City of Prescott
Purchasing Services
216 S. Marina St., Suite 302
Prescott, AZ 86303-3929

Bid 12FOD0018
FLAIL MOWER / TRACTOR

The City of Prescott is soliciting bids from qualified vendors to purchase a Flail Mower / Tractor. Sealed bids (one (1) original and one (1) copy) shall be received before 2:00 pm on Thursday, December 8, 2011 at the time and place indicated in Section 2.2.

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Solicitation Specifications
1.1

For illustrative purposes, the following specifications are for a John Deere Model 5083E. Vendors are hereby notified that any make or model can be substituted if it meets or exceeds the indicated performance and quality standards.

Engine	
Manufacturer	John Deere PowerTech 4045 or equivalent
Aspiration	Turbocharged
Cylinders/Displacement, cu. in. (liters)	4/276 (4.5)
Cylinder Liners	Wet Sleeved
Fuel Tank Cap., US Gal. (L) (Open; Cab)	---
Standard	30 (113.6)
Optional	---
Underhood muffler	Yes
Performance	
Advertised PTO HP (kW) @ Rated RPM	69 (51) @ 2400 per SAE
Official PTO HP (kW) @ Rated RPM	69 (51) @ 2400
@ Standard PTO @ Eng RPM	---
Maximum @ Eng RPM	---
Advertised Engine HP (kW) @ Rated Speed	83 (60.5) @ 2400 per ISO 97/68/EC
Max Unballast Drwbr HP (kW) @ Eng RPM	---
Maximum Torque (PTO) @ RPM, lb-ft (Nm)	---
Max Torque Rise (80% Rtd Spd) @ Eng RPM	---
Maximum Torque Rise % (PTO) @ Eng RPM	---
Fuel Use, U.S. gal./hr. & HP hr./gal. at:	
PTO @ Rated Eng RPM	---
Standard PTO Speed @ Eng Speed	---
Maximum PTO Power @ Eng RPM	---

Maximum Engine Power @ Eng RPM	---
Max Unballasted Drawbar Power @ Eng RPM	---
75% Load, Full Engine RPM (Unballasted)	---
75% Load @ Reduced RPM (Unballasted)	---
Transmission	
Std. Transmission; Forward/Reverse	12F/12R PowrReverser
Opt. Transmission; Forward/Reverse	---
Reverser	Yes
On-the-Go Shifting (Yes/No/Partial)	Partial
Clutch; Wet/Dry	Wet
Creeper	Dealer Installed Kit
Power Take-Off (PTO)	
Standard	540/540E
Optional	540/1000 (Dealer Installed Kit)
PTO Speeds @ Engine RPM	540E @ 1716
PTO Actuation	Mechanical
Hydraulics	
Type	Open Center
Pump Rated Output, GPM (L/min.)	---
Standard	22.5 (85.1)
Optional	---
Rated Flow @ One SCV, GPM (L/min.)	15.9 (60.1)
Max Output @ SCV Couplers, GPM (L/min.)	---
Maximum Operating Pressure, PSI (kPa)	---
Maximum Hydraulic Power, HP (kW)	---
Hitch Draft Control Load Sense Type	Mechanical
Remote Control Valves Available	1 (opt. 3)
Hitch Category (SAE Designation)	Category 2 ; convertible to 1

Hitch Lift Cap. lb. (kg) @24"Bhnd Lift Pt.	---
OECD	---
Standard	3,213 (1,457)
Optional	---
Hitch Lift Cap. lb. (kg) @24"Bhnd Lift Pt. (SAE)	---
Standard	---
Optional	---
Hitch Lift Cap. lb. (kg) @24"Bhnd Lift Pt. (ASAE)	---
Standard	---
Optional	---
Sensing Type	Top Link
Joystick SCV Control	Optional
Final Drive	
Type	Inboard Planetary
Differential Controls	Mechanical (pedal)
Availability	---
Front	No
Front & Rear	No
Engage On-the-Go Rear Differential Lock	Yes
Axle Type	Flanged
Brakes, Type and Control	Hydraulic Wet Disc
Operator Station	
Rollover Protective Structure, OOS	---
Rigid - Foldable - Telescopic	---
Platform - Flat/Straddle	---
Gearshift Location - Console/Floor	---
Cab	---

Doors	1; left-hand door standard, right-hand door optional.
Platform - Flat/Straddle	Flat
dB(A) Rating	77
Seat Suspension System	Mechanical
2WD Dimensions	
Wheelbase, in. (mm)	---
Front Tread Range, in. (mm)	---
Rear Tread Range, in. (mm)	---
Minimum Rear Tread Setting, in. (mm)	---
Front Axle Clearance, in. (mm)	---
Turning Radius w/Brakes, ft. (m)	---
Turning Radius w/o Brakes, ft. (m)	---
Unballasted Operating Weight, lb. (kg)	---
Approx. Ship Wgt, lb. (kg) Open; Cab	---
MFWD Dimensions	
Wheelbase, in. (mm)	85.8 (2178)
Front Tread Range, in. (mm)	52.8 - 75.0 (1340 - 1904)
Front Axle Clearance, in. (mm)	15.2 (386)
Turning Radius w/Brakes, ft. (m)	11.6 (3.54)
Turning Radius w/o Brakes, ft. (m)	14.3 (4.36)
Limited Slip Differential	Yes
Unballasted Operating Weight, lb. (kg)	7,435 (3372)
Approx. Ship Wgt, lb. (kg) Open; Cab	7,385 (3350)
4WD Dimensions	
Wheelbase, in. (mm)	---
Wheel Tread, Min. to Max. in. (mm)	---
Turning Radius w/o Brakes, ft. (m)	---
Nebraska Test Unballasted w/Duals, lb.(kg)	---

Unballasted Weight, lb. (kg)	---
Standard Tires	
2WD	---
Front	---
Rear	---
MFWD	---
Front	11.2-24 ; R1
Rear	16.9-30 ; R1
4WD	---
Track Widths	---
Flail Mower	
	Midmount Side Flail Base
	63” side flail smooth cut
	Valve 2 Spool Stand and Hoses
	90” Rear Offset Smooth Cut
	Factory Mount
	Grill Guard with Pump Guard

2.0 Solicitation Process Requirements/Tentative Timeline

2.1 Communications with the City

All communications regarding this solicitation must be directed to the City’s Buyer. The City’s buyer for this solicitation is:

Dawn M. Foster, Purchasing Manager
City of Prescott
Purchasing Services
Fax: 928-777-1241
e-mail: dawn.foster@prescott-az.gov

Unless authorized by the City’s Buyer, no other City official or employee is empowered to speak for the City with respect to this solicitation. Bidders are advised that the City shall not be bound by information, clarifications, or interpretations from other City officials or employees. Bidders are cautioned against contacting any City official or employee other than the City’s Buyer. Failure to observe this requirement may be grounds for rejection of Bidder’s bid.

2.2 Schedule

Solicitation Advertisement		Sunday, October 30, 2011
Bids Due	**Time:**	**Thursday, December 8, 2011 at 2:00 pm**
	Location:	**Purchasing Manager** **201 S. Cortez St.** **Prescott, AZ 86302**

2.3 Questions and Requests for Addenda

Bidders who have questions about or suggestions for changes to this solicitation may direct them to the City's Buyer in writing by fax or email.

Questions and requests for addenda must be received by the City's Buyer no later than the date and time listed in Section 2.2. Questions received after this time will not be considered or answered.

Failure by a Bidder to request clarification of any inadequacy, omission or conflict shall not relieve the Bidder of the responsibility of being in compliance with the solicitation.

2.4 City Answers and Addenda

Changes to this solicitation will be made only by formal written addenda issued by the City's Buyer. Any such addenda and City answers to questions will be posted to the City website at www.prescott-az.gov/business.
Changes to this solicitation may be made by the City if, in the sole judgment of the City, the changes will not compromise the City's objectives in this acquisition.

All addenda issued by the City shall become a part of the specifications of this solicitation, and will be made part of the resulting agreement.

2.5 Proprietary Material

A Bidder shall clearly mark any proprietary information contained in its bid with the words "proprietary information." Bidder shall not mark any Solicitation Form as proprietary. Marking all or nearly all of a bid as proprietary may result in rejection of the bid.

Bidders should be aware that the City is required by law to make its records available for public inspection. The Bidder, by submission of materials marked proprietary, acknowledges and agrees that the City will have no obligation to advocate for non-disclosure in any forum or any liability to the Bidder in the event that the City must legally disclose these materials.

2.6 Multiple Bids

A Bidder may submit multiple bids for any solicitation however; each bid must be submitted separately (in its own complete package) from the others.

2.7 Delivery of Bids

Sealed bids (one (1) original and one (1) copy) must be received at the Office of the Purchasing Manager no later than the date and time listed in Section 2.2 at the following address:

Dawn Foster, Purchasing Manager
City of Prescott
201 S. Cortez St.
Prescott, AZ 86303

Bidder shall enclose bid (one (1) original and one (1) copy) in a sealed envelope. The envelope should identify the Bidder's name, mailing address, Solicitation and Title, and the time and date due.

The City shall not consider late bids, telegraphic (fax) or telephone bids.

Bidder is solely responsible for ensuring that bid(s) are delivered on time. Delays caused by any delivery service, including the U.S. Postal Service, will not be grounds for an extension of the deadline for receipt of bids. Bids received after the deadline will be returned unopened.

2.8 Cost of Bids

The City shall be not be liable for any costs incurred by Bidder in the preparation and submittal of a bid(s) in response to the solicitation or in the participation of any part of the acquisition process.

2.9 Errors in Bids

Bidder is responsible for all errors or omission in their bids, and any such errors or omission will not serve to diminish their obligations to the City.

2.10 Withdrawal of Bids

A bid may be withdrawn by written request of the Bidder prior to the bid due date and time listed in Section 2.2. No bid may be withdrawn for a period of 90 calendar days after the bid due date and time.

2.11 Changes in Bids

Prior to the bid due date and time listed in Section 2.2, a Bidder may make changes to its bid provided the change is initialed and dated by the Bidder. Corrections and/or modifications received after the closing time specified will not be accepted.

2.12 Rejection of Bids

The City reserves the right to reject any and all bids and to waive any immaterial defects and irregularities in bids.

2.13 Disposition of Bids

All materials submitted in response to the solicitation, including samples, shall become the property of the City upon delivery to the City.

2.14 Incorporation of Solicitation and Response in Agreement

This solicitation, including all attachments and addenda, and all promises, warranties, commitments and representations in the successful bid shall be binding and shall become obligations of the agreement.

2.15 Protests

Any protest of the solicitation process must be filed by 5:00 p.m. on the third business day after solicitations are opened. All such protests shall be in writing, contain a complete statement of the grounds for protest, and be filed with the Purchasing Manager, PO Box 2059, Prescott, AZ 86302, FAX 928-777-1234.

Protesting parties must demonstrate as part of their protest that they made every reasonable effort within the schedule and procedures of this solicitation to resolve the basis or bases of their protest during the solicitation process, including asking questions, seeking clarifications, requesting addenda, and otherwise alerting the City to perceived problems so that corrective action could be taken prior to the selection of the Apparent Successful Bidder(s). The City will not consider any protest based on items that could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent the City from executing an agreement with any other bidder.

2.16 Bid Submittal

Bid (one (1) original and one (1) copy) must be sealed and the envelope must clearly indicate the information as described in Section 2.9. Bidder must fully complete and submit the following documents:

1) Bid Form A – Solicitation Response Cover Sheet
2) Bid Form B – Price Sheet
3) Bid Form C - Certification
4) Bid Form D - Non-Collusion Certificate
5) Bid Form E- Contractor Questionnaire
6) Bid Form F – Certificate of Ownership
7) Bid Form G – Bidder Qualifications, Representations and Warranties

3.0 General Contract Terms and Conditions

1. **Entire Agreement:** This contract, including all attachments referenced herein, constitutes the entire agreement between the City and the Contractor. The City's RFQ/RFP, all addenda to the RFQ/RFP, and the Contractor's response to the RFQ/RFP are explicitly included in this contract. Where there is any conflict among or between any of these documents, the controlling document shall be the first listed in the following sequence: the most recently issued Contract amendment; the Contract; the most recently issued addendum to the City's RFQ/RFP; the City's RFQ/RFP; and the Contractor's response to the RFQ/RFP.

2. **Term**: The term of this Contract shall commence on the date the City's Purchasing Agent signs the same and shall expire as stated within the Contract.

3. **Freight**: Prices include freight prepaid and allowed. The Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges.

4. **Title**: Prices are F.O.B. destination. Title to items and risk of loss remain with Contractor until City receives items at the delivery point.

5. **Overages/Undergoes:** Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.

6. **Schedule**: Unless the City's Purchasing Agent requests a change in schedule, the Contractor shall deliver the items or render the services as stated in the Contract. At the City's option, the Contractor's failure to timely deliver or perform may require expedited shipping at the Contractor's expense, or may be cause for termination of the Contract and the return of all or part of the items at the Contractor's expense. If the Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City's Purchasing Agent of such difficulty and the length of the anticipated delay.

7. **Payment**: Invoices will be paid according to early payment discount terms, or if no early payment discount is offered, thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services. Payment periods will be computed from either the date of delivery of all goods ordered, the completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract. No payment shall be due prior to the City's receipt and acceptance of the items identified in the invoice therefore.

8. **Unlawful Overcharges**: The Contractor assigns to the City all claims for anti-trust violations and overcharges relating to items purchased by the City.

9. **Price Warranty:** The Contractor warrants that the prices for the items sold to the City hereunder are not less favorable than those currently extended to any other customer for the same or similar items in similar quantities. The Contractor warrants that prices shown on this Contract are complete, and that no additional charge of any type shall be added without the City's express written consent.

10. **Warranties**: The Contractor warrants that all goods are merchantable, comply with the City's specifications, and are fit for the City's intended use; all goods comply with all applicable safety and health standards

established for such products; all goods are properly packaged; and all appropriate instructions or warnings are supplied.

11. Vendor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

12. **Equal Employment Opportunity:** During the term of this Contract, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification.

13. **Diversity:** The City encourages the Contractor to employ a workforce reflective of the region's diversity.

14. **Discrimination in Contracting**: The Contractor shall not create barriers to open and fair opportunities for subcontractors and suppliers in obtaining or competing for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

15. **Record-Keeping:** The Contractor shall maintain, for at least 12 months after expiration or earlier termination of the term of this Contract, relevant records and information necessary to document the Contractor's utilization of other businesses as subcontractors and suppliers in this contract and in its overall public and private business activities. The Contractor shall also maintain all written quotes, bids, estimates, or bids submitted to the Contractor by all businesses seeking to participate as subcontractors or suppliers in the contract. The City shall have the right to inspect and copy such records. If this Contract involves federal funds, the Contractor shall comply with all record-keeping requirements set forth in every applicable federal rule, regulation and statute referenced in the contract documents.

16. **Publicity**: The Contractor shall not advertise or publish the fact that the City has contracted to purchase items from the Contractor without the City's prior written approval.

17. **Proprietary and Confidential Information:** The Contractor acknowledges that the City is required by law to make its records available for public inspection, with certain exceptions. City staff believe that this legal obligation would not require the disclosure of proprietary descriptive information that contains valuable designs, drawings or formulas. The Contractor, by submission of materials marked proprietary and confidential, nevertheless acknowledges and agrees that the City will have no obligation or any liability to the Contractor in the event that the City must disclose these materials by law.

18. **Indemnification**: To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, or trademark, arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, except for damages resulting from the sole negligence of the City.

19. **Insurance:** The Contractor shall secure and maintain, at all times during the term of this Contract, at its own expense, a policy or policies of insurance known as**: (1) Commercial General Liability** written on an insurance industry standard occurrence form (ISO form CG 00 01) or equivalent including premises/operations, products/completed operations, personal/advertising injury, contractual liability, and independent contractors liability**; (2)** if any vehicle is used in the performance of this Contract, a policy of **Business Automobile Liability** written on an insurance industry standard form (ISO form CA 00 01) or equivalent**,** including coverage for owned, non-owned, leased or hired vehicles; and **(3)** if any work under this Contract will be performed by a resident of the state of Arizona, **Worker's Compensation** ("Industrial Insurance") as required by the State of Arizona. The insurance as provided under items (1) and (2) above shall be endorsed to include The City of Prescott, its officers, elected officials, employees, agents and volunteers as an **Additional Insured** per ISO form CG2010 11/85 or CG2026 or equivalent, and to not

permit reduction or cancellation by the insurer without forty-five (45) days prior written notice to the City. The Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and non-contributing with the Contractor's insurance.

20. **Compliance with Law:** The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Arizona; the Charter, Municipal Code, and ordinances of The City of Prescott; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

21. **Licenses and Similar Authorizations:** The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

22. **Taxes:** The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

23. **Americans with Disabilities Act:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

24. **Adjustments**: The City's Purchasing Agent at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; and ancillary matters that Contractor may accommodate without substantial additional expense to the City.

25. **Amendments**: Except for adjustments authorized above, modifications or amendments to the Contract may only be made by a change order or by written document signed by or for both parties. Unless Contractor is otherwise notified, the City's Purchasing Agent shall be the City's authorized agent.

26. **Assignment**: Neither party shall assign any right or interest nor delegate any obligation owed without the written consent of the other, except Contractor may assign the proceeds of this Contract for the benefit of creditors upon 21 days advance written notice to the City.

27. **Binding Effect**: The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

28. **Waiver:** The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

29. **Applicable Law:** This Contract shall be construed under the laws of the State of Arizona. The venue for any action relating to this Contract shall be in the Superior Court for Yavapai County, State of Arizona.

30. **Remedies Cumulative:** Remedies under this Contract are cumulative; The use of one remedy shall not be taken to exclude or waive the right to use another.

31. **Severability:** Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.

32. **Gratuities:** The City may, by written notice to the Contractor, terminate Contractor's right to proceed under this Contract upon one (1) calendar day's notice, if the City finds that any gratuity in the form of entertainment, a gift, or otherwise was offered or given by the Contractor or any agent thereof to any City official, officer or employee.

35. **Termination:**

35.1. **For Cause:** Either party may terminate this Contract in the event the other fails to perform its obligations as described herein, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party.

35.2. **For Reasons Beyond Reasonable Control of a Party**: Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

35.3. **For Public Convenience:** The City may terminate this Contract in whole or in part whenever the City determines that such termination is in its best interest (including but not limited to for lack of continuing appropriations). In such a case the Contractor shall be paid for all items accepted by the City.

35.4. **Notice:** Notice of termination shall be given by the party terminating this Agreement to the other not less than ten (10) working days prior to the effective date of termination.

36. Major Emergencies or Disasters: The following provision shall be in effect only during major emergencies or disasters. The City is committed to preparing thoroughly for any major emergency or disaster situation. As part of its commitment, the City is contracting with the Contractor under the following terms and conditions: Contractor shall provide to the City, upon the City's request, such goods and/or services at such time as the City determines. In the event the Contractor is unable to meet the delivery date commitment due to circumstances beyond the reasonable control of the Contractor, the Contractor shall make such delivery as soon as practicable. If the Contractor is prevented from making such delivery to the requested delivery location due to circumstances beyond its reasonable control, the Contractor shall immediately assist the City in whatever manner is reasonable to gain access to such goods and/or services. In the event that the Contractor is unable to provide such goods and/or services as requested by the City, the Contractor may offer to the City limited substitutions for its consideration and shall provide such substitutions to the City as required above, provided the Contractor has obtained prior approval from the City for such substitution. The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). In the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall provide the City with appropriate documentation of the additional costs. The Contractor acknowledges that the City is procuring such goods and/or services for the benefit of the public. The Contractor, in support of public good purposes, shall consider the City as a customer of first priority and shall make its best effort to provide to the City the requested goods and/or services in a timely manner. For purposes of this Contract, a "major emergency" or "disaster" shall include, but is not limited to a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above.

4.0 Standard Bid Information

4.1 Default by Bidder

In case of default by the Bidder, the City of Prescott may procure the items or service from other sources and may deduct from any monies due or that may thereafter become due to the Bidder the difference between the price named in the contract or purchase order and the actual cost thereof to the City of Prescott. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.

4.2 Cash Discounts

In connection with any cash discount specified on this bid, time will be computed from the date of complete delivery of the supplies, equipment or services as specified or from the date correct invoices are received in the City Finance office if the latter date is later than the date of delivery.

For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

4.3 Warranty

Manufacturer's warranties shall remain in effect. All equipment purchased shall be purchased from one (1) vendor. That one vendor shall be fully responsible for all warranty performance relating to any part of component of the purchased equipment. The vendor's responsibility shall include all warranty involving sub-contractors. The vendor shall supply a warranty on all parts and workmanship from the initial delivery date. The vendor shall guarantee further that the equipment to be supplied complies with all applicable regulations.

4.4 Litigation

The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. Neither party shall be entitled to an award of attorneys' fees, either pursuant to the Contract or another other state or federal statute.

4.5 Cooperative Use of Contract

This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the contracted vendor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

4.6 Brand Names

Brand names are only used for reference to indicate character or quality desired unless otherwise indicated.

5.0 Instructions for Solicitation Forms

5.1 Form A - Solicitation Response Cover Sheet

Bidder shall complete, sign, and submit Form A as the first page of the bid package.

5.2 Form C - Bid Certification

Bidder shall complete, sign, and submit Form B

5.3 Form D - Non-Collusion Certificate

Bidder shall complete, sign, and submit Form C.

5.4 Form E - Contractor Questionnaire

Bidder shall complete, sign, and submit Form D.

5.5 Form F - Certificate of Ownership

Bidder shall complete, sign, and submit Form F completely and accurately stating the names and addresses of all persons, firms, corporations, partnerships or other associations having any direct or indirect financial interest in the Bidder's business and the nature and extent of each such interest.

5.6 Form G - Bidder Qualifications, Representations and Warranties,

5.6.1 Bidder shall complete and submit Solicitation Form G. Bidder shall provide additional information as required.

5.6.2 The City reserves the right to inspect any of Bidder's facilities and equipment after the bid due date and time listed in Section 2.2. The Bidder shall make such facilities and

equipment available for the City's inspection within eight business hours of the City's request. The City may require additional information concerning a Bidder's facilities, equipment, personnel, and procedures. The Bidder shall supply such information within the time noted in the City's request.

5.6.3 The City shall consider awarding agreements only to responsible Bidders. Responsible Bidders are those that have, in the sole judgment of the City, the financial ability, character, reputation, resources, skills, capability, reliability, and business integrity necessary to perform the requirements of the agreement.

5.6.4 In determination of responsibility, the City may consider all information available to the City, whether specifically provided by the Bidder in response to this solicitation or other information otherwise available to the City in evaluating the responsibility of the Bidder. Such information may include, but is not limited to, experience and history of the City with current and/or prior contracts held by the Bidder with the City or with other agencies, references provided by the Bidder to the City, information provided by the Bidder as part of the solicitation responses, and information not specifically provided by the Bidder but is otherwise available to the City and has merit in consideration of responsibility, in the opinion of the City. The evaluation of responsibility shall be determined by the City and shall be in the sole opinion of the City. Such evaluation by the City shall be final and not subject to appeal.

Furthermore, no agreement will be awarded to a Bidder if any owner of such Bidder has been convicted within the past ten years of a crime involving dishonesty or false statements, or if the Bidder has unsatisfied tax or judgment liens.

5.6.5 Bidder shall provide (2) references, a sub-contractors list (if applicable) and certify there are no unsatisfied tax liens or judgments on record. Bidder shall complete, sign, and submit Form G.

Form A – Solicitation Response Cover Sheet

City of Prescott
Solicitation Response

Solicitation Number: _____

Description:…….. _____

Please note all that apply:

☐ Form 'B' Total……..……$_____

☐ Addenda Number(s) Received (if any)
…..……..…_____

☐ Original Forms A through H plus one (1) photocopy

Business Name: _____

Business Address: _____

_____

Business Phone: (_____) _____

Business Contact: _____

Supplier Comments: _____

_____

_____

_____

_____

Form B – Price Sheet

ITEM DESCIPTION	BRAND / MODEL	QUANTITY	UNIT COST	TOTAL COST
			$	$
			$	$
			$	$
			$	$

Sub-Total _____

Tax _____ (%) _____

Total _____

Form C - Bid Certification

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

C.1 That he/she has read The City of Prescott's Solicitation, appendices, attachments and the following Addenda (if applicable) in their entirety and to the best of his/her knowledge has complied with the mandatory requirements stated therein.

Addendum	Issue Date
_____	_____
_____	_____

C.2 That he/she has had opportunity to ask questions regarding the solicitation, and that such questions having been asked, have been answered by the City.

C.3 That the Bidder's bid consists of the following:

1. Form A – Solicitation response cover sheet
2. Form B – Price Sheet
3. Form C - Bid Certification
4. Form D – Non-Collusion Certificate
5. Form E – Contractor Questionnaire
6. Form F – Certificate of Ownership
7. Form G – Bidder Qualifications, Representations and Warranties

C.4 That the Bidder's bid is valid for 90 days.

Dated this _____ day of _____ 2011.

_____ _____

Signature **Title**

Form D – Non-Collusion Certificate

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

To the best of his/her knowledge, the person, firm, association, partnership or corporation herein, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in the preparation and submission of a bid to The City of Prescott for consideration in the award of this solicitation.

Dated this _____ day of _____ 2011.

_____ _____

Signature **Title**

Form E – Bidder Questionnaire

Yes - No

☐ ☐ **1.** Has the City of Prescott or other governmental entity incurred costs as a result of contested change order (s) from the undersigned company?

☐ ☐ **2.** Has the City of Prescott or other governmental entity been involved in litigation relative to contract performance with the undersigned company?

☐ ☐ **3.** Has the undersigned company failed to meet bid specifications or time limits on other contracts?

☐ ☐ **4.** Has the undersigned company abandoned a contract or refused to perform without legal cause after submitting a bid?

☐ ☐ **5.** Has the undersigned company had bidding errors or omissions in two or more bid submissions within a thirty-six month period?

☐ ☐ **6.** Has the undersigned company failed to perform or performed unsatisfactory of two or more contracts within a thirty-six month period.

☐ ☐ **7.** Does the undersigned company have adequate equipment, personnel and expertise to complete the proposed contract?

☐ ☐ **8.** Does the undersigned company have a record of safety violations in two or more contracts within a thirty-six month period?

☐ ☐ **9.** Does the undersigned have a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such a contract or subcontract within a ten-year period?

☐ ☐ **10.** Has the undersigned company been convicted of a criminal offense within a ten-year period of embezzlement, theft, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which might affect responsibility as a municipal contractor?

☐ ☐ **11.** Has the undersigned company been convicted of state or federal antitrust statues within a ten-year period arising out of submission of bids or bids?

☐ ☐ **12.** Has the undersigned company been disbarred or a similar proceeding by another governmental entity?

If you answered "yes" to Items 1-6 or 8-12 or answered "no" to Item 7, please attach a full explanation to this questionnaire.

Company: _____

Address: _____

Name: _____ (please print)

Title: _____ (please print)

Signature: _____

Date: _____

Form F – Certificate of Ownership

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

To the best of his/her knowledge, the person, firm, association, partnership or corporation herein, are the only person, firms, corporations, partnerships, or other associations having any direct or indirect financial interest in the Bidder's business as legal or equitable owner, creditor (except current bills for operating expenses), or holder of any security or other evidence of indebtedness.

Dated this _____ day of _____ 2011.

_____ _____

Signature **Title**

Form G – Bidder Qualifications, Representations and Warranties

Bidder Name:_____

The undersigned Bidder hereby certifies as follows:

G1 **Taxes and Liens** - Bidder has no unsatisfied tax or judgment lien on record.

G2 **Subcontractors** – Bidder submits as Attachment 4 to this Bid Form G a list of all subcontractors it will use in performing the requirements of the agreement resulting from this solicitation. A subcontractor is any separate legal entity used to perform requirements of the proposed agreement. The list shall include the firm's name, contact person and title, mailing address, telephone number, fax number and a description of the service(s) to be subcontracted. Bidder shall also attach a copy of the letter from the subcontractor stating its commitment to perform the services(s) subcontracted.

G3 **References** – The City will enter into an agreement only with a Bidder(s) having a reputation of satisfactory performance. The Bidder's ability to provide timely service; knowledgeable, conscientious, and courteous staff; reasonable care and skill; invoicing consistent with contract pricing, etc., are important to the City. Bidder shall provide information for two clients, other than the City of Prescott, that presently contract with Bidder for similar goods or services:

Reference #1
Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Reference #2
Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Note: The bid evaluators may contact the customer references, as well as any other customers or customer employees including The City of Prescott. A Bidder with unsatisfactory references may have its bid rejected.

G4 **Bidder's Examination** - Bidder has made its own examination, investigation and research regarding the requirements of the solicitation including but not limited to the work to be done, services to be performed, any conditions affecting the work and services, the type and quantity of labor, equipment and facilities necessary to perform. Bidder fully understands the character of the work and services, the manner in which payment is to be made, the City of Prescott standard terms and conditions, and the solicitation. Bidder acknowledges and agrees that it has satisfied itself by its own examination, investigation and research, and that is will make no claim against the City because of erroneous estimates, statements, or interpretations made by City. Bidder hereby proposes to furnish all materials, equipment, and facilities and to perform all labor which may be required to do the work within the time required and upon the terms and conditions provided in the draft agreement and the solicitation, and at the prices as proposed.

Dated this _____ day of _____ 2011.

_____ _____
Signature Title