

REQUEST FOR PROPOSAL

CITY OF TEMPE

REQUEST FOR PROPOSAL : 13-080

RFP ISSUE DATE: 12/28/2012

Commodity Code(s): 110-19

PROCUREMENT DESCRIPTION: Solar Photovoltaic Electric Generating Systems

PROPOSAL DUE Wednesday, February 6, 2013 at 3:00 P.M. Local Time

DATE/TIME:

Late proposals will not be considered.

PROPOSAL RESPONSE MUST BE DELIVERED TO CITY PROCUREMENT OFFICE.

Mailing Address: P.O. Box 5002, Tempe, AZ 85280

Street Address: 20 E. Sixth Street (2nd Floor), Tempe, AZ 85281

Mailing Alert: Firms should use the Street Address to ensure on-time express deliveries. The Mailing Address provided above routes through the City's internal mail distribution center and may impact delivery time.

PRE-PROPOSAL CONFERENCE Tuesday, January 15, 2013 at 9:00 a.m. at Tempe Transit Center, Don Cassano Community Room, 200 East 5th Street, Tempe, Arizona 85281. Participants may park in the City Parking Garage that is located directly across the street (south) of the Tempe Transit Center located on 5th Street just east of Mill Avenue.

DEADLINE FOR INQUIRIES: Tuesday, January 22, 2013 at 5:00 P.M. (Local Time)

Sealed proposals must be received and in the actual possession of the City Procurement Office on or before the exact Proposal Due Date/Time indicated above. Proposal responses will be opened and each Offeror's name will be publicly read. Prices are not read and shall be kept confidential until award. Late proposals will not be considered.

Proposals must be submitted by a sealed envelope/package with the Request for Proposal number, Offeror's name and address clearly indicated on the envelope/package. **It is critical that the RFP number be included on the front of the envelope to ensure proper handling.**

Proposals must be completed in ink or typewritten and a completed proposal response returned to the City Procurement Office by the Proposal Due Date/Time indicated above. The "Vendor's Offer" (Form 201-B RFP) must be completed and signed in ink. Proposals by electronic transmission, telegraph, mailgram or facsimile will not be considered.

Offerors are asked to immediately and carefully read the entire Request for Proposal and not later than ten (10) days before the Proposal Due Date/Time, address any questions or clarifications to the Procurement Officer identified below:

Michael Greene C.P.M. E-mail: michael_greene@tempe.gov Phone No: 480-350-8516

Procurement Officer

Award recommendations are publicly posted to the City Procurement Office web page www.tempe.gov/procurement and at the Procurement Office reception counter.

Submit one (1) original signed and completed proposal response for evaluation purposes. For this specific RFP, four (4) additional proposal response copies are also to be submitted for evaluation purposes. A late, unsigned and/or materially incomplete proposal response will be considered nonresponsive and rejected.

The City Procurement Office is committed to fair and equal procurement opportunities for all firms wishing to do business with the City and encourages the participation of small and disadvantaged businesses.

Michael Greene, C.P.M.
Central Services Administrator

Vendor's Offer

Form 201-B (RFP)

“Return this Section with your Response”

It is required that Offeror complete, sign and submit the original of this form to the City Procurement Office with the proposal response. An unsigned “Vendor’s Offer”, late proposal response and/or a materially incomplete response will be considered nonresponsive and rejected.

Offeror is to type or legibly write in ink all information required below.

| |
|---|
| Company Name: _____ |
| Company Mailing Address: _____ |
| City: _____ State: _____ Zip: _____ |
| Contact Person: _____ Title: _____ |
| Phone No.: _____ FAX: _____ E-mail: _____ |
| <u>Company Tax Information:</u> |
| Arizona Transaction Privilege (Sales) Tax No.: _____ or |
| Arizona Use Tax No.: _____ |
| Federal I.D. No.: _____ |
| City & State Where Sales Tax is Paid: _____, _____ |
| If a Tempe based firm, provide Tempe Transaction Privilege (Sales) Tax No.: _____ |

THIS PROPOSAL IS OFFERED BY

Name of Authorized Individual (TYPE OR PRINT IN INK) _____

Title of Authorized Individual (TYPE OR PRINT IN INK) _____

REQUIRED SIGNATURE OF AUTHORIZED OFFEROR (MUST SIGN IN INK)

By signing this Vendor’s Offer, Offeror acknowledges acceptance of all terms and conditions contained herein and that prices offered were independently developed without consultation with any other Offeror or potential Offeror. In accordance with A.R.S. 35-393, et seq., the Offeror hereby certifies that it does not have scrutinized business operations in Iran or Sudan. Failure to sign and return this form with proposal response will be considered nonresponsive and rejected.

Signature of Authorized Offeror

Date

(H:/RFP 3-2008)

INSTRUCTIONS TO PROPOSERS

Failure to follow these instructions shall result in rejection of proposal for non-responsiveness or cancellation of any Contract awarded.

1. **Preparation of Proposal:**
 - A. Proposals shall be submitted to the City of Tempe (“City”) in the sequence specified herein, on the forms attached hereto, including Vendor’s Offer, Form 201-B (RFP).
 - B. All proposals shall be submitted on the forms provided in this Request for Proposal, signed by an authorized signer and returned with the proposal response to the City.
 - C. Completed and signed proposal forms for offer, acceptance and any solicitation amendments shall be signed by an authorized individual. Such proposal constitutes an irrevocable Offer to sell the good and/or service specified herein. Offeror shall submit all additional data, documentation, or information as requested by the City, signifying its intent to be bound by the terms of the Request for Proposal.
 - D. Negligence in preparation of a proposal confers no right of withdrawal. Offeror is solely responsible for seeking clarification of any requirement and presenting accurate information in the proposal response. The City shall not reimburse any costs for a proposal, or its submission, presentation or withdrawal, for any reason.
 - E. Offeror shall identify each subcontractor to be utilized in the services and/or work set forth herein, in the proper form as indicated.
2. **Late, Unsigned and/or Incomplete Proposal:** A late, unsigned and/or materially incomplete proposal will be considered nonresponsive and rejected.
3. **Inquiries:** Questions regarding this Request for Proposal shall be directed to the City Procurement Officer identified on the cover page of this document, unless another City contact is specifically named. Inquiries shall be submitted in writing, identifying the appropriate Request for Proposal’s number, page and paragraph at issue. **PLEASE NOTE: Offeror must not place the Request for Proposal’s number on the outside of an envelope containing questions.** Oral responses provided by the City shall have no binding effect or legal effect. Inquiries should be submitted no later than ten (10) days before proposal due date/time. Those received within ten (10) days of the proposal due date/time shall not be considered. The City reserves the right to contact Offerors to obtain additional information for use in evaluating proposal and solicitation requirements.
4. **Proposal Conference:** If a proposal conference is scheduled, Offeror shall attend the conference to seek clarification of any points of confusion or requirements at issue.
5. **Withdrawal of Proposal:** At any time before the specified proposal due date and time, an Offeror may withdraw its proposal by way of written correspondence from the Offeror or its authorized representative.
6. **Proposal Addenda:** Receipt and acceptance of a Request for Proposal Addendum shall be acknowledged by signing and returning the document either with the vendor’s proposal response or by separate envelope prior to proposal due date/time. Failure to sign and return an addendum prior to the proposal due date/time may result in the proposal being considered nonresponsive to that portion of the Request for Proposal and may result in rejection.

7. **Evaluation:** The City shall determine whether a proposal meets the specifications and requirements of this Request for Proposal, at its sole discretion, and reject any proposals not meeting the intent or requirements set forth therein. The City reserves the right to reject any and all proposals.
8. **Payment:** For a single requirement purchase, the City will make an effort to remit payment within thirty (30) calendar days from receipt and approval of acceptable products, materials and/or services and approval of correct invoice. For ongoing term Contract purchases, the City will make an effort to remit payment within thirty (30) calendar days from approval of monthly statement.
9. **Discounts:** Payment discounts periods shall be computed from the date of receipt of acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed. Discounts shall be taken on the full amount of the invoice, unless otherwise indicated. The City shall be entitled to receive any discounts offered by Offeror, if payment is made within the discount period.
10. **Compliance with City Solicitation Requirements:** Unless stated otherwise in this Request for Proposal, the City reserves the right to award by individual line item, by group of items, or as a total at the City's discretion. The City expressly reserves the right to waive any immaterial defect or informality, or reject any or all proposals, or portions thereof, or reissue this Request for Proposal.
11. **Award of Contract:** A proposal shall constitute a binding Offer to Contract with the City based on the terms, conditions and specifications contained in this Request for Proposal. An Offeror shall become a Contractor only upon execution of a formal Contract from the City Procurement Office ("Contract"). Unless this Request for Proposal includes separate contract document(s) or requires the Offeror to submit a contract for review, a contract shall be formed when the City Procurement Office provides a written notice of award or a purchase order to the successful Offeror. All items and conditions of the Contract are contained herein, unless modified by an amendment approved by the City. Proposals that take exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the vendor's Offer to be considered non-responsive and rejected. Exceptions will be evaluated on an individual basis to determine compliance with the purpose and intent of the terms and conditions stated within this solicitation. The City shall be the sole judge as to whether an exception complies with the general purpose and intent of any term, condition and/or specification set forth herein.
12. **Taxes:** All materials, equipment and/or products shall be proposed as F.O.B. City, prepaid. Unless specified herein, sales, use or federal excise tax shall not be included in proposal pricing. The City is exempt from payment of federal excise tax. For proposal evaluation, transaction (sales) privilege tax paid (returned) to the City is considered a pass-through cost, calculated as zero (0) expense. For information on privilege (sales) tax, please contact the City's Tax and License Office at (480) 350-2955 or visit their web site at www.tempe.gov/salestax.
13. **Payment by City Procurement Card:** The City Procurement Office may elect to remit payment through the use of a City procurement card. Each Offeror may indicate on the Price Sheet of this Request for Proposal its ability to accept City procurement card payments. The inability to accept payment by City procurement card will not disqualify a proposal.
14. **Proposal Results:** Offerors may attend the scheduled proposal opening at which the name of each Offeror will be publicly read. All other information contained in the proposals shall be kept confidential until contract is awarded. After award of contract, an appointment may be made with the City Procurement Officer to review proposal documents. Formal Contract award results shall be placed on the Procurement Office web page (www.tempe.gov/procurement) and posted at the front counter of the Procurement Office at the time the Contract award is approved by the City Council. Award recommendations may also be viewed via the City Clerk's web site normally up to five (5) days prior to the scheduled City Council meeting by visiting (<http://documents.tempe.gov/sirepub/web>).

15. **Protests:** Any actual or prospective Offeror who is aggrieved in conjunction with this Request for Proposal or award may protest the award to the City Procurement Office. A protest based upon alleged improprieties in this Request for Proposal that are apparent before the proposal opening shall be filed prior to the proposal due date/time. A protest concerning an award recommendation must be filed within ten (10) business days after the date of award. Up to five (5) days before award of a Contract, the City Procurement Office will post award recommendations on its web page (www.tempe.gov/procurement) and at the Procurement Office front counter for public review. A protest shall be in writing and include the protester's name, address and phone number, identification of the solicitation or Contract being protested, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents, and the form of relief requested. A protest is to be on the protester's company letterhead and signed by the protestor or its authorized representative.
16. **Compliance of Proposal Offeror/Contractor Forms:** Any documents or forms (including separate contract, maintenance agreement or training agreement intended by the Offeror to be utilized in any resulting Contract, must be submitted with proposal. Any documents inconsistent with or taking exception to the terms, conditions, specifications and/or other requirements stated within this Request for Proposal may cause the proposal to be considered as nonresponsive and rejected. No documents will be considered unless submitted with vendor's proposal Offer and approved by the City Procurement Office.
17. **Definitions:** For purposes of this Request for Proposal and resultant Contract, the following definitions apply:
- A. "City" means the municipal corporation of the City of Tempe, Arizona.
 - B. "Code Governance" means unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
 - C. "Contract" means the agreement for the procurement of goods, services, work, construction or concessions.
 - D. "Contractor" means an Offeror responding to a Request for Proposal who has been awarded a Contract with the City.
 - E. "Offer" means a written offer to furnish goods, services, work, materials, construction and/or concessions to the City, in conformity with the standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.
 - F. "Offeror" means a business, entity or person who submits an Offer in response to a competitive solicitation.
 - G. "Public Record" means proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award.
 - H. "Purchase Order" means a document issued by the City Procurement Office directing the Contractor to deliver goods, services, work, materials, construction and/or concessions to the City.
 - I. "Request for Proposal" means a competitive solicitation issued by the City for the procurement of goods, services, work, materials, construction and/or concessions.

18. **Responsiveness to Specifications:** Performance or feature requirements which are designated as mandatory or minimums are needed in order to satisfy an identified task or performance need. A description is given for each designated feature. This description shall be used to determine if the Offeror's proposed product(s) and/or service(s) is/are capable of performing the function(s) specified in the Request for Proposal.

It is recognized that more than one method may be used to accomplish the sought after task functionality. If Offeror has an alternate method of performing functional tasks, then Offeror shall list such method as an "alternate", and described in full detail within the Proposal. The City shall be the sole judge as to whether any alternate methodology will be accepted.

"Must", "shall", "will", "minimum", "required" and/or "mandatory" performance/feature statements must be met or exceeded by the Offeror. Should no Offeror be found totally responsive to all designated Request for Proposal requirements, the City at its option, may either award the Contract to the most responsive Offeror or cancel the Request for Proposal and issue another Request for Proposal for the need under revised specifications.

19. **Technical Questionnaire:** Offeror must complete the Technical Questionnaire portion of this Request for Proposal and provide any documentation required to support the answers to the Questionnaire. Questionnaire items, which are designated as mandatory, are needed to satisfy a required task or performance criteria. Items, which may be listed as desirable, are not required to be responsive to the Request for Proposal and will be relatively evaluated against other proposals in making a final award decision.

If supporting documentation is required, Offeror shall provide the documentation in the sequence set forth in the Request for Proposal and ensure all technical literature and/or narrative explanations fully address the specifics of the question. Vague or disorganized responses that do not allow sufficient information for evaluation purposes may result in rejection of a Proposal.

20. **Proposal Opening:** Proposals shall be opened at the time and place designated on the cover page of this Request for Proposals. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in its evaluation. Prices shall not be read. After Contract award, the proposals and the evaluation documentation shall be open for public inspection.

21. **Technical Proposal Opening:** Technical proposals (as received in step one of a two-step bidding process) shall be opened at the time and place designated on the cover page of this document. The name of each Offeror and the identity of the Request for Proposal for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this Request for Proposal shall be shown only to City personnel having a legitimate interest in the evaluation. Evaluation documentation to substantiate technical proposal selection(s) shall be open for public inspection.

22. **Proposal Evaluation and Award:** Award(s) shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the Request for Proposal. The City shall be the sole judge as to the acceptability of the products and/or services offered.

23. **Clarifications and Negotiations with Offerors and Revisions to Proposal:** Clarifications may be made with any submitting firm at any time during the evaluation phase of this procurement. Clarifications are not negotiations and may be utilized by the City to ensure thorough and complete understanding of, and responsiveness to, the solicitation requirements. Negotiations may be conducted with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of negotiations is to allow the City and the Offeror(s) to revise initial Offers through an exchange or series of exchanges. Should the City elect to call for final proposal revisions (best and final Offers), Offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiations and revision of proposals, and such revisions may be permitted after submissions and prior to award. In conducting clarifications and negotiations there shall be no disclosure of any information derived from proposals submitted by competing Offerors. The purposes of such negotiations shall include but not be limited to:
- A. Determine in greater detail such Offeror's qualifications;
 - B. Explore with the Offeror the scope and nature of the project, the Offeror's proposed method of performance, and the relative utility of alternate methods of approach;
 - C. Determine that the Offeror will make available the necessary personnel and facilities to perform within the required time; and
 - D. Agree upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.
24. **Code Governance:** Unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Request for Proposal.
25. **Public Record:** Proposals and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award. Material portions of the recommended Offer(s) as determined by the City may be posted to the City's web site up to five (5) days prior to the City Council meeting.

STANDARD TERMS & CONDITIONS

Please note that these Standard Terms & Conditions shall be fully complied with by Offeror. Failure to comply with these requirements may result in rejection of a proposal for non-responsiveness, or cancellation or termination of any awarded Contract.

1. **Applicable Law:** This Contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code as adopted in the State of Arizona, except as otherwise provided in this Request for Proposal and resultant Contract, and all statutes or ordinances pertaining specifically to the City. This Contract shall be governed by State of Arizona law and suits pertaining to this Contract may only be brought in courts located in Maricopa County, Arizona.
2. **Arizona Climate Action Compliance:** Offeror shall comply with all applicable standards, laws, rules, orders and regulations issued pursuant to A.R.S. §49-101, *et seq.*, including but not limited to, Arizona Executive Orders Nos. 2006-13 and 2005-02, with regard to reducing GHG emissions, increasing energy efficiency, conserving natural resources and developing renewable energy sources.
3. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of the Contract is contingent upon the availability of City, state and federal funds that are allocated or appropriated for payment obligations of the Contract. If funds are not allocated by the City or available for the continued use or purchase of services, work and/or materials set forth herein, the City may terminate the Contract. The City will use reasonable efforts to notify Contractor of such non-allocation affecting the obligations of the Contractor and/or City. The City shall not be penalized or adversely affected for exercise of its termination rights. Further, the City shall in no way be obligated or liable for additional payments or other damages as a result of such termination. No legal liability on the part of the City for any payment may arise for performance under this Contract.
4. **Certification:** By signing the "Vendor's Offer", form 201-B (RFP), the Offeror certifies:
 - A. The submission of the vendor's proposal Offer response did not involve collusion or other anti-competitive practices.
 - B. The City is an equal opportunity, affirmative action employer. Offeror hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, religion, color, national origin, ancestry, physical or mental disability, age, veteran status, marital status, sex, gender, sexual orientation or gender identification. Offeror agrees and covenants that it will comply in all respects with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, Arizona Executive Order No. 99-4, and all other applicable state and federal statutes governing equal opportunity.
 - C. Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer. Failure to sign the "Vendor's Offer" or signing it with a false statement shall void the submitted proposal and any resulting Contract. In addition, the Offeror may be barred from future proposal and bidding participation with the City and may be subject to such further actions as permitted by law.
 - D. The Offeror agrees to promote and offer to the City only those materials and/or services as stated and allowed by this Request for Proposal and resultant Contract award. Violation of this condition shall be grounds for Contract termination by the City.

- E. The Offeror expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. Offeror further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.
- F. Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
5. **Commencement of Work:** Contractor is cautioned not to commence any work or provide any materials or services under the Contract until and unless Contractor receives a purchase order, Notice to Proceed, or is otherwise directed in writing to do so, by the City.
6. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
7. **Conflict of Interest:** This Contract is subject to the cancellation provisions of A.R.S. § 38-511.
8. **Contract Formation:** This Contract shall consist of this Request for Proposal and the vendor's proposal Offer submitted, as may be found responsive and approved by the City. In the event of a conflict in language between the documents, the provisions of the City's Request for Proposal shall govern. The City's Request for Proposal shall govern in all other matters not otherwise specified by the Contract between the parties. All previous contracts between the Offeror and the City are not applicable to this Contract or other resultant contracts. Any contracted vendor documents that conflict with the language and requirements of the City's solicitation are not acceptable and void the Contract.
9. **Contract Modifications:** This Request for Proposal and resultant Contract may only be modified by a written contract modification issued by the City Procurement Office and counter-signed by the Contractor. Contractors are not authorized to modify any portion of this solicitation or resulting Contract without the written approval of the City Procurement Office and issuance of an official modification notice.
10. **Contracts Administration:** Contractor must notify the designated Procurement Officer from the City's Procurement Office for guidance or direction of matters of Contract interpretation or problems regarding the terms, conditions or scope of this Contract. The Contract shall contain the entire agreement between the City and the Contractor and the Contract shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

11. **Cooperative Use of Contract:** Any Contract resulting from this solicitation shall be for the use of the City of Tempe. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tempe's Department of Procurement are eligible to participate in any subsequent Contract. Additionally, this Contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/SAVE/save-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter and/or rules and regulations of the respective political entity.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others. Contractor shall be responsible for correctly administering this Contract in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

12. **Dispute Resolution:** This Contract is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the Contractor agree to negotiate with each other in good faith to resolve any disputes arising out of the Contract. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred with said fees and costs to be included in any judgment rendered.

13. **Energy Efficient Products:** The City may consider energy conservation factors including costs in the evaluation of equipment and product purchases for the purpose of obtaining energy efficient products. In addition, vendor proposal Offers may specify items that have been given an energy efficient classification by the federal government for consideration by the City.

14. **Billing:** All invoices submitted by Contractor for the City's review and approval shall be in itemized form to identify the specific item(s) being billed. Items must be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the City shall refer to the Contract number resulting from this Request for Proposal. Separate invoices are required on individual contracts or purchase orders. Only invoices with items resulting from this Request for Proposal will be accepted for review and approval by the City.

15. **Estimated Quantities:** This Request for Proposal references quantities as a general indication of the City's needs. The City anticipates considerable activity resulting from Contracts that will be awarded as a result of this Request for Proposal; however, the quantities shown are estimates only and the City reserves the right to increase or decrease any quantities actually acquired, in its sole discretion. No commitment of any kind is made concerning quantities and Offeror hereby acknowledges and accepts same.

16. **Events of Default and Termination:**

A. The occurrence of any or more of the following events shall constitute a material breach of and default under the Contract. The City reserves the right to terminate the whole or any part of the Contract due to Contractor's failure to fully comply with any term or condition herein.

- i) Any failure by Contractor to pay funds or furnish materials, services and/or goods that fail to conform to any requirement of this Contract or provide personnel that do not meet Contract requirements;
- ii) Any failure by Contractor to observe, perform or undertake any provision, covenant or condition of this Contract to be observed or performed by Contractor herein, including but not limited to failing to submit any report required herein;

- iii) Any failure to make progress in the performance required pursuant to the Contract and/or gives the City reason to believe that Contractor cannot or will not perform to the requirements of the Contract; or,
- iv) Any failure of Contractor to commence construction, work or services within the time specified herein, and to diligently undertake Contractor's work to completion.

B. Upon and during the continuance of an event of default, the City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to Contractor, may do the following:

- i) Terminate the Contract;
- ii) Pursue and/or reserve any and all rights for claims to damages for breach or default of the Contract; and/or,
- iii) Recover any and all monies due from Contractor, including but not limited to, the detriment proximately caused by Contractor's failure to perform its obligations under the Contract, or which in the ordinary course would likely result there from, including, any and all costs and expenses incurred by the City in: (a) maintaining, repairing, altering and/or preserving the premises (if any) of the Project; (b) costs incurred in selecting and retaining substitute Contractor for the purchase of services, materials and/or work from another source; and/or (c) attorneys' fees and costs in pursuing any remedies under the Contract and/or arising there from.

C. The exercise of any one of the City's remedies as set forth herein shall not preclude subsequent or concurrent exercise of further or additional remedies. In addition, the City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, or pursuant to A.R.S. § 38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the Contractor.

D. Termination shall be commenced by delivery of written notice to Contractor by the City personally or by certified mail, return receipt requested. Upon notice of termination, Contractor shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. Contractor shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that Contractor could reasonably have avoided.

E. The City, in its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.

17. **Termination for Convenience:** The City at its sole discretion may terminate this Contract for convenience with thirty (30) days advance notice to Contractor. Contractor shall be reimbursed for all appropriate costs as provided for within the Contract up to the termination date specified.

18. **Force Majeure:**

- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract only in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- B. Force majeure shall not include the following occurrences:
- i) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
 - ii) Late performance by a subcontractor.
- C. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, 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 by hand delivery or certified mail 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 the results or effects of such delay prevent the delayed party from performing in accordance with the Contract.

19. **Gratuities:** The City may elect to terminate any resultant Contract, if it is found that gratuities in any form were offered or given by the Contractor or agent thereof, to any employee of the City or member of a City evaluation committee with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order. In event the Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of gratuity.

20. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Contract.

21. **Interpretation of Parole Evidence:** This Contract is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the Contract, unless the signing of a subsequent Contract is specifically called for in this Request for Proposal. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of the Contract, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

Contractor shall respond within five (5) calendar days after notice by the City of any defects and/or maintenance requests to immediately remedy the condition of the job site. Should the Contractor fail to respond promptly as set forth herein, the City shall correct the job site at the expense of the Contractor, and recover all attendant costs.

22. **Key Personnel:** Contractor shall provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract during the Contract term and any renewal periods. The Contractor must agree to assign specific individuals to the key positions.

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

B. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall replace each person with personnel of substantially equal ability and qualifications upon prior City approval.

23. **Licenses and Permits:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor, at its sole expense.

24. **No Assignment:** No right or interest in this Contract shall be assigned by Contractor and no delegation of any duty of Contractor shall be made without prior written permission of the City.

25. **Notices:** All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

City of Tempe Procurement Office
Attn: Procurement Officer
20 E. 6th Street (Second Floor)
PO Box 5002
Tempe, Arizona 85280

[Contractor's Name]
[Attn of Offeror Named in Contract]
[Address]

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder.

26. **No Waiver:** No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
27. **Overcharges by Antitrust Violations:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the City. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as the goods and/or services used fulfill the Contract.
28. **Performance Standards:** Equipment shall operate in accordance with the performance criteria specified in the Request for Proposal, including the manufacturer's published specifications applicable to the machine involved. Each machine is expected to be available for productive use, as provided in the procurement documents. Penalties and/or bonuses applicable to machine and system performance, if any, shall be calculated as specified in the Request for Proposal.
29. **Preparation of Specifications by Persons Other Than City Personnel:** No person preparing specifications for this Request for Proposal shall receive any direct or indirect benefit from the use of these specifications.
30. **Procurement of Recycled Materials:** If the price of recycled material that conforms to specifications is within five percent (5%) of the lower priced material that is not recycled and the recycled Offeror is otherwise the lowest responsive and responsible Offeror, the proposal containing recycled material shall be considered more advantageous; provided the item(s) to be obtained contains at least the minimum amount of recycled content material as defined in the City's solicitation and sufficient funds have been budgeted for the purchase.
31. **Provisions By Law:** Each and every provision of law and any clause required by law to be in this Contract will 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 will forthwith be physically amended to make such insertion or correction.
32. **Public Record:** After award of Contract, proposal responses shall be considered public record and open for public inspection except to the extent the withholding of information is permitted or required by law. If an Offeror believes a specific section of its proposal response is confidential, the Offeror shall mark the page(s) confidential and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Offeror shall include a written statement as to the basis for considering the marked pages confidential and the City Procurement Office will review the material and make a determination, pursuant to A.R.S. §§ 39-121, *et seq.*, and 41-1330, *et seq.* A general statement of confidentiality (boiler plate statement) that is not appropriately referenced to a specific section of the RFP will not be sufficient to warrant protection by the City. The confidential portion of the submission must be clearly noted with accompanying justification for treating the section confidential. Failure of the vendor to appropriately designate confidential information in this manner will relieve the City of any obligation to protect this information as confidential.
33. **Records:** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §§ 35-214 and 36-215, Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the City Attorney or City Procurement Office.

34. **Relationship of Parties:** It is clearly understood that each party to this Contract will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other party. The Contractor is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Offeror. An employee or agent of one party shall not be an employee or agent of the other party for any purpose whatsoever.
35. **Rights and Remedies:** No provisions of this Request for Proposal or in the proposal shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of the City to insist upon strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, shall not release the Contractor from any responsibilities or obligations imposed by the Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
36. **Safety Standards:** All items supplied on this Contract must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.
37. **Serial Numbers:** Proposals shall include equipment on which the original manufacturer's serial number has not been altered in any way. The City reserves the right to reject any and all equipment.
38. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
39. **Specially Designated Nationals and Blocked Persons List:** Contractor represents and warrants to the City that neither Contractor nor any affiliate or representative of Contractor:
- A. Is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed. Reg. 49079 (“Order”);
 - B. Is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s);
 - C. Is engaged in activities prohibited in the Order; or,
 - D. Has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.
40. **Time of the Essence:** Time is and shall be of the essence in this Contract. If the delivery date(s) specified herein cannot be met, Contractor shall notify the City using an acknowledgment of receipt of order and intent to perform without delay, for instruction. The City reserves the right to terminate this Contract and to hold Contractor liable for any cost of cover, excess cost(s) or damage(s) incurred as a result of delay.

41. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. All Offerors, Contractors and subcontractors shall honor this requirement at all times and failure to honor this requirement shall result in Contract termination and additional penalties. This requirement also applies to any and all persons, including those who maintain a concealed weapons permit. In addition to Contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.
42. **Warranties:** Contractor expressly warrants that all materials and/or goods delivered under the Contract shall conform to the specifications of this Contract, and be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. Contractor expressly warrants the following:
- A. All workmanship shall be finest and first-class;
 - B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and,
 - C. All services will be performed in a good and workmanlike manner. Contractor's warranties shall survive inspection, acceptance and/or payment by the City, and shall run to the City, its successors, agents and assigns.

The Contractor agrees to make good by replacement and/or repair, at its sole expense and at no cost to the City, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should Contractor fail to perform said replacement and/or repair to City's satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from Contractor. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedies.

43. **Work for Hire and Ownership of Deliverables:** Contractor hereby agrees and covenants that all the results and proceeds of Contractor's work and/or services for the Project specified herein, for Contractor and all of its agents, employees, officers and subcontractors, shall be owned by the City, including the copyright thereto, as work for hire. In the event, for any reason such results and proceeds are not deemed work for hire, Contractor agrees and covenants that it shall be deemed to have assigned to the City all of its right, title and interests in such results, proceeds and content to the City, without limitation. Contractor agrees to indemnify and hold the City harmless from and against all claims, liability, losses, damages and expenses, including without limitation, legal fees and costs, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, with respect to any work, services and/or materials contemplated in this Contract. Contractor agrees to pay to defend any and all such actions brought against the City. Contractor's obligations hereunder shall survive acceptance by the City of all covenants herein as well as the term of the Contract itself.
44. **Non-exclusive Contract:** Any Contract resulting from this Request for Proposal shall be awarded with the understanding and agreement that it is non-exclusive and entered into for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source to secure cost savings or if timely delivery may be met by the Contractor
45. **Ordering Process:** Upon award of a Contract by the City Procurement Office, the City may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate Contractor. Each purchase order must cite the correct Contract number. Such purchase order is required for the City to order and the Contractor to deliver the material and/or service.

46. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection. Shipments under reservation are prohibited. No tender of a bill of lading shall operate as a tender of the materials.
47. **Delegated Awards:** In the event this Contract is administratively awarded via delegated authority as provided for in Section 26A-5 of the Procurement Ordinance, the Contractor acknowledges that a final Contract with the City of Tempe requires City Council approval and possibly the signature of the Mayor. Should this Contract be rejected by the City Council, Contractor agrees that it is immediately void and unenforceable against any party. The awarded firm(s) will be compensated only for any and all costs incurred up to the date of notification of such termination.

Special Terms and Conditions

Proposals taking exception to Special Terms & Conditions stated within this Request for Proposal may cause the Proposal to be considered nonresponsive and rejected.

1. **City Procurement Document:** This Request for Proposal is issued by the City. No alteration of any portion of this Request for Proposal by an Offeror is permitted and any attempt to do so shall result in vendor's proposal Offer being considered nonresponsive, and rejected. No alteration of any portion of a resultant Contract is permitted without the written approval of the City Procurement Office and any attempt to do so shall be considered a breach of the Contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, Contract termination and/or suspension of the Contractor.
2. **Offer Acceptance Period:** To allow for an adequate evaluation, the City requires the vendor's proposal Offer in response to this Request for Proposal to be valid and irrevocable for 120 days after the proposal due time and date.
3. **Term of Contract:** The term of the Contract shall commence on the date of award and shall continue for a period of two (2) years thereafter, unless terminated, canceled or extended as otherwise provided herein. The term of contract and contract renewal period referred to herein applies to the short list of qualified firms that will be awarded as part of this RFP process. Any actual Solar Service Agreement (SSA) awarded for a particular site or sites will be subject to the term negotiated that may be up to 25 years in total length.
4. **Contract Renewal:** The City reserves the right to unilaterally extend the period of any resultant Contract for ninety (90) days beyond the stated term. In addition, the City at its option may renew for supplemental terms of up to a maximum of three (3) additional years. The period for any single renewal increment shall be determined by the City Procurement Office. Such increment shall not be for more than a period of one (1) year each, unless the City is eligible to obtain a significant cost and/or supply advantage by a longer Contract renewal period.
5. **Multiple Awards:** The City has a large number and variety of potential customer departments. In order to assure that any ensuing Contracts will allow the City to fulfill current and future requirements, the City reserves the right to award Contracts to multiple companies. The actual utilization of any Contract will be at the sole discretion of the City. The fact that the City may make multiple awards should be taken into consideration by each Offeror.
6. **Current Products:** All Offers made in response to this Request for Proposal shall be in current and ongoing production shall have been formally announced for general marketing purposes shall be a model or type currently functioning in user environments and shall meet or exceed all specifications and requirements set forth in this solicitation. Enhancements to established products need not necessarily comply with this clause, and will be reviewed on individual merits.
7. **Product Discontinuance:** The City may award Contracts for particular products and/or models of equipment as a result of this solicitation. In the event that a product or model is discontinued by the manufacturer, the City at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request permission by the City to substitute a new product or model and provide all of the following:
 - A. A formal announcement from the manufacturer that the product or model has been discontinued;
 - B. Documentation from the manufacturer that names the replacement product or model;
 - C. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation;
 - D. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model; and

- E. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.
8. **Local Maintenance:** In order to ensure that the provisions necessary maintenance support required for the equipment specified in the Request for Proposal, Offeror must have local maintenance facilities and/or have specific agreements in force with a third party to provide local maintenance. Each maintenance facility must be staffed by trained technicians and have a sufficient parts inventory in order to provide quality service on the equipment. The City Procurement Office may inspect the maintenance facilities to determine adequacy of the inventory.
9. **Maintenance Service:** Contractor covenants and agrees to maintain the equipment set forth in the Request for Proposal, or alternatively, warrants that the equipment manufacturer will maintain the equipment acquired under the Contract in good working order and in accordance with the manufacturer's official published specifications and any other specifications set forth herein. Additional terms and conditions applicable to maintenance of the equipment may be specified in a separate maintenance agreement between the City and the Contractor or equipment manufacturer. In no event shall the provisions of such separate agreement supersede the provisions of the Contract.
10. **Installation and Acceptance:**
- A. **Installation Date:** The Contractor shall install equipment ready for use on or before the installation date specified in the applicable schedule, provided that an equivalent extension shall be given for any delay caused by the City.
- B. **Site Preparation:** The City shall have the site available and prepared in a timely manner in accordance with Contractor published specifications. The Contractor shall be given access to the site for installation and testing purposes.
- C. **Site Inspection:** Prior to the installation date, Contractor shall inspect the site and shall report to the City in writing the dates of such inspections, any rejections and the reasons therefore, and the final acceptance thereof. Such final site acceptance shall include a written representation to the City by the Contractor that the site meets the Contractor's and/or equipment manufacturer's site specifications for the efficient and safe operation of the equipment.
- D. **Acceptance Testing:** At such time as Contractor has completed installation and is satisfied that the equipment is operating successfully and meets minimum design capabilities, the City shall be so notified. The City may accept or reject any portion or all of the equipment.
- E. **Acceptance:** At the conclusion of the acceptance testing period, the City's acceptance may be conclusively presumed if a written rejection specifying the reasons therefore is not delivered to Contractor within ten (10) business days following the end of the acceptance testing period.
11. **Contractor's Risk:** Contractor agrees to bear all risk of loss, injury, or destruction of materials (equipment/products) ordered as a result of this Request for Proposal which occur prior to delivery to the City; and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.
12. **Insurance:**
- A. **Insurance Required:** Prior to commencing services under this Contract, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors. For Offerors with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of Contract.

A Contract Award Notice or Purchase Order will not be issued to a Vendor until receipt of all required insurance documents by the City Procurement Office with such documents meeting all requirements herein. In addition, before any Contract renewal, all required insurance must be in force and on file with the City Procurement Office. Contractor must submit required insurance within ten (10) calendar days after request by the City Procurement Office or the award may be rescinded and another Vendor selected for award.

B. Minimum Limits of Coverage: Without limiting any obligations or liabilities, the Contractor, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

i. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

a. Commercial General Liability

Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Contract or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as insurance service officer policy form CG2010 11/85 edition or any replacement thereof.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

Such policy shall contain a "severability of interests" provision.

b. Worker's Compensation

The Contractor shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

In case services are subcontracted, the Contractor will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by Contractor.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

- C. Additional Insured. The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Contractor shall be primary insurance. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).
 - D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Contract.
 - E. Primary Coverage. Contractor's insurance shall be primary insurance to the City, and any insurance or self insurance maintained by the City shall not contribute to it.
 - F. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
 - G. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Contractor.
 - H. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self insured retentions shall be disclosed by the contractor and shall not be applicable with respect to the coverage provided to the City under such policies. Contractor shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
 - I. Certificates of Insurance. Prior to commencing work or services under this Contract, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
 - J. Copies of Policies. The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
13. **Builder's Risk (Property) Insurance**. The Contractor shall purchase and maintain, on a replacement cost basis, builders' risk insurance in the amount of the initial Contract amount as well as subsequent modifications thereto for the entire work at the site. Such builders' risk insurance shall be maintained until final payment has been made or until no person or entity other than the City has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of the City, the Contractor and all subcontractors and sub-subcontractors in the work during the life of the Contract and course of construction and shall continue until the work is completed and accepted by the City. For new construction projects, the Contractor agrees to assume full responsibility for loss or damage to the work being performed and to the buildings under construction. For renovation construction projects, the Contractor agrees to assume responsibility for loss or damage to the work being performed at least up to the full Contract amount, unless otherwise required by the Contract documents or amendments thereto.

Builders' risk insurance shall be on an all-risk policy form and shall also cover false work and temporary buildings and shall insure against risks of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor's service and expenses required as a result of such insured loss and other "soft costs" as required by the Contract.

Builders' risk insurance must provide coverage from the time any covered property becomes Contractor's control and/or responsibility, and continue without interruption during construction, renovation and/or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof are occupied. Builders' risk insurance shall be primary and not contributory.

If the Contract requires testing of equipment or other similar operations, at the option of the City, the Contractor will be responsible for providing proper insurance for these exposures under a boiler machinery insurance policy.

Required coverage's may be modified by an amendment by the City to the Contract documents.

14. **Professional Liability:** The Contractor shall maintain professional liability insurance covering errors and omissions arising out of the services performed by the Contractor and/or any person(s) employed by it, with an unimpaired limit of not less than \$1,000,000 each claim and \$1,000,000 all claims. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of services as evidenced by annual certificates of insurance provided by Contractor to the City. In addition, Contractor shall maintain property coverage on an all-risk, replacement cost basis in an amount established by the City with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the Contractor used in the completion of this Contract.
15. **Job Site Requirements and Clean-Up:** Contractor agrees and covenants to adequately protect the work site, adjacent property and the public in all phases of the work and/or services provided herein. Contractor shall be solely responsible for all damages or injuries due to action or neglect pursuant to this section. Contractor shall maintain access to all phases of the Project pending inspection by the City or its agent. Contractor hereby agrees to the following as to the job site:
 - A. Continually keep the job site free from debris, waste and accumulation of materials;
 - B. Immediately clean up any oil, fuel or chemical spills and take any and all remediation necessary;
 - C. Keep machinery clean and free of weeds and debris;
 - D. Remove all construction stains, smears and debris from finished surfaces;
 - E. Perform site preparation to limit the spread of weeds, debris and other nuisances prior to submission of final invoice to the City; and,
 - D. Remove all equipment, materials, tools and Contractor's personal property prior to submission of final invoice to the City.
17. **Conduct and Dress Code:** The Contractor's employees shall maintain proper conduct at all times while on City property. Employees shall respect other personnel at the work site. Abusive language, ethnic and racial slurs, sexual comments and jokes, shouting, and gestures toward other personnel will not be tolerated. Any occurrence will result in immediate action with possible dismissal of that employee.

Employees will be neatly dressed with badges or uniforms that identify them as employees of the Contractor.

18. **Safety, Health and Sanitation:** The Contractor shall provide and maintain in a neat, sanitary condition such facility accommodations for the use by their employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code.

The Contractor shall be fully responsible for the safety of their employees, the public and property in connection with the performance of the work covered by this Contract. The Contractor shall provide all safeguards, safety devices and protective equipment and be responsible for taking any needed actions to protect the life and health of their employees and the public during work activity. The Contractor shall also take any necessary actions as directed by the City of Tempe Project Manager to reasonably protect the life and health of employees on this job and others coming into contact with the job site.

Precaution shall be exercised by the Contractor at all times for the protection of persons (including employees) and property. The Contractor shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State Occupational Safety and Health Acts, and Standards and Regulations promulgated there under.

19. **Protection and Restoration of Property and Landscape:** The Contractor shall be responsible for all damage or injury to public or private property of any character, during the prosecution of the work resulting from any act, omission, neglect, or misconduct in its manner or method of executing the work or at any time due to defective work or materials. The Contractor's responsibility will not be released until the project has been completed and accepted.

If damage is caused by the Contractor, the Contractor shall restore at no cost to the City of Tempe, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring as may be directed, or they shall make good such damage or injury in an acceptable manner. Further payments will be withheld until the City of Tempe has inspected the corrected damage or injury and has signed-off the completion and acceptance.

Contractor shall not dump spoils or waste material on private or private public property without first obtaining from the owner written permission for such dumping.

20. **Responsibility for Work:** The Contractor shall properly guard, protect, and take every reasonable precaution necessary against damage or injury to all finished or partially finished work due to weathering action by the elements or from any other cause, until the entire portion of their respective Contract obligation is completed and accepted by the City of Tempe. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work before final acceptance at no cost to the City of Tempe. Partial payment for any completed portion of work shall not release the Contractor from such responsibility.

21. **Employees of the Contractor:** No one except authorized employees of the Contractor is allowed on the premises of the City of Tempe. Contractor employees are NOT to be accompanied in their work area by acquaintances, family members, assistants, or any other person unless said person is an authorized employee of the Contractor. Failure of Contractor to meet this requirement will result in permanent removal of employee performing work at the City of Tempe sites. The Contractor must, however, furnish the City a current employee register on the issuance of this Contract and updated every six (6) months thereafter. This register must contain the Name, Social Security Number, Phone Number, and Address.

22. **Sub-Contractor(s):** The City reserves the right to approve all sub-contractors. Contractor is responsible for all actions of sub-contractors. Contractor shall name sub-contractors as additionally insured, in addition to the City of Tempe on all required insurance documents.

23. **Manual Traffic Directors:** If your department is in need of manual traffic directors, it is imperative that such training be made available. Otherwise, the only other approved means for directing traffic is by using a uniformed police officer, preferably one who is off-duty and has been scheduled to accompany your work. Some examples where manual traffic directors will be required are as follows:

- (a) To assist in getting construction equipment in and out of a job site adjacent to the traveled portion of the roadway.
- (b) To direct traffic during a water main break, a hazardous waste spill, or any other emergency.
- (c) May be used in place of police officers that are mandatory whenever manual control of traffic is necessary and such control cannot be done by flaggers from the edge of the roadway.

24. **Traffic Operations on Roadways/Thoroughfares:** Any and all work carried out on adjacent roadways and thoroughfares will use the appropriate traffic barricading as set forth in the City of Phoenix TRAFFIC BARRICADE MANUAL published by the Street Transportation Department as adopted by the City of Tempe. Any and all pruning operations must comply with the safety standards set forth in ANSI 133. 1. All traffic control and lane closures shall be presented as a written plan to City of Tempe Traffic Engineering (480-350-8219) of the Transportation Division.

Short term operations are allowed under Chapter 9 of the City of Phoenix Traffic Barricade Manual; however, the City of Tempe has revised this policy to allow for short duration work up to thirty (30) minutes.

Non-compliance of any safety or related items within this Contract will result in a deficiency of performance deduction of a minimum of \$100 from the City payment made to the Contractor.

25. **Black Out Provision**

No Proposer, including anyone directly or indirectly on behalf of such Proposer, shall attempt to influence any part of the process. From the time the RFP is issued until the City Council makes the Contract Award (the "Black-Out Period"), Proposers directly or indirectly through others, are restricted from attempting to influence in any manner the decision making process through, including, but not limited to, the use of paid media; contacting or lobbying the City Council or City Manager or any other City employee; contacting reporters; contacting RFP evaluators; submitting letters, e-mail messages or other similar forms of communications to the editor of newspapers and other media for publication or ghostwriting or otherwise requesting others to submit such letters, e-mail messages or other similar forms of communication; answering questions regarding the RFP or their Proposals during the "Black-Out Period" or in any other way which could be construed to influence any part of the decision making process about this RFP.

Violation of this provision will cause the Proposal of the Proposer found in violation to be rejected.

Scope of Work

1. PURPOSE

- A. The purpose of this Request for Proposal (RFP) is to enter into a long-term contract and secure pricing with a qualified firm(s) to provide privately-owned solar photovoltaic (PV) energy systems at designated sites and sell the electricity output to the City.
- B. The City’s intent is to enter into solar services agreements (SSA) for a term of up to, but not limited to, twenty (20) years for those sites determined economically feasible. The City intends to award to a qualified solar energy photovoltaic system provider (“Contractor”) that will privately finance, develop, design, construct, own, operate and maintain the solar PV systems and sell electrical output to the City on a cents/kWh basis for the length of the agreement. The awarded firm(s) will be responsible for providing all necessary materials, labor, equipment, materials, financing, travel and incidentals to develop fully functioning solar powered systems.
- C. Each site is to be leased to the awarded firm pursuant to a site lease agreement. All electric power generated by the systems will be sold to the City for use at each respective site to effectively generate electricity at a cost lower than currently available through current traditional electrical providers now and into the future. The systems will be appropriately sized to avoid excess generation and will be delivered on a net metering basis.
- D. The City has included information on a number of available site locations. Firms may submit analysis on any or all of these locations. Multiple firms may be awarded as part of this RFP and those firms awarded will be eligible to participate on additional PV system locations (whether or not specially referenced herein) throughout the potential five-year term of resultant contract. The City reserves the right to award any site or combination of sites at its sole discretion.

2. GENERAL INFORMATION

- A. The City of Tempe is located in the center of the Phoenix metropolitan area. Bordered by Phoenix to the West, Mesa to the East, Scottsdale to the North and Chandler to the South, Tempe is the most densely populated large city in the state of Arizona and is home to Arizona State University. Tempe has a population of 161,719 people within a 40 square-mile area that is connected to four major freeways. City facilities are provided power by Arizona Public Service (APS) and Salt River Project (SRP).
- B. To date, the City has a limited number of completed solar PV systems. In order to increase its renewable energy profile as well as capitalize on more efficient and cost effective power generation, the City has identified a number of sites for solar power consideration. At its sole discretion, the City will award only those sites that are economically feasible through available renewable energy credits, rebates and incentives.

| <u>Site Name</u> | <u>Site Address</u> | <u>Annual Electric Consumption (kWh)</u> | <u>Utility Provider</u> |
|--|---------------------------------|--|-------------------------|
| Johnny G. Martinez Water Treatment Plant | 255 East Marigold Lane | 5,472,312 | SRP |
| South Water Treatment Plant | 6600 South Price Road | 10,667,767 | SRP |
| Kiwanis Recreation Center | 6300 South All America Way | 1,665,000 | SRP |
| Tempe Library Complex | 3300 South Rural Road | 2,617,195 | SRP |
| Tempe Center for the Arts | 700 West Rio Salado Parkway | 2,309,600 | APS |
| City Hall | 31 East 5 th Street | 728,400 | APS |
| Police Courts Parking Structure | 115 East 5 th Street | 3,492,300 | APS |

- C. Pricing Plan worksheets have been included as Exhibit A and will be completed on a per site basis.
- D. Historical electrical usage for the identified sites is provided as Exhibit B.
- E. Site plans/construction documents have been included as Exhibit C (to be published via addendum).
- F. Aerial site photographs have been included as Exhibit D (to be published via addendum).
- G. A Pre-Proposal Conference will be conducted on January 15, 2013 at 9:00 A.M. at the Tempe Transit Center, Don Cassano Community Room, 200 East Fifth Street, Tempe, Arizona 85281 where the entire RFP will be reviewed and discussed. Participants may park at the City Garage that is located just across the street from the Transit Center (south side of 5th street). The City can validate parking. The City is finalizing a site visit schedule (with the exception of the two sites near downtown complex) and will publish it via addendum. The pre-proposal conference is not mandatory but attendance is highly encouraged. Site visits are mandatory and must be completed in order to be qualified to submit a proposal response. Due to the secured nature of a number of the locations, attendance at these scheduled visits is critically important. Prior background clearances for personnel visiting the water treatment facilities may be required.

Site Visit Schedule:

| <u>Site Name</u> | <u>Site Address</u> | <u>Date and Time of Visit</u> |
|--|-----------------------------|---|
| Johnny G. Martinez Water Treatment Plant | 255 East Marigold Lane | To be determined via addendum |
| South Water Treatment Plant | 6600 South Price road | To be determined via addendum |
| Kiwanis Recreation Center | 6300 South All America Way | To be determined via addendum |
| Tempe Library Complex | 3300 South Rural Road | To be determined via addendum |
| Tempe Center for the Arts | 700 West Rio Salado Parkway | To be determined via addendum |
| City Hall | 31 East 5th Street | January 15, 2013 – after conclusion of Pre-Proposal Meeting |
| Police Courts Parking Structure | 115 East 5th Street | January 15, 2013 – after conclusion of Pre-Proposal Meeting |

3. PROJECT REQUIREMENTS

- A. The proposal must provide for a complete ‘turnkey’ solar energy system including private ownership, engineering, procurement, installation, financing, operation and maintenance, utility coordination and interconnect agreement, including all labor and materials and any temporary or interim facilities required to maintain essential existing functions throughout the commercial operational period. The system provider will receive all federal and state tax credits and utility incentives and is expected to factor those rebates into the proposal.
- B. Renewable Energy Certificates (REC’s) will be handled as follows: For APS sites, the REC’s will be retained by the City and then transferred to APS. In the event the City is not awarded any PBI’s from APS, the City may negotiate a transfer of these credits to the Contractor in order to realize a lower cost per kWh. For SRP sites, the REC’s will be assigned to the Contractor who will then transfer them to SRP in order to qualify for any approved PBI’s.
- C. Although the installed PV energy system will be privately owned, it must comply with Arizona and local utility company metering and interconnection standards and construction guidelines, and must be suitable for allowing maximum output sales to the City over the contract term.

- D. Each firm is responsible for evaluating relevant site conditions, cost/benefit analyses, financing models, renewable energy incentives and appropriate system size. Contractor will be required to design and install a system that fully meets the known electric load (including peak demands) generated at the site over the contract term. Failure of the system to generate the guaranteed kWh will result in the Contractor reimbursing the City for any differences in guaranteed and actual kWh production.
- E. A professional structural engineer, registered in the state of Arizona, must provide sealed structural plans and calculations for proposed roof mounted and ground mounted installations relative to the applicable live and dead loads in accordance with the Tempe Building Code.
- F. A professional electrical engineer, registered in the State of Arizona, must provide sealed electrical plans and specifications.
- G. The Contractor shall be fully responsible for all aspects of the design, construction, operations and maintenance of the PV systems in accordance with this RFP, firm's technical proposal, requirements of all applicable construction and safety codes, laws, City design standards and bonding requirements as required for construction work. Maintenance costs shall include all costs associated with the performance of the contract including ongoing inspection, maintenance, panel replacement costs resulting from damage, vandalism, theft, and routine inverter replacement costs. Failure of Contractor to comply with the agreed to operations and maintenance plan may result in a breach of contract determination that will allow the City to terminate the contract for cause.
- H. Any PV system repairs necessary as part of a rooftop installation must be performed by the original roofing contractor (if still under warranty) and coordinated with the City representative.
- I. The Contractor shall secure from governing agencies and the utility company all required rights, permits, approvals, and interconnection agreements at no additional cost to the City. A link to the fee schedule is shown below: <http://www.tempe.gov/modules/showdocument.aspx?documentid=9126>
- J. The Contractor shall complete and submit in a timely manner all documentation required to qualify each system for available rebates and incentives.
- K. The Contractor shall supply and install all equipment required to interconnect the solar photovoltaic systems to the City's distribution system. The firm shall fulfill all application, study, and testing procedures to complete the interconnection process. All costs associated with utility interconnection shall be borne by the Contractor.
- L. The Contractor shall complete a video/photo inventory of the selected facilities within the project limits and provide a copy of the video to the City prior to the start of construction. The Contractor shall restore all materials and facilities in "like kind" and will be responsible for repairing any damage to facilities that are within the project limits or were disturbed or damaged as a result of the contractor's work.
- M. Any and all required permits, easements and associated costs for this project are to be included in the project scope and are the responsibility of the Contractor.
- N. Contractor shall be responsible for all costs involved in the development and implementation of a comprehensive monitoring system that will track technical and financial information for each PV system installed. The monitoring system shall be a web based system that is non-proprietary, commercially available, capable of being used with PV system equipment from various manufactures and tracks technical and financial information of one or more systems. The monitoring system shall have the following features:
 - 1) System shall be available to the City online, 24/7 for the life of the SSA;
 - 2) Provides accurate information at the module-level, string-level and system-level regarding PV performance monitoring, fault detection and troubleshooting, maintenance management, site profitability, and provides logical and physical PV site visualization;
 - 3) Provides near real time data, as well as historical and aggregated data, and comparative analysis;

- 4) Automatically detects problems and issues status reports and alert via e-mails to the Contractor and City;
 - 5) All data is logged and can be securely reviewed and analyzed at any time from any location using a personal/portable computer or a mobile handheld device and the data can be downloaded to the City in Excel format;
 - 6) Tracks energy production, energy usage, PV input voltage and current, solar cell temperature, irradiance, weather conditions and system warnings or faults on a daily, weekly, monthly, yearly, lifetime and date range basis;
 - 7) Provides information on system energy savings to the City in terms of one or more of the following: Cost, CO2 off-set, equivalent power savings per home or similar comparison;
 - 8) Monitoring data shall be displayed graphically using visual meters, graphs, bar charts, or other similar displays;
 - 9) The monitoring system data shall be available for display on the City's website.
- O. The City will be eligible to purchase the system at any time after the system has been in place for a minimum of six (6) years based on the buy-back schedule provided as determined at the end of year 6, 10, 15 and 20 year milestone dates. If purchased at any other period, the parties will agree on a purchase price based on the system's fair market value. If the City elects not to purchase the system at the end of the contract term, the Contractor shall be responsible for any and all costs to disassemble and remove the PV system apparatus and return the site to the original condition. The City also reserves the right to negotiate an extension of the SSA.
- P. All components of the PV systems shall be approved, listed, and labeled by an acceptable third party and meet the requirements of the Tempe Building Code and the Tempe Electrical Code.
- Q. Commissioning and acceptance testing by the Contractor will be required before acceptance of the PV system by the Utility and the City of Tempe. During this testing, the Utility and the City (or its independent agent) shall observe and verify system performance. Before the Contractor can sell electricity to the City, the project must be fully tested and commissioned to ensure reliability and comply with established commercial practices. The Commercial Operation Date is defined as the date after which all testing and commissioning has been completed and is the initiation date to which the Contractor can start producing electricity for sale. Required commissioning and acceptance test services include:
- 1) Starting up of all components of the solar PV systems including the solar panel, inverter, and interconnect equipment until it achieves the performance requirements;
 - 2) Conducting the successful delivery of power for seven (7) consecutive days within the first thirty (30) days following completion of a system;
 - 3) The solar power monitoring system shall also be fully operational during the entire seven (7) day power delivery period;
 - 4) Orientation on how the solar PV system will be disconnected in the event of emergency;
 - 5) All necessary training and coordination with utility and City staff shall be provided;
 - 6) The Contractor shall provide two (2) complete sets of the operations and maintenance manuals, and one set of as-built drawings in an electronic format required by the City Engineering Division.

PROPOSAL FORMAT

1. PROPOSAL FORMAT

One (1) original and four (4) copies of the proposal shall be submitted. One electronic copy of the complete proposal shall be included on a flash drive or CD Rom. The City will make no reimbursement for the cost of developing or presenting proposals in response to this RFP. In order to be considered, proposals are to be submitted in the same format (sequence) as outlined below, with each section tabbed and clearly identified.

Tab 1: Background Information

- A. Name of firm, year founded and brief history to include number of years operating in local Phoenix Metro market, total number of employees in the local office, and revenue growth (percent) over the past four years, etc.
- B. Describe the geographic reach of firm (Arizona, regional or national) to include the address of local office and regional office, if applicable;
- C. Primary individual to contact for clarification of offer to include phone, fax and e-mail;
- D. Number of years doing business in the solar industry and number of years performing similar SSA projects under the current corporate ownership;
- E. Provide the percentage of the firm's solar work that is residential-based versus government/commercial-based; Indicate the percentage of the firm's overall business that is derived from SSA work;
- F. Form of business organization (Corporation, Partnership, Individual, Joint Venture, other);
- G. Discuss any industry awards or association memberships that would demonstrate the firm's success and achievements in the solar industry;
- H. Provide the company's mission and vision statements;
- I. Briefly identify the City of Tempe sites that are being proposed for SSA's;

Tab 2: Proposed Project Team

- A. Provide a full description of the proposed team that will be responsible for executing all aspects of the project from design, construction, commissioning, financing, maintenance, monitoring, etc., for the project;
- B. The team will include key personnel from the primary contracting entity and any sub-contractors or consultants that will be utilized for any and all aspects of the work. Identify by name all of the key personnel including title, professional registration, address, telephone number, specific role/responsibility under the project and relevant experience;
- C. Where applicable, include the resume or curriculum vitae for each key team member;

Tab 3: Experience and Expertise of Firm

- A. Provide a statement of the firm's general experience providing solar photovoltaic energy systems over the past five (5) years. Describe any relevant experience with executing, installing and maintaining systems developed under SSA's;
- B. Provide the total number of photovoltaic energy systems installed (listed by residential, commercial and government type projects to include kW size) over the past five (5) years as completed through the firm's local office (the same office that is being designated to perform the City's work, if awarded);
- C. Provide a minimum of three (3) customers (preferably public entities or large commercial accounts) where similar PV systems have been successfully implemented (by the firm submitting this offer) in the past five (5) years with preference to accounts using SSA's and that are similar in size to those listed herein. Provide the name of the customer, describe the project to include kWh size and configuration, year when the project was completed, contact name and telephone number;
- D. Provide experience background for any sub-contractors or consultants that will be utilized;

Tab 4: Financing and Risk Management Plan

- A. Provide information of the firm's capacity and capability to finance multiple systems. Include the following:
 - 1) Description of relevant financing aspects for the proposed project(s);
 - 2) Identification of funding sources (including proposed incentives);
 - 3) Examples of previously funded or financed third-party owned projects;
 - 4) Commitment letter from anticipated funding source;
 - 5) Provide two (2) years of audited financial statements for each of the following entities:
 - a) Submitting Firm (entity that is responding directly to RFP)
 - b) Financing Firm (entity or entities that will finance project costs)
- B. Provide a statement that the firm understands and will comply with insurance requirements as detailed herein and that any insurance certificates will include the City of Tempe as an additional insured.
- C. Identify any expectations and/or obligations that the Contractor will attribute to the City during the Construction and on-going operations and maintenance phase of contract.
- D. Describe how the company will bond the project during the construction phase.

Tab 5: Technical Approach

This section shall be completed separately for each of the sites proposed:

- A. Provide a detailed description of the proposed solar energy system. This should include the following:

- 1) PV System Design and Configuration;
- 2) Schematic of overall configuration;
- 3) Electrical grid interconnection requirements;
- 4) Key design considerations;
- 5) Guaranteed power capacity (DC kW), measured at the inverter's input;
- 6) Guaranteed power capacity (AC kW), measured at the interconnection point;
- 7) Expected and guaranteed minimum output (AC kWh) production, including data assumptions for winter and summer hours of power generation. Summer on-peak, mid-peak, and winter peak hours must be explained with some detail of assumptions and performance criteria based on seasonal sunlight availability and variable weather conditions;
- 8) Estimated capacity factor (%) and annual output (kWh) for each year of the 20-year term, with the methodology used to develop the estimates;
- 9) Discuss how any excess generated power will be handled through the "net metering" process and at what reimbursement rate;
- 10) PV panels proposed including type, specifications and warranty;
- 11) Expected PV panel degradation rate to be shown on an annual basis throughout the 20-year term;
- 12) Inverter – specifications, warranty, and percent degradation in 10 years;
- 13) Typical useful life of other significant components including all electrical equipment and connections;
- 14) Structural component specifications for racks, roof mounts, panel mounts, etc.
- 15) Specifications for controls for metering, monitoring and diagnostic instrumentation including warranties;
- 16) Provide a basic rendering of facility for aesthetic consideration;
- 17) Include a brief description of the proposed quality assurance/quality control program;
- 18) Discuss the commissioning, testing and acceptance process for the completed site;
- 19) Provide a project implementation schedule for the proposed site that is based on a tentative award date of April 4, 2013 and that shows all key milestones from project start through commissioning of system and power generation;

Tab 6: Monitoring System

- A. Describe the firms' ability to monitor the installed system. Explain if the collected data reflects system performance, system availability, average and accumulated output, capacity factor,

degradation. Provide a sample report. Indicate if monitoring system complies with requirements outlined in section 3M – Project Requirements on Page 27.

Tab 7 Operations and Maintenance Plan

- A. Provide a sample operation and maintenance plan. The plan should cover the full term of operations. Note that the cost of such services will be included in the kWh pricing offered. The plan should describe the proposed operations and maintenance for the system to include the following:
- 1) The plan will describe the work to be performed, the frequency, time of day, method of routine inspection and cleaning, and any impact this will have on production; Discuss the process that will be used to quickly replace broken, damaged or missing panels;
 - 2) Describe the project team who will provide this service to include similar experience and qualifications of maintenance technicians. Indicate if these personnel are employees of the respondent or sub-contractors;
 - 3) Clearly explain the site access requirements that the firm will need in order to properly inspect and maintain the PV system.
 - 4) Explain how your firm expects the City to handle routine maintenance issues over the potential 20 year term that might impact the solar system infrastructure including rooftop work such as HVAC, roofing repairs/renovation, etc.

Tab 8: Pricing Proposal

- A. Provide a detailed price analysis for each site proposed. Offerors will evaluate each site to determine if the PV system will provide an annual savings to the current and future electrical utility bills for that site. A firm all-inclusive price for power delivered (cost/kWh) for each year of the 20-year term of agreement will be presented. The City has included a price analysis matrix labeled as Exhibit A that will be completed for each proposed site. The City will use the financial analysis to determine the annual cost savings to current and future electrical utility bills when compared to utility costs without the PV systems. This matrix will be completed in accordance with the following assumptions:
- 1) A \$0.05 per kWh PBI shall be used for APS projects. A \$0.04 per kWh PBI shall be used for SRP projects. Any federal or state credits will be determined by the responding firm and factored into the Pricing analysis;
 - 2) For APS projects a utility escalator of 2.5% per year and for SRP projects a utility escalator of 3.67% per year will be factored into the 20-year analysis to reflect projected utility rate increases for the traditional delivery of power. When completing the traditional delivery cost projections, the fact that APS has a rate freeze through 2016 shall be reflected into the analysis.
 - 3) All costs to design, construct, install, finance, operate/maintain and monitor the system will be included in the cost/kWh;
 - 4) All appropriate utility state and local taxes shall be included in the cost/kWh;
 - 5) The production based incentive (PBI) including tax credits used in the financial analysis will be the PBI that can be expected to be awarded by SRP and APS for the 2012/2013 fiscal year. For calculations purposes, the City has estimated the PBI as shown in

paragraph 1 above. The PBI expected incentives should be designated in Exhibit A. Should the proposed PBI not be awarded or not be available, the City may delay proceeding with the PV system at the proposed site until the proposed PBI's are available, request an updated Price Plan or elect not to procure a PV system.

- 6) The financial analysis shall show a net present value of the system for “buy back purposes” at year 6, 10, 15 and 20 years.
- 7) A complete PV system cost including all materials, equipment, design, construction, installation and tax costs shall be included for each site on the Pricing Schedules.

Tab 9: Billing Plan

- A. Describe the monthly billing plan for the system, include a sample bill. The monthly billing period will be generated based on the local utility meter and shall coincide with the utility provider billing cycle and shall include the following:
 - 1) Maximum power output in KW (AC);
 - 2) Total kWh (AC) generated;
 - 3) Total kWh (AC) sold;
 - 4) Net metering summary, if applicable;
 - 5) Amount due for solar energy sold to the City within the billing period;
 - 6) Past due amounts;
 - 7) Total bill;

Tab 10: Warranties

- A. Describe in detail the warranty offered the City regarding the installed solar photovoltaic system and how that warranty would support any impact of the Contractor's solar system apparatus to the City's owned infrastructure.

Tab 11: Additional Contracts

- A. Providers may require the use of a service agreement and other supplemental contracts. Any agreements used must be pre-approved by the City. Include any additional agreements in this section for City review.

Tab 12: Supplemental Forms

- A. Supplemental forms must be submitted to include:
 - 1) A signed Offer & Acceptance Page – Form 201-B
 - 2) Addendum Acknowledgement (if applicable)
 - 3) Valid and applicable Arizona Commercial Contractors License

Evaluation Criteria

EVALUATION CRITERIA

Representatives of the City will evaluate the proposals in accordance with the evaluation criteria listed below and rank them from the one most likely to the one least likely to meet the needs of the City and satisfy the requirements of the RFP. The City may call for interviews to clarify information received in the proposal. In addition to interviews, or if the proposals are very closely ranked, the City reserves the option to enter into discussion on pricing and/or other portions of the proposal, and may request Best and Final offers if it is determined to be in the City's own best interest. However, offering firms are cautioned that the City may proceed with an award on the basis of information received in the original proposal and subsequent interviews (if held) without calling for additional discussions or Best and Final offers.

The evaluation criteria listed below follows the same format as the Proposal Format section and incorporates all of the elements listed for each format category (Tab 1 through Tab 12).

| Award Criteria | Points Possible | Weight | X | Rating | = | Points |
|---|-----------------|-----------|---|--------|---|--------|
| 1. Qualifications and Experience of Proposed Project Team (Tab 1, 2 and 3) | (300) | <u>30</u> | X | _____ | = | _____ |
| 2. Financing and Risk Management Plan | (120) | <u>12</u> | X | _____ | = | _____ |
| 3. Technical Approach | (250) | <u>25</u> | X | _____ | = | _____ |
| 4. Monitoring Plan | (70) | <u>7</u> | X | _____ | = | _____ |
| 5. Operations and Maintenance Plan | (120) | <u>12</u> | X | _____ | = | _____ |
| 6. Pricing Proposal | (650) | <u>65</u> | X | _____ | = | _____ |
| 7. Billing Plan | (50) | <u>5</u> | X | _____ | = | _____ |
| 8. Warranties | (80) | <u>8</u> | X | _____ | = | _____ |
| 9. Reasonableness of terms and conditions proposed in formal contract templates | (80) | <u>8</u> | X | _____ | = | _____ |
| 10. Responsiveness – The overall quality of the presented proposal and the firm's ability to provide all of the required information at time of proposal submittal; | (80) | <u>8</u> | X | _____ | = | _____ |
| Total Points Possible | (1,800) | | | | | |

This proposal will be evaluated on a cumulative point system using the rating scale shown below (fractional points may be selected within this range).

Scoring

| | | | | |
|-------------------------------|---|---|---|----|
| Outstanding | . | . | . | 10 |
| | | | | 9 |
| Good | . | . | . | 8 |
| | | | | 7 |
| | | | | 6 |
| Average | . | . | . | 5 |
| | | | | 4 |
| | | | | 3 |
| Poor | . | . | . | 2 |
| | | | | 1 |
| Not Addressed or Unacceptable | | | | 0 |

To evaluate the cost portion of the above criteria, the City may elect to evaluate each firm on a percentage basis of the lowest cost Offer. The formula would be: (Lowest Priced Offer/Evaluated Firm's Price) X Points Possible = Evaluation Points.

Proposal Checklist for Submittals

- _____ One signed and complete original of the proposal response, including "Vendor's Proposal Offer" (Form 201-B).
- _____ Four (4) bound hard copies of your submittal along with one electronic version (flash drive or CD Rom)
- _____ All Required Information has been included as described on Pages 29 through 33 – Tab 1 through Tab 12;
- _____ Price Analysis information completed and included per Table 1 per site offered
- _____ Any addendum(s) have been acknowledged and included

Exhibit A Pricing Plan Worksheet

Pursuant to all the RFP requirements and specifications enumerated and described in this solicitation, firm agrees to furnish **Solar Power Projects** to the City of Tempe at the price(s) stated below.

Site: _____

PV Size: _____

Panel Type: _____

Unblended \$/kWh: _____

Total Construction Cost to Furnish and Install PV System \$ _____

*For calculating the traditional electrical cost of power, an escalator has been assigned for both APS and SRP sites. This escalator is an estimate of what potential increases will occur over the life of the project using traditional generation. APS has a rate freeze through 2016 so that should be accounted for when completing this price analysis.

| Period (Years) | Guaranteed Power Production (AC) | Guaranteed Power Production (DC) | *Traditional Electrical Cost of Power per kWh 2.5%(APS) 3.67% (SRP) | Proposed SSA Price per kWh (2012/13 Expected PBI at \$.05/kWh for APS and \$.04/kWh for SRP) | Proposed Savings per kWh | NPV |
|----------------|----------------------------------|----------------------------------|---|--|--------------------------|-----|
| 1 | | | | | | |
| 2 | | | | | | |
| 3 | | | | | | |
| 4 | | | | | | |
| 5 | | | | | | |
| 6 | | | | | | |
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| 10 | | | | | | |
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| 16 | | | | | | |
| 17 | | | | | | |
| 18 | | | | | | |
| 19 | | | | | | |
| 20 | | | | | | |

Provide all assumptions made in determining the values above.

Vendor Name _____

Date: _____