PIMA COUNTY NOTICE OF INVITATION FOR BIDS (IFB)

Solicitation Number: 162359 Title: Batteries (Dry Cell)

DUE IN AND OPENS: January 6, 2015 AT OR BEFORE 2:00 P.M. LOCAL ARIZONA TIME (MST)

Pre-Bid Conference: **December 16, AT 10:00 A.M. LOCAL ARIZONA TIME (MST)**
Pima County Procurement Department
130 West Congress, 3rd Floor
Tucson, Arizona 85701

SOLICITATION: Pima County is soliciting bids from Respondents qualified, responsible and willing to provide the following Goods and/or Services in compliance with all solicitation specifications and requirements contained or referenced herein.

GENERAL DESCRIPTION: This solicitation is to supply Pima County with Batteries per specifications and requirements defined herein. SBE requirements will apply.

You may download a full copy of this solicitation at www.pima.gov/procure/ifbrfp.htm by selecting the solicitation number. Respondents are required to check this website for addenda prior to the Due In and Opens date to assure that the bid incorporates all addenda. Prospective Respondents may also pick up a copy, Monday through Friday excluding legal holidays, 8 am to 5 pm LOCAL ARIZONA TIME (MST), at the address listed above.

A Pre-Bid Conference will be held for the purpose of clarifying requirements and answering prospective respondent questions. It is the responsibility of Prospective Respondents to familiarize themselves with all requirements of the solicitation and to identify any issues at the conference. Attendance is optional and encouraged.

Questions and Deviation requests shall be submitted in writing to Procurement Department, Attention: Denise D Waldo by fax (520)791-6505 or email to denise.waldo@pima.gov. All submittals shall reference the Solicitation Number and Title; Questions or deviation requests submitted within 8 days of the solicitation *Due in and Opens Date* may not be answered. VERBAL REQUESTS FOR CLARIFICATIONS OR INTERPRETATIONS WILL NOT BE ACCEPTED.

Bids shall be submitted as defined in the Instructions to Bidders, in accordance with the Standard Terms and Conditions, and all solicitation documents either referenced or included herein. Failure to do so may be cause for rejection as *non-responsive*.

Bids may not be withdrawn for 60 days after opening except as allowed by Pima County Procurement Code.

No Bonds or licenses are required.

RESPONDENTS ARE REQUIRED TO READ THE ENTIRE SOLICITATION, INCLUDING ALL REFERENCED DOCUMENTS, ASSURE THAT THEY CAN AND ARE WILLING TO COMPLY, AND TO INCORPORATE ALL ASSOCIATED COSTS IN THEIR BID.

Respondents must complete and return those documents identified in the Instruction to Bidders, 4. SUBMISSION OF BIDS to:

Pima County Procurement Department
130 W. Congress, 3rd Floor
Mailstop # DT-AB3-126
Tucson, AZ 85701

Denise D Waldo
Commodity/Contracts Officer

Publish: The Territorial – December 4, 5, 8 & 9 2014

3/27/14

INSTRUCTIONS TO BIDDERS

FAILURE TO COMPLY MAY CAUSE THE BID TO BE IMPROPERLY EVALUATED OR DEEMED NON-RESPONSIVE

1. PREPARATION OF RESPONSES
All bids shall be made using the forms provided in this package. All prices and notations must be printed in ink or typewritten. **No erasures are permitted.** Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and shall be initialed in ink by person signing the bid. Typewritten responses are **preferred**.

All bids shall as appropriate indicate the registered trade name, stock number, and packaging of the items included in the bid. Surety, if required by this solicitation, may be in the form of a bond, cashier's check or certificate of deposit made payable to *Pima County*. Personal or company checks are not acceptable.

2. OFFER AGREEMENT (Contract) Form Batteries/6 Pages
The attached or referenced Offer Agreement when completed, signed and submitted by the Offeror is a binding offer that results in a legal contract when accepted and executed by Pima County as defined by this solicitation. The Offer Agreement document must be completed and signed by an authorized representative certifying that the firm can and is willing to meet all requirements of the solicitation.

Supplier Minimum Qualifications:
Supplier Minimum Qualifications are intended to establish the respondent's capacity and responsibility for providing the services or products solicited. To be evaluated and considered for award of contract the Offeror shall submit with the Offer Agreement all documents specified in article 3. *Supplier Minimum Qualifications* of the Offer Agreement. If requested by article 3, the Offeror shall denote in article 3 of the Offer Agreement the license numbers/descriptions and other information requested.

Unit Prices & Bid Certification:
Respondents shall fully complete and sign article *7. Compensation & Payment* and article *15. Bid/Offer Certification* sections of the Offer Agreement utilizing the forms provided by this solicitation.

Unless otherwise stated, a Unit Price shall be given for all items defined by the Offer Agreement Unit Prices schedule. Requested information and data shall be provided in the precise manner requested. Product descriptions shall provide sufficient information to precisely document the product being offered. All unit prices shall remain firm for the initial term of the executed agreement, with the exception that should seller during the term of the agreement offer to another buyer pricing for like or similar quantity, products or services at price more favorable than those given to Pima County ("COUNTY"), that seller shall offer same pricing to County effective on the date offered to other buyer. Unit prices given by respondent shall include all costs required to implement and actively conduct and document cost control and reduction activities. Taxes applied to the unit price and legally applicable to Pima County purchase transactions shall be separately invoiced and not included in the item unit price. Unit Prices shall include all costs incidental to the provision of the requirements defined by the solicitation and Offer Agreement and unless otherwise specified by the Delivery Article shall be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination"), no additional payments will be invoiced or paid. Unit prices shall prevail in the event of an extension error. Price each item separately. Delivery time if stated as a number of days shall mean "calendar" days.

COUNTY reserves the right to question, clarify and correct obvious errors.

3. SPECIFICATIONS & DEVIATIONS
The specifications included in this solicitation are intended to identify the kind and quality of goods and/or services to be provided without being unnecessarily restrictive, and as required to provide the information needed for the development of consistent and comprehensive bids, evaluation of bids and to efficiently support the subsequent ordering, invoicing and payment processes.

Items included in the bid shall satisfy all specifications and requirements set forth by the County's Offer Agreement. Equipment brand names, models and numbers, when given are intended to identify a level of quality, equivalent performance and dimensional specifications, and are for reference only, unless otherwise specified by the County's Offer Agreement. Failure to perform appropriate research, discovery, examine any drawings, specifications, and instructions will be at the respondent's sole risk.

Deviation requests shall specifically document and clearly illustrate the deviation to the specification, or the requirement, set forth by this solicitation and fully explain the requested deviation's impact on the end performance of the item. Deviation requests shall be submitted prior to the initial solicitation due date. Requests shall be submitted as soon as is possible and not less than 8 days prior to the solicitation due date else they may not be answered or addressed

cceptance or rejection of any deviation request shall be at the sole discretion of the County and will be made in writing by the County via specific addendum of the solicitation and Offer Agreement as applicable. Respondents shall complete article *13.Acknowledgement of Solicitation Addenda* of the Offer Agreement prior to submission.

Bidders are advised that conditional offers or notations on the documents submitted that do not conform to or that request exceptions to the published solicitation and addenda may be considered non-responsive and not evaluated.

All equipment shall be models of current production, latest design and technology, new and unused unless otherwise specified.

Manufacturer and supplier documentation, including and not limited to the following shall be provided by the successful respondent not later than 14 days after request by the County and at no additional cost; warranty; caution-informational warnings; recommended maintenance schedule and process; recommended spare parts list; operating, technical and maintenance manuals including drawings, if appropriate; product brochures; and material safety data sheets (MSDS).

4. SUBMISSION OF BIDS

Submissions are binding offers and will result in a binding contract upon acceptance by Pima County by issue of a properly executed contract document referencing said offer.

The submittal shall include all information requested by the solicitation, and utilize without modification the forms provided by the solicitation. Respondents are to complete, execute and submit one original of the following bid documents:

- SIGNED OFFER AGREEMENT with completed Supplier Minimum Qualifications, Early Payment Discount, Addenda acknowledgement (if applicable), tax, and Bid/Offer Certification with contact information
- Completed Unit prices Attachment A: Unit Prices and documents or media defining other items within the scope of the agreement with Unit Prices and Discount Percents/Prices offered, via hardcopy & on electronic media in Excel
- Min Qual Required Docs: Documentation proving minimum 3 yr business providing dry cell batteries to large commercial or governmental accounts the size and scope of this IFB for a minimum of at least the three (3) years and Green program information
- SBE Certificate issued by the City of Tucson (if applicable)

Bids must be received and time stamped at the specified location at or before the Bid Due Date/Time as defined by the *Invitation for Bid*. The “time-stamp” provided by the County shall be the official time used to determine the timeliness of the submittal. Bids and modifications received after the Bid Due Date/Time will not be accepted, or will be returned unopened. Timely submittals will be opened and recorded promptly after the Bid Due Date/Time.

Bids must be signed by an authorized agent of the respondent and submitted in a sealed envelope marked or labeled with the respondent firm name, solicitation number, title, solicitation due date and time, to the location and not later than the Bid Due Date/Time specified by the *Invitation for Bid*.

Bids and modifications received after the *Due In & Opens* date and time will not be accepted. Facsimiles of bids will not be accepted. Bids must have electronic media with Attachment A: Unit Prices in Excel formatting.

Failure to comply with the solicitation requirements, including submittals that modify the solicitation requirements, may be cause for the respondent’s bid to be rejected as *non-responsive* and not evaluated.

5. COMPLIANCE WITH AGREEMENT

County will execute an agreement with the successful respondent by issue of a Master Agreement (MA) or Purchase Order or contract. The respondent agrees to establish, monitor, and manage an effective 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 amendment or change order properly executed by the County. Any items provided in excess of the quantity 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 Pima County Procurement Department within 1 workday of the request. The report shall include the name of the requesting individual and the nature of the request.

6. INQUIRIES & NOTICE OF RECOMMENDATION FOR AWARD (NORFA)

Results of this procurement will not be given in response to telephone inquiries. Interested parties are invited to attend the public opening at the time and date stated in this solicitation. A tabulation of submittals will be on file at the Procurement

INSTRUCTIONS TO BIDDERS (continued)

Department. No oral interpretations or clarifications made to any respondent as to the meaning of any of the solicitation documents will be binding on Pima County. If a prospective respondent believes a requirement of the solicitation documents to be needlessly restrictive, unfair, or unclear, the respondent shall notify the Pima County Procurement department in writing identifying the solicitation number, page and paragraph number and clearly stating the issue and suggested solution prior to the *Due In and Opens* date set for receipt of the bid or proposal. Responses from COUNTY will be made by written addendum and sent to all known potential respondents. Issues identified less than 8 days prior to the *Due In and Opens* date may not be answered.

Interested parties are invited to attend the public opening of submissions at the time and date stated in this solicitation.

Pima County protest procedures are defined by Chapter 11.20 of the Pima County Procurement Code, available through http://www.pima.gov/cob/code/. The five-day period to file a protest of the award will be measured from the date the Notice of Recommendation for Award is posted on the Pima County Procurement website at http://www.pima.gov/procure/awards/ **without regard to whether individual notices were issued**. It is the responsibility of bidders, proposers and offerors to check the website.

7. ORDER OF PRECEDENCE-CONFLICTING DOCUMENTS

In the event there are variations or conflicts between these instructions and the standard terms and conditions or the offer agreement document, the standard terms & conditions and offer agreement shall govern.

8. VENDOR RECORD MAINTENANCE

By submitting a response to this solicitation, the submittor agrees to establish and maintain a complete Pima County Vendor record, including the provision of a properly completed and executed "Request for Taxpayer Identification Number and Certification" document(Form W-9), within ten calendar days of the solicitation due date. The Vendor also agrees to update the information within ten calendar days of any change in that information and prior to the submission of any invoice or request for payment. The preferred method for creating or updating this record is via the Internet utilizing the Pima County Vendor Self Service (VSS). The registration requires that the Vendor establish and maintain email functionality. In addition to providing the means for a Vendor to create and maintain their Vendor record, VSS also provides for email notice to the vendor regarding solicitations published by Pima County for commodities of interest as defined by the Vendor record. Internet links for Vendor Registration are located at the Procurement Internet page: http://www.pima.gov/procure/venreg.htm.

9. SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE

Any contract funded in any amount with federal funds is not eligible for this preference.

For those bids that do not exceed $500,000 per contract year, a 5% bid preference will be given to firms submitting SBE Certificates issued by the City of Tucson WITH THEIR BID; said certification is subject to verification and acceptance by Pima County. If the certification is accepted by Pima County, the bid will be evaluated at 95% of the bid amount to determine the low and responsive bid. If an award of contract is made, the contract will be formed utilizing the Unit Prices, or Lump Sum, as bid.

To be eligible for the price preference, SBE firms must include with their bid documents a copy of their current certification certificate which may be acquired from the City of Tucson; Office of Equal Opportunity Programs, (520) 791-4593 (520) 791-2639 TTY, 201 N. Stone Ave., 3rd Floor North, Tucson, AZ 85701. Their SBE website, which typically includes an SBE Application Form and a Directory listing firms holding SBE Certification, is located at: http://cms3.tucsonaz.gov/office-equal-opportunity-programs-small-business-enterprise-program

The process of acquiring SBE Certification may take several weeks. Please contact the Pima County Vendor Relations Division at **(520) 724-8465** for assistance or further information.

END OF INSTRUCTIONS TO BIDDERS
(Revised April 23, 2014)

OFFER AGREEMENT (Page 1 of 6)

1. INTENT:

This document is intended to establish an "As Required" indefinite delivery/indefinite quantity (IDIQ) "Master" purchase agreement contract to provide Pima County ("County") with such quantities of batteries as the County may order from time to time by issue of Delivery Order (DO) or Delivery Order Maximo (DOM) 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. Pima County intends to award one single contract but also reserves the right to award multiple contracts for single items, groups of items or in any other manner deemed to be in the best interests of the County. The following primary values and objectives will be mutual obligations assumed by both parties regarding the interpretation and performance under the agreement: COUNTY will award an agreement for the purchase of goods as specified herein, and Supplier will receive compensation when goods are delivered as per the terms of the purchase order issued against the agreement.

Although a particular County Department may be identified in the solicitation, unless otherwise documented by the executed agreement document, all County Departments may utilize the resulting agreement.

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.

2. AGREEMENT TERM EXTENSIONS-RENEWALS & REVISIONS:

The initial term of the agreement will be for a one year period and include four (4) one-year renewals that may be exercised upon the written agreement of the parties as follows.

Proposed extension or renewals of the contract if included in the contract and revisions to the contract shall be made through the issuance by County to Contractor of a revised Master Agreement (MA) 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:

The Supplier certifies that they are competent, willing and responsible for performing the services or providing the products in accordance with all requirements of the solicitation and this Offer Agreement.

CERTIFY minimum qualifications by MARKING RESPONSE and SUBMITTING REQUESTED DOCUMENTATION. (Failure to mark a response or submit required documentation may be cause for rejection as non-responsive. A "NO" response may be cause for rejection as non-responsive.)

This supplier certifies they are competent, willing and responsible for performing the services or providing the products in accordance with all requirements of the solicitation and this Offer Agreement.	Yes No
Supplier certifies that they possess all licenses and/or permits required to conduct business in Pima County. *(Documentation shall be available within 7 calendars upon request by Pima County. Do NOT include with sealed bid.)*	Yes No
Supplier certifies that they have been in the business of providing dry cell batteries to large commercial or governmental accounts of the size and scope of this IFB for a minimum of at least the three (3) most current years preceding the IFB due date. *Provide documentation with solicitation response.*	Yes No
Supplier certifies that they shall have a primary and a secondary account representative who are responsible for the administration of the resultant contract and the receipt of the orders. Respondent shall have an established telephone and fax number in the local calling area, or a toll-free number, as will allow free calls for customer service and free faxing for placing orders. Mandatory contact information is required where and as requested on forms provided in this solicitation. *Provide information within 1 week of award.*	Yes No

OFFER AGREEMENT (Page 2 of 6)

Yes No

Supplier has attached or included what "green" programs they have implemented per the instructions beginning below.

The following are Specifications for *BOS Resolution 2007*-84. *Offeror is to include with bid submittal* a statement outlining what 'green' programs, if any, have been implemented that may include, but not be limited to: recycling of paper,

glass and cans; efforts to conserve energy in offices and work areas; utilization of alternative fuels for vehicles and production equipment.

All proposed paper products for use under this contract, such as toilet tissue and seat covers, should contain the highest percentages of recovered materials and postconsumer contents as possible.

All cleaning and disinfecting products should be green products; such as biodegradable and containing the lowest toxicity and VOC (volatile organic compound) contents necessary.

Other areas of conservation shall include:

- Supplier shall recycle as many recyclable items as possible including office paper, corrugated paperboard (aka cardboard) boxes and sheet, chip board boxes and sheet, plastics, aluminum and steel cans/containers, etc.
- Supplier shall use as many environmentally preferable items as possible, ie. Items that do not impact the environment such as 30-100% post-consumer recycled content, processed chlorine free (PCF) paper; Energy Star equipment and appliances; remanufactured, low air emission paint; low volatile organic compound (VOC) water based adhesives and paint; zero formaldehyde emitting composite wood products; odorless and non-toxic water based markers, etc. the company's daily operations.
- Supplier shall provide to the consumer as many environmentally preferable products as possible.
- Supplier shall modify business practices to decrease air, water and ground pollution.
- Supplier shall modify business practices to conserve energy and water use.
- Supplier/Contractor should purchase eco-friendly supplies whenever possible including office supplies.

Failure to submit the required forms and supporting documentation by the "due in and opens" date and time may be grounds for deeming respondent as non-responsive.

4. PRODUCT OR SERVICE SPECIFICATIONS & SCOPE:

Any brand names, models or numbers used in the specifications are for the purpose of describing and/or establishing the level of quality, equivalent performance and dimensional specifications required. Any such reference is not intended to limit or restrict any offer. Any offer, which proposes like quality, design or performance, will be considered. If an alternative product is offered, a detailed specification must be submitted with the bid response. Pima County will have final determination on equivalency. If alternate number is not listed it will designate that vendor is bidding per specifications, no alternate.

Pima County is requesting offers from vendors who can provide batteries for purchase. In the event similar items are required that are not listed, they may be ordered at a mutually agreed upon price. The mutually agreed upon unit price shall include all incidental 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. All items added to the contract will be subject to the same terms and conditions as the original solicitation.

Respondent must cite manufacturers that will be utilized for the duration of the agreement. Only the manufacturers initially submitted and allowed will be accepted during the term of the agreement, without prior written approval by the County. The County is concerned about delivery of counterfeit copies during the agreement and expects the respondent to document their process control to ensure that batteries delivered during the term of the agreement are sourced from a manufacturer of reputable nationally known OEMs, that utilizes documented Quality Control and Assurance measures. Respondent must provide manufacturer's name, headquarters' location and contact information for County to use to verify respondent's business relationship with proposed manufacturer.

Respondent must provide Product Specification sheets, Product Safety Data Sheets and proof of American National Standards Institute (ANSI) C18 conformance, for all items listed under core items. Documentation that proves this must be submitted as part of the response to the sealed bid.

A catalog of products, with the items listed on the core item list, tabbed by Item number.
A published, dated Price List, which lists and identifies all the items and associated list unit prices offered in the above-mentioned catalog.

OFFER AGREEMENT (Page 3 of 6)

General Specifications for core items:

- Must meet or exceed applicable industry standards as established by American National Standards Institute.
- Must be of first quality and not seconds.
- Must have a minimum of three (3) years shelf life from the date of receipt by the ordering department.
- Must be labeled individually with product information, including shelf life.
- Must be listed as standard household waste by the United States Environmental Protection Agency (EPA).
- Must not contain Mercury or Cadmium.
- Must be sealed to keep ingredients fresh to prolong shelf life and reduce leakage.

Item Specifications for Core Items:
Alkaline batteries shall consist of the following characteristics:

- System: Primary Alkaline (unless specifically stated as rechargeable)
- Shell: Plastic or insulated metal (#5,9 volt – steel only)
- Nominal voltage: 1.5 volts (#5,9 volt- 9 volts)
- Operating temperature range: 0 – 130 degrees F
- Capacity Retention: not less than 97% after 12 months and 85% after 5 years (stored at 70 degrees F)
- Anode: gel consisting of zinc
- Cathode: electrolytic magnesium dioxide, cylindrical assembly

General Specification for non-core items:

- Must be listed as standard household waste by the EPA, or labeled as hazardous waste.
- May contain Mercury or Cadmium if so labeled and noted in specifications in catalog.
- Must be sealed to keep ingredients fresh to prolong shelf life and reduce leakage.

Item Specifications for non-Core Items:
Basic specifications must be found in provided catalog. Detailed specifications must be provided by respondent if requested by County. All non-core items must be available as individuals.

Catalogs and price sheets will be provided at no charge to any County department requesting one at any time during the contract term. New dated price lists may be submitted in accordance with the Standard Term and Condition Price Escalation.

5. OFFER ACCEPTANCE AND ORDER RELEASES:
Offer(s) will be accepted and executed by the County by issue of a Master Agreement (MA) (Recurring requirements) and effective on the document's date of issue without further action by either party. Master Agreement (MA) and Contract documents will document the term of the agreement.

Order(s) for products or services pursuant to an executed Master Agreement will be made by COUNTY by issue of Delivery Order (DO) or Delivery Order Maximo (DOM) 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 Delivery Order (DO) or Delivery Order Maximo (DOM) 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 Delivery Order (DO) or Delivery Order Maximo (DOM).

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.

OFFER AGREEMENT (Page 4 of 6)

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 (PO) Delivery Order (DO) or Delivery Order Maximo (DOM) or Contract number under which the services or 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. **Supplier shall not accept orders, or provide services or products that cumulatively exceed the amount.**

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 (PO), Delivery Order (DO) or Delivery Order Maximo (DOM) 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 Master Agreement (MA) or Purchase Order (PO) issued to accept Supplier offer will define the not to exceed amount of the agreement.

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 after which 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.

OFFER AGREEMENT (Page 5 of 6)

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.

See Attachment A: Unit Prices.

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 Delivery Order (DO) or Delivery Order Maximo (DOM) or Contract.

This is a County Wide contract and all departments may utilize the services and commodities on the IFB.

Supplier guarantees delivery of product or service **in less than two (2) days after** issue date of order. 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. 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. 162359 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 SUPPLIER;
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.

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. 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

OFFER AGREEMENT ***(PAGE 6 of 6)***

15. 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:

STREET 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 Master Agreement (MA) or Purchase Order (PO) 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: _____ **E-MAIL:** _____

County Attorney Contract Approval "As to Form":

PIMA COUNTY STANDARD TERMS AND CONDITIONS (06/26/14)

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 are most advantageous to Pima County (County) considering evaluation criteria, conformity to the specifications and other factors.

If an award is made, the County will enter into an agreement with the one or multiple respondent(s) that submitted the lowest responsive bid(s) that were 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, at its sole discretion, 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 item quantity or eliminate any item of this solicitation prior to the award. 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 Master Agreement (MA), Purchase Order (PO) Delivery Order (DO) or Delivery Order Maximo (DOM) revision or amendment as required by COUNTY Procurement Code. 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.

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 Master Agreement 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 Master Agreement, Purchase Order or associated orders, 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 Master Agreement, or Purchase Order. 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 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 Master Agreement, Purchase Order, and associated orders. 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 Master Agreement, Purchase Order or associated orders. 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. In the event any services provided under this contract require a license issued by the Arizona Registrar of Contractors (ROC), Contractor certifies that those services will be provided by a contractor licensed by ROC to perform those services in Arizona. 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 Pima 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 Master Agreement 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 Master Agreement, Purchase Order, Delivery Order, Delivery Order Maximo 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: Master Agreement, Delivery Order or Delivery Order Maximo, Purchase Order, offer agreement or contract attached to a Master Agreement, Purchase Order, Delivery Order or Delivery Order Maximo ; 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 Master Agreement or Purchase Order 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 Master Agreement and Purchase Order, the signed offer of Respondent and the signed acceptance of COUNTY shall each be deemed an original and together shall constitute a binding Master Agreement, if all other requirements for execution have been met.

38. AUTHORITY TO CONTRACT:
Contractor warrants its right and power to enter into the Master Agreement or Purchase Order. If any court or administrative agency determines that COUNTY does not have authority to enter into the Master Agreement or Purchase Order, COUNTY shall not be liable to Contractor or any third party by reason of such determination or by reason of the Master Agreement or Purchase order.

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 Master Agreement, Purchase Order, Delivery Order or Delivery Order Maximo 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. <u>SUBCONTRACTOR:</u>
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. <u>SEVERABILITY:</u>
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. <u>LEGAL ARIZONA WORKERS ACT COMPLIANCE:</u>
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. <u>CONTROL OF DATA PROVIDED BY PIMA COUNTY:</u>
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.

<u>END OF *PIMA COUNTY STANDARD TERMS AND CONDITIONS*</u>