered to have identical meaning.

2. AGREEMENT TERM EXTENSIONS-RENEWALS & REVISIONS:

The term of the agreement will be for a five-year period. Full term is expected, however will only occur through successful annual review. Revisions that may be exercised upon the written agreement of the parties as follows:

Proposed revisions to the contract shall be made through the issuance by County to Contractor of a revised Blanket Contract-Master Agreement, Purchase or Delivery Order document setting forth the requested changes. Failure by Contractor to object in writing to the proposed revisions, terms, conditions and/or specifications within ten (10) calendar days of issuance by County shall signify acceptance by Contractor and the amendment shall be binding upon the parties, effective on the date of issuance.

3. SUPPLIER MINIMUM QUALIFICATIONS:

CERTIFY MINIMUM QUALIFICATIONS BY MARKING RESPONSE (CIRCLE YES OR NO) AND PROVIDING APPLICABLE DOCUMENTATION

The Supplier certifies that they are competent, willing and responsible for performing the services and/or providing the products in accordance with all requirements of the solicitation and this Offer Agreement.	Yes No
Valid State of Arizona Office of Pest Management (AZOPM) <u>Business License</u> and employ Qualifying Party Licensee that is licensed with ALL the following classes: B-1 General & Public Health Pest Management, Class B-2 Wood Destroying Pests, Class B-8 Wood Destroying Insect Inspection and Class B-4 Fumigation Control. The license must show to have at least five (5) years continuous service leading up to the last published date of this solicitation (10/23/2012). Contractor's license MUST be registered to the Contractor , and not subcontracted to another company. Proof of such must accompany Offer Agreement. In lieu of Class B-4 a letter stating you will be using a subcontractor for this work, who that subcontractor will be and a copy of their certificate will be acceptable. License #: Initial Issue Date: Expiration Date (must be current):	Yes No
Valid State of Arizona Office of Pest Management (AZOPM) Applicator License with ALL the following classes: B-1 General & Public Health Pest Management, Class B-2 Wood Destroying Pests, , Class B-8 Wood Destroying Insect Inspection and Class B-4 Fumigation Control. Submit at least one applicator's licenses, but all personnel provide termite control services must have the required licenses at all times while on the County Job. . Proof of such must accompany Offer Agreement. Applicator must be employed by the Contractor. In lieu of Class B-4 a letter stating you will be using a subcontractor for this work, who that subcontractor will be and a copy of their certificate will be acceptable.	Yes No

License #: Initial Issue Date: Expiration Date (must be current):	
Supplier certifies that they will maintain a Pima County office during the term of the contract. Supplier will be found at default if their Pima County office is not set up at least one-month prior to contract start date. Their contract will be terminated.	Yes No
Respondents must bid all bid line items in this solicitation to be considered Responsive .	Yes No
<p>SUSTAINABILITY: Pima County values and encourages sustainable practices. Please indicate by checking the applicable boxes which of the following your business incorporates:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Waste prevention/reduction or material recycling/reuse. <input type="checkbox"/> Alternative energy/fuels (such as solar/wind energy, bio-diesel, alternative fuels, hybrid vehicles) in your program's preparation, transportation, and demonstration. <input type="checkbox"/> Environmentally preferable materials (such as recycled materials; locally produced/manufactured products). <input type="checkbox"/> Sustainable practices that lessen impact on non-renewable resources and global climate change (such as reduction in water/energy/paper use; minimization of hazardous materials; use of compressed/flexible work schedules). <input type="checkbox"/> Other practices which coincide with the County's definition of sustainable practices (such as alternative modes of transportation; transportation minimization; life-cycle costs; product/packaging "take back" practices; preference to firms located within Pima County). 	

The Supplier further stipulates that they possess license required by the laws and rules of the United States and the State of Arizona to perform the scope of services set forth in this Offer Agreement throughout the term of this agreement. The Supplier agrees to provide notification of any change in licensure status or sanctions taken against the Supplier during the contract period.

4. PRODUCT OR SERVICE SPECIFICATIONS & SCOPE:

All goods and services shall conform to the Instructions to Bidders, and Standard Terms and Conditions as modified or added by the following specifications.

4.1 The Contractor will provide for the treatment of subterranean infestations of termites for Pima County properties located throughout Pima County. Service includes furnishing all materials, equipment, labor, and other items incidental to performing this service.

4.2 The contractor is to maintain monthly warranties on designated properties previously treated with baits and/or liquids (see Exhibit B: Unit Prices for location and treatment details) and other properties (not listed in Exhibit B) that may require treatment because of termite activity.

4.3 Contractor shall provide County with a list of chemicals and mixes it intends to use for treatment along with Material Safety Data Sheets (MSDS) for each chemical. The active ingredient shall be a United States EPA approved product. Contractor shall use every precaution so as to prevent accidents or improper use of chemicals.

4.4 BAIT SYSTEMS

Contractor shall use the bait system Advance Termite Colony Elimination System or an EQUAL system that has been determined to kill termites and is recognized and approved by the State of Arizona Office of Pest Management. The system's active ingredient shall be registered with the Arizona Department of Agriculture. **EQUAL brand must be submitted to the County no later than November 14, 2012 for approval.**

Contractor shall furnish proof of authorization by the manufacturer for the use of the termite baiting system **one month prior to the contract initial date.**

County reserves the right to approve more efficient bait system during the term of this Agreement. Contractor shall obtain County's approval prior to other bait system's deployment.

All chemicals used must be applied in strict accordance with the manufacturer's label for interior and exterior treatment and comply with all applicable laws and regulations. All work will be performed using the utmost safety standards and precautions. Every precaution must be taken to prevent accidents.

4.5 FOR EXTERIOR TREATMENT the in-ground baiting system shall do the following:

- A. Monitor for any subterranean termite activity in the soil surrounding the structure and the devise(s) shall be nontoxic monitoring devices.
- B. The bait active ingredients affect insects and not mammals by a process which interrupts insect molting.
- C. Non-toxic monitoring devices and bait containing active ingredients are contained in stations which include the following:
 1. Tamper resistant locking cap limiting access to authorized people only.
 2. Inconspicuous location when installed which does not interfere with property maintenance activities and is flush with the ground.

Contractor shall prepare bait stations to be placed in the soil around the building as determined by Contractor and State law, but no more than every ten (10) feet. The stations will be checked quarterly, no more than three (3) months should pass by without a station being checked. If the Contractor finds any termite activity in the bait station, one or more additional stations shall be installed in the soil within six (6) to twelve (12) inches of the infested device. Granules and dust shall not be left in a visible or potential drift situation causing possible harm to personnel in the areas. Baits should be slow acting (Ditubenzuron or Hexaflumuron) that eliminate the colony through an IGR (Insect Growth Regulator).

4.6 FOR INTERIOR TREATMENT of termite infestations, the product shall have above ground capabilities and must be authorized for interior applications. If installing stations in interior areas, the number of stations shall not be limited. The Contractor shall prepare bait stations to be placed where activity has been located. The stations will be checked as frequently as ordered by the manufacturer of system, but at least once a quarter. No more than three (3) months should pass by without a station being checked.

Bait stations have been installed in several Pima County facilities. The locations of these stations are included in the Exhibit B: Unit Prices. Contractor may be called upon to add additional bait stations at various sites around the County. For Bait treatments the County prefers Advance Systems but other products may be considered.

Contractor will monitor and service these stations in the same manner as if they had been installed by the Contractor. Bait stations may not be removed permanently by Contractor without permission of County.

Contractor shall provide, within one month of contract start, an initial graph showing each station location and a written report verifying the status of each termite station. An updated written report verifying the status of each termite station and graph shall be given to the Facilities Management Contract Coordinator after each monitoring and baiting. The report should also be kept on file at Contractor's place of business. These records will be subject to inspection by the State of Arizona Office of Pest Management and the Arizona Department of Agriculture upon request.

4.7 WARRANTY

Contractor shall provide a written warranty against termite reinfestation for each property treated for the term of the contract for both bait and liquid treatments. If any sign of termite reinfestation occurs during the term of the contract with the County, the Contractor will treat the area at no additional cost to Pima County.

4.8 INSPECTIONS

Even after a colony has been eliminated, the Contractor will continue to inspect monitoring devices and treated sites every quarter for the term of the contract. The Contractor will notify the Pima County Facilities Management Contract Coordinator when the visit is to be made. The Contractor is to notify the Pima County Facilities Management Contract Coordinator as necessary for each site and submit a "Verification of Services Completed" form. The completed form will be sent to the Contract Coordinator at 150 W Congress, 3rd Floor. This form should have Contractor's company logo and clearly indicate:

Site name and number from Exhibit B
 Site address, name of building and/or number
 Date of visit (mm/dd/yy)
 Time arriving and leaving site
 Action Taken
 Materials used and quantities
 Comments on observations of structure
 Technicians Signature
 Signature from County personnel on site.

4.9 RESPONSIBILITIES

Contractor will assume the warranty for previously treated sites listed on Exhibit B. There will be a monthly fee to maintain the warranty and do quarterly inspections. If further activity is detected at the sites on Exhibit B, additional treatments will be made at no cost to the County. A site may have multiple buildings but the warranty will only apply to those buildings previously treated.

The Contractor assumes full responsibility and liability for compliance with all regulations pertaining to health and safety for personnel performing the work.

4.10 The Contractor agrees the work will be done at the convenience of the County and work times must be carefully coordinated through the Facilities Management Contract Coordinator. Hours for checking, placement, and activities of this contract shall be approved prior to work by the Facilities Management Contract Coordinator. Contractor shall respond to routine requests for treatment within seventy-two (72) business hours. In the event an unexpected problem is discovered, Contractor shall respond within twenty-four (24) business hours to correct the problem. New baiting systems will be installed within seven (7) business days of request, unless later installation is approved by the Facilities Management Contract Coordinator.

4.11 Contractor, after any initial treatment at a new site, will arrange to inspect the premises annually with the Facilities Management Contract Coordinator.

4.12 Contractor shall not request from County loans of tools or equipment. Contractor shall provide County with copies of initial and monthly reports with service tickets.

4.13 LIQUID TREATMENTS

Contractor may be asked to provide a liquid treatment which has been determined to kill termites and is recognized and approved by the State if Arizona Office of Pest Management for some Pima County locations. Termidor is the preferred product for the County but other treatments may be considered. **Other treatments must be submitted to the County no later than November 14, 2012 for approval.**

Contractor shall furnish proof of authorization by the manufacturer for the use of the liquid treatment one month prior to the contract initial date.

County reserves the right to approve more efficient liquid treatment during the term of this Agreement. Contractor shall obtain County's approval prior to other treatment's deployment. Contractor may be asked to apply pre-treatments of Borate or a like material when appropriate.

Contractor shall make in specific quantities, strengths and dosages as recommended by the manufacturer on the product labels unless otherwise prescribed by the State if Arizona Office of Pest Management rule or order.

All field measurements are the responsibility of the contractor. This includes buildings under warranty. Field measurements in Exhibit B have been provided by the previous contractor and are not guaranteed as accurate by the County.

All drilled holes, **rod holes in trench**, shall be no more than **eighteen (18) inches apart or the recommended spacing found on the manufacturers label unless otherwise prescribed by the State of Arizona Office of Pest Management.** Drilled holes will be securely plugged with a nonporous non-cellulose material. All other structure penetrations shall be treated and patched to County specifications. All trenches must be filled so that they do not depress later and all disturbed landscaping should be returned to its original condition.

4.14 It is not anticipated that any building owned by the County will require fumigation services (tenting). Should this need arise, all work will be project quoted.

4.15 When requested by the Facilities Management Contract Coordinator the Contractor will submit an itemized written quote within three (3) calendar days of the receipt of request. If Contractor utilizes their quote sheet, all terms and conditions shall be deleted from their quote sheet and there shall be no required signature line. The terms and conditions are those established under this Agreement, not what Contractor has on their quote sheet.

Acceptance by the County shall be documented prior to the commencement of the service via an approved "Notice To Proceed". This will be issued by the Facility Management and will include a Delivery Order (DO) number to be used to reference the job.

Contractor shall be required to perform, complete, and invoice the project as per the written, accepted quotation.

In cases where the final expenditures exceed the original cost estimate due to unforeseen circumstances the Facilities Management Contract Coordinator will request a change order for the required amount. This amount will be added to the original (DO) amount via a DO Revision. The sum of all invoices shall NOT exceed the total approved job amount.

It will be the Contractor's responsibility to contact the Facilities Management Contract Coordinator when the job is complete so a final inspection can be conducted. Any items found that need to be corrected must be completed by the Contractor prior to submitting an invoice for payment.

All invoices must have the job address and (DO) number and be dated when the job passed the final inspection.

Pima County reserves the right to request invoice copies for materials used.

4.16 Contractor shall contact Facilities Management Contract Coordinator immediately should Contractor receive calls from other County Departments for termite control services. In no circumstance shall Contractor provide services to other County Departments without a DO issued by the Facilities Management.

5. OFFER ACCEPTANCE AND ORDER RELEASES:

Offer will be accepted and executed by the County by issue of a Master Agreement and effective on the document's date of issue without further action by either party. Blanket Contract and Contract documents will document the term of the agreement.

Order(s) for products or services pursuant to the executed agreement will be made by COUNTY by issue of Delivery Order documents. Order documents will be furnished to Supplier via facsimile, e-mail or telephone. If the order is given verbally, the County Department that issued the order will transmit a confirming order document to the Supplier within five workdays of the date the verbal order is given.

Supplier is prohibited from supplying materials or services pursuant to the resulting agreement that are not documented or authorized by a Purchase Order at the time of provision. The Supplier agrees that the County accepts no responsibility regarding this agreement for control or payment for materials or services not documented by a COUNTY Purchase Order.

The Supplier agrees to establish, monitor, and manage an effective agreement administration process that assures compliance with all requirements of the agreement. In particular, the respondent agrees that they shall not provide goods or services in excess of the executed agreement items, item quantity, item amount, or agreement amount without prior written authorization by agreement revision properly executed and issued by the County. Any items provided in excess of that stated in the agreement shall be at the Respondent's own risk. Respondents shall decline verbal requests to deliver items in excess of the agreement and shall report all such requests in writing to the COUNTY Procurement Department within one (1) workday of the request. The report shall include the name of the requesting individual and the nature of the request.

6. ACCEPTANCE OF SERVICES AND PRODUCTS:

Acceptance of the goods and services shall be made by the County Department designated on the issued Order in accordance with this agreement. Acceptance is required prior to commencement of Payment terms.

7. COMPENSATION & PAYMENT:

All pricing shall satisfy and conform to Pima County's Living Wage ordinance if applicable including required annual adjustments of the wage.

Supplier shall submit Request(s) for Payment/Invoices to the location and entity defined by the County's Order document.

All Invoice documents shall reference the County's Purchase Order or Contract number under which the services or

ADDENDUM #1 OFFER AGREEMENT

Solicitation #:70328

Title: Termite Control Services

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products were ordered. ALL Invoice line items shall utilize the item description, precise unit price and unit of measure defined by the County's Order or Contract document. Invoices that include line items or unit prices that do not match those documented by the County's order or contract may be returned to the Supplier unprocessed for correction.

Standard payment terms are net 30 from the date of valid invoice document and shall not commence until receipt of goods into payment system by the receiving Department and Supplier's Invoice is received and verified by County Financial Operations.

OPTIONAL EARLY PAYMENT DISCOUNT TERM: Pima County Administrative Procedure No. 22-35 section II.B.4 defines the County's practice regarding discounts for early payment. Supplier hereby offers the following discounts to those prices to be used for all orders issued pursuant to this agreement. County will utilize the existing payment code that best matches that offered and does not exceed the offered discount percentage. Payment days cannot be less than ten calendar days. Supplier shall submit valid invoice document consistent with the associated purchase order to County Finance Department at least seven (7) calendar days prior to the date on which the discounted payment is due. If desired, for any order issued pursuant with this agreement, the Supplier may offer early payment discounts that exceed this Standard Early Payment Discount.

Standard Early Payment Discount Percent: _____% if payment tendered within _____ Days as above

The blanket contract or purchase order issued to accept Supplier offer will define the not to exceed amount of the agreement. Supplier shall not accept orders, or provide services or products that cumulatively exceed that amount.

Unit Pricing may be negotiated and established as per all requirements of the agreement for items included in the scope of the agreement and for which unit pricing has not been previously defined provided that the item and unit price are offered in writing by the Supplier.

Unless otherwise stipulated by this agreement or the County's order, all pricing shall be *F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination")*, delivered to and unloaded at the destination(s) defined by the Delivery article of this agreement or accepted *Order* for services or products and all freight cost shall be included in the offered Unit Price.

Although State and City sales tax may not be fully or accurately defined on an order, they will be paid when they are DIRECTLY applicable to Pima County and invoiced as a separate line item; those taxes should not be included in the item unit price.

Price Warranty: Seller shall give Pima County benefit of any price reduction before actual time of shipment. Sellers agree that all pricing given includes all costs required to conduct aggressive and active cost control and reduction activities.

Price Escalation: It is agreed that all Unit Prices include compensation for the Seller to implement and actively conduct cost and price control activities. It is the intention of both parties that pricing shall remain firm during the initial year of the agreement and that the parties intend to consider price increases no more frequently than once per year. Seller shall submit a written request to COUNTY that includes supporting documents justifying requested increases at least 90 days prior to the desired implementation date; Seller shall provide evidence, cite sources, specific conditions and document how those conditions affect the cost of its performance, and specific efforts Seller has taken to control and reduce those and other costs to avoid the need to increase prices. COUNTY will review proposed pricing and determine if it is allowable, fair and reasonable, and in the best interest of COUNTY to accept the proposal. County reserves the right to continue, accept or reject the price proposal, or terminate and re-solicit the contract.

Quantities referred to are estimated quantities. Pima County reserves the right to increase or decrease the quantities and amounts. No guarantee is made regarding actual orders issued for items or quantities during the term of the agreement. Pima County shall not be responsible for Supplier inventory or order commitment.

Unit Prices offered shall include all incidentals and associated costs required to comply with and satisfy all requirements referred to or included in this solicitation which includes the *Instructions to Bidders, Standard Terms and Conditions* and Offer Agreement. No payments will be made for items not included in the agreement.

UNIT PRICES (Net 30 day Payment Terms): see Exhibit B: Unit Prices.

For those items not specifically listed and priced above that may be provided within the defined scope of this agreement the Seller shall submit Master Price List (MPL) documents, diskette or compact disc and filenames or identify website address, identifying all other items offered pursuant to this agreement to include Description and Discounted Unit Price, or Unit Price and Discount % (Unit Price x Discount % = Discounted Unit Price). The resulting Unit Prices shall be of similar

discount off List Prices as given for those items specifically defined above. Item Unit Prices above shall govern in case of conflict with the Master Price List.

List MPL Document by Title, MPL Media & Filenames or MPL Internet Address and Title(s)	Qty of Pages	Dated	Percentage Discount (Unit Price x Discount % = Discounted Unit Price)

8. DELIVERY:

As defined by the Standard Terms "On-Time" delivery is an essential part of the consideration to be given to the COUNTY under the agreement. Delivery will be made in accordance with the Instructions to Bidders, Standard Terms and Conditions and to the location(s) referenced on the Purchase Order or Contract.

Delivery locations: Pima County, Arizona

Supplier guarantees delivery of product or service in accordance with contract requirements. If required to satisfy the guaranteed delivery interval Supplier will utilize premium freight method at no additional cost to the County.

9. TAXES, FEES, EXPENSES:

Articles sold to Pima County are exempt from federal excise taxes. The County is subject to State and City sales tax. Pima County will furnish an exemption certificate upon request. No separate charges for delivery, drayage, express, parcel post, packing, insurance, license fees, permits, costs of bonds, surcharges, or bid preparation, will be paid by Pima County, unless expressly included and itemized by the solicitation documents.

10. OTHER DOCUMENTS

Supplier and County in entering into this agreement have relied upon information provided or referenced by Pima County Solicitation No. 70328 including the Invitation For Bids, Instructions to Bidders, Standard Terms and Conditions, Solicitation Addenda, Suppliers Bid Offer, documents submitted by Supplier or References to satisfy Supplier Minimum Qualifications and on other information and documents submitted by the Supplier in its' response to the County's Solicitation. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this contract.

11. INSURANCE:

The SUPPLIER'S insurance shall be primary insurance and non-contributory with respect to all other available sources. Supplier shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

- a) Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage. COUNTY is to be named as an additional insured for all operations performed within the scope of the Contract between COUNTY and CONTRACTOR;
- b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage;
- c) If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00; and,
- d) If required by law, workers' compensation coverage including employees' liability coverage.

Supplier shall provide COUNTY with current executed certificates of insurance within two weeks from when the Notice of Award is issued by the County. All certificates of insurance shall guarantee the provision of thirty (30) days prior written notice to the COUNTY of cancellation, non-renewal or material change. The additional insured for Commercial General Liability shall be endorsed by the underwriter.

12. PERFORMANCE BOND:

N/A

13. ACKNOWLEDGEMENT of SOLICITATION ADDENDA:

Supplier acknowledges that the following solicitation addenda have been incorporated in their offer and this agreement:

Addendum #	Date	Addendum #	Date	Addendum #	Date

14. SCRUTINIZED BUSINESS OPERATIONS

"Pursuant to A.R.S. §§ 35-391.06 and 393.06, contractor hereby certifies that it does not have scrutinized business operations in Iran or Sudan. The submission of a false certification by contractor may result in action up to and including termination of this contract.

15. SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION:

Is your firm SBE certified as defined by the solicitations 'Instruction To Bidders'? Yes No (Select one)

If 'Yes', have you included your certification document? Yes No (Select one) NOTE: If the SBE Certification document is not submitted with your bid the SBE Preference cannot be applied.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

16. BID/OFFER CERTIFICATION:

SUPPLIER LEGAL NAME: _____

BUSINESS ALSO KNOWN AS: _____

MAILING ADDRESS: _____

CITY/STATE/ZIP: _____

REMIT TO ADDRESS: _____

CITY/STATE/ZIP: _____

CONTACT PERSON NAME/TITLE: _____

PHONE: _____ FAX: _____

CONTACT PERSON EMAIL ADDRESS: _____

EMAIL ADDRESS TO WHICH ORDERS & CONTRACTS SHALL BE TRANSMITTED:

CORPORATE HEADQUARTERS LOCATION:

ADDRESS: _____

CITY, STATE, ZIP: _____

By signing and submitting these Offer Agreement documents, the undersigned certifies that they are legally authorized to represent and bind the "Supplier" to legal agreements, that all information submitted is accurate and complete, that the firm has reviewed the Procurement website for solicitation addenda and incorporated to their offer, that the firm is qualified and willing to provide the items requested, and that the firm will comply with all requirements of the solicitation. The Unit Pricing includes all costs incidental to the provision of the items in compliance with the above documents; no additional payment will be made. Conditional offers that modify the solicitation requirements may be deemed not 'responsive' and may not be evaluated. Offeror's submission of a signed offer agreement shall constitute a firm offer and upon the issuance of a blanket contract or purchase order document signed by the Pima County Procurement Director or authorized designate a binding contract is formed that shall require the Offeror to provide the services and materials described in this solicitation. The undersigned hereby offers to furnish the material or service in compliance with all terms, conditions, specifications, defined or referenced by the solicitation, which includes Pima County Standard Terms & Conditions, this Offer Agreement and other documents listed in this Offer Agreement's Other Documents article.

SIGNATURE: _____ DATE: _____

PRINTED NAME & TITLE OF AUTHORIZED SUPPLIER REPRESENTATIVE EXECUTING OFFER

PHONE AND E-MAIL: _____

County Attorney Contract Approval "As to Form"

EXHIBIT A: LIVING WAGE REQUIREMENTS AND CERTIFICATE

This solicitation is subject to the Pima County living wage requirements as provided in the Pima County Procurement Code section 11.38 which specifies that a living wage requirement be included in County contracts for specific services.

Contractors entering into eligible contracts with Pima County for the covered services shall pay a living wage to their eligible employees for the hours expended providing services to Pima County. Eligible employees shall receive a wage not less than \$11.32 per hour. A contractor may pay its eligible employees a wage of no less than \$10.07 per hour if the contractor provides health benefits with a monthly value at least as high as the difference between that wage and a monthly wage based on \$11.32 per hour. A copy of section 11.38 of the Procurement Code is attached for your review and complete compliance. Contractors shall include all costs necessary for complete compliance to the living wage requirement.

In bid preparation, Contractors will need to consider the possibility of increased administrative costs. The following is a brief description of key Living Wage reporting requirements. These are not limited to but include:

- One time reports: Due at the beginning term of each contract/renewal
- >Payroll calendar
- >Certificate of Living Wage Payments Form
- > Master Listing of employees eligible to work on Pima County jobs
- >Listing of Subcontractors to be used (if applicable)

Staffing Plans, Including Subcontractors (work schedules): Due **prior** to work performed to enable the Compliance Officer to rate check and interview employees; *If there is not sufficient time prior to performing work, then a plan must be submitted as soon as possible after work is performed:*

- >Name of employee(s) who will be working
- >Where work is performed
- >Approximate time-frame work will be performed
- >Total approximate hours to be worked
- >Revised plan IF any information changed from the original staffing plan

Payroll Reports: Must be provided to the Compliance Officer 7 days after EVERY pay period

- >Statement of Compliance
- >Payroll Summary Reports:
 - *Name of all employees on a Pima County job*
 - *Total hours worked/rate of pay/gross pay/paycheck number*
 - *Support documentation for this information*
 - *Signed "Statement of Compliance" even if no payroll performed*

Subcontracted Labor (if applicable): Packets are required to be submitted to Pima County's Compliance Officer as soon as the Subcontractor is issued payment. This includes:

- >A letter signed by subcontractor indicating that laborers associated with the work billed on their attached invoice were paid at or above the Living Wage required rate
- >the check # and date which this invoice was paid should be noted
- >Attach the appropriate staffing plans (work schedules) of the subcontractor to this invoice. The subcontractor employee payroll check# needs to be noted beside their employee (s) name

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EXHIBIT A: LIVING WAGE REQUIREMENTS AND CERTIFICATE (Continued)**Title 11 Pima County Procurement Code****CHAPTER 11.38
PIMA COUNTY LIVING WAGE****11.38.010****Conditions for use.**

Employees of contractors entering into eligible contracts with Pima County for covered services shall be paid a living wage by said contractors for the hours expended providing services to the county as provided in this chapter. (Ord. 2002-1 § 1 (part), 2002)

11.38.020 - Eligible contract.

An eligible contract shall be a contract awarded by the board of supervisors for covered services except for the following:

- A. Contracts under which federal or state regulations preclude the applicability of a living wage;
- B. Contracts involving programs where the county shares management authority with other jurisdictions, and intergovernmental and cooperative agreements;
- C. Contracts impacted by bond covenants, grant restrictions, governmental regulations; and
- D. Contracts for job training and youth or summer employment programs. (Ord. 2002-1 § 1 (part), 2002)

11.38.030 - Covered services

Covered services are:

- A. Facility and building maintenance
- B. Refuse collection and recycling
- C. Temporary employee services
- D. Janitorial and custodial
- E. Landscape maintenance and weed control
- F. Pest control
- G. Security
- H. Moving services (Ord. 2002-1 § 1 (part), 2002)

11.38.040 - Eligible employee

Any person employed by a contractor holding an eligible contract with the county who:

- A. Is not a person who provides volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation.
- B. Expends chargeable time providing services to the county and on county property; and

C. Is at least sixteen (16) years of age. (Ord. 2002-1 § 1 (part), 2002)

11.38.050 - Wages.

A. Eligible employees shall receive a wage of not less than nine dollars (\$9.00) per hour.

B. This rate shall be automatically adjusted each successive year based upon Consumer Price Index, Western Region.

C. If the contract is subject to a prevailing wage requirement or union agreement, the higher wage shall apply.

D. A contractor may request that it be allowed to pay its eligible employees a wage of no less than eight dollars (\$8.00) per hour if the contractor provides health benefits with a monthly value at least as high as the difference between a monthly wage based on nine dollars (\$9.00) per hour and the requested monthly wage of no less than eight dollars (\$8.00) per hour. Proof of said benefits shall be provided at the time of bid or proposal submission, or, as the county may require, in accordance with notification by the county of its intent to award a contract. (Ord. 2002-1 § 1 (part), 2002)

11.38.060 - Compliance.

The county procurement director shall monitor compliance, including the investigation of claimed violations, and promulgate administrative rules and regulations to implement and enforce this article. In the event of any violation of the provisions set forth in this chapter, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and shall pay the eligible employee any amounts underpaid. The provisions in eligible contracts may allow any one or more of the following remedies in the event of a written determination of a noncompliance:

A. A penalty imposed by the county in the amount of \$50.00 for each incidence of a noncompliance for each day of noncompliance and/or each day it continues.

B. Suspension of further payments on the contract until the violation has ceased.

C. Suspension and/or termination of the contract for cause.

D. Debar or suspend the contractor or subcontractor from future county contracts pursuant to Chapter 11.28.

Protests or appeals of the remedies for noncompliance shall be handled under Chapter 11.20. (Ord. 2002-1 § 1 (part), 2002)

11.38.070 - Records.

A. The contractor or subcontractor shall make its records available for inspection, copying, or transcription by authorized representatives of the county procurement department, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or make them available, the county procurement director may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to Chapter 11.28.

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

C. The contractor shall submit a payroll record for all eligible employees to the procurement director within seven days from the end of the payroll period. The payrolls submitted shall set out accurately and completely all the information required to be maintained under subparagraph (b) of this section. (Ord. 2002-1 § 1 (part), 2002)

11.38.080- Reporting.

On or about December 1, 2002, and every year thereafter, the county procurement director shall file an annual report on compliance with the county administrator and the board of supervisors. (Ord. 2002-1 § 1 (part), 2002)

END OF CHAPTER 11.38

EXHIBIT A: LIVING WAGE REQUIREMENTS AND CERTIFICATE (Continued)

CERTIFICATION OF LIVING WAGE PAYMENTS

This firm certifies that it will meet all specifications, terms, and conditions contained in the Living Wage Contract Ordinance; **AND** that if labor is subcontracted, subcontractors will be held to the exact terms that is required of this firm.

Yes _____ No _____ If no, you must explain all deviations in writing.

Company Name: _____

Description of Services: _____

Job Location: _____

(PLEASE CHECK ONE(S) THAT APPLY)

I do hereby agree to pay all eligible employees working on the above listed contract at least eleven dollars and thirty-two cents (\$11.32) per hour.

AND/OR

I do hereby agree to pay all eligible employees working on the above contract a wage of no less than ten dollars and seven cents (\$10.07) per hour **and** provide health benefits with a monthly value at least as high as the difference between a monthly wage based on eleven dollars and thirty-two cents (\$11.32) per hour and the requested monthly wage if no less than ten dollars and seven cents (\$10.07) per hour. In essence, the **employer paid portion** of benefits must have a *monthly* value of two-hundred sixteen dollars and sixty-six cents (\$216.66). This equals the one dollar and twenty-five cents (\$1.25) per hour difference.

Providers Name: _____

Address: _____

Phone: () _____ Fax: () _____

Plan or Program Number: _____ Type of Benefit: _____

Total premium paid per month: _____ Amount paid by employee: _____

(Attach pages if needed for additional providers)

COMPANY NAME: _____

AUTHORIZED SIGNATURE: _____ DATE: _____

PRINTED NAME

TITLE OF AUTHORIZED

END OF EXHIBIT A

PIMA COUNTY STANDARD TERMS AND CONDITIONS (12/20/10)**1. OPENING:**

Responses will be publicly opened and respondent's name, and if a Bid the amount, will be read on the date and at the location defined in the *Invitation for Bid (IFB)* or *Request For Proposals (RFP)*. Proposals shall be opened so as to avoid disclosure of the contents of any proposal to competing Offerors during the process of negotiation. All interested parties are invited to attend.

2. EVALUATION:

Responses shall be evaluated to determine which response is most advantageous to the COUNTY considering evaluation criteria, conformity to the specifications and other factors.

If an award is made, the Pima County (COUNTY) will enter into an agreement with the one or multiple respondent(s) that submitted the lowest bid(s) and determined responsible for supplying the required goods or services. Unless otherwise specified on the Bid/Offer document determination of the low/lowest bids will be made considering the total bid amount.

The COUNTY reserves the following rights: 1) to waive informalities in the bid or bid procedure; 2) to reject the response of any persons or corporations that have previously defaulted on any contract with COUNTY or who have engaged in conduct that constitutes a cause for debarment or suspension as set forth in COUNTY Code section 11.32; 3) to reject any and all responses; 4) to re-advertise for bids previously rejected; 5) to otherwise provide for the purchase of such equipment, supplies materials and services as may be required herein; 6) to award on the basis of price and other factors, including but not limited to such factors as delivery time, quality, uniformity of product, suitability for the intended task, and bidder's ability to supply; 7) to increase or decrease the quantity herein specified. Pricing evaluations will be based on pre-tax pricing offered by vendor.

3. AWARD NOTICE:

A *Notice of Recommendation for Award* for IFB or RFP will be posted on the Procurement website and available for review by interested parties. A tabulation of responses will be maintained at the Procurement Department.

4. AWARD:

Awards shall be made by either the Procurement Director or the Board of Supervisors in accordance with the Pima County Procurement Code. COUNTY reserves the right to reject any or all offers, bids or proposals or to waive irregularities and informalities if it is deemed in the best interest of the COUNTY. Unless expressly agreed otherwise, resulting agreements are not exclusive, are for the sole convenience of COUNTY, and COUNTY reserves the right to obtain like goods or services from other sources.

5. WAIVER:

Each respondent, by submission of an offer, bid or proposal proclaims and agrees and does waive any and all claims for damages against COUNTY or its officers or employees when any of the rights reserved by COUNTY may be exercised.

6. ACKNOWLEDGEMENT AND ACCEPTANCE:

If Contractor's terms of sale are inconsistent with the terms of the resultant agreement, the terms herein shall govern, unless Contractor's terms are accepted in writing by COUNTY. No oral agreement or understanding shall in any way modify this order or the terms and conditions herein. Contractor's acceptance, delivery or performance called for herein shall constitute unqualified acceptance of the terms and conditions of the resultant agreement.

7. INTERPRETATION and APPLICABLE LAW:

The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of Arizona. If any of Contractors' terms or conditions is not in agreement with County's terms and conditions as set forth herein, COUNTY's shall govern. This Agreement incorporates the complete agreement of the parties with respect to the subject matter of this Agreement. No oral agreement or other understanding shall in any way modify these terms and conditions.

8. WARRANTY:

Contractor warrants goods or services to be satisfactory and free from defects.

9. QUANTITY:

The quantity of goods ordered shall not be exceeded or reduced without **written** permission in the form of a properly executed blanket contract, purchase order or contract revision or amendment as required by COUNTY Procurement Code except in conformity with acknowledged industry tolerances. All quantities are estimates and no guarantee regarding actual usage is provided.

10. PACKING:

No extra charges shall be made for packaging or packing material. Contractor shall be responsible for safe packaging conforming to carrier's requirements. All packages shall bear the content(s) quantity, product identification, purchase order number, and destination address plainly marked in indelible ink on the exterior of each package.

11. DELIVERY:

On-time delivery of goods and services is an essential part of the consideration to be received by COUNTY.

A guaranteed delivery date, or interval period from order release date to delivery, must be given if requested by the Price offer document. Upon receipt of notification of delivery delay, COUNTY at its sole option and at no cost to the COUNTY may cancel the order or extend delivery times. Such extension of delivery times will not be valid unless extended in writing by an authorized representative of the COUNTY.

To mitigate or prevent damages caused by delayed delivery, COUNTY may require Contractor to deliver additional quantity utilizing express modes of transport, and or overtime, all costs to be Contractor responsibility. COUNTY reserves the right to cancel any delinquent order, procure from alternate source, and/or refuse receipt of or return delayed deliveries, at no cost to COUNTY. COUNTY reserves the right to cancel any order and/or refuse delivery upon default by Contractor concerning time, cost, or manner of delivery.

Contractor will not be held responsible for unforeseen delays caused by fires, strikes, acts of God, or other causes beyond Contractor's control, provided that Contractor provide immediate notice of delay.

12. SPECIFICATION CHANGES:

COUNTY shall have the right to make changes in the specifications, services, or terms and conditions of an order. If such changes cause an increase or decrease in the amount due under an order or in time required for performance, an acceptable adjustment shall be made and the order shall be modified in writing. Any agreement for adjustment must be made in writing. Nothing in this clause shall reduce Contractor's responsibility to proceed without delay in the delivery or performance of an order.

13. INSPECTION:

All goods and services are subject to inspection and testing at place of manufacture, the destination, or both, by COUNTY. Goods failing to meet specifications of the order or contract shall be held at Contractor's risk and may be returned to Contractor with costs for transportation, unpacking, inspection, repacking, reshipping, restocking or other like expenses to be the responsibility of Contractor. In lieu of return of nonconforming supplies, COUNTY, at its sole discretion and without prejudice to COUNTY's rights, may waive any nonconformity, receive the delivery, and treat the defect(s) as a warranty item, but waiver of any condition shall not be considered a waiver of that condition for subsequent shipments or deliveries.

14. SHIPPING TERMS:

Unless stated otherwise by the agreement documents, delivery terms are to be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination") are to be included in the Unit Price offered by Contractor and accepted by the COUNTY.

15. PAYMENT TERMS:

Payment terms are net 30, unless otherwise specified by the agreement documents.

16. ACCEPTANCE OF MATERIALS AND SERVICES:

COUNTY will not execute an acceptance or authorize payment for any service, equipment or component prior to delivery and verification that all specification requirements have been met.

17. RIGHTS AND REMEDIES OF PIMA COUNTY FOR DEFAULT:

In the event any item furnished by the Contractor in the performance of the agreement should fail to conform to the specifications thereof, or to the sample submitted by the Contractor, COUNTY may reject same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same, without expense to COUNTY, and immediately replace all such rejected items with others conforming to the specifications or samples. Should the Contractor fail, neglect, or refuse immediately to do so, COUNTY, shall have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any monies due or that may become due to the Contractor the difference between the price named in the contract or purchase order and actual cost to COUNTY.

In the event the Contractor shall fail to make prompt delivery as specified of any item, the same conditions as to the rights of COUNTY to Purchase in the open market and invoke the reimbursement condition above shall apply, except when delivery is delayed by fire, strike, freight embargo, or acts of god or of the government. In the event of cancellation of the contract or purchase order, either in whole or in part, by reason of the default or breach by the Contractor, any loss or

damage sustained by COUNTY in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of COUNTY provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

18. FRAUD AND COLLUSION:

Each Contractor, by submission of a bid, proclaims and agrees that no officer or employee of COUNTY or of any subdivision thereof has: 1) aided or assisted the Contractor in securing or attempting to secure a contract to furnish labor, materials or supplies at a higher price than that proposed by any other Contractor; 2) favored one Contractor over another by giving or withholding information or by willfully misleading the bidder in regard to the character of the material or supplies called for or the conditions under which the proposed work is to be done; 3) will knowingly accept materials or supplies of a quality inferior to those called for by any contract; 4) any direct or indirect financial interest in the offer or resulting agreement. Additionally, during the conduct of business with COUNTY, the Contractor will not knowingly certify, or induce others to certify, to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies that has been actually received. If at any time it shall be found that the awardee(s) has in presenting any offer(s) colluded with any other party or parties for the purpose of preventing any other offer being made, then the agreement so awarded shall be terminated and that person or entity shall be liable for all damages sustained by COUNTY.

19. COOPERATIVE USE OF RESULTING AGREEMENT:

As allowed by law, the COUNTY has entered into cooperative procurement agreements that enable other Public Agencies to utilize procurement agreements developed by the COUNTY. The Contractor may be contacted by participating agencies and requested to provide services and products pursuant to the pricing, terms and conditions defined by the COUNTY blanket contract, purchase order or contract. Minor adjustments are allowed subject to agreement by both Contractor and Requesting Party to accommodate additional cost or other factors not present in the COUNTY agreement and required to satisfy particular Public Agency code or functional requirements and are within the intended scope of the solicitation and resulting agreement. Any such usage shall be in accordance with State, COUNTY and other Public Agency procurement rules, regulations and requirements and shall be transacted by blanket contract purchase order or contract between the requesting party and Contractor. Contractor shall hold harmless COUNTY, its officers, employees, and agents from and against all liability, including without limitation payment and performance associated with such use. A list of agencies that are authorized to use COUNTY agreements can be viewed at the Procurement Department Internet home page: <http://www.pima.gov/procure> by selecting the link titled *Authorized Use of COUNTY Agreements*.

20. PATENT INDEMNITY:

Contractor shall hold COUNTY, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the blanket contract purchase order or contract. Contractor may be required to furnish a bond or other indemnification to COUNTY against any and all loss, damage, costs, expenses, claims and liability for patent or copyright infringement.

21. INDEMNIFICATION:

Contractor shall indemnify, defend, and hold harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the Contractor, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of the blanket contract, purchase order or contract. Contractor warrants that all products and services provided under this contract are non-infringing. Contractor will indemnify, defend and hold COUNTY harmless from any claim of infringement arising from services provided under this contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.

22. UNFAIR COMPETITION AND OTHER LAWS:

Responses shall be in accordance with Arizona trade and commerce laws (Title 44 A.R.S.) and all other applicable COUNTY, State, and Federal laws and regulations.

23. COMPLIANCE WITH LAWS:

Contractor shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. The laws and regulations of the State of Arizona shall govern the rights, performance and disputes of and between the parties. Any action relating to this Contract shall be brought in a court of the State of Arizona in COUNTY. Any changes in the governing laws, rules, and regulations during an agreement shall apply, but do not require an amendment/revisions.

24. ASSIGNMENT:

Contractor shall not assign its rights to the resultant agreement, in whole or in part, without prior written approval of the COUNTY. Approval may be withheld at the sole discretion of COUNTY, provided that such approval shall not be unreasonably withheld.

25. CONFLICT OF INTEREST:

All agreements are subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated into and made part of all resultant contracts or purchase orders as if set forth in full herein.

26. NON-DISCRIMINATION:

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors.** Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, CONTRACTOR shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

27. NON-APPROPRIATION OF FUNDS:

Pursuant to the provisions of A.R.S. § 11-251, sub-section 42, this agreement may be canceled if for any reason the COUNTY Board of Supervisors does not appropriate funds for the stated purpose of maintaining any agreement. In the event of such cancellation, COUNTY shall have no further obligation, other than for services or goods that have already been received.

28. PUBLIC INFORMATION:

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any records submitted in response to this solicitation that Contractor reasonably believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by Contractor **prior** to the close of the solicitation.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., COUNTY shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the Contractor of the request for release, unless Contractor has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. Contractor shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

COUNTY shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall COUNTY be in any way financially responsible for any costs associated with securing such an order.

29. CUSTOM TOOLING, DOCUMENTATION AND TRANSITIONAL SUPPORT:

Costs to develop all tooling and documentation, such as and not limited to dies, molds, jigs, fixtures, artwork, film, patterns, digital files, work instructions, drawings, etc. necessary to provide the contracted services or products and are unique to the services or products supplied to COUNTY are included in the agreed upon Unit Price unless specifically stated otherwise in the agreement. It is agreed that such tools and documentation are the property of COUNTY and shall be marked, as is practical, as the "Property of Pima County" and if requested by COUNTY a copy of the tooling and documentation shall be delivered to COUNTY within twenty days of acceptance by the COUNTY of the first article sample, or not later than ten days of termination of the agreement associated with their development, without additional cost to COUNTY. The Contractor also agrees to act in good faith to facilitate the transition of work to a subsequent Contractor if and as reasonably requested by COUNTY at no additional cost.

Should exceptional circumstances be present that may justify an additional charge, the Contractor may submit said justification and proposed cost and negotiate an agreement acceptable to both Contractor and COUNTY, but Contractor may not withhold any requested tooling, document or support as defined above that would delay the orderly, efficient and prompt transition of work. Should conduct by the Contractor result in additional costs to the COUNTY the Contractor

agrees to reimburse the COUNTY for said actual and incremental costs provided that the COUNTY had given the Contractor reasonable time to respond to the COUNTY's requests for support.

30. AMERICANS WITH DISABILITIES ACT:

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (public law 101-336, 42 USC 12101-12213) and all applicable federal regulations under the act, including 28 CFR parts 35 and 36.

31. NON-EXCLUSIVE:

Agreements resulting from this solicitation are non-exclusive and are for the sole convenience of Pima County which reserves the right to obtain like goods and services from other sources for any reason.

32. PROTESTS:

An interested party may file a protest regarding any aspect of a solicitation, evaluation, or recommendation for award. Protests must be filed in accordance with the Pima County Procurement Code, Section 11.20.010.

33. TERMINATION:

COUNTY reserves the right to terminate any blanket contract, purchase order, contract or award, in whole or in part, at anytime, without penalty or recourse when in the best interests of the COUNTY, Upon receipt of written notice, Contractor shall immediately cease all work as directed by the notice, notify all sub-Contractor of the effective date of termination and take appropriate actions to minimize further costs to the COUNTY. In the event of termination under this paragraph, all documents, data, and reports prepared by the Contractor under the contract shall become the property of and be promptly delivered to the COUNTY. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures defined by A.A.C. R2-7-701 shall apply.

34. ORDER OF PRECEDENCE-CONFLICTING DOCUMENTS:

In the event that there are inconsistencies between agreement documents, following is the order of precedence, superior to subordinate, that shall be applied to resolve the inconsistency: blanket contract; purchase order; offer agreement or contract attached to a blanket contract or purchase order; standard terms and conditions; other solicitation documents.

35. INDEPENDENT CONTRACTOR:

The status of the Contractor shall be that of an independent Contractor. Neither Contractor nor Contractor officer's agents or employees shall be considered an employee of COUNTY or be entitled to receive any employment-related fringe benefits under the COUNTY Merit System. Contractor shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of Contractor's failure to pay such taxes. Contractor shall be solely responsible for program development and operation.

36. BOOKS AND RECORDS:

Contractor shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY. In addition, Contractor shall retain all records relating to this contract at least 5 years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

37. COUNTERPARTS:

The blanket contract, purchase order or contract awarded pursuant to this solicitation may be executed in any number of counterparts and each counterpart shall be deemed an original, and together such counterparts shall constitute one and the same instrument. For the purposes of the blanket contract, purchase order or contract, the signed offer of Respondent and the signed acceptance of COUNTY shall each be deemed an original and together shall constitute a binding blanket contract, purchase order or contract, if all other requirements for execution have been met.

38. AUTHORITY TO CONTRACT:

Contractor warrants its right and power to enter into the blanket contract, purchase order or contract. If any court or administrative agency determines that COUNTY does not have authority to enter into the blanket contract, purchase order or contract, COUNTY shall not be liable to Contractor or any third party by reason of such determination or by reason of the blanket contract, purchase order or contract.

39. FULL AND COMPLETE PERFORMANCE:

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of the blanket contract, purchase order or contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance

by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

40. SUBCONTRACTOR:

CONTRACTOR shall be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts CONTRACTOR may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract shall create any obligation on the part of COUNTY to pay or see to the payment of any money due any subcontractor, except as may be required by law.

41. SEVERABILITY:

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

42. LEGAL ARIZONA WORKERS ACT COMPLIANCE:

CONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONTRACTOR's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR shall further ensure that each subcontractor who performs any work for CONTRACTOR under this contract likewise complies with the State and Federal Immigration Laws.

COUNTY shall have the right at any time to inspect the books and records of CONTRACTOR and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONTRACTOR's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting CONTRACTOR to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, CONTRACTOR shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

CONTRACTOR shall advise each subcontractor of COUNTY's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that COUNTY may inspect the SUBCONTRACTOR's books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of CONTRACTOR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONTRACTOR's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which CONTRACTOR shall be entitled to an extension of time, but not costs.

43. CONTROL OF DATA PROVIDED BY PIMA COUNTY:

For those projects and contracts where Pima County has provided data to enable the Contractor to provide contracted services or products, unless otherwise specified and agreed to in writing by Pima County, Contractor shall treat, control and limit access to said information as confidential and under no circumstances release any data provided by County during the term of this agreement and thereafter, including but not limited to personal identifying information as defined by A.R.S. § 44-1373, and is further prohibited from selling such data directly or through a third party. Upon termination of the associated agreement or completion of the required contractual intent whichever occurs sooner, Contractor shall either return all data to County or shall destroy such data and confirm destruction in writing in a timely manner not to exceed 60 calendar days.