

**The Industrial Development Authority
of the City of Phoenix, Arizona**

REQUEST FOR PROPOSAL

**Legal Advisor Services
(Issuer Counsel)**

Agreement No. PSC-10-C0002

Proposal due Date and Time: December 8, 2009 at 2:00 p.m.

**Proposal Submittal Location: 251 W. Washington Street, 9th Floor
Phoenix, Arizona 85003**

**Contact Person
Wendy Gutierrez
Administrator
(602) 534-5888
wendy.gutierrez@phoenix.gov**

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PART I – SCOPE OF WORK

1. INTRODUCTION

General. The Industrial Development Authority of the City of Phoenix, Arizona (hereinafter the “Authority”) is an Arizona non-profit corporation and political subdivision of the State of Arizona, organized and incorporated pursuant to the Industrial Development Financing Act. A.R.S. § 35-701, *et seq.* (hereinafter the “Act”). The statutory powers granted to the Authority in the Act permit it to provide financial assistance to qualifying capital Projects.

Members of the Authority’s Board of Directors serve voluntary terms of six (6) years and are appointed by the Mayor and City Council of the City of Phoenix (hereinafter the “City”). Members of the Board have agreed to serve because it is their belief that their service can aid the general welfare and economic growth of the City. Through the Board’s efforts, it is intended that qualified entities locate or improve Projects (as defined under the Act) in the City. The Board believes that through the powers granted to it pursuant to the Act, the Authority can aid qualified entities in providing financing for Projects at the lowest possible borrowing costs.

One of the Authority’s most widely used powers is the power to issue tax-exempt bonds. The Authority acts as a conduit through which qualified entities gain access to the tax-exempt bond market. Bondholders are willing to buy the Authority’s tax-exempt bonds and to accept a lower interest rate than would otherwise be payable because the interest on the Authority’s tax-exempt bonds is not considered taxable to the bondholders under federal and, often, state tax laws. The Authority passes the benefit of these lower borrowing costs on to qualified entities. The proceeds from the tax-exempt bonds are loaned to the qualified entities to finance qualified Projects. The interest paid by the qualified entity for financing the Project is the interest paid to bondholders. To qualify for such conduit financing, entities must apply to the Authority and adhere to the requirements, policies and procedures as stated in the Authority’s procedural pamphlet.

Through the process of conduit financing, the Authority has financed a variety of Projects, including manufacturing facilities, multifamily housing apartments, single family residences, museums, sports facilities (on a taxable basis), airport facilities and government offices.

Clients and Stakeholders. The Authority’s clients and stakeholders include the City, applicants or borrowers, and investors.

PART I – SCOPE OF WORK

The Authority was created by the City as a legally separate, non-profit corporation to implement the public purposes stated in the Act. As such, the City of Phoenix is not legally responsible for the actions, omissions or debts of the Authority. However, to fulfill its statutory obligations and public purposes, the Authority deems it necessary to coordinate with the City Manager's Office, the Finance Department, the Housing Department, the Neighborhood Services Department and the Community and Economic Development Department. Such coordination ensures that the objectives of the City in creating the Authority and the objectives of the Authority in meeting its statutory obligations are met. These objectives coincide to include providing affordable housing and increasing housing stock in the City, revitalizing depressed neighborhoods, attracting, retaining and encouraging wealth-creating businesses and fostering the creation of jobs. Without close coordination with the City policies as set forth by the Mayor and City Council, the Authority could not fulfill its mission. As such, the Authority views the City as one of its major clients and stakeholders.

The Authority's clients also include the applicants and borrowers using the Authority's programs and financing Projects with the Authority's bonds. These include for-profit developers, non-profit developers, small businesses and manufacturers, individual families and the municipal finance community (e.g., investment bankers and legal counsel). The Authority's mission is to advance certain applicant and borrower objectives, including low cost financing, certainty of process and completion of Projects.

The Authority must also meet the needs of its investor clients, which include large institutional investors (e.g., insurance companies and mutual funds), commercial banks and individuals. It is critical that the Authority provide these clients or bondholders with safety of principal and a risk adjusted return, yield to maturity and liquidity, tax-free income, proper disclosure (initial offering and secondary market) and administrative ease.

2. SCOPE OF WORK

The Authority is seeking to Contract with two (2) firms to satisfy the Authority's requirements for legal services as Issuer Counsel, a primary and a secondary firm. All Issuer Counsel work will be awarded to the primary firm unless the primary firm has a conflict, in which case the work will be awarded to the secondary firm. The Authority's Executive Director, in his un-reviewable discretion, will determine whether a conflict exists between Issuer Counsel and the work to be performed.

These services will include, but are not necessarily limited to, the following areas:

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A) Review applications and bond documents for compliance with the Authority's standards, policies and procedures and applicable state and federal law.

B) Upon request, assist in review of offering and/or disclosure documents to be distributed in conjunction with the sale of proposed bond issued by the Authority.

C) Upon request, attend Authority and City Council meetings or other hearings and assist in review of offering and/or disclosure documents to be distributed in conjunction with the issuance of bonds or sale of proposed bonds issued by the Authority.

D) Prepare routine documentation associated with closing transactions, i.e. certificates to be executed by members of the Authority's Board of Directors, and the City Council.

E) Provide standard "Issuer's Counsel" opinion relating to the power and authority of the Authority, in a form acceptable to the applicant's finance team.

In the event that the Authority's Executive Director determines that an actual or perceived conflict exists in connection with the Contractor and the service being requested or being provided, the Authority will select an alternative provider for the services described in this Part.

PART II – INSTRUCTIONS TO PROPOSERS

1. INTRODUCTION

A response to this solicitation is an offer to Contract with the Authority based upon the terms, conditions, and specifications contained in this solicitation. The response does not become a Contract unless and until it is executed by the Authority's President and Executive Director.

The Contract Representative for this solicitation is: **Wendy Gutierrez, Administrator, (602) 534-5888, wendy.gutierrez@phoenix.gov.**

Interested Proposers may download the complete solicitation and addenda from the Authority's website (www.phoenixida.com). Internet access is available at all public libraries.

Any interested Proposer without Internet access may obtain this solicitation by calling (602) 534-5888 or by picking up a copy during regular business hours at Calvin C. Goode, Municipal Building, 251 W. Washington Street, 9th Floor, Phoenix, Arizona 85003.

This solicitation is available in large print, Braille, audio tape, or computer diskette. Please call (602) 262-5054/Fax (602) 534-2311 or TTY (602) 534-5500 for assistance.

2. SCHEDULE OF EVENTS

Proposal Issue Date	November 24, 2009
Pre-Proposal Meeting	None
Proposer's Written Inquiries Due	November 30, 2009 at 5:00 p.m.
Proposal Due Date	December 8, 2009 at 5:00 p.m.
Finalist Interviews (If required)	None
Executive Committee Final Approval with recommendations to the Board	December 16-18, 2009
Board of Directors Final Approval	January 12, 2010

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Proposal Submittal Location: Calvin C. Goode Municipal Building
251 W. Washington Street, 9th Floor
Phoenix, AZ 85003

Pre-Proposal Conference: None

Finalist Interviews: None

The Authority reserves the right to change the schedule of events, dates and/or locations as necessary.

3. PRE-PROPOSAL CONFERENCE: If scheduled, the date and time of a Pre-Proposal Conference is indicated on the cover page of this document. Attendance is encouraged even if the Pre-Proposal Conference is designated as voluntary. Written minutes and/or notes will not be available. The purpose of this conference will be to clarify the contents of this Request for Proposal (RFP) in order to prevent any misunderstanding of the Authority's position. Any doubt as to the requirements of this RFP or any apparent omission or discrepancy, should be presented to the Authority at this conference. The Authority will then determine the appropriate action necessary, if any, and may issue a written amendment to the RFP.

4. PROPOSER INQUIRIES: All questions relating to this RFP must be directed in writing to the Authority's Contract Representative designated in the Introduction to this Part.

All inquiries received will be answered by an addendum and published at the Authority's website listed above.

5. INFORMAL CONTACTS PROHIBITED: No informal contact relating to the requested service is permitted by Proposers with members of the Authority's Board or Authority staff members from the date of distribution of this RFP until after the time for the submission of proposals. All questions or concerns relating to this RFP must be presented **in writing** as specified in this solicitation.

6. ADDENDUMS: It is the Proposer's responsibility to check the Authority's website for any addendums that may have been issued in connection with this solicitation. The failure to include a required addendum with the solicitation response may be grounds for deeming a submittal non-responsive.

7. FAMILIARIZATION WITH SCOPE OF WORK: It is the responsibility of all Proposers to examine the entire solicitation and seek clarification of any

PART II – INSTRUCTIONS TO PROPOSERS
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requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing a proposal confers no right of withdrawal after the due date and time. The Proposer shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfying itself as to the expense and difficulties associated with the fulfillment of Contract requirements. The submission of a proposal will constitute a representation of compliance by the offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

8. **EXCEPTIONS TO THE CONTRACT PROVISIONS:** A response to any RFP is an offer to Contract with the Authority based upon the Contract provisions contained in the Authority’s RFP, including, but not limited to, the specifications, Scope of Work and any terms and conditions. Proposers who wish to propose modifications to the Contract provisions must clearly identify the proposed deviations and any proposed substitute language. These modifications must be set out in the part/or attachment to the RFP submittal titled “Request for Consideration of Alternate Terms.” See Part VI, Submittal of Offer, #11 on Solicitation Response Checklist. The provisions of the RFP cannot be modified without the express written approval of the Executive Director or Director’s designee. If a proposal or offer is returned with modifications to the Contract, the Contract provisions contained in the Authority’s RFP shall prevail unless the Proposer’s proposed alternative provisions are expressly approved in writing by the Executive Director or designee.

If provisions of the detailed specifications preclude an otherwise qualified Proposer from submitting a proposal, a written request for modification must be received by the Authority contact listed on the front of this solicitation at least seven (7) calendar days prior to the proposal due date. The Authority may issue an addendum to this solicitation of any approved specification changes.

9. **PUBLIC RECORD:** All proposals submitted in response to the RFP shall become the property of the Authority and shall become a matter of public record available for review pursuant to Arizona state law after the award notification.
10. **CONFIDENTIAL INFORMATION:** The Authority is obligated to abide by all public information laws.

If a Proposer believes that a specific section of its proposal is confidential, the Proposer shall mark those pages “confidential” and include them in a separate and clearly-labeled section of its proposal. The Proposer shall include a written basis for considering the marked pages confidential including the specific harm

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or prejudice if disclosed and the Authority will review the material and make a determination.

11. LATE PROPOSALS: Late proposals will be rejected, regardless of the reason, including mail delivery problems beyond Proposer's control. Proposers mailing their responses should allow sufficient time to insure delivery by the date and time specified.

12. NON-RESPONSIVE PROPOSALS: Proposals deemed non-responsive will not be evaluated or considered for award.

A) The following proposals will not be evaluated:

- 1) Proposals submitted unsigned.
- 2) Proposals that do not conform to the minimum specifications stated in the Scope of Work.
- 3) Proposals submitted without complete pricing.
- 4) Proposals that contain altered or conditional cost information.
- 5) Proposals submitted by a Proposer who does not have valid certifications and/or licenses required by state, federal or local law or regulations to perform the service requested at the time of the submittal.
- 6) Proposals that fail to contain the required bonds, security assurances or insurance certificates as specified in this RFP.
- 7) Proposals not received by the designated due date, place and time.
- 8) Proposals that are deemed non-responsive, in the sole discretion of the Authority, because:
 - a) The Proposer does not meet the minimum required skill, experience or other conditions or terms set forth in this RFP.
 - b) The Proposer does not comply with the submission requirements including any specified page limits.
 - c) The Proposer does not have a past record of sound business integrity and a history of fulfilling Contractual obligations.

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- d) The Proposer is not financially stable, solvent, or does not possess the cash reserves to meet all financial obligations while awaiting reimbursement from the Authority. (Proposer who is borrowing any or all of the monies necessary to meet initial expenses between the start of the Contract period and receipt of the first payment must provide a Letter of Commitment from the Proposer's creditor.).
- e) The proposal contains false, inaccurate, or misleading statements that, in the opinion of the Authority, is/are intended to mislead the Authority in its evaluation of the proposal.

- 13. RESPONSIVE PROPOSALS:** Proposals must meet all material requirements of the solicitation. All required elements of a sealed proposal will be evaluated on a pass/fail basis. The use of scoring or ranking will not be used to evaluate non-responsive proposals. Only those proposals determined to be responsive will be evaluated and scored by the Executive Committee in accordance with the criteria set forth in Part III of this RFP.

The committee may request a formal presentation from the highest-ranked Proposers before a final recommendation is made. If presentations are requested and presented, the Executive Committee will reconvene, review, and rescore the evaluation categories based on the expanded information.

In the event interviews are conducted, information provided during the interview process will be taken into consideration when evaluating the stated criteria. The Authority will not reimburse the Proposer for the costs associated with the interview process.

The Authority reserves the right to conduct such additional investigations as it deems necessary in order to verify the submittal, qualifications, competence and financial stability of any Proposer submitting a proposal. The Authority may consider other verifiable information bearing on financial stability and strength, including, without limitation, information provided by former employees and/or creditors.

Experiences with the Authority and entities that directors of the Board represent may be taken into consideration when evaluating qualifications and experience.

If two or more finalists are tied, the finalist with the lowest cost proposal score will be awarded the Contract.

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14. **DISCUSSIONS:** The Authority reserves the right to conduct discussions with Proposers for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure a full understanding of, and responsiveness to, solicitation requirements. If such a discussion is deemed necessary, the only Authority staff that is authorized to contact the Proposer is the Contract Representative listed on the front of this proposal. The Contract Representative shall document any such discussion in the Authority's RFP file.
15. **WITHDRAWAL OF OFFER:** At any time prior to the solicitation due date and time, a Proposer (or designated representative) may withdraw the proposal by submitting a request in writing, signed by a duly authorized representative. Facsimiles, telegraphic or mailgram withdrawals will not be considered.
16. **PROPOSAL RESULTS:** Proposals will be opened on the proposal due date, time and location indicated in the Schedule of Events at which time the name of each Proposer shall be read. Proposals and other information received in response to the RFP shall be shown only to authorized Authority personnel having a legitimate interest in them or persons assisting the Authority in the evaluation.
17. **AUTHORITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST:** The Authority reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposal submitted or any other information available to the Authority. This disqualification is at the sole discretion of the Authority. Any Proposer submitting a proposal herein waives any right to object now, or at any future time, before any body or agency, including but not limited to, the Board of Directors of the Authority or any court.
18. **AWARD:** The Proposer whose proposal receives the highest score in the evaluation process will be recommended for Contract award.

Notwithstanding any other provision of this solicitation, the Authority reserves the right to: (1) waive any immaterial defect or informality; (2) reject any or all proposals or portions thereof; or (3) reissue a solicitation.

A response to this solicitation is an offer to Contract with the Authority based upon the terms, conditions, and specifications contained in the Authority's solicitation. Such a proposal does not become a Contract unless and until it is executed by the Authority's President and Executive Director. A Contract has its inception in the award, eliminating the need to sign a separate Contract. For that reason, all of the terms, conditions and specifications of the procurement Contract are contained in the solicitation, unless any of the terms, conditions, or

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specifications are modified by an addendum or Contract amendment. The terms and conditions set forth in this RFP and the selected Proposer's Offer (Part VI – Submittal of Offer) shall form the entire Contract between the Authority and the Contractor.

- 19. EMPLOYEE IDENTIFICATION:** Proposer agrees to provide an employee identification number or social security number to the Authority for the purposes of reporting to appropriate taxing authorities monies paid by the Authority under the awarded Contract. If the federal identifier of the Proposer is a social security number, this number will be shared only with appropriate state and federal officials. This submission is mandatory pursuant to 26 U.S.C. § 6041A.

20. MULTIPLE AWARDS PROHIBITED

This RFP is being issued with another RFP for General Corporate Counsel. In the event that a Proposer should submit a proposal for both, and be the highest-scoring Proposer for both, the Authority will determine which Contract will be awarded to that Proposer. The second-highest rated Proposer for the RFP not awarded will then be awarded the Contract for that second RFP.

PART III – EVALUATION REQUIREMENTS

1. EVALUATION CRITERIA

All timely proposals will be reviewed to determine whether the minimal qualification requirements have been met. Proposals that do not meet all qualification requirements will be considered non-responsive, will not be evaluated, and will be rejected.

All proposals meeting the minimum qualification requirements will be evaluated by the Executive Committee according to the evaluation criteria.

The evaluation criteria are as follows:

Experience and Qualifications	
Firm	25
Individual	20
Method of Approach	10
References	15
Pricing	<u>30</u>
Total available points:	100

The evaluators will award the maximum score for each category to the highest-rated firm, with all other qualifying firms ranked proportionally.

Reference information may be gathered and documented by an Authority staff member with the staff member report evaluated by the Executive Committee.

The overall completeness, accuracy and quality of the proposal may be taken into consideration when evaluating experience and qualifications.

2. PROPOSER'S EXPERIENCE AND QUALIFICATIONS

- A) **Business History.** The Proposer shall provide a history of the business including the date established, the type of ownership or legal structure of the business (e.g., sole proprietor, partnership, corporation, etc.), the length of time that the firm has been operating in that legal form and the length of time the firm has been providing the requested services. Discuss the expertise and resources available both nationally and locally to provide the requested services.

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- B) **Key Personnel.** List the proposed key members of staff to be assigned to the Authority's Contract including their roles and estimated participation in delivering the services.

Attach the resumes of the key personnel who will be assigned to provide the requested services, including education and training. Resumes must clearly state any experience specifically related to the Scope of Work and list any similar work successfully completed. Limit each resume to no more than three pages.

- C) **Adverse Actions/Potential Impact.** State whether the company is currently involved in, or has, any litigation, threatened litigation, investigation, reorganization, receivership, filing, strike, audit, corporate acquisition, unpaid judgments or other action that could have an adverse impact on its ability to provide the requested services. For each, please describe the nature of the item and its potential impact.

State whether your firm has been unable to complete a Contract, been removed from a Contract, or been replaced during a Contract period in the past five years. If so, explain what happened and why.

- D) **Government/Corporate Experience.** State your firm's experience in providing services to large public entities or large corporate entities. List other government Contracts that you have now or have had in the past 5 years including the Authority and/or City of Phoenix. Do not exceed three pages.

- E) **Sample Projects.** Describe sample Projects (not to exceed three) that best illustrate the firm's qualifications for the Scope of Work, identifying any Projects accomplished by current staff while conducted under the employment of others. Projects must be of similar complexity, have been completed, and demonstrate the Proposer's ability and experience to successfully perform the services requested. Do not exceed five (5) pages.

- F) **Customer References.** Proposer shall furnish a minimum of three references, but no more than five, from firms or government organizations for which the Proposer is currently furnishing services, or in the past five years has completed services. References from large public entities or large corporate entities are preferred.

Please provide for each reference: name of company or government entity, name of contact person, address, telephone number and e-mail address (if available).

	PART III – EVALUATION REQUIREMENTS
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- G) **Other Relevant Information.** Submit any other information that documents other skills or experience relating to the requirements of this RFP that you believe may be relevant, including brochures and firm descriptions.

3. **METHOD OF APPROACH.** Describe the firm's method of approach to satisfy the requirements of the solicitation. This should be accomplished by covering the Scope of Work requirements. Proposer may utilize a written narrative or other printed technique to demonstrate its approach to satisfying the Scope of Work. Address issues such as:

- A) **Milestones.** Provide a list of milestones and proposed deliverables for each milestone.
- B) **Work Schedule.** Provide a description of how work will be scheduled in order to provide the Authority with the most efficient and cost-effective service possible.
- C) **Customer Service – Availability.** Provide an estimate of key personnel time on each major step. State the work schedule (days and hours) that the Contract Representative will be available and the anticipated turnaround time for returning phone calls.

State the availability of assigned personnel to perform the work according to the timing/needs of the Authority. Provide a brief assessment of the current workload and capacity of the Proposer to carry out the Scope of Work.

- D) **Customer Service – Office Resources.** State or describe the on-site resources such as office space, conference rooms, clerical support for meeting arrangements as relevant to the services provided.
- E) **Sample Reports.** Describe or provide a sample progress report or form.
- F) **Technology.** Describe how your firm uses technology in performing services.
- G) **Budgetary Controls.** Describe the fiscal accounting processes and budgetary controls that you will use to ensure the responsible use and management of Contract funds and accurate invoicing.

State how costs incurred under this Project will be appropriately accounted for and how only applicable Project expenses will be billed to the Authority.

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State your fiscal reporting and monitoring capabilities (e.g. spreadsheets, automated fiscal reports, quality controls, checks and balances), to ensure Contract funds are managed responsibly.

Describe any other procedures that you will use to ensure that the Authority receives satisfactory service at a low cost, i.e., how your firm will strive to provide the best value at the lowest price.

4. PRICE PROPOSAL

Pricing should be provided in the following categories:

- A) Attorney time (all levels), hourly rate by level.
- B) Paralegal time.
- C) Travel time outside of Maricopa County.
- D) Copying charges.

Pricing must remain firm and fixed for the initial term (one year) of the Contract.

5. IDENTIFICATION OF TAXES IN OFFER: The Authority is exempt from federal excise tax, including the federal transportation tax. The Authority is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be included in the Pricing offered in this solicitation. At all times, payment of taxes and determination of applicable taxes are the sole responsibility of the Contractor. For the purposes of determining the lowest cost, the Authority will not take tax into consideration. Taxes, if any, must be listed as a separate item on all invoices.

6. REQUIRED AGREEMENTS: Charges for any agreements or licenses required to perform the work described in this RFP, such as third-party software license fees, must be included in the prices provided in the Price Proposal section.

	PART IV – SPECIAL TERMS AND CONDITIONS
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1. METHOD OF INVOICING

Invoices must include, at least, the following:

- A) Authority Agreement No. PSC-10-C0002.
- B) Designation of person performing work.
- C) Hourly billing rate of person performing work.
- D) A complete description of the work performed for all personal services, with time billed in 1/10 hour increments.
- E) Complete description of item for all non-personal service charges.
- F) Date work was performed or other cost incurred.
- G) Applicable tax and fees, itemized separately.
- H) Item totals by category and total amount due.
- I) Invoice number and date.
- J) Matter number once assigned by the Authority.

All invoices charging time or costs incurred in any calendar month must be received at the Authority's e-mail address for billing purposes no later than the tenth day of the following month. For example, all charges incurred in the month of October must be received no later than 11:59 p.m. on November 10. The Authority's e-mail address for billing purposes is provided by the Authority's Executive Director. No invoice received in violation of this rule will be paid without the express, written authorization of the Authority's Executive Director.

All personal service charges must include all costs and expenses except those specifically listed below:

- Copying
- Outside printing
- Delivery service/messengers
- Travel time outside of Maricopa County
- Out-of-town travel

No non-personal service charges may be billed other than those listed above.

Contractor will be reimbursed for approved expenditures when the expense is itemized in the invoice and Contractor provides the documentation supporting the invoiced amount.

All expenses will be billed at Contractor's actual out-of-pocket cost without any markup.

	PART IV – SPECIAL TERMS AND CONDITIONS
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Outside printing and travel charges may only be incurred with the prior written authorization of the Authority's Executive Director.

2. METHOD OF PAYMENT

The Authority will pay all amounts due on a monthly basis thirty (30) days in arrears.

3. ACCOUNTING AND AUDITING

The Authority shall have access to and the right to examine any books, documents, papers, records and other evidence reflecting all time charges, compensation and costs billed under this Agreement. The materials described herein shall be made available at the office of Contractor at any reasonable time for inspection, audit or reproduction until the expiration of three (3) years from the date of final payment under this Agreement.

4. INDEMNIFICATION

Contractor shall indemnify, defend, save and hold harmless the Authority and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or Subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the Contractor agrees to waive all rights of subrogation against the Authority, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the Authority.

PART IV – SPECIAL TERMS AND CONDITIONS

5. INSURANCE REQUIREMENTS

Contractor and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or Subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Authority in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or Subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form Contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

Policy shall be endorsed to include the following additional insured language: "The Industrial Development Authority of the City of Phoenix, Arizona shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

Worker's Compensation and Employers' Liability

Contractor shall provide Workers' Compensation Statutory Employers' Liability

Each Accident	\$ 100,000
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	PART IV – SPECIAL TERMS AND CONDITIONS
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Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

Policy shall contain a waiver of subrogation against the Authority.

This requirement shall not apply when a Contractor or Subcontractor is exempt under A.R.S. § 23-901, and when such Contractor or Subcontractor executes the appropriate sole proprietor waiver form.

Automobile Liability

Policy shall include bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language: "The Industrial Development Authority of the City of Phoenix, Arizona shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant, including automobiles owned, leased, hired or borrowed by the Consultant."

Professional Liability (Errors and Omissions Liability)

Contractor's policy shall cover professional misconduct or lack of ordinary skill in performing the services defined in the Scope of Work of this Contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract, and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

On insurance policies where the Authority is named as an additional insured, the Authority shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

	PART IV – SPECIAL TERMS AND CONDITIONS
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The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to The Industrial Development Authority of the City of Phoenix, Arizona, 251 West Washington, 9th floor, Phoenix, Arizona 85003, Attn: Executive Director.

ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the Authority with certificates of insurance (ACORD form or equivalent approved by the Authority) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the Authority before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of Contract.

All certificates required by this Contract shall be sent directly to the Authority at: The Industrial Development Authority of the City of Phoenix, Arizona, 251 W. Washington Street, 9th Floor, Phoenix, Arizona 85003, Attn: Executive Director. The Authority Project/Contract number and Project description shall be noted on the certificate of insurance. The Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

SUBCONTRACTORS: Contractors' certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to the Authority separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements

	PART IV – SPECIAL TERMS AND CONDITIONS
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identified above.

6. OPTION TO EXTEND

The Authority may, at its option and with approval of the Contractor, extend the period of this one-year Contract for up to three (3) additional years, in increments of one year or less. The parties may negotiate pricing adjustments in connection with any Contract extensions.

7. PERFORMANCE INTERFERENCE

Contractor shall notify the Executive Director immediately of any occurrence and/or condition that interferes with the full performance of the Contract, and confirm it in writing within twenty-four (24) hours, to: The Industrial Development Authority of the City of Phoenix, Arizona, 251 W. Washington Street, 9th Floor, Phoenix, Arizona 85003, Attn: Executive Director.

8. CONTRACTOR'S PERFORMANCE

Contractor shall use those efforts that a skilled, competent, experienced, and prudent person or organization would use to perform and complete the requirements of this Contract in a timely and professional manner conforming to the standards and quality generally recognized and accepted within the profession throughout the United States. Contractor shall furnish all necessary labor, tools, equipment, and supplies to perform the required services.

The Authority's authorized representative will decide all questions that may arise as to the quality and acceptability of any work performed under the Contract. If, in the opinion of the Authority's authorized representative, performance becomes unsatisfactory, the Authority shall notify the Contractor.

The Contractor will have ten (10) days from that time to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the Authority shall have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover from any balances due, or to become due, the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the Contract for default.

9. ACCOUNT STAFFING

The Contractor agrees to assign experienced personnel to provide for successful and timely accomplishment of the Scope of Work. The Authority reserves the

	PART IV – SPECIAL TERMS AND CONDITIONS
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right at any time and for any reason during the Contract to reject any Contractor staff from performing services on behalf of the Authority.

10. TIME IS OF THE ESSENCE

The parties agree that time is of the essence in the performance of the Scope of Work.

	PART V – STANDARD TERMS AND CONDITIONS
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1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of proposal as non-responsive.

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

May: Indicates something that is not mandatory but permissible.

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

- “Amendment”** Means a written document issued by the Authority and signed by the Contractor that alters the Contract and identifies the following: (i) a change in the Scope of Work (ii) a change in the Contract amount (iii) a change in the time allotted for performance and/or (iv) an adjustment to the Agreement terms.

- "City"** The City of Phoenix.

- "Contract"** The legal agreement executed between the Authority and the Contractor.

- "Contract Representative"** The Authority employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this Contract.

- "Contractor"** The individual, partnership, corporation, limited liability company, joint venture, or other business entity who, as a result of the competitive process, is awarded a Contract by the Authority.

- “Days”** Means calendar days unless otherwise specified.

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“Executive Director”	The Authority’s Executive Director.
“Employer”	Any individual or type of organization that transacts business in this state, that has a license issued by an agency in the state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent Contractor, employer means the independent Contractor, and does not mean the person or organization that uses Contract labor. (A.R.S. § 23-211).
“Offer”	Means proposal or quotation.
“Proposer/ Offeror”	Means a vendor who responds to the RFP.
“Subcontractor”	Means an individual, firm, partnership, corporation, limited liability company, joint venture, or any other business entity having a Contract, purchase order, or agreement with the Contractor, or with any Subcontractor, of any tier for the performance of any part of the Agreement. When the Authority refers to Subcontractor(s) in this document, for the purpose of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level, and/or tier, all Subcontractors, sub-consultants, suppliers and material men.
“Solicitation”	Means a Request for Proposal (RFP).
“Suppliers”	Firms, entities or individuals furnishing goods or services directly to the Authority.
“Vendor”	A seller of goods or services.

	PART V – STANDARD TERMS AND CONDITIONS
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2. CONTRACT INTERPRETATION

- A) **APPLICABLE LAW:** This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in federal or state courts in Maricopa County, State of Arizona.

- B) **IMPLIED CONTRACT TERMS:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

- C) **CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the Authority and as they may be amended, the following shall prevail in the order set forth below:
 - 1) Special Terms and Conditions
 - 2) Standard Terms and Conditions
 - 3) Statement of Scope of Work
 - 4) Specifications
 - 5) Attachments
 - 6) Instructions to Proposers
 - 7) Other documents referenced or included in the RFP.

- D) **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract that may remain in effect without the invalid provision or application.

- E) **NON-WAIVER OF LIABILITY:** The Authority, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the Authority agrees to limit in advance or waive any right the Authority might have to recover actual lawful damages in any court of law under applicable Arizona law.

- F) **PAROLE EVIDENCE:** This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this Contract. No course of prior dealings between the parties and no usage in the trade shall be relevant to

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supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

3. CONTRACT ADMINISTRATION AND OPERATION

- A) **RECORDS:** All books, accounts, reports, files and other records relating to the Contract shall be subject at all reasonable times to inspection and audit by the Authority for five (5) years after completion of the Contract. Such records will be produced at the Authority office, 251 W. Washington Street, 9th Floor, Phoenix, Arizona 85003.

- B) **CONFIDENTIALITY AND DATA SECURITY.** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor/consultant in connection with this Agreement is confidential, proprietary information owned by the Authority. Except as specifically provided in this Agreement, the Contractor/consultant shall not disclose data generated in the performance of any service provided pursuant to this agreement to any third person without the prior written consent of the Board of Directors and/or its designee.

Personally-identifying information, financial account information, or restricted Authority information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Contractor/consultant must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personally-identifying information, financial account information, or restricted Authority information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by the Contractor/consultant in connection with this Agreement is believed to have been compromised, Contractor/consultant shall notify the Authority Executive Director immediately. Contractor/consultant agrees to reimburse the Authority for any costs incurred by the Authority to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

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Contractor/consultant agrees that the requirements of this Part shall be incorporated into all Subcontractor/subconsultant agreements entered into by the Contractor/consultant. It is further agreed that a violation of this Part shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Part may result in immediate termination of this Agreement without notice.

Contractor/consultant shall indemnify, defend, save and hold harmless the Authority and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and cost of claims processing, investigation and litigation) for any loss caused, or alleged to be caused, in whole or in part, by Contractor's/consultant's or any of its owners', officers', directors', agents' or employees' failure to comply with the requirements of this Part. This indemnity includes any claim arising out of the failure of Contractor/consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

The obligations of Contractor/consultant under this Part shall survive the termination of this Agreement.

- C) **LICENSES AND PERMITS:** Contractor shall possess at the time of submittal and shall keep current federal, state, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

- D) **ADVERTISING:** Contractor shall not advertise or publish news releases concerning this Contract without the prior written consent of the Authority's Executive Director, and the Authority shall not unreasonably withhold permission.

- E) **EXCLUSIVE POSSESSION:** All research and materials created, developed, compiled or produced pursuant to or as a result of this Contract (including but not limited to all reports) will be considered ordered and commissioned by the Authority as works made for hire under the copyright laws and made in the course of services rendered.

All services, information, computer program elements, reports, and other deliverables that may be created under this Contract are the sole property of the Authority and shall not be used or released by the Contractor or any other person except with prior written permission of the Authority.

	PART V – STANDARD TERMS AND CONDITIONS
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F) **HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor's products, services and facilities shall be in full compliance with all applicable federal, state and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the Authority. The Authority shall have the right to inspect operations conducted by the Contractor or Subcontractor in the performance of this Contract.

G) **COMPLIANCE WITH LAWS:** Contractor agrees to fully observe and comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether or not they are referred to by the Authority. Contractor agrees to permit Authority inspection of Contractor's business records, including personnel records to verify any such compliance.

Because the Contractor will be acting as an independent Contractor, the Authority assumes no responsibility for the Contractor's acts.

H) **CONTINUATION DURING DISPUTES:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, the Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

I) **STRICT PERFORMANCE:** Failure of either party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

J) **LEGAL WORKER REQUIREMENTS:** The Authority is prohibited by A.R.S. § 41-4401 from awarding an agreement to any Contractor who fails, or whose Subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

1) Contractor and each Subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.

	PART V – STANDARD TERMS AND CONDITIONS
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- 2) A breach of a warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
- 3) The Authority retains the legal right to inspect the papers of the Contractor or Subcontractor employee(s) who work(s) on this Agreement to ensure that Contractor or Subcontractor is complying with the warranty under paragraph 1.

4. COSTS AND PAYMENTS

- A) **COMMENCEMENT OF WORK:** The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives a purchase order or is otherwise directed to do so, in writing by the Authority.
- B) **PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the Authority Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the Authority. Contractor agrees that any obligation it owes to the Authority will be offset against any payment due to the Contractor from the Authority.
- C) **NO ADVANCE PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received or rendered.
- D) **FUND APPROPRIATION CONTINGENCY:** The Contractor recognizes that any agreement entered into shall commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the Authority herein recognize that the continuation of any Contract after the close of any given fiscal year of the Authority, which fiscal year ends on June 30 of each year, shall be subject to the approval of the budget of the Authority providing for or covering such Contract item as an expenditure therein. The Authority does not represent that said budget item will be actually adopted, said determination being the determination of the Board of Directors at the time of the adoption of the budget.
- E) **IRS W-9 FORM:** In order to receive payment the Contractor shall have a current IRS W-9 form on file with the Authority.

The form can be downloaded at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

	PART V – STANDARD TERMS AND CONDITIONS
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5. CONTRACT CHANGES

- A) **CONTRACT AMENDMENTS:** Contracts shall be modified only by a written Contract amendment signed by the Executive Director and persons duly authorized to enter into Contracts on behalf of the Contractor.
- B) **ASSIGNMENT - DELEGATION:** No right or interest in this Contract nor monies due hereunder shall be assigned in whole or in part without the written permission of the Authority, and no delegation of any duty of Contractor shall be made without prior written permission of the Executive Director, which may be withheld for good cause. Any assignment or delegation made in violation of this Part shall be void.
- C) **NON-EXCLUSIVE CONTRACT:** Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the Authority. The Authority reserves the right to obtain like goods or services from another source when necessary.
- D) **AUTHORIZED CHANGES:** The Authority reserves the right at any time to make changes in any one or more of the following: a) specifications; b) implementation schedule. If the change causes an increase or decrease in the cost of, or the time required for, performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Price increases or extensions of delivery time shall not be binding on the Authority unless evidenced in writing and approved by the Executive Director prior to the institution of the change.

6. RISK OF LOSS AND LIABILITY

- A) **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the Authority until the Authority actually receives the material or service at the point of delivery, and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.
- B) **ACCEPTANCE:** All service is subject to final inspection and acceptance by the Authority. Noncompliance shall conform to the cancellation clause set forth in this document.
- C) **INDEMNIFICATION – PATENT, COPYRIGHT AND TRADEMARK:** The Contractor shall indemnify and hold harmless the Authority against any liability, including costs and expenses, for infringement of any patent,

	PART V – STANDARD TERMS AND CONDITIONS
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trademark or copyright or other proprietary rights of any third parties arising out of Contract performance or use by the Authority of materials furnished or work performed under this Contract.

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding that is, has been, or may be brought against the Authority and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Contract and the Contractor further agrees to indemnify the Authority against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The Authority may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires. It is expressly agreed by the Contractor that these covenants are irrevocable and perpetual.

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

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

- E) **ORGANIZATION – EMPLOYMENT DISCLAIMER:** The Contract resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the

	PART V – STANDARD TERMS AND CONDITIONS
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parties shall be only those expressly set forth in the Contract. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the Contract are considered to be Authority's employees and that no rights of Authority civil service, benefits, retirement or personnel rules accrue to such persons. The Contractor shall have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the Authority harmless with respect thereto.

- F) **LOSS OF MATERIALS:** The Authority does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the Contract operations have commenced until the final acceptance of the work by the Executive Director.
- G) **DAMAGE TO AUTHORITY PROPERTY:** Contractor shall perform all work so that no damage to the building or grounds results. Contractor shall repair any damage caused to the satisfaction of the Authority at no cost to the Authority.

7. WARRANTIES

- A) **QUALITY:** Contractor expressly warrants that all goods or services furnished under this Contract shall conform to the specifications and appropriate standards.
- B) **RESPONSIBILITY FOR CORRECTION:** It is agreed that the Contractor shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance.
- C) **LIENS:** Contractor shall hold the Authority harmless from claimants supplying labor or materials to the Contractor or its Subcontractors in the performance of the work required under this Contract.
- D) **PROFESSIONAL RESPONSIBILITY:** Contractor shall use those efforts that a skilled, competent, experienced, and prudent person or organization would use to perform and complete the requirements of this Contract in a timely manner conforming to the standards and quality generally recognized and accepted within the profession throughout the United States.

	PART V – STANDARD TERMS AND CONDITIONS
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8. AUTHORITY'S CONTRACTUAL RIGHTS

- A) **RIGHT TO ASSURANCE:** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of this Contract.
- B) **NON-EXCLUSIVE REMEDIES:** The rights and remedies of the Authority under this Contract are non-exclusive.
- C) **DEFAULT:** In case of default by the Proposer, the Authority may, by written notice, cancel this Contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due, (2) collection against the proposal and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- D) **COVENANT AGAINST CONTINGENT FEES:** Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Authority shall have the right to annul the Contract without liability or in its discretion to deduct from the Contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.
- E) **COST JUSTIFICATION:** In the event only one response is received, the Authority may require that the Proposer submit a cost proposal in sufficient detail for the Authority to perform a cost/price analysis to determine if the proposal price is fair and reasonable.

9. CONTRACT TERMINATION

- A) **GRATUITIES:** The Authority may, by written notice to the Contractor, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Authority making any determinations with respect to the performing of such Contract.

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In the event this Contract is canceled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

- B) **CONDITIONS AND CAUSES FOR TERMINATION:** This Contract may be terminated at any time by mutual written consent, or by the Authority, with or without cause, upon giving thirty (30) days written notice to Contractor. The Authority, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the Authority shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the Authority before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the Authority after costs are claimed and allowed. The Contractor shall submit detailed cost claims in an acceptable manner and shall permit the Authority to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

The Authority reserves the right to cancel the whole or any part of this Contract due to failure of Contractor to carry out any term, promise, or condition of the Contract. The Authority will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

In the opinion of the Authority, Contractor provides personnel who do not meet the requirements of the Contract;

In the opinion of the Authority, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

In the opinion of the Authority, Contractor attempts to impose on the Authority personnel or materials, products or workmanship that is of an unacceptable quality;

Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

In the opinion of the Authority, Contractor fails to make progress in the performance of the requirements of the Contract and/or gives the Authority a positive indication that Contractor will not or cannot perform to the requirements of the Contract.

	<p style="text-align: center;">PART V – STANDARD TERMS AND CONDITIONS</p>
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- C) **CONTRACT CANCELLATION:** All parties acknowledge that this Contract is subject to cancellation by the Authority pursuant to the provisions of §38-511, Arizona Revised Statutes.

	PART VI – SUBMITTAL OF OFFER
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1. PROPOSAL FORMAT AND SUBMITTAL:

Each proposal must meet the following requirements:

- A) Each proposal must be submitted in a sealed envelope with the following information noted on the outside of the envelope:
 - 1) Proposer's Name
 - 2) Proposer's Address (as shown on the Certification Page)
 - 3) RFP Title
 - 4) Proposal Opening Date
- B) Proposals must be in the actual possession of the Authority at the designated location on, or prior to, the exact time and date indicated in the Schedule of Events. Late proposals will not be considered. The prevailing clock shall be the Authority's clock at the location designated for delivery of the proposal.
- C) One (1) hard copy original and six (6) hard copies.
- D) One (1) electronic copy on a compact disc in PDF format.
- E) Printed electronically or typewritten.
- F) Submitted in an 8½ x 11 inch loose-leaf, three-ring binder, preferably using double-sided copying and at least 30% post consumer content paper.
- G) Set forth in the following sequence:
 - 1) Your response to the Evaluation Criteria categories (Part III), in the order listed at that Part.
 - 2) Offer and Acceptance (include all of Part VI, Submittal of Offer).
 - 3) Any alternative terms, clearly separated and marked as such as an attachment to the submittal.
 - 4) Exceptions to the terms and conditions.
- H) The proposal shall be signed by an authorized representative of the Proposer authorized to bind the Proposer to a Contract.

	PART VI – SUBMITTAL OF OFFER
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- I) The proposal shall provide the name, title, address and telephone number of those individuals with the authority to Contractually bind the company and who may be contacted during the period of the Contract.
- J) All proposals must be on the forms and in the format set forth in the RFP package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals will not be considered.
- K) The Offer and Acceptance form, the Price Page and any solicitation amendments must be signed by a person authorized to bind the Proposer to a Contract and returned with the proposal.
- L) Erasures, interlineations, or other modifications of your proposal shall be initialed in original ink by the authorized person signing the proposal.
- M) In case of error in the extension of price in the proposal, unit price shall govern when applicable.
- N) Periods of time, stated as a number of days, shall be in calendar days.
- O) The Authority shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation. All materials and proposals submitted in response to this solicitation become the property of the Authority and will not be returned.
- P) Do not submit an entire copy of the RFP.

2. CERTIFICATION

By signature in the offer section of the Offer and Acceptance page in Part VI, Proposer certifies:

- A) The submission of the offer did not involve collusion or other anti-competitive practices.
- B) Proposer will not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- C) Proposer has not given, offered to give, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

	PART VI – SUBMITTAL OF OFFER
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- D) Proposer does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.
- E) Proposer is financially stable and solvent and has adequate cash reserves to meet all financial obligations while awaiting reimbursement from the Authority.

3. OFFER AND ACCEPTANCE PERIOD

In order to allow for an adequate evaluation, the Authority requires an offer in response to this solicitation to be valid and irrevocable for 120 days after the proposal due date and time.

4. OFFER AND ACCEPTANCE

TO THE AUTHORITY:

The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of this Request for Proposal and any written exceptions in the offer.

Arizona Sales Tax No. _____

Use Tax No. for Out-of State Suppliers _____

City of Phoenix Sales Tax No. _____

Proposer certifies that Proposer has read, understands, and will fully and faithfully comply with this Request for Proposal, any attachments and any referenced documents. Proposer also certifies that the prices offered were independently developed without consultation with any other Proposers or potential Proposers.

Authorized Signature

Date

Printed Name and Title

	PART VI – SUBMITTAL OF OFFER
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Proposer’s Contact Information:

Company Name _____

Address _____

City, State and Zip Code _____

Telephone Number _____

Company’s Fax Number _____

Company’s Toll Free # _____

E-mail Address _____

Website _____

Payment Address: (If different from above)

NOTE: Any assignment of proceeds must go through the Authority. Please also refer to the Assignment Provision, paragraph 5 (B) of Part V - Standard Terms and Conditions.

Name _____

Address _____

City, State and Zip Code _____

Payment Address: (If different from above)

Name _____

Address _____

City, State and Zip Code _____

	PART VI – SUBMITTAL OF OFFER
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ACCEPTANCE OF OFFER (For Authority Use Only)

The offer is hereby accepted.

The Contractor is now bound to sell materials or services listed by the attached Contract and based upon the Request for Proposal including all terms, conditions, specifications, amendments, and exhibits and the Contractor’s offer as accepted by the Authority.

This Contract shall henceforth be referred to as Agreement No. PSC-10-C0002. The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives a purchase order, or Contract documentation.

AWARDED this _____ day of _____, 2010.

THE INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF PHOENIX,
ARIZONA

By: _____
Its: _____

Executive Director

Approved as to form: _____

	PART VI – SUBMITTAL OF OFFER
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SOLICITATION RESPONSE CHECKLIST
(NOT NECESSARY TO RETURN CHECKLIST WITH OFFER)
(For Proposer's Use Only)

Check off each of the following as the necessary action is completed.

- 1. All forms have been signed. All of Part VI – Submittals and required attachments are included. All Contract terms have been read.
- 2. Narrative portion of the proposal follows the sequence set forth in Part III, Evaluation Requirements.
- 3. The prices offered have been reviewed. All blanks have been filled in. The pricing page is included with the proposal response.
- 4. The resume and other page limitations, if any, have been followed.
- 5. The insurance and bond and surety requirements, if any, have been reviewed to assure you are in compliance. Attach a Certificate of Insurance and other requested documents.
- 6. The specified number of copies of your offer has been included.
- 7. Any addenda have been signed and are included.
- 8. The mailing envelope has been addressed to:

Wendy Gutierrez
Administrator
The Industrial Development Authority
of the City of Phoenix, Arizona
251 W. Washington Street, 9th Floor
Phoenix, AZ 85003

	PART VI – SUBMITTAL OF OFFER
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The mailing envelope clearly shows:

Your company's name and address, the RFP Title, and the proposal opening date.

- 9. The response will be mailed in time to be received no later than 2:00 p.m. local Arizona time.

- 10. Request for Consideration of Alternate Terms, if needed, is included. See Part II, Instructions to Proposers, section 8. If requested, the request must be submitted with the proposal either as a separate section of the proposal or as a separate attachment and must be titled as "Request for Consideration of Alternate Terms."