

City of Prescott
 Purchasing Services
 201 S. Cortez St.
 Prescott, AZ 86303

Proposal 12GIS0014

The City of Prescott is soliciting proposals from qualified Contractors to provide Aerial Photography Mapping and Contour Generation Services. Sealed proposals shall be received before 2:00 pm on Friday, October 28, 2011 at the time and place indicated in Section 2.2.

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1.0 Background/Scope of Work/Proposal Evaluation

Background

The City of Prescott is seeking a qualified contractor to produce digital, low-level orthophotographs and a two-foot interval contour map of its City and surrounding area, for the use within the City of Prescott GIS system, and for infrastructure, transportation, planning, drainage, and other City projects.

For the purposes of this RFP, a digital orthophotograph is defined as a geo-referenced image prepared from perspective photography, or other remotely-sensed data in which the displacement within the image due to sensor orientation and terrain relief has been removed. A digital orthophotograph represents the combination of photographic image characteristics with the geometric qualities of a map.

Some examples of what the product of this RFP should allow users to identify are: hydrants, manholes, road striping and utility poles. It is intended that the products of the RFP will allow the municipality to provide better and more accurate digital representation of what is actually on the ground. The municipality may use this imagery to refine and improve upon the digital overlay data, develop more accurate storm water infrastructure delineations, map water and sewer system lines and connections, and inform land use planning projects.

Three dimensional modeling is becoming more important to municipal utility management. Digital Terrain Models (DTMs) developed for photogrammetric corrections in the development of the orthoimagery will also be used for a variety of other purposes. For this reason, the City of Prescott seeks to develop the most detailed DTM possible with the limited budget available for this project. LIDAR elevation data collection is the preferred method, but may be cost prohibitive, so other means of collecting elevation data will be considered.

Prescott will consider any proven photogrammetric and data collection methods and technologies, including film and digital techniques. Respondents must state their methods to be used in generating the final product and their resulting horizontal/vertical positional accuracies. Quality Control procedures should also be stated in the respondent's proposal.

City of Prescott Aerial Imagery Background

The City last acquired imagery in early 2008, prior to that imagery from 2004, 2002, 2000, 1998 was acquired, and is archived on the GIS. The municipal staff uses ArcMap 10 as a GIS editing environment with data stored in SQL Server using SDE for a variety of purposes. Departments using GIS include Engineering, Water, Wastewater, Planning and Zoning, Police, Fire, Dispatch, Golf Course, Parks and Recreation, Legal, Administrative Services, Finance, City Clerk, Airport, and Economic Development. The high-resolution orthoimagery will benefit numerous staff in our ability to provide responsive service to residents.

PROPOSAL REQUIREMENTS

All respondents or teams must prepare a Technical Proposal and a Cost Proposal as part of this submission. In order to be considered responsive to this RFP, each proposal must conform to the following requirements. The contractor shall:

Submit one (1) original and two (2) copies of the Technical Proposal.

Submit one (1) original and one (1) copy of the Cost Proposal (see requirements below) in a sealed, separate envelope.

Clearly indicate the following on the outside of each Technical Proposal and the two sealed packages:

1. Project name (City of Prescott Digital Orthoimagery);
2. Contents (Technical Proposal or Cost Proposal); and
3. Name and address of the prime contractor.

Technical Proposal Requirements

The Technical Proposal should demonstrate that the Respondent understands the intent and scope of the project, the character of the deliverables, the services required for their delivery, and the specific tasks that must be performed in the course of supplying these services. In addition, the qualifications of the Proposer to supply the required services must be demonstrated. In order to assist in the evaluation process, please include the following information in the technical proposal.

A. Cover Letter

B. Project Abstract

This section should convey the Respondent's understanding of the nature of the work and approach to be taken. This section should briefly address project objectives, scope of work, the proposed approach, and any other pertinent elements.

C. Introduction to the Contractor Firm(s)

Proposers shall provide the following information relative to their firms. Similar information must be provided for each subcontractor or each member of a joint venture.

1. Firm name, business address, and telephone number.
2. Year established. Include former firm name(s) and year(s) established, if applicable. Identify the state in which the firm was organized or incorporated.
3. Type of ownership, and name and location of parent company and subsidiaries, if any.
4. Indication of whether the firm is licensed to do business in the State of Arizona.
5. Number of full-time employees. Part-time employees or consultants routinely engaged by the Respondent may be included if clearly identified as such.

D. Qualifications and Experience of the Contractor Firm(s)

Proposers shall describe recent experience relevant to the project. Particular emphasis should be placed on projects managed by the key personnel to be assigned to this project. If the respondent anticipates the use of subcontractors, the respondent shall identify:

1. The role and extent to which these parties will participate in the project;
2. The means by which the contractor will oversee the work of these parties; and
3. The experience and credentials of these parties relevant to this project.

E. Qualifications and Experience of Key Staff

Proposers shall identify key individuals assigned to this project and include the function and/or responsibility of each of the identified individuals along with the percentage of their normal work week estimated to be spent on this project. Experience summaries of these key individuals shall be provided, with emphasis on previous experience on similar projects in similar roles. Resumes of these key individuals may also be included as an appendix.

F. References

The respondent shall submit names, addresses, and phone numbers of at least four references familiar with the contractor's ability, experience, and reliability in the performance and management of projects of a similar nature (imagery with 2ft contour generation).

G. Imagery Description and Methods

This section should include a detailed description of the proposed imagery product. Each of the functional requirements listed in the scope of work must be addressed. This section should also address items such as camera specifications, image rectification, license agreements, and any other pertinent information.

H. Quality Assurance / Quality Control Overview

Describe processes and procedures used for QA/QC on the project, addressing the technological and procedural elements to be used to ensure the orthoimagery meets or exceeds all required specifications.

I. Work Plan

This section will include a description of tasks, products, milestones, and time tables. Task descriptions should fully discuss the steps to be followed in carrying out the work. Sufficient detail should be presented to show a clear understanding of the work and the proposed approach. A detailed timetable should accompany the work description showing the expected sequence of tasks and resource requirements for both the contractor and City of Prescott staff.

Cost Proposal Requirements

The contractor will be reimbursed via a fixed fee for the development of the imagery products. Payment will be made within 60 days of delivery of satisfactory final products. Partial payments may be agreed upon for a series of deliverables to be negotiated by the selected proposer and the City of Prescott.

The Cost Proposal should include the following items, listing the prime contractor and sub-contractors or partners separately.

Fixed price for completion of all tasks in the Scope of Work for the area specified in Attachment A.

This will be broken down into the following:

- a. Cost of aerial imagery development- for each separate area defined below:
 - Base flight area, true color at 6 inch cell resolution
 - Surrounding area, true color at 1 foot cell resolution
 - Chino Valley area, true color at 6 inch cell resolution
 - BCWR area, true color at 6 inch cell resolution

- b. Digital terrain model and 2ft Contours development costs- for each separate area defined below:
 - Base flight area, DTM and 2ft contours
 - Chino Valley area, DTM and 2ft contours
 - BCWR area, DTM and 2ft contours

- c. LIDAR option
 - Base flight area, DEM and 2ft contours

Total Project Costs.

Costs shall be provided in the form of a cost associated with each of the specified project elements. Depending on funding available and the contractor bids received in response to this RFP, the project area or requirements may be adjusted to stay within budget constraints.

CONTRACTOR SELECTION PROCEDURE

Review of Technical Proposals

The contractor or contractor team will be evaluated based on the following factors. These factors are not listed in any particular order of priority:

I. Experience and Capability (30%) - Respondents will be evaluated with respect to the experience of the firm(s) and personnel assigned to the project both in terms of past efforts in this type of work and the level of commitment to this project. Of prime concern will be the capabilities and accomplishments of the individuals to be assigned to this particular project (including subcontractors) and the management qualifications of the firm in terms of its ability, experience, and reliability in performing and managing work within a schedule and budget. Specific emphasis will be placed on:

- a. Firm's corporate history and experience (including references from recent customers)

- b. Professional experience of both management and technical personnel to be assigned to the project (including sub-contractors).

- c. Firm's experience in orthophotography and digital terrain modeling.

II. Technical Approach (30%) - Respondents will be evaluated as to their understanding of the project, how well the proposed work program and schedule address the project requirements, the quality assurance/quality control procedures to be deployed, and the completeness and innovation evident in the approach to the project and the proposed work program.

III. Project Cost (30%)- The bid price will be an important consideration in the selection, although it will not be the sole determining factor. Specific attention will be given to the commitment implied for key staff and the overall labor effort proposed, and their relationship to the estimated project cost.

IV. Other value-added tools and services (10%) - Responses will be evaluated on the inclusion of tools and services to streamline production, project management, and data distribution. Such items may include tools for online project status tracking, automated QA/QC tools and procedures, and online data hosting/distribution services.

Proposals will be evaluated by City of Prescott GIS and Engineering staff. The City of Prescott reserves the right to seek clarification of any proposal submitted and to select the proposal considered to best promote the public interest. All proposals become the property of the City of Prescott upon submission. The cost of preparing, submitting and presenting a proposal is the sole expense of the contractor. The City of Prescott reserves the right to reject any and all proposals received as a result of this solicitation, to negotiate with any qualified source, to waive any formality and any technicalities or to cancel the RFP in part or in its entirety if it is in the best interest of the City of Prescott. This solicitation of proposals in no way obligates the City of Prescott to award a contract.

SCOPE OF WORK

The following scope of work has been developed by the City of Prescott staff. Although the scope presents a sound approach, the City of Prescott is willing to consider revisions based on the experience and expertise of the Contractor. The first task for the selected contractor will be to review of the scope of work and recommend changes. Contractors are encouraged to suggest any innovative approaches that are not addressed in this scope. However, both the technical and cost sections of the proposal must include each of the tasks listed below. Changes to the scope of work will only be considered after the Contractor has been selected.

The purpose of this project is to provide high resolution orthorectified imagery and 2ft contours for the City of Prescott. This covers approximately 250 square miles. A map of the proposed area is included as Attachment A of this RFP.

A. Image Acquisition

The contractor shall acquire imagery to support high resolution digital orthophotographs.

Acquisition Timing and Conditions

Photo acquisition for this project may take place in the fall of 2011 (preferred) or the spring of 2012, pursuant to agreement between the City and the contractor. Images will be captured in leaf-off conditions of vegetation with minimal shadowing from sun angle, when the area is free of clouds, haze, fog, dust, smoke, floodwaters, and the ground is free of snow. Photo acquisition shall not begin without authorization from the City of Prescott Project Manager.

Photographic Mission

The contractor shall be responsible for applying for, and obtaining, any required permit for access, overflight, or intrusion into restricted or otherwise limited ground access and/or airspace, which may be included within the requirement of this scope of services.

Every effort shall be made to avoid breaks within individual flight lines. Where breaks within a flight line are necessary, the entire flight line composed of the resulting segments shall meet all of the requirements set forth in these Specifications. Where breaks occur, these shall have an overlap of at least four frames to ensure a stereo model of overlap or tie. All photos within a single flight line shall be acquired with the same aerial camera and with the camera oriented in the same direction.

Overlap/Sidelap

All photography shall be acquired to provide adequate stereo coverage. Minimum overlap shall be 60% forward and 30% side. However, additional exposures shall be captured over urban core areas and mountain areas to ensure that no more than 25% of roadways/transportation features are obscured in urban areas and valley bottoms are visible in the mountains. The imagery should not contain any objectionable shadows caused by terrain relief or low solar altitude.

Image Quality

All images should be clear and sharp in detail with no light streaks, static marks, scratches, dust marks, or other noticeable blemishes. The imagery should be free from defects, such as out-of-focus imagery, and should not contain inconsistencies in tone and/or density between individual orthos and/or adjacent sheets. To ensure consistency, the imagery should be radiometrically and geometrically corrected to enable adjacent files to be displayed simultaneously without obvious distinctions between them.

Imagery Scanning

In the case of imagery acquired through traditional film-based methods, the imagery shall be scanned directly from negative film, at a resolution of 14 microns. The device used for scanning shall be a precision instrument designed for photogrammetric applications having an aperture capable of producing a scanning resolution of at least 10 microns, a geometric accuracy of 5 microns RMSE, and a capability of resolving sufficient levels of red, green, and blue to produce natural color imagery.

Ground Control

The ground control will be established in accordance with FEMA Map Modernization Guidelines in conjunction with the NGS-58 procedures and derived from existing NAD 83, NAVD 88 control throughout the project area. That should supplement local NGS points and the use of the High Accuracy Reference Network (HARN) in and around the project and the Continually Operation References Stations (CORS).

Lidar

If the LIDAR option is selected, a flight with data collection at 100 kHz to achieve three points per square meter, and vertical accuracies to support 2' contours- (18.5 cm RMSEz). This should include a survey of at least 20 checkpoints within the project area to control, measure and validate the accuracy. All processing will adhere to FEMA, USGS and NSSDA guidelines and specifications. Deliverables include bare-earth classified LiDAR point data in ASCII and LAS formats, Bare-earth DEM in an agreed standard format.

The survey datum for this project will be: Arizona State Plane Coordinate System, Central Zone, North American Datum of 1983, 1993 Adjustment, with the vertical datum on NAVD 88, international feet.

Camera Station Control

Camera position (AZ State Plane coordinate system (units of meters), NAD 83, x, y, and elevation) shall be recorded at the instant of exposure with airborne GPS. Airborne GPS data shall be differentially corrected and organized as individual data sets grouped by corresponding film roll (or digital image groups if using non-film methods). The horizontal root-mean-square error (RMSE) of the airborne GPS control data shall not exceed 20cm. The vertical RMSE of the airborne GPS control shall not exceed 30cm. Final post-processed airborne GPS data shall be submitted to the City in a format mutually agreeable to the City and the Contractor.

B. Image Rectification

Digital orthophotograph production shall be produced consistent with the following requirements.

- a. Digital Orthorectified Images shall be 24-bit true color. Other available formats may be considered (e.g. color-infrared).
- b. Digital Orthorectified Image ground resolution shall be appropriate to the scale of imagery acquired (6 inch resolution). Control from the aerotriangulation and ground survey will be used to tie the digital images to actual ground coordinates.
- c. The rectification process shall involve solution of the appropriate photogrammetric equations for each pixel in the output image. It will not be permissible to solve photogrammetric equations at anchor points only and then warp the content of the original image between the anchor points.
- d. Digital Orthorectified Images shall be rectified to the Arizona State Plane Coordinate System, NAD 83 Datum, with international feet as the unit of measure.
- e. Digital Terrain Model Vertical Accuracy - Vertical positional accuracy of the resultant DTM shall meet National Map Accuracy Standards so that "Vertical accuracy, as applied to contour maps on all publication scales shall be such that not more than 10 percent of the elevations tested shall be in error more than one-half the contour interval." The contractor must ensure that the data be capable of producing a two (2) foot interval contour map.
- f. Digital Orthorectified images shall be rectified to a composite Digital Terrain Model (DTM) developed by the vendor at appropriate resolutions and accuracy to develop the acquired imagery.
- g. Digital Orthorectified Image Horizontal Accuracy – Horizontal positional accuracy of the resultant imagery shall meet American Society of Photogrammetry and Remote Sensing (ASPRS) Class 1 Accuracy Standards for 1"=100' scale mapping and meet National Standards for Spatial Data Accuracy (NSSDA) for a 2ft contour interval (RMSEz of 0.6 ft). The contractor will detail the methods used to ensure this level of accuracy in the Technical Proposal.
- h. Digital Orthorectified Image Tile Size – Orthorectified GeoTIFF files shall represent quarter section tiles cut at even quarter section lines with no overedge. The City will provide the contractor with a tile index indicating the tile layout and tile names. The index will be supplied as a shapefile suitable for loading into ArcGIS.
- i. Orthorectified Image Chips shall be tonally balanced prior to generation of an image mosaic. Building tilt shall be corrected to the extent that other important features are not obscured. Relative join (misalignment) of transportation features between adjacent image chips/tiles shall be within the tolerance defined by the horizontal positional accuracy requirement set out above. Any methods of mosaicing orthoimagery to reduce relief displacement of buildings and terrain should be detailed in the technical proposal.
- j. File Naming Convention – The ortho tile filenames shall be derived from the tile index supplied to the contractor by the City.
- k. Coverage Area – The quoted price shall include all costs to provide complete coverage of the area shown in the coverage diagram of approximately 250 square miles included in Attachment A. The

coverage area may be adjusted in the final contract depending on the cost proposals and funds available.

C. Quality Assurance

The contractor shall perform quality assurance tasks on the orthorectified imagery to ensure the product meets all of the requirements for horizontal and vertical accuracy, image resolution, and image characteristics in this scope of work. Specific tasks to complete quality assurance will be detailed in the finalized scope of work.

D. Project Deliverables

The resultant imagery will be delivered on a timetable defined at the time of contracting.

The deliverable products of this project will consist of the following items:

1. Flight Diagrams--A Flight Diagram plot and associated digital plot file shall be delivered that illustrates project area outline, photo identification (roll/exposure if film), and approximate location of photo centers.
2. AGPS Track Plots--An Airborne GPS Ground Track Plot and associated digital plot file shall be delivered. Ground track plot shall be created from airborne GPS coordinates recorded during flight.
3. Digital Orthorectified Images – Contractor shall deliver master copies of the orthophotographs for the project area in uncompressed, ArcGIS readable, GeoTIFF computer file format on a mutually acceptable storage medium. The Contractor shall furnish geo-referenced world files for all ortho images.
4. Composite Elevation data developed for the DTM in the orthorectification process shall be submitted as a deliverable in non-proprietary format suitable for use in ESRI GIS software and industry standard CAD software, such as a point DXF file. The contractor should list alternative file formats if available.
5. Two-foot contour interval file compatible with ESRI GIS software.
6. FGDC-compliant metadata for each tile.

E. Acceptance Criteria

Imagery delivery must pass through a comprehensive evaluation and review process. This process will verify the positional accuracy of the data, and ensure its aesthetic and functional quality. The City of Prescott will oversee this quality control process using in-house resources. The City may reject any or all tiles that fail to meet the project's positional accuracy or aesthetic and functional quality requirements.

Prior to delivery of the product, horizontal positional accuracy testing will be performed following the methods proposed by the contractor in the technical proposal.

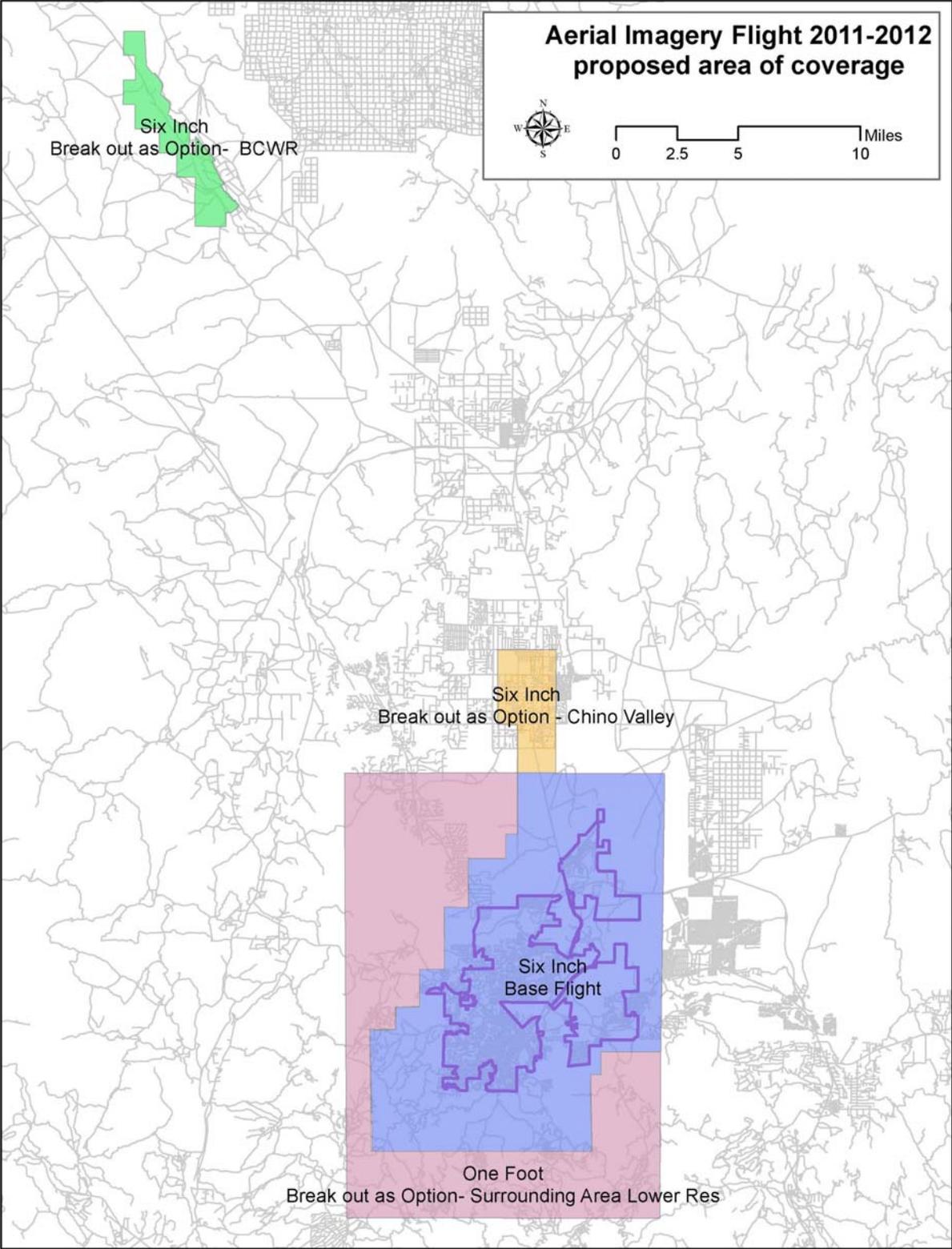
The City of Prescott will review and test orthoimagery as it is delivered to ensure it meets the required accuracy standards and imagery qualities.

Aesthetic and functional quality will be tested through a variety of qualitative and quantitative methods to ensure the imagery generally matches the aesthetic and functional quality of previous years of imagery. In overall terms, the imagery must be free of the following types of errors:

- Misalignments in linear features (roads/curbs/building edges etc.) resulting from poorly stitched mosaics
- Obvious seams between images
- Blurred, out-of-focus, stretched, or poorly scanned imagery
- Scratches, lint, blemishes or other artifacts introduced in the processing of the film or imagery
- Stark changes in color balance and contrast
- Stark shadows or bright spots in the imagery
- Excessive shadowing in Ponderosa Pine areas resulting in imagery with more emphasis on the shadows than the tree itself.
- Buildings that obscure more than 25 percent of adjacent important features. Obscured valley bottoms in the mountains.
- Warped bridges/overpasses/viaducts

ATTACHMENT A

Project Area (data for area is available in shapefile format, contact GIS (928-777-1309)



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. Proposers are advised that the City shall not be bound by information, clarifications, or interpretations from other City officials or employees. Proposers 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 Proposer's proposal.

2.2 Schedule

Solicitation Advertisement

Sunday, October 16, 2011

Proposals Due

Time: Friday, October 28, 2011 at 2:00 pm
Location: Office of the Purchasing Manager
201 S. Cortez St.
Prescott, AZ 86302

2.3 Questions and Requests for Addenda

Proposers 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 Proposer to request clarification of any inadequacy, omission or conflict shall not relieve the Proposer 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.cityofprescott.net/business/bids.

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 Proposer shall clearly mark any proprietary information contained in its proposal with the words “proprietary information.” Proposer shall not mark any Solicitation Form as proprietary. Marking all or nearly all of a proposal as proprietary may result in rejection of the proposal.

Proposers should be aware that the City is required by law to make its records available for public inspection. The Proposer, 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 Proposer in the event that the City must legally disclose these materials.

2.6 Multiple Proposals

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

2.7 Delivery of Proposals

Sealed proposals must be received at the Office of the Purchasing Manager no later than the date and time listed in Section 2.2.

Proposer shall enclose proposal in a sealed envelope. The envelope should identify the Proposer’s name, mailing address, Solicitation and Title, and the time and date due.

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

Proposer is solely responsible for ensuring that proposal(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 proposals. Proposals received after the deadline will not be considered.

2.8 Cost of Proposals

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

2.9 Errors in Proposals

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

2.10 Withdrawal of Proposals

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

2.11 Changes in Proposals

Prior to the proposal due date and time listed in Section 2.2, a Proposer may make changes to its proposal provided the change is initialed and dated by the Proposer.

Corrections and/or modifications received after the closing time specified will not be accepted.

2.12 Rejection of Proposals

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

2.13 Disposition of Proposals

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 proposal 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, 201 S. Cortez St., Prescott, AZ 86303, FAX 928-777-1241.

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 Proposer(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 proposer.

2.16 Proposal Submittal

Proposal submittals must be sealed and the envelope must clearly indicate the information as described in Section 2.9. Proposer must fully complete and submit the following documents:

- 1) Proposal Form A – Solicitation Response Cover Sheet
- 2) Proposal Form B - Proposal Certification
- 3) Proposal Form C - Non-Collusion Certificate
- 4) Proposal Form D - Contractor Questionnaire
- 5) Proposal Form E – Certificate of Ownership
- 7) Proposal Form F – Proposer 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. **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.
4. **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.
5. **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.
6. **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. The Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
7. **Diversity**: The City encourages the Contractor to employ a workforce reflective of the region's diversity.
8. **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.

9. **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, proposals, estimates, or proposals 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.
10. **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.
11. **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.
12. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Agreement, Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.
13. **Insurance:** Contractor is required to keep in full force during the term of this Agreement, the Insurance coverage as set forth in **Appendix 1**, incorporated herewith and made part of this Agreement. Failure to maintain the insurance required in **Appendix 1** by Contractor, is reason for immediate termination of this Agreement by Licensor. Licensor reserves the right to require Contractor to make changes to insurance coverage including, but not limited to, increasing limits of insurance coverage under this Agreement.

14. **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.
15. **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.
16. **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.
17. **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.
18. **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.
19. **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.
20. **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.
21. **Binding Effect:** The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.
22. **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.
23. **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.
24. **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.

25. **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.
26. **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 Proposal Information

4.1 Default by Proposer

In case of default by the Proposer, 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 Proposer 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 proposal, 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 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.

4.4 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.

5.0 Instructions for Solicitation Forms

5.1 Form A - Solicitation Response Cover Sheet

Proposer shall complete, sign, and submit Form A as the first page of the proposal package.

5.2 Form B - Proposal Certification

Proposer shall complete, sign, and submit Form B

5.3 Form C - Non-Collusion Certificate

Proposer shall complete, sign, and submit Form C.

5.4 Form D - Contractor Questionnaire

Proposer shall complete, sign, and submit Form D.

5.5 Form E - Certificate of Ownership

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

5.6 Form F - Proposer Qualifications, Representations and Warranties,

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

5.6.2 The City reserves the right to inspect any of Proposer's facilities and equipment after the proposal due date and time listed in Section 2.2. The Proposer 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 Proposer's facilities, equipment, personnel, and procedures. The Proposer 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 Proposers. Responsible Proposers 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 Proposer in response to this solicitation or other information otherwise available to the City in evaluating the responsibility of the Proposer. Such information may include, but is not limited to, experience and history of the City with current and/or prior contracts held by the Proposer with the City or with other agencies, references provided by the Proposer to the City, information provided by the Proposer as part of the solicitation responses, and information not specifically provided by the Proposer 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 Proposer if any owner of such Proposer has been convicted within the past ten years of a crime involving dishonesty or false statements, or if the Proposer has unsatisfied tax or judgment liens.

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

Form A – Solicitation Response Cover Sheet



City of Prescott
Solicitation Response

Solicitation Number: 12GIS0014
Description:..... Aerial Mapping Photography and Contour
Generation

Proposal checklist:

- Original Forms A through F completed and submitted
- Copies of proposal included as requested

Business Name: _____

Business Address: _____

Business Phone: (____) _____

Business Contact: _____

Form B – Proposal Certification

Proposer

Name: _____

The undersigned Proposer hereby certifies as follows:

B.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
_____	_____
_____	_____

B.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.

B.3 That the Proposer’s proposal consists of the following:

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

B.4 That the Proposer’s proposal is valid for 120 days.

Dated this _____ day of _____ 2011.

Signature

Title

Form C – Non-Collusion Certificate

Proposer

Name: _____

The undersigned Proposer hereby certifies as follows:

To the best of his/her knowledge, the person, Contractor, 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 proposal to The City of Prescott for consideration in the award of this solicitation.

Dated this _____ **day of** _____ **2011.**

Signature

Title

Form D – Proposer 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 proposal 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 proposal?
- 5.** Has the undersigned company had proposal errors or omissions in two or more proposal 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 statutes within a ten-year period arising out of submission of proposals or proposals?
- 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 E – Certificate of Ownership

Proposer

Name: _____

The undersigned Proposer hereby certifies as follows:

To the best of his/her knowledge, the person, Contractor, association, partnership or corporation herein, are the only person, Contractors, corporations, partnerships, or other associations having any direct or indirect financial interest in the Proposer'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 F –Proposer Qualifications, Representations and Warranties

Proposer Name: _____

The undersigned Proposer hereby certifies as follows:

- F1 Taxes and Liens** - Proposer has no unsatisfied tax or judgment lien on record.
- F2 Subcontractors** – Proposer submits as Attachment 4 to this Proposal 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 Contractor’s name, contact person and title, mailing address, telephone number, fax number and a description of the service(s) to be subcontracted. Proposer shall also attach a copy of the letter from the subcontractor stating its commitment to perform the services(s) subcontracted.
- F3 References** – The City will enter into an agreement only with a Proposer(s) having a reputation of satisfactory performance. The Proposer’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. Proposer shall provide information for two clients, other than the City of Prescott, that presently contract with Proposer for similar goods or services:

Reference #1

Contractor Name: _____

Address: _____

Contact Person: _____

Phone Number: _____

Reference #2

Contractor Name: _____

Address: _____

Contact Person: _____

Phone Number: _____

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

- F4 Proposer’s Examination** - Proposer 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. Proposer 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. Proposer acknowledges and agrees that it has satisfied itself by its own examination, investigation and research, and that it will make no claim against the City because of erroneous estimates, statements, or interpretations made by City. Proposer 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

DRAFT SERVICE AGREEMENT

WHEREAS the City of Prescott (hereinafter referred to as "City") is in need of certain services; and

WHEREAS _____ (hereinafter referred to as "Contractor ") has expertise in providing aerial orthophotography;

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

SCOPE OF WORK

1. The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities as identified in Exhibit "A", attached hereto and made a part hereof, and to completely and totally provide the same to the CITY, in a good and workmanlike and substantial manner and to the satisfaction of the CITY through its agents and under the direction and supervision of the Risk Manager or his properly authorized agent(s), hereinafter referred to as the Project Director or his designee, subject to those limitations and modifications as contained in Exhibits "A" and "B", attached hereto and made a part hereof.

2. In addition to those services identified in the attached Exhibits "A" and "B", the Contractor shall also perform all subordinate tasks not specifically referenced but necessary to the full and effective performance of those tasks specifically referenced. In the event of a discrepancy between this Agreement and Exhibits "A" and "B", this Agreement shall control. In the event of a discrepancy between Exhibits "A" and "B", Exhibit "A" shall control over Exhibit "B".

3 Contractor shall provide sufficient qualified personnel, upon reasonable notice to perform any and all services as required herein, including but not limited to preparation of reports, as reasonably requested by representatives of the City.

TIME OF COMPLETION/TERM

4. (a) The term of this agreement shall be from START DATE through END DATE. All services identified in Paragraphs 1 and 2 above shall be completed to the satisfaction of the City no later than mutually agreed upon dates.

(b) The parties may, by mutual consent, extend this contract additional _____ years under the same terms and conditions as contained herein.

(c) Notwithstanding the foregoing, this Agreement may be terminated by the City upon ten (10) days written notice, with or without cause. It may also be terminated by the City in the event that funding for the City's payments hereunder is dependent on grants or other commitments of funds from another governmental Agency/Contractor/Vendor and those funds are terminated or substantially reduced for any reason. If this Agreement is terminated, the Agency/Contractor/Vendor shall be paid for services performed to the date of Agency/Contractor/Vendor's receipt of such termination notice.

5. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the City is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement

in any capacity or a Agency/Contractor/Vendor to any other party of the agreement with respect to the subject matter of the agreement. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of the City of Prescott from any other party to the agreement arising as a result of this agreement.

6. Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage and certified mail, at the following addresses:

City of Prescott
REQUESTOR
PO Box 2059
Prescott, AZ 86302

With a copy to:

City of Prescott
City Clerk
PO Box 2059
Prescott, AZ 86302

Agency/Contractor/Vendor:

CONTRACTOR
Street
City, State, Zip

INDEPENDENT CONTRACTOR STATUS

7. It is expressly agreed and understood by and between the parties that Contractor is an independent Contractor, and as such Contractor shall not become a City employee, and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled. As an independent Agency/Contractor/Vendor, Contractor further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent Agency/Contractor/Vendor, Contractor further agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out nor claim to be an officer or employee of the City by reason thereof, and that it will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

8. This Agreement is non-assignable by the Agency/Contractor/Vendor.

COMPENSATION

9. (A) The City shall pay to the Contractor a total sum not to exceed \$ [REDACTED] for the complete performance of all services specified in Sections 1, 2 and 3 of this Agreement.

(B) Should the City request in writing additional services beyond that specified in Sections 1, 2 and 3, then Contractor shall charge and City shall pay a mutually agreed fee.

AMBIGUITY/VENUE

10. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

11. This agreement shall be construed under the laws of the State of Arizona.

12. This Agreement and Exhibit "A" represent the entire and integrated Agreement between the City and the Agency/Contractor/Vendor and supersede all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Agency/Contractor/Vendor. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

13. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

14. The Agency/Contractor/Vendor shall, within ten (10) calendar days after the execution of the Agreement and before awarding any subcontract, furnish the City with a list of proposed subcontractors, and shall not employ any that the City may object to as incompetent or unfit.

15. The Agency/Contractor/Vendor hereby agrees to defend, indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the Agency/Contractor/Vendor's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or his/her agents. The Agency/Contractor/Vendor further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the Agency/Contractor/Vendor has or may have against the City, its agents or employees, arising out of or in any way connected with the Agency/Contractor/Vendor's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents.

16. No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

INSURANCE

17. Contractor is required to keep in full force during the term of this Agreement, the Insurance coverage as set forth in Appendix 1, incorporated herewith and made part of this Agreement. Failure to maintain the insurance required in Appendix 1 by Contractor, is reason for immediate termination of this Agreement by Licensor. Licensor reserves the right to require Licensee to make changes to insurance coverage including, but not limited to, increasing limits of insurance coverage under this Agreement.

NONDISCRIMINATION

18. The Agency/Contractor/Vendor, with regard to the work performed by it after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Agency/Contractor/Vendor will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Order 99-4.

19. 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. The Agency/Contractor/Vendor further agrees that this provision shall be contained in all subcontracts related to the project which is the subject of this Agreement. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Agreement, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute. The Agency/Contractor/Vendor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.

IMMIGRATION WARRANTY

20. The Contractor understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. §34-302, as amended, "Residence Requirements for Employees."

Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the City that the Contractor and each of its Subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractor's employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of its Subcontractors to ensure compliance with the Contractors Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214 Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its Subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or Subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

DATED this _____ day of _____, 2011.

City Manager

ATTEST:

APPROVED AS TO FORM:

ELIZABETH BURKE
City Clerk

GARY D. KIDD
City Attorney

Contractor

By: _____

Printed Name: _____

Title: _____

APPENDIX 1 – INSURANCE REQUIREMENTS

(A) The Contractor shall obtain and maintain in effect during the term of, and until final acceptance of all work under, this Agreement a policy or policies of liability insurance with limits not less than \$1,000,000.00. Liability insurance shall provide the following coverage:

1. Commercial General Liability – Occurrence Form

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

General Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

a. The policy shall be endorsed to include the following additional insured language: **"The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor "**.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

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

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

a. Policy shall contain a **waiver of subrogation** against the City of Prescott.

(B) All insurance and bonds required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS Section 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

(C) Prior to commencing work under this Agreement, the Contractor shall provide the City with evidence that he/she is either a "self-insured employer" or a "carrier insured employer" for Workers' Compensation as required by A.R.S. 23-901 et seq., or that he/she employs no persons subject to the requirement for such coverage.

EXHIBIT 'A'
(insert RFP here)

EXHIBIT 'B'
(insert Proposal Response here)