



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

Proposal 12PPL0036
Library Materials

The City of Prescott is soliciting proposals from qualified firms to provide library materials on an as-needed basis for a duration of (3) years. Sealed proposals (one (1) original and two (2) copies) shall be received before 2:00 pm on Thursday, March 29, 2012 at the time and place indicated in Section 2.2.

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1.0 Solicitation Specifications/Scope of Work/Proposal Evaluation

The City of Prescott invites proposals for the furnishing and delivery of LIBRARY MATERIALS for the Prescott Public Library for a period of three (3) years from date of award. The successful vendors shall grant to City the right to an option to renew the agreement for two (2) successive terms of one year each. Proposals are to be based on requirements for library materials for the Prescott Public Library for this period. The Prescott Public Library FY2013 budget is expected to be \$152,000 for library materials (not including downloadable materials). The stated amount is an approximate figure and in no way binds the City of Prescott to purchase any firm or guaranteed amount.

The City will issue purchase order(s) to that supplier(s) who, in the sole judgment of the City of Prescott, will provide the 'best buy' as measured by the best discount in conjunction with compliance with all specifications and with a thoroughly acceptable and excellent level of service as evaluated by the City Librarian.

For purposes of comparison, and to determine which vendor(s) will be able to supply the greater variety of books ordered, proposers would supply a complete list of publishers' imprints handled or provide an indication of the number of publishers routinely carried.

DESCRIPTION: Books must conform to recognized standards as regards quality of paper, printing, and binding.

Discount shall be based on the publishers' list price, not freight pass-through price. Proposers shall quote discounts on five categories of books, as follows or as a firm all inclusive discount for all materials, and on plastic covers for paperbacks, if available.

DELIVERY: Proposal will be for books delivered F.O.B., Prescott Public Library, 215 E. Goodwin Street, Prescott, Arizona, 86303. Orders for books will be placed as required, and any quantity of books designated must be delivered. Proposer agrees to pay transportation charges on return of imperfect books or books or titles not as ordered, and replace same at no further charge to the City. The transportation charges on returned materials will be reimbursed by vendor in the form of a credit to be used by the City against the next payment to Proposer.

For published materials, deliveries must be made within three (3) weeks of release of order for at least seventy-five percent (75%) of the books released. Materials ordered prepublication must arrive by publication date. Items remaining unfilled ninety (90) days after original release or order are automatically canceled, and if delivered thereafter may be automatically returned to Proposer at Proposer's expense. Transportation charges on returned items will be reimbursed in the form of a credit to be used by the City against the next payment to Proposer.

The following types of books may be excluded from ordering under this agreement, but if ordered from the supplier the appropriate discount shall apply: encyclopedias, dictionaries, yearbooks, out-of-print books, foreign publications, continuations, subscriptions, publications by obscure or little-known publishers; books which cannot be supplied in a publisher's 'library binding' of acceptable quality and which require better than trade binding; publications of the H.W. Wilson Company, R.R. Bowker, and the American Library Association, and other primary sources determined by the library.

ELECTRONIC ORDERING: The Prescott Public Library utilizes the SirsiDynix Symphony Acquisitions Module with the X-12 format. Proposer must be able to accept orders electronically according to the following specifications and be compatible with our acquisitions system.

1. Orders, indicating ISBN and quantity only, must be able to be pre-batched at the library, and then transmitted electronically from library directly to vendor.
2. Access to vendor's order processing system must be via toll-free telephone number and there is to be NO CHARGE for the use of the system. Special consideration to those vendors capable of accepting orders in X-12 format via FTP.

3. Vendor must provide confirmation reports either electronically or in print which are to be mailed directly to library and received within three working days after order placement, or electronic verification of order.
4. Vendor will supply necessary software if required to interface with DYNIX Acquisitions System X-12 format.
5. Preference will be given to vendors who can accept orders in X12 format.
6. Must interface with Dynix and Horizon acquisition modules.
7. Must meet Edifact standards.

BILLING: Billing must be rendered in duplicate clearly identified at the time of each original order, and as instructed by the City Librarian. Preference will be given to vendors who can invoice individual orders or purchase order numbers separately.

TOLL-FREE TELEPHONE: Phone inquiries to the successful proposer by the library may be made on a collect basis or toll-free number anytime throughout the year.

Any terms offered will be added to totals. Proposals will be evaluated by COMPARING the ability of Proposer to supply one or more categories of library materials (as listed in Description) or the across the board discount, Proposer's fulfillment of orders, accuracy and manner of invoicing, other normal services as experienced by libraries supplied by Proposers, and discounts from publishers' list price.

Proposals submitted by individual publishers will not be considered.

TAXES: If your company is outside Arizona, library materials are not subject to use tax.

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 or equipment as specified, or from 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.

AWARDS: The City of Prescott reserves the right: (1) to award proposals received on the basis of individual items, or groups of items, or on the entire list of items; (2) to reject any or all offers, or any part thereof; (3) to waive any informality in the proposal; and (4) to accept the offer(s) that are in the best interest of the City. The City Council's decision shall be final.

RENEWAL OF AGREEMENT TERM: The initial term of the Agreement with the successful proposing vendor shall be three years. The successful vendors shall grant to City the right to an option to renew the agreement for two (2) successive terms of one year each. All discounts, payment and shipping terms for each renewal term will remain the same as the initial term.

Proposal Content

The response to this RFP should be specific and complete in detail, address each item by the order given in the RFP and be prepared in a straight-forward manner. One (1) original and two (2) copies of the proposal shall be submitted for purposes of evaluation.

1. **Cover Letter:** A letter on your organization's stationary shall indicate the reply to the RFP for 'Library Materials.' The letter shall be dated on or prior to the listed date for receipt of the proposal, define the capability of the organization to purchase and supply the materials, list the names of contact persons with phone numbers and mailing addresses.
2. **Materials List:** Attach a complete list of publishers' imprints with discounts offered in the format suggested on page #1 of this RFP.

3. Certification of Proposal: The proposal shall be certified with the signing of the cover letter by a representative of the organization authorized to bind the proposal and be identified by name, title, address and phone number.

4. Pricing Information below:

Discount
Percentage

A. Trade books, which include fiction, miscellaneous non-fiction, juvenile, and which carry the full trade discount including paperback books of over \$5.00 publisher's list price (\$97,000 est.)*

B. Technical, scientific, and reference books; and textbooks normally classified as 'short discount' items (\$15,000 est.)

C. Books of a trade nature, published by smaller publishers; not listed in Trade List Annual (\$5,000 est.)

D. Books ordered in publisher's reinforced library bindings (\$15,000 est.)

E. Mass paperbacks, popular titles in paper format having a publisher's list price of \$8.00 or less (\$5,000 est.)

F. Recorded books
CD's and DVD's
software (\$15,000 est.)

OR

All library materials - books, paperbacks, audio visual, computer software, etc. purchased

Preprocessing of paperbacks purchased with reinforced plastic covers/jackets @

Preprocessing of hardbacks with dust covers purchased with mylar covers/jackets @

*Bracketed amounts are estimated distribution of library's materials budget (not including downloadable materials).

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: 928-777-1234
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, March 4, 2012
Proposals Due	Time:	Thursday, March 29, 2012 at 2:00 pm
	Location:	Prescott City Hall Attn: 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 (one (1) original and two (2) copies) must be received at the Office of the City Clerk no later than the date and time listed in Section 2.2.

The proposal shall be addressed to:

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

Proposer shall enclose proposal (one (1) original and two (2) copies) 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 be returned unopened.

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, 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 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.

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 latest drawings and 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. **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 take affirmative action to 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.
12. **Diversity:** The City encourages the Contractor to employ a workforce reflective of the region's diversity.
13. **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.
14. **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.
15. **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.
16. **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.
17. **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.

The Contractor shall obtain and maintain in effect during the term of this Agreement liability insurance policy(ies) with limits not less than those set forth in this Agreement. The amount and type of insurance coverage requirements set forth herein are the minimum requirements and will in no way be construed as limiting the scope of indemnity covenants contained in this Agreement.

18. **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.
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.
24. **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.
25. **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.

26. **Binding Effect:** The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.
27. **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.
28. **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.
29. **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.
30. **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.
31. **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.