



NOTICE OF SOLICITATION

SOLICITATION # 2018011

September 20, 2017

REQUEST FOR PROPOSAL FOR: INFORMATION TECHNOLOGY SOLUTIONS & SERVICES

PROPOSAL DUE DATE AND TIME: October 23, 2017 – 3:00 P.M. LOCAL ARIZONA TIME

Notice is hereby given sealed proposals will be received by the Purchasing Division, City of Mesa, Mesa City Plaza, 20 East Main Street, Suite #400, Mesa, Arizona 85201, until the date and time cited above. Proposals received by the correct date and time will be opened publicly and read aloud by the Purchasing Division's Procurement Administrator (or designated representative).

| | |
|---|--|
| Issue Request for Proposals | September 20, 2017 |
| Pre-Proposal Conference (Optional) | October 3, 2017 – 10:00 am local Arizona time |
| Questions due from Proposers | October 6, 2017 – 3:00 pm local Arizona time |
| City of Mesa response to Questions | October 12, 2017 |
| Proposal Due Date | October 23, 2017 – 3:00 pm local Arizona time |

VENDOR CONFERENCE / SITE VISIT:

Date and Time: October 3, 2017 – 10:00 am local Arizona time

Location: City of Mesa – Mesa City Plaza
20 E Main Street, Conference Room 450 South
Mesa, AZ 85201
Teleconference Number: 480-644-6120; PIN 319405

The conference provides interested parties an opportunity to discuss the City and National IPA's needs and ask questions. Please read the entire solicitation package and submit the proposal in accordance with the instructions. This document (less this invitation and the instructions) and any required response documents, attachments, and submissions will constitute the proposal. Proposal envelopes with insufficient postage will not be accepted by the City of Mesa.

Proposals must be in the actual possession of the Purchasing Division Office at the location indicated, on or prior to the exact date and time indicated above. Late submittals shall not be considered under any circumstances.

Questions concerning this solicitation should be directed, IN WRITING, to the following Purchasing contacts or their designees:

Technical Questions:

Sharon Brause, CPPO, CPPB, CPCP
Senior Procurement Officer
PHONE: 480-644-2815
FAX: (480) 644-2655
Sharon.Brause@MesaAZ.gov

General or Process Questions:

Cyndi Gonzales
Procurement Specialist
PHONE: 480-644-2179
FAX: (480) 644-2655
Cyndi.Gonzales@MesaAZ.gov

NOTE: THE CITY OF MESA PUBLISHES ITS SOLICITATIONS, ATTACHMENTS, AND ADDENDA ONLINE AND THEY ARE AVAILABLE FOR VIEWING AND/OR DOWNLOADING AT THE FOLLOWING INTERNET ADDRESS:
<http://www.mesaaz.gov/business/purchasing>

All vendors wishing to conduct business with the City are required to register and maintain all information used for the notification of solicitation opportunities and issuance of payment in the Vendor Self Service (VSS) system. To register and view additional vendor information, go to <http://mesaaz.gov/business/purchasing/vendor-self-service>.

TABLE OF CONTENTS

| | <u>PAGE</u> |
|---|-------------|
| NOTICE | 1 |
| TABLE OF CONTENTS | 2 |
| SECTIONS: | |
| INSTRUCTIONS | 3 - 13 |
| SCOPE OF WORK | 14 - 18 |
| ATTACHMENTS: | |
| ATTACHMENT A PRICING | 19 |
| ATTACHMENT B REQUIRED RESPONSE FORMS (5 pages) | 20 |
| ATTACHMENT C RESPONDENT QUESTIONNAIRE | 21 |
| ATTACHMENT D NATIONAL IPA PRINCIPAL PROCUREMENT AGENCY ("PPA") | 22 |
| EXHIBITS: | |
| EXHIBIT 1 DRAFT AGREEMENT | 23 - 39 |
| EXHIBIT 2 MAILING LABEL | 40 |

INSTRUCTIONS

1. **GENERAL:** Please read the entire Solicitation package and all attachments before submitting a Response. Responses must be in accordance with the provisions, specifications and instructions set forth herein and will be accepted until the date and time the Response is due.
2. **VENDOR QUESTIONS:** All questions regarding the contents of this Solicitation, and Solicitation process (including requests for ADA accommodations), must be directed solely to the Procurement Officer or the Purchasing Administrator. Questions should be submitted in writing via letter, fax or email. Questions received after due date and time for vendor questions (October 6th) may be answered at the discretion of the City.
3. **INSTRUCTIONS FOR PREPARING AND SUBMITTING RESPONSE:** Respondents will have the option to submit their responses either electronically or physically through hard copy response. Respondents shall provide their Responses in accordance with the following form and content requirements:

ELECTRONIC RESPONSE:

- a. Responses shall be submitted through the City of Mesa's Purchasing Website at <http://www.mesaaz.gov/business/purchasing/bid-opportunities> under the appropriate solicitation opportunity. Submissions submitted elsewhere or under the wrong solicitation will not be considered.
- b. Responses must be signed by an authorized representative of Respondent with the authority to bind Respondent to make such commitments to the City set forth in the Response.
- c. Responses should be specific to the Solicitation and present details on all requested information in a concise manner.

HARD COPY RESPONSE:

- a. Submit **one (1) signed original hardcopy** of all Response documents along with **three (3) copies**. Do **not** use spiral binding or comb binding on Responses or any Response documents. Three-ring binders are preferred for large submissions.
- b. Submit **one (1) flash drive** providing all Response documents in PDF, Word, and Excel (utilize Excel only if spreadsheets/graphs/charts are included as a part of the Response).
- c. All Responses must be signed, sealed and addressed to the Purchasing Division and Respondents shall address all Responses identified with a shipping address, serial number, and title in the following manner:

City of Mesa
Mesa City Plaza - Purchasing Division
20 East Main Street, Suite 400
Mesa, Arizona 85201

RFP No. 2018011 – Information Technology Solutions & Services

- d. Responses must be signed by an authorized representative of Respondent with the authority to bind Respondent to make such commitments to the City set forth in the Response.
- e. Responses should be specific to the Solicitation and present details on all requested information in a concise manner.

INSTRUCTIONS

4. RESPONSE FORMAT:

Table of Contents. Identify contents by tab and page number

TAB 1 - Letter of Transmittal. A brief letter of transmittal should be submitted that includes the following information:

1. The Respondent's understanding of the work to be performed.
2. A positive commitment to perform the service within the time period specified.
3. The names of key persons, representatives, project managers who will be the main contacts for the City regarding this Solicitation.

TAB 2 - Program Description AND Method of Approach. Clearly define the services/materials offered and Respondent's method of approach to including, but not limited, to the following criteria:

1. Provide a response to the national program.
 - a. Include a detailed response to Attachment D, Exhibit A, National IPA Response for National Cooperative contract. Responses should demonstrate a strong national presence, describe how offeror will educate its national sales force about the contract, describe how products and services will be distributed nationwide, include a plan for marketing the products and services nationwide, and describe how volume will be tracked and reported to National IPA.
 - b. The successful offeror will be required to sign Attachment D, Exhibit B, National IPA Administration Agreement. Offerors should have any reviews required to sign the document prior to submitting a response. Offeror's response should include any proposed exceptions to the National IPA Administration Agreement.
2. Provide a description of the product lines that can be provided by your firm.
3. Provide a description of the services that can be provided by your firm.
4. Provide a detailed description of any programs available for Participating Agencies seeking to set and meet goals for historically underutilized businesses (e.g. minority, woman, veteran, disabled, etc.). Discuss how transactions between offeror and tier one suppliers and Participating Agencies and tier one suppliers will be tracked and accounted for and any quality assurance measures that are in place to assure a high-performance standard for tier one suppliers.
5. Describe how your firm proposes to distribute the products/services nationwide.
6. Identify all subcontractors that will be involved in processing agency orders under this contract and describe their distribution/delivery processes.
7. Provide the number, size and location of your firm's distribution facilities, warehouses, and retail network as applicable Provide information on the productivity of your facilities and systems as follows:
 - a. How many orders are processed daily on an average
 - b. How many devices does your facility configure daily on an average
 - c. What is the highest number of orders processed in a single day
 - d. What is the highest number of devices configured in a single day from the facilities described
8. State any return and restocking policy, and any fees, if applicable associated with returns.
9. Describe your invoicing process. Is electronic invoicing available? Is summary invoicing available? Are there other options on how an agency receives an invoice?
10. Describe your delivery commitment:
 - a. What is your fill rate guarantee?
 - b. What are your delivery days?
 - c. Do you offer next day delivery?
 - d. How do you facilitate emergency orders?
 - e. Are shipping charges exempt for ALL who use this contract?
 - f. Describe how problems (such as a customer ordering a wrong product or a customer receiving a defective product; etc.) are resolved.
11. Describe the types of customer service available to agencies that use this contract:

INSTRUCTIONS

- a. Is online support available?
 - b. Is phone support available?
 - c. Can agencies request a dedicated service representative and/or a dedicated service team? If a dedicated customer service representative and/or team are assigned, what types of services does the representative/team provide? How do you help the customer manage our account?
 - d. How are problems resolved?
 - e. What are the location and hours of your call centers?
 - f. What response time is guaranteed when a customer service request is made?
 - g. Do you measure/track the success of your customer service program? If so, how do you do this, and what are your findings?
 - h. Describe in detail your company's ability to hold/warehouse customers' orders and if there are any cost associated.
12. Describe how your company will assist customers in navigating OEM warranty process.
 13. Describe how your firm will notify customers of new products.
 14. Describe how your company will assist and support customers when their standardized is reaching EOL (end of life).
 15. Describe if technical support questions are handled the same way as a customer service request? If not, describe the type(s) of technical support available, the location of technical support, and the hours of technical support. Is it the intent to use employees of your company or will this be an outsourced function?
 16. Describe what other services you offer that would be applicable to this contract (e.g., cloud, services, maintenance, implementation, design, analysis, training, repair, etc.)
 17. Describe options for leasing and financing and the various payment methods accepted.

TAB 3 - Pricing Forms. The cost portion of the Response should include the following criteria:

1. Provide price proposal as requested on the Pricing Document (Attachment A – “National” TAB) attached herein. In addition to indicating your proposed discounts on the Price Page, you must also apply those discounts to the sample items listed in the City's Market Basket listed in Attachment A.
2. Propose and provide details of additional discounts or rebates for volume orders, special manufacturers' offers, free goods program, total annual spend, etc.

TAB 4 - Qualifications. (Abilities, Experience and Expertise). The following information should be included:

1. Provide a brief history and description of your firm. Discuss firm's national presence in the IT solutions industry.
2. Provide the total number and location of sales persons employed by your firm.
3. Provide the number and location of support centers (if applicable).
4. Provide Public sector sales figures for 2014, 2015 and 2016 and the percentage mix of hardware, software, and services
5. Please submit your FEIN and Dunn & Bradstreet report.
6. Provide a summarization of your experience in performing work similar to that outlined in this solicitation.
7. Provide a minimum of three references for which your firm has provided the same solution (please include company name, address, contact person, phone number, email address and dates of service). References from other public agencies, particularly municipal governments, are preferred.
8. Provide resumes and three references (preferably from the public sector) for the primary customer service representative(s). Resume(s) shall include their title within the organization, a description of the type of work they would perform, the individuals' credentials, background, years of experience and relevant experience, etc. References should include the contact's name, phone number, email, position, organization, and the work which the Offeror performed for the reference.
9. Provide information regarding if your organization ever failed to complete any work awarded.

INSTRUCTIONS

11. Provide information regarding if your firm, either presently or in the past, has been involved in any litigation, bankruptcy, or reorganization.

TAB 5 – Technology.

1. Describe your website and the ease-of-use for customers to perform the following types of tasks:
 - a. to search for products
 - b. to find alternate products (if a certain product is not available)
 - c. to perform side-by-side price comparison of products
 - d. to order products
 - f. to track order status, to include backordered items
 - g. to determine when an item was received and who received it
 - h. to restrict/block the ordering of certain line items and to restrict/block the ordering of groups
 - i. to create approval paths/levels for orders, to include creating an approval path for restricted items
 - j. to create a “favorites” list or subscribed purchases other personalized list of frequently ordered items
 - k. to create a “shared” list for an agency to use
 - l. to obtain online customer service
 - m. to receive online training
 - n. to accept credit card payment (and describe the level of data offered; also describe your security measures for credit card orders)
 - o. to track their budget for purchases
 - p. to generate reports
2. Describe additional functionality offered by your website. Provide screen shots, a demo “CD/jump drive,” a demo URL, a manual, etc., or any other format that will aid the City in our evaluation of your website.
3. Describe any national awards and/or other recognition that your website has received.
4. Describe the hours your website is available? What are your hours of downtime, such as for system maintenance?
5. Does your website offer real time product availability?
6. How does your company leverage your website to inform customers of the additional savings that may be available.
7. Describe the types of email confirmations that your website generates. What events trigger an email going to the customer?
8. Describe the registration process to set up new customers for your online ordering process. Is self-registration available? If an agency does not want self-registration, are you available to assist in the registration process?
9. Describe if your website can be customized for an agency’s specific needs, such as placing our logo on your website, associating an agency blanket purchase order number on all orders, creating a bulletin board or other place to display customized messages, displaying approved configurations, naming certain fields (i.e., user defined fields, ability to include budget information), etc.
10. Describe the types of online reporting that are available. Is customized reporting available?
11. Describe your online return process (if available).
12. Describe any third-party integration that you have successfully implemented. For example, is your website integrated with any third-party procurement, financial, or purchasing/credit card systems? Is there a cost for these services?
13. Describe your strategic vision for your website – i.e., Is new functionality expected to be added? If so, describe the functionality and the timeline for implementation. How often is the web redesigned? As technology evolves (for example, new search engines are more robust), does your website evolve, too? Etc.

TAB 6 - Other Forms. The following forms should be completed and signed:

INSTRUCTIONS

1. Vendor Information form
 2. Exceptions & Confidential Information form
 3. General Questionnaire form
 4. Lawful Presence Affidavit
 5. Respondent Certification form (Offer and Acceptance)
 6. Respondent Questionnaire
 7. W-9 Form. All responses should include a fully completed, current W-9 form. Failure to include the W-9 will not disqualify your response, however the W-9 must be submitted to the City prior to the execution of any contract pursuant to this Solicitation. (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>)
5. **RESPONSE CHECKLIST:** This checklist is provided for your convenience. It is not necessary to return a copy with your Response. Only submit the requested forms and any other requested or descriptive literature.
- Response will be sent in time to be received by City before Response due date and time.
 - Original and proper number of copies submitted
 - Response container properly labeled
 - Pricing, math double-checked, form completed and included (Attachment A)
 - Required Response Forms completed and included (Attachment B)
 - Respondent Questionnaire form completed and included (Attachment C)
 - Response to a National Program (Attachment D)
 - W-9 Request for Taxpayer Identification Number and Certification form completed and included (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>)
 - Warranty information, as applicable
6. **ADDENDA:** Any changes to the solicitation document will be in the form of an addendum. Addenda are posted on the City website. Contractors are cautioned to check the Purchasing Website or the Self-Service portal for addenda prior to submitting their Response. The City will not be held responsible if a vendor fails to receive any addenda issued. *The City shall not be responsible for any oral changes to these specifications made by any employees or officer of the City and Contractors are cautioned not to rely on any such changes.* Failure to acknowledge receipt of an addendum may result in disqualification of a Response.
7. **RESPONSE OPENING:** The City will open all Responses properly and timely submitted, and will record the names and other information specified by law and rule. No responsibility will attach to the City of Mesa, its employees or agents for premature opening of a Response that is not properly addressed and identified. All Responses become the property of the City and will not be returned except in the case of a late submission. Results, as read at the public opening, will be posted on the City website. Responses will be available to the public in accordance with the City Procurement Rules.
8. **LATE RESPONSES:** The Respondent assumes responsibility for having the Response delivered on time at the place specified. All Responses received after the Response Due date and time shall not be considered and will be returned unopened to the Respondent. The Respondent assumes the risk of any delay in the mail or in handling of the mail by employees of the City of Mesa, or any private courier, regardless whether sent by mail or by means of personal delivery. Respondents must allow adequate time to accommodate all registration and security screenings at the delivery site; a valid photo I.D. may be required. It shall not be sufficient to show that Respondent mailed or commenced delivery before the due date and time as the Response must be received by the City prior to the specified date/time. All times are Mesa, Arizona local times. Respondents agree to accept the time stamp in the City Purchasing Office as the official time.
9. **RESPONSE FIRM TIME:** Responses shall remain firm and unaltered after opening for **180** Days unless the time is extended or amended as agreed upon Respondent and the City. Examples of where an extension or amendment may be necessary include, but are not limited to: (i) contract negotiations with selected Respondent; (ii) submission of a Best and Final Offer by Respondent;

INSTRUCTIONS

(iii) City needing additional time to review responses. The City may accept the Response, subject to successful contract negotiations, at any time during this period.

10. **LOBBYING PROHIBITION:** Any communication regarding this Solicitation for the purpose of influencing the process or the award, between any person or affiliates seeking an award from this Solicitation and the City including, but not limited to, City Council, City employees, and consultants hired to assist the City in the Solicitation, is prohibited.

This prohibition is imposed from the time of the first public notice of the Solicitation until the City cancels the Solicitation, rejects all Responses, awards a contract, or otherwise takes action which ends the Solicitation process. This section shall not prohibit public comment at any City Council meeting, study session, or City Council committee meeting.

This prohibition shall not apply to Respondent-initiated communication with the contact(s) identified in the Solicitation or City-initiated communications for the purposes of conducting the procurement including, but not limited to, vendor conferences, clarification of Responses, presentations if provided pursuant to the Solicitation, requests for Best and Final Responses (as set forth in the City Procurement Rules), contract negotiations, protest/appeal resolution, or surveying non-responsive vendors.

Violations of this provision shall be reported to the Purchasing Administrator. Persons violating this prohibition may be subject to a warning letter or rejection of their Response depending on the nature of the violation.

11. **LAWFUL PRESENCE IN THE UNITED STATES:** Arizona Revised Statutes § 1-501 and § 1-502 require all persons who will be awarded a contract (a Public Benefit as defined in 8 USC Section 1621) must demonstrate they are lawfully present in the United States. Person under the statute is defined as a natural person and therefore excludes Limited Liability Companies, Corporations, Partnerships, or other similar types of business entities as indicated on a W-9 form.

Individuals (natural persons) or Sole Proprietorships must complete the affidavit in the "Required Response Forms" section of this Solicitation. Respondents that fail to provide a completed affidavit and provided the necessary documentation may be deemed non-responsive.

12. **COMMENCEMENT OF WORK:** If a Respondent begins any billable work prior to the City's final approval and execution of the contract, Respondent does so at its own risk.

13. **RESPONSIBILITY TO READ AND UNDERSTAND:** Failure to read, examine and understand the Solicitation and any of its addenda will not excuse any failure to comply with the requirements of the Solicitation or any resulting contract, nor shall such failure be a basis for claiming additional compensation. The City is not responsible for and will not pay any costs associated with the preparation and submission of a Response. Respondents are cautioned to verify their Responses before submission, as amendments to or withdrawal of Responses submitted after time specified for opening of Responses may not be considered. The City will not be responsible for any Respondent errors or omissions.

INSTRUCTIONS

14. **FORM AND CONTENT OF RESPONSES:** Responses may be submitted on-line (if the option is indicated), mailed or hand-delivered. E-mail or fax submissions will not be accepted. Unless otherwise instructed or allowed, Responses shall be submitted on the forms provided. An original and the designated number of copies of each Response are required. Responses, including modifications, must be submitted in ink, typed, electronically, or printed form and signed by an authorized representative of the Respondent. Please line through and initial rather than erase changes. Any modifications to the Solicitation must be identified in the "Exceptions" section of the required response forms. The City does not encourage exceptions. The City is not required to grant exceptions and depending on the exception, the City may reject the Response as non-responsive. The City reserves the right at its sole discretion to negotiate exceptions with a Respondent. If the Response is not properly signed or if any changes are not initialed, it may be considered non-responsive. In the event of a disparity between the unit price and the extended price, the unit price shall prevail unless obviously in error, as determined by the City. The City may require that Responses be submitted on disk, flash drive, or through electronic means. The Response must provide all information requested and must address all points set forth in the Solicitation.

15. **SPECIFICATIONS:** Technical specifications define the minimum acceptable standard. When the specification calls for "Brand Name or Equal," the brand name product is acceptable. The use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. If a Respondent wishes to provide a material or service that is not the brand name, the equivalent material or service must meet the standard of quality of the brand name product, which is determined at the City's sole discretion. Equivalent products will be considered upon showing the other product meets stated specifications and is equivalent to the brand name product in terms of quality, performance and desired characteristics. Products that are substantially equivalent to those brands designated will qualify for consideration.

Minor differences that do not affect the suitability of the supply or service for the City's needs may be accepted. Burden of proof that the product meets the minimum standards or is equal to the brand name product is on the Respondent. The City reserves the right to reject Responses that the City deems unacceptable for any reason.

16. **MODIFICATION/WITHDRAWAL OF RESPONSE:** Written requests to modify or withdraw a Response received by the City prior to the scheduled opening time for Responses will be accepted and will be corrected after the Response due date and time. No oral requests will be allowed. Requests must be addressed and labeled in the same manner as the Response and marked as a MODIFICATION or WITHDRAWAL of the Response. Requests for withdrawal after the Response Due date and time will only be granted upon proof of undue hardship and may result in the forfeiture of any Response security. Any withdrawal after the Response due date and time shall be allowed solely at the City's discretion.

17. **DEBARMENT DISCLOSURE:** If the Respondent has been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government or agency, or if any such preclusion from participation from any public procurement activity is currently pending, the Respondent shall include a letter with its Response identifying the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances must be provided by the Respondent, including the details enumerated above. A Response from a Respondent who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity may be rejected. Failure of a Respondent to disclose a debarment or suspension in accordance with this Section may result in the Response being disqualified for award of the Solicitation.

INSTRUCTIONS

18. **RESERVATIONS:** The City reserves the right to reject any or all Responses or any part thereof; to re-issue the Solicitation; to reject non-responsive or non-responsible Responses; to reject unbalanced Responses; to reject Responses where the terms, prices, or awards are conditioned upon another event; to reject individual Responses for failure to meet any requirement; to award by item, part or portion of an item, group of items, geographical region or total; to make multiple awards; to waive minor irregularities, defects, omissions, informalities, technicalities or form errors in any Response; to conduct exclusive or concurrent negotiations of any terms, conditions, or exceptions taken by a Respondent or the terms of any agreement/document a Respondent would require the City to sign should Respondent be awarded a contract; and to reject Responses that are outside the City's budgeted amount for the materials or services that are the subject of the Solicitation. The City may seek clarification of the Response from Respondent at any time, and failure to respond is cause for rejection. Submission of a Response confers no right to an award or to a subsequent contract. The City is charged by its Charter to make an award that is in the best interest of the City. All decisions on compliance, evaluation, terms and conditions shall be made solely at the City's discretion and made to favor the City. No binding contract will exist between the Respondent and the City until the City executes a written contract or purchase order.
19. **EXCEPTIONS TO A SOLICITATION:** Changes to the Solicitation document requested by a Respondent may not be acknowledged or accepted by the City. Award or execution of a contract does not constitute acceptance of a changed term, condition or specification in the Solicitation unless specifically acknowledged and agreed to by the City. The copy of the Solicitation, including all addenda, maintained and published by the City shall be the official Solicitation document. Any exception to the Solicitation must be set forth in the "Exceptions" portion of the Response; any exceptions not indicated in the "Exceptions" portion of the Response will be deemed rejected by the City, void and of no contractual significance. The City reserves the right to: (i) reject any or all exceptions requested by a Respondent; (ii), determine a proposal non-responsive due to the exception(s) made by Respondent; (iii) enter into negotiations with a Respondent regarding any of the Respondent's exceptions; (iv) adjust points from the Respondent's score in the applicable evaluation criteria category or categories; or (v) accept any or all of a Respondent's exceptions.
20. **COPYING OF RESPONSES:** The Respondent hereby grants the City permission to copy all parts of its Response including, without limitation, any documents and/or materials copyrighted by the Respondent. The City's right to copy shall be for internal use in evaluating the Response.
21. **CONTRACTOR ETHICS:** Contractors doing business with the City shall adhere to the Procurement Ethics Standards, Article 7 of the Procurement Rules. It is the policy of the City to promote courtesy, fairness, impartiality, integrity, service, professionalism, economy, and government by law in the Procurement process. The responsibility for implementing this policy rests with each individual who participates in the Procurement process, including Respondents and Contractors. The failure of a Respondent or Contractor to meet the ethical standards may result in the disqualification of award under the Solicitation or the termination of a contract with the City.
- To achieve the purpose of this Section, it is essential Respondents and Contractors doing business with the City observe the ethical standards prescribed herein and in the City Charter, Code Procurement Rules and Management Policy 200. It shall be a breach of ethical standards to:
- a. Exert any effort to influence any City official, employee or agent to breach the standards of ethical conduct.
 - b. Intentionally invoice any amount greater than provided in a contract or to invoice for materials or services not provided.
 - c. Intentionally offer or provide sub-standard materials or services or to intentionally not comply with any term, condition, specification or other requirement of a City contract.
22. **GIFTS:** The City will accept no gifts, gratuities or advertising products from Respondents or prospective Respondents and affiliates. The City may request product samples from Respondents solely for the purpose of product evaluation.

INSTRUCTIONS

23. **EVALUATION PROCESS:** Responses will be reviewed by a screening committee comprised of City employees and/or any agents authorized by the City to participate in the evaluation. City staff may initiate discussions with Respondents for clarification purposes; however, a request for clarification is not an opportunity for a Respondent to change the Response. A request for clarification from a Respondent does not guarantee clarification will be requested from any other Respondents. Respondents shall not initiate discussions with any City employee, agent or official as set forth in the Lobbying section of these instructions including, but not limited to, members of the evaluation committee.
24. **PRESENTATIONS/INTERVIEWS:** The City reserves the right to conduct interviews which may include a demonstration of the supplier's website with some or all of the offerors at any point during the evaluation process. However, the City may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The City shall not reimburse the offeror for the costs associated with the interview process.
25. **SHORT-LISTING:** The City, at its sole discretion, may create a short-list of the highest scored Responses based on a preliminary evaluation of the Responses against the evaluation criteria. Only those short-listed Respondents will be invited to give presentations/interviews. Upon conclusion of any presentations/interviews, the City will finalize the scoring against the evaluation criteria.
26. **ADDITIONAL INVESTIGATIONS.** The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any offeror submitting a proposal.
27. **PRIOR EXPERIENCE.** Experiences with the City and entities that evaluation committee members represent and that are not specifically mentioned in the solicitation response may be taken into consideration when evaluating offers.
28. **BEST AND FINAL OFFERS:** The City may request Best and Final Offers if the City deems necessary and the City will determine the scope and subject of any Best and Final request. Respondents should not expect the City will always ask for Best and Final Offers. Therefore, all Respondents must submit their best offer based on the specifications, terms and conditions in the Solicitation.
29. **CRITERIA FOR EVALUATION AND AWARD:**
- a. The criteria that will be evaluated and their relative weights are:

| Evaluation Criteria | Points |
|--|--------|
| Firm's Proposed Solution Information provided or referenced by Respondents in response to the Solicitation. Sources of information to be evaluated include, but are not limited to, as applicable, Responses, presentations, interviews, and Best and Final Offers. | 500 |
| Firm's Qualifications & Experience Information pertaining to the quality of work, accomplishments, skill, and knowledge regarding a Respondent's suitability for award. Information can come from any source including, but not limited to, Responses, Best and Final Offers, references, publicly or privately available information, and the City's experience with a Respondent. | 300 |
| Firm's Proposed Pricing Pricing will be evaluated based on the below criteria. | 200 |

INSTRUCTIONS

The City has provided various sample items on the City of Mesa Market Basket Pricing (See Attachment A – “Pricing”) for pricing evaluation purposes. Suppliers are encouraged to provide pricing on as many items as possible.

Full Market Basket pricing will be evaluated based on the below equation:

$$\frac{\text{Lowest Proposal Cost}}{\text{Proposal Cost being evaluated}} \times \text{Price Points Possible} = \text{Pricing Score}$$

- b. If less than three (3) Responses to a Solicitation are deemed responsive by the City, at the City's sole discretion, the Responses may be evaluated using simple comparative analysis instead of any announced method of evaluation, subject to meeting administrative and responsibility requirements.
 - c. Each Response will be evaluated based upon responsiveness and responsibility criteria. A failure to meet responsiveness or responsibility criteria will render a Respondent ineligible for award of a contract under the Solicitation.
 1. **Responsiveness.** The City will determine whether the Response complies with the instructions for submitting a Response set forth in the Solicitation (i.e. the completeness of the Response which encompasses the inclusion of all required attachments and submissions). Responsiveness will also be examined as it pertains to items set forth in this Solicitation that state a Respondent may be deemed non-responsive based upon the content of their Response. The City will reject any Responses that are submitted late. Failure to meet any requirements in the Solicitation may result in rejection of a Response as non-responsive.
 2. **Responsibility.** The City will determine whether a Respondent is one with whom the City should do business. Factors the City may evaluate to determine responsibility include, but are not limited to: an excessively high or low priced Response; past performance under any agreement with the City; references from any source including, but not limited to, those found outside the references listed in the Response and City employees, agents or officials who have experience with the Respondent; compliance with applicable laws; Respondent's record of performance and integrity (e.g. has the Respondent been delinquent or unfaithful to any contract with the City, whether the Respondent is qualified legally to contract with the City, financial stability and the perceived ability to perform completely as specified). A Respondent must at all times have financial resources sufficient, in the opinion of the City, to ensure performance of the contract and must provide proof upon request. City staff may also use Dun & Bradstreet or any generally available industry information to evaluate the Respondent. The City reserves the right to inspect and review Respondent's facilities, equipment and personnel and those of any identified subcontractors. The City will determine whether any failure to supply information, or the quality of the information, will result in Respondent being deemed non-responsible.
 - d. As a part of the Response, Respondents are requested to provide references. The City reserves the right to: (1) Not contact any or all of a Respondent's references as the City may evaluate reference information provided in a Response; (2) Contact references not included in a Respondent's Response; and (3) Utilize as a reference City staff members who have experience with a Respondent. As references may not be contacted, Respondents are encouraged to provide as much detail as possible in Attachment C (Respondent Questionnaire).
30. **COST JUSTIFICATION:** In the event only one Response to the Solicitation is received, the City may require the Respondent submit a cost offer in sufficient detail for the City to perform a cost/price analysis to determine if the Response price is fair and reasonable.
31. **CONTRACT NEGOTIATIONS AND ACCEPTANCE:** Respondent must be prepared for the City to accept the Response as submitted. If Respondent fails to sign all documents necessary to successfully execute the final contract within a reasonable time as specified, or negotiations do not

INSTRUCTIONS

result in an acceptable agreement, the City may reject the Response or revoke the award, and may begin negotiations with another Respondent. Final contract terms must be approved or signed by the appropriately authorized City official(s). No binding contract will exist between the Respondent and the City until the City executes a written contract or purchase order.

32. **NOTICE OF INTENT TO AWARD:** Notices of the City's intent to award a contract are posted to the Purchasing Division's website before 6:00 PM local time on Wednesdays. If Wednesday is a holiday observed by the City, notice will be posted on Tuesday.

It is the Respondent's responsibility to check the City of Mesa Purchasing website at <http://mesaaz.gov/business/purchasing> to view Purchasing's Intent to Award notices. This is the only notification you will receive regarding the City's Intent to Award a contract related to this Solicitation.

33. **PROTESTS AND APPEALS:** If a Respondent or any person believes there is a mistake, impropriety, or defect in the Solicitation, believes the City improperly rejected its Response, or believes the selected Response should not receive the City contract based upon a fact supported issue with the Solicitation or selected Respondent or otherwise protests the award to the Respondent, the Respondent may submit a written protest. All protests and appeals are governed by the City Procurement Rules ("Procurement Rules"). The rules surrounding protests and appeals may be found in Section 6 of the Procurement Rules which are located on the Purchasing Division website at <http://mesaaz.gov/business/purchasing>. Please see the Procurement Rules for more information on the submission of a protest and corresponding appeal rights; if there exist any discrepancy in this Section and the Procurement Rules, the language of the Procurement Rules will control.

ADDRESS PROTESTS TO:

Matt Bauer
Procurement Administrator
20 East Main Street, Suite 400
PO Box 1466
Mesa, Arizona 85211-1466
Fax: (480) 644-2655
Email: Matt.Bauer@MesaAZ.gov

ADDRESS APPEALS TO:

Edward Quedens
Chief Procurement Officer
20 East Main Street, Suite 450
PO Box 1466
Mesa, Arizona 85211-1466
Fax: (480) 644-2687
Email: Ed.Quedens@MesaAZ.gov

34. **POLICY DOCUMENTS:** The City of Mesa Charter, Code, Procurement Rules and Management Policy 200 govern this procurement and are incorporated as a part of this Solicitation by this reference. A copy of these documents may be found on Mesa Purchasing Division's website at www.mesaaz.gov/business/purchasing.

SCOPE OF WORK

This Scope of Work and the Technical Requirements will be compiled into any resulting contract as Exhibit A.

1. **INTENT.** The City of Mesa (the "City") is requesting proposals from firms qualified to provide Information Technology Solutions and Services to be delivered to various locations throughout the City. Requirements and qualifications are defined in detail in the following Scope of Work and Technical Requirements Sections of this Request for Proposal (RFP).
2. **NATIONAL CONTRACT REQUIREMENTS.** The City, as the Principal Procurement Agency, as defined in Attachment D, has partnered with the National Intergovernmental Purchasing Alliance Company ("National IPA") to make the resultant contract (also known as the "Master Agreement" in materials distributed by National IPA) from this solicitation available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies"), through National IPA's cooperative purchasing program. The City of Mesa is acting as the contracting agency for any other Public Agency that elects to utilize the resulting Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with National IPA as a Participating Public Agency in National IPA's cooperative purchasing program. Attachment D contains additional information on National IPA and the cooperative purchasing agreement.

National IPA is a channel partner with, Vizient (formally, Novation). Together we leverage over \$100 billion in annual supply spend to command the best prices on products and services. With corporate, pricing and sales commitments from the Supplier, National IPA provides marketing and administrative support for the Supplier that directly promotes the Supplier's products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies on a national basis. Public Agencies benefit from pricing based on aggregate spend and the convenience of a contract that has already been advertised and competed. The Supplier benefits from a contract that allows Participating Public Agencies to directly purchase goods and services without the Supplier's need to respond to additional competitive solicitations. As such, the Supplier must be able to accommodate a nationwide demand for services and to fulfill obligations as a nationwide Supplier and respond to the National IPA documents Attachment D.

The City anticipates spending approximately \$10 million over the full potential Master Agreement term for IT Solutions. While no minimum volume is guaranteed to the Supplier, the estimated annual volume of IT Solutions purchased under the Master Agreement through National IPA is approximately \$500 million. This projection is based on the current annual volumes among the City, other Participating Public Agencies that are anticipated to utilize the resulting Master Agreement to be made available to them through National IPA, and volume growth into other Public Agencies through a coordinated marketing approach between the Supplier and National IPA.

3. **MINIMUM REQUIREMENTS.** Offerors should be able to meet the following minimum qualifications:
 - a) A full range of information technology solution products and services to meet varying requirements of governmental agencies.
 - b) Have a strong national presence as a computer solutions provider.
 - c) Have a distribution model capable of delivering products, free of charge, in a timely manner on a nationwide basis.
 - d) Have a demonstrated sales presence.
 - e) Ability to provide a toll-free telephone and state of the art electronic facsimile and internet ordering and billing capabilities.
 - f) Be able to meet the minimum requirements of the cooperative purchasing program detailed herein.

SCOPE OF WORK

4. **ORDERING.** Although the City is open to alternate ordering methods, the primary methods for customers placing orders with the Supplier is through the following:
- a) Online
 - b) Telephone
 - b) Fax
 - c) Email
5. **DELIVERY REQUIREMENT.** Supplier agrees to deliver all products to the desktop of the ordering customer be delivered F.O.B. destination, freight pre-paid and allowed to various locations throughout the City. In many cases within the City, the Supplier may be asked to deliver all goods to the front counter within a given department. This is the City of Mesa requirement and other participating agencies may have other delivery requirements.
6. **SCOPE OF PRODUCTS.** The intent of this solicitation is to establish a contract with the ability to purchase a comprehensive, wide variety of Information Technology Solution Products including but not limited to the following categories:
- a) **Personal Computer Systems:** National brand name desktop PCs, notebooks and laptops from Enterprise Tier and Middle Tier Suppliers that are business related computers, manufactured by companies, such as, Apple, COMPAQ, Dell, Gateway, Hewlett Packard, IBM / Lenovo and Toshiba.
 - b) **Standard Business Workstation:** These will be used for typical tasks, which will include word processing, spreadsheet analysis, database management, business graphics, statistical analysis, internet, and other office automation activities. Product will include the operating system license, software media and documentation in the hardware shipment.
 - c) **High End Workstation:** These will be used by application developers using GIS, CASE or other high-level language development tools, Computer Aided Design and Drafting professional, Internet Application developers or other sophisticated application work. Product will include the operating system license, software media and documentation in the hardware shipment.
 - d) **Laptop Computer or Notebook:** These will be used by traveling or remote access user for typical office automation and business productivity use. With a port replicator or docking station, it may also be used as a standard desktop. Product will include the operating system license, software media and documentation in the hardware shipment.
 - e) **Network Equipment:** This includes equipment primarily used for communications over an IP network. This includes layer 2 and layer 3 switches, routers, area wireless access points, point-to-point wireless access, optics, media interfaces (i.e. serial, T1, T3, OC3) and fiber channel. Class of equipment should include home office, small and medium business, and enterprise. Suppliers may include, but not limited to, Cisco Systems, Dell, Juniper Networks, HP, Extreme Networks, Enterasys Networks, D-Link, Netgear, and Brocade Communications Systems.
 - f) **Monitors:** These will include plug and play compatible monitors that are manufactured for the above systems and/or any other brand that may be specifically called for by the ordering entity and which meet the most current UL and OSHA requirements.
 - g) **Computer and Network Products and Peripherals:** Complete availability of major manufacturers product lines on items such as, but not limited to RAM, graphic accelerator cards, network interface cards, cables, printers, scanners, keyboards, drives, memory cards, cables, batteries, etc.

SCOPE OF WORK

- h) Services: Services such as cloud computing, consulting, technical support, leasing/financing, trade-ins, repair, design, analysis, configuration, implementation, installation, training, and maintenance, etc. In addition, services which are related to the design, use or operation of the products being purchased such as system configurations, testing, hardware/software installation, upgrades, imaging, etc.

Note: All hardware should come assembled. For example, if extra memory, additional drives or peripherals are ordered, the Supplier must install them unless the Participating Agency request they not be installed.

- i) Comprehensive Product Offering: Offeror's complete catalog and services offered shall be available. Each offeror awarded a contract under this solicitation may offer their complete product and service offering. Pricing for products and services must be entered on the appropriate section of the Price Page. The City reserves the right to accept or reject any or all items offered.
- j) Financing: Options available such as lease programs and conditional sales contracts.

7. **LICENSES**. Participating Agencies may be required to sign a separate agreement, rider or End User Licensing Agreement ("EULA") as required by manufacturers.
8. **AWARD**. It is the City's intention that a single or limited number of awards will be made under this solicitation however at the City's sole discretion, the City may consider multiple awards (See "Reservations").
9. **DEFECTIVE PRODUCT**. All defective products shall be replaced and exchanged by the Supplier. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Supplier. All replacement products must be received by the City within seven (7) days of initial notification.
10. **TERM**. This solicitation is for awarding a purchasing contract to cover an initial **five (5) year term**. An estimated initial term of **January 1st, 2018** through **December 31st, 2022**, not including any extensions or renewals subject to the terms of the Agreement. If the commencement of performance is delayed because the City does not execute the Agreement at this start date, the City may adjust the start date, end date and any milestones to reflect the delayed execution.

The parties agree any job orders, project agreements or maintenance agreements executed against Contract during the effective term may survive beyond the expiration of said Contract as established and agreed to in writing, by both parties.

11. **RENEWALS**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of **two (2) one (1) year periods**. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
12. **EXTENSIONS**. Upon the expiration of the Term of the Agreement, including any renewals permitted herein, at the City's sole discretion the Agreement may be extended for a maximum of six (6) months to allow for the City's procurement processes in the selection of a Supplier to provide the services/materials under this Agreement. The City intends to notify the Supplier in writing of its desire to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
13. **PRICING**. Suppliers shall provide a price in the format of a minimum percentage discount off a verifiable price index. Suppliers may submit discounts for various manufacturers. At the time of purchase, suppliers may offer deeper discounts beyond the discounted price list, based on volume or other factors, as applicable. Minimum discounts will remain firm during the entirety of the initial term of the Contract, unless the Supplier requests to increase its discount percentage, and will include all charges that may be incurred in fulfilling requirement(s). Also, the "technology marketplace" is one of rapid change, with new products

SCOPE OF WORK

and revisions coming into the marketplace on a regular basis, it is required that a verifiable pricing formula or guaranteed discount matrix be included with response. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Supplier may conduct sales promotions involving price reductions for a specified lesser period. In the event a product is discontinued, Supplier will provide a product of the same or greater functionality, utilizing the proposed discount structure.

Price discounts will be evaluated by applying the Supplier's discount to the prices listed on the verifiable price index.

It is the Supplier's responsibility to provide the City with an up-to-date price list for the duration of the contract.

- a) **Prices.** All pricing discounts shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and include all costs of the Supplier providing the materials/service including transportation, insurance and warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

The Supplier further agrees that any reductions in the price of the materials or services covered by this Agreement will apply to the undelivered balance. The Supplier shall promptly notify the City of such price reductions.

No price modifications will be accepted without proper request by the Supplier and response by the City's Purchasing Division.

- b) **Price Adjustment.** Any requests for reasonable price adjustments must be submitted in accordance with this section. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Supplier should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Supplier's actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

During the sixty (60) day period prior to Contract term expiration date of the Agreement, the Supplier may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve month change in the **Consumer Price Index for All Urban Consumers** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

- c) **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 13, pricing may be adjusted for amounts other than inflation that represent actual costs to the Supplier based on the mutual agreement of the parties. The Supplier may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Supplier. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

SCOPE OF WORK

14. **TYPES AND AMOUNTS OF INSURANCE.** Insurance requirements are detailed in the Agreement document. Supplier must obtain and retain throughout the term of the Agreement, at a minimum, the following:

- a. Worker's compensation insurance in accordance with the provisions of Arizona law. If Supplier operates with no employees, Supplier must provide the City with written proof Supplier has no employees. If employees are hired during the course of this Agreement, Supplier must procure worker's compensations in accordance with Arizona law.
- b. The Supplier shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
- c. Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.

Prior to the execution of the Contract, the Supplier shall provide the City with a Certificate of Insurance (using appropriate ACORD certificate) SIGNED by the Issuer, applicable endorsements, and the City reserves the right to request additional copies of any or all of the above policies, endorsements, or notices relating thereto.

When the City requires a Certificate of Insurance to be furnished, the Supplier's insurance shall be primary of all other sources available. When the City is a certificate holder, the Supplier agrees that no policy shall expire, be canceled or materially changed to affect the coverage available without advance written notice to the City.

"Waiver of Subrogation". The policies required by this agreement (or contract) shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, elected officials, officers, employees, and volunteers for any claims arising out of the work of Supplier."

All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Manager.

ATTACHMENT A **PRICING**

Offerors must utilize the below document when responding to this solicitation and **return the document in an Excel format** with their proposal.



2018011 Pricing.xlsx

ATTACHMENT B
REQUIRED RESPONSE FORMS



Solicitation Required
Response Forms.docx

ATTACHMENT C
RESPONDENT QUESTIONNAIRE

| | |
|--|-----------------|
| Respondent Company Name/ DBA: | |
| Years in business providing similar services: | |
| Contractor's License No(s): (Submit a copy with the Response) | Type: |
| Number of employees at location that would serve under a contract from the Solicitation: | |
| Provide names, contact and telephone numbers of three (3) organizations that have received similar services from your company. At least one reference should be comparable in size to the City's proposed contract. | |
| Firm/Government Agency Name: | |
| Contact Person: | Phone: |
| Address: | Fax: |
| | E-Mail Address: |
| \$ Value of Work, Supplies/Services and Dates Provided: | |
| Firm/Government Agency Name: | |
| Contact Person: | Phone: |
| Address: | Fax: |
| | E-Mail Address: |
| \$ Value of Work, Supplies/Services and Dates Provided: | |
| Firm/Government Agency Name: | |
| Contact Person: | Phone: |
| Address: | Fax: |
| | E-Mail Address: |
| \$ Value of Work, Supplies/Services and Dates Provided: | |
| List any other information which may be helpful in determining your qualifications for a potential contract: | |
| | |
| | |

ATTACHMENT D
NATIONAL IPA PRICIPAL PROCUREMENT AGENCY (“PPA”)



Attachment D
PPA.docx

EXHIBIT 1
DRAFT AGREEMENT



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT NUMBER 2018011
INFORMATION TECHNOLOGY SOLUTIONS & SERVICES**

CITY OF MESA, Arizona (“City”)

| | |
|------------------|--|
| Department Name | City of Mesa – Purchasing Division |
| Mailing Address | P.O. Box 1466 Mesa, AZ 85211-1466 |
| Delivery Address | 20 East Main St, Suite 400 Mesa, AZ 85201 |
| Attention | Sharon Brause, CPPO, CPPB, CPCP Senior Procurement Officer |
| E-Mail | Sharon.Brause@MesaAZ.gov |
| Phone | (480) 644-2815 |
| Fax | (480) 644-2655 |

AND

COMPANY NAME, (“Contractor”)

| | |
|------------------|--------------|
| Mailing Address | |
| Delivery Address | |
| Attention | NameAndTitle |
| E-Mail | |
| Phone | |
| Fax | |

EXHIBIT 1
DRAFT AGREEMENT

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation (“Agreement”) is entered into this ___ day of _____, 2017, by and between the City of Mesa, Arizona, an Arizona municipal corporation (“City”), and **CompanyName**, a(n) **State corporation/company/natural person** (“Contractor”). The City and Contractor are each a “Party” to the Agreement or together are “Parties” to the Agreement.

RECITALS

- A. The City issued solicitation number **2018011** (“Solicitation”) for **INFORMATION TECHNOLOGY SOLUTIONS & SERVICES**, to which Contractor provided a response (“Response”); and
- B. The City Selected Contractor’s Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

- 1. **Term**. This Agreement is for a term beginning on **January 1, 2018** and ending on **December 31, 2022**. The use of the word “Term” in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of **two (2) one (1) year** periods. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City’s sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City’s procurement processes in the selection of a Contractor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.3 **Delivery**. Delivery shall be made to the location(s) contained in the Scope of Work within thirty (30) days after receipt of an order.
- 2. **Scope of Work**. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** (“Scope of Work”) Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor’s personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.
- 3. **Orders**. Orders be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement

EXHIBIT 1
DRAFT AGREEMENT

4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.
- a. Agreement
 - b. Exhibits
 - 1. Mesa Standard Terms & Conditions
 - 2. National IPA Agreement
 - 3. Scope of Work
 - 4. Other Exhibits not listed above
 - c. Solicitation including any addenda
 - d. Contractor Response

5. **Payment.**

5.1 **General.** Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B** ("**Pricing**") in consideration of Contractor's performance of the Scope of Work during the Term.

6. **Pricing.** Suppliers shall provide a price in the format of a minimum percentage discount off a verifiable price index. Suppliers may submit discounts for various manufacturers. At the time of purchase, suppliers may offer deeper discounts beyond the discounted price list, based on volume or other factors, as applicable. Minimum discounts will remain firm during the entirety of the initial term of the Contract, unless the Supplier requests to increase its discount percentage, and will include all charges that may be incurred in fulfilling requirement(s). Also, the "technology marketplace" is one of rapid change, with new products and revisions coming into the marketplace on a regular basis, it is required that a verifiable pricing formula or guaranteed discount matrix be included with response. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Supplier may conduct sales promotions involving price reductions for a specified lesser period. In the event a product is discontinued, Supplier will provide a product of the same or greater functionality, utilizing the proposed discount structure.

Price discounts will be evaluated by applying the Supplier's discount to the prices listed on the verifiable price index.

It is the Supplier's responsibility to provide the City with an up-to-date price list for the duration of the contract.

- 6.1 **Prices.** All pricing discounts shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and include all costs of the Supplier providing the materials/service including transportation, insurance and warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

The Supplier further agrees that any reductions in the price of the materials or services covered by this Agreement will apply to the undelivered balance. The Supplier shall promptly notify the City of such price reductions.

No price modifications will be accepted without proper request by the Supplier and response by the City's Purchasing Division.

- 6.2 **Price Adjustment.** Any requests for reasonable price adjustments must be submitted in accordance with this section. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Supplier should be prepared for the Pricing to be firm over the Term of

EXHIBIT 1
DRAFT AGREEMENT

the Agreement. The City is only willing to entertain price adjustments based on an increase to Supplier's actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

During the sixty (60) day period prior to Contract term expiration date of the Agreement, the Supplier may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve month change in the **Consumer Price Index for All Urban Consumers** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

6.3 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Supplier based on the mutual agreement of the parties. The Supplier may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Supplier. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

6.4 **Invoices.** Payment will be made to Contractor following the City's receipt of a properly completed invoice. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Applicable Taxes
- j. Total amount due.

6.5 **Payment of Funds.** Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement. Otherwise; payment will be through a traditional method of a check or Electronic Funds Transfer (EFT) as available.

6.6 **Disallowed Costs, Overpayment.** If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

7. **Insurance.**

7.1 Contractor must obtain and maintain at its expense throughout the term of Contractor's agreement, at a minimum, the types and amounts of insurance set forth in this Section 6 from

EXHIBIT 1
DRAFT AGREEMENT

- insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.
- 7.2 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.
- 7.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.
- 7.4 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the term of the Agreement.
- 7.5 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 7.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 7.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 7.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 7.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 7.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
- 7.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
- 7.9.3 Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.

EXHIBIT 1
DRAFT AGREEMENT

8. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services. The City reserves the right to purchase contracted items through other sources if determined in the best interests of the City to do so.
9. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.
10. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
 - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
 - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
 - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
11. **Mesa Standard Terms and Conditions.** **Exhibit C** to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
12. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
13. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.

Exhibits to this Agreement are the following:

- (A) Scope of Work / Technical Specifications
- (B) Pricing
- (C) Mesa Standard Terms and Conditions
- (D) National IPA Agreement

EXHIBIT 1
DRAFT AGREEMENT

- 14. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
- 15. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
- 16. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

By executing below, each Party acknowledges that it understands, approves, and accepts all of the terms of the Agreement and the attached exhibits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF MESA, ARIZONA

CONTRACTOR NAME

By: _____

By: _____

Printed Name

Printed Name

Title

Title

Date

Date

REVIEWED BY:

By: _____

EXHIBIT 1
DRAFT AGREEMENT

EXHIBIT A
SCOPE OF WORK

The Scope of Work / Technical Specifications, National IPA Agreement and Contractor Response will be added here when Agreement is finalized.

DRAFT

EXHIBIT 1
DRAFT AGREEMENT

EXHIBIT B
PRICING

Attachment A Pricing will be added here when Agreement is finalized.

DRAFT

EXHIBIT 1
DRAFT AGREEMENT

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
3. **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
5. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
6. **NON- EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
9. **COMPLIANCE WITH APPLICABLE LAWS.**
 - a. **General.** Contractor must procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified

EXHIBIT 1
DRAFT AGREEMENT

in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel, and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its 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").
 - ii. A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - iv. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - v. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if 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 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods of services to the City.

10. **SALES/USE TAX, OTHER TAXES.**

- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility

EXHIBIT 1
DRAFT AGREEMENT

under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.
 - 12.1. If Contractor believes document related to the Agreement contains trade secrets or other proprietary data, Contractor must notify the City and include with the notification a statement that explains and supports Contractor's claim. Contractor also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.
 - 12.2. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
14. **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
16. **DEFAULT.**
 - a. A party will be in default if that party:
 - i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;

EXHIBIT 1
DRAFT AGREEMENT

- ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
 - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
 - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.
18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.
20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.

EXHIBIT 1
DRAFT AGREEMENT

21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION/LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.
 - b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.
25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.
- Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.
26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.

EXHIBIT 1
DRAFT AGREEMENT

27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.
36. **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be

EXHIBIT 1
DRAFT AGREEMENT

written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).

37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
38. **COOPERATIVE USE OF CONTRACT.** This contract is available through National IPA to agencies nationwide. The City has also entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies through National IPA or SAVE in the State of Arizona with the approval of Contractor. 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.

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

Additionally, Contractor will comply with the governing body's fingerprinting policy of each individual school district and public entity. Contractor, subcontractors, vendors and their employees will not provide services on school district properties until authorized by the school district.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via email or facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, email or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.

EXHIBIT 1
DRAFT AGREEMENT

41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Maricopa County, Arizona.
42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes as applicable.

EXHIBIT 2
MAILING LABEL

CUT ALONG THE LINE AND AFFIX TO THE FRONT OF YOUR PROPOSAL CONTAINER

SEALED PROPOSAL

| |
|---------------------------------------|
| Submitted by: Company Name: |
| Address: |
| City, State, Zip: |

Solicitation # **2018011 INFORMATION TECHNOLOGY SOLUTIONS & SERVICES**
Due Date: **October 23rd, 2017, at 3:00 p.m. local Arizona time**

City of Mesa
Attn: **Purchasing**
20 E. Main St., Suite 400
Mesa, AZ 85201
