

INVITATION FOR BID

CITY OF TEMPE

INVITATION FOR BID NO: 10-006

BID ISSUE DATE: 06/11/2009

Commodity Code(s): 755-10; 745-80

PROCUREMENT DESCRIPTION: Asphalt Crack Sealing Compound

BID DUE DATE/TIME: Tuesday, July 7, 2009, 3:00 P.M. MST

Late bids will not be considered

BID RESPONSE MUST BE DELIVERED TO CITY PROCUREMENT OFFICE

Mailing Address: PO Box 5002, 31 E. Fifth Street, Tempe, AZ 85280

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

PRE-BID CONFERENCE (if scheduled): N/A

DEADLINE FOR INQUIRIES: Thursday, June 25, 2009, 5:00 P.M., MST

Sealed bid must be received and in the actual possession of the City Procurement Office on or before the exact bid due date and time indicated above. Bid responses will be opened and each bidder's name and bid prices will be publicly read. Late bids will not be considered.

Bids must be submitted by a sealed envelope/package with the Invitation for Bid number referenced, and the bidder's name and address clearly indicated on the envelope/package.

Bids must be completed in ink or typewritten. The "Vendor's Offer" (form 201-B IFB) must be signed in ink. Bids by electronic transmission, telegraph, mailgram or facsimile will not be considered.

Bidders are asked to immediately and carefully read the entire Invitation for Bid and not later than 10 days before the bid due date, address any questions or clarifications to the Procurement Officer identified below:

Tony Allen

E-mail: anthony_allen@tempe.gov

Phone No: 480-350-8548

Procurement Officer

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

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

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

Michael Greene, C.P.M.

Central Services Administrator

Form 201-A (IFB)

(H:/IFB 3-2008)

Vendor's Offer

It is REQUIRED that Bidder COMPLETE, SIGN and SUBMIT the original of this form to the City Procurement Office with the bid response offer. An unsigned "Vendor's Offer", late bid response and/or a materially incomplete response will be considered nonresponsive and rejected.

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

Company Name:	<u>Crafco, Inc.</u>		
Company Mailing Address:	<u>420 N. Roosevelt Avenue</u>		
City:	<u>Chandler</u>	State:	<u>AZ</u> Zip: <u>85226</u>
Contact Person:	<u>Ed Myers</u>	Title:	<u>Sales Representative</u>
Phone #:	<u>602-276-0406</u>	FAX #:	<u>480-940-0313</u> E-mail: <u>Ed.myers@crafco.com</u>
<u>Company Tax Information:</u>			
Arizona Transaction Privilege (Sales) Tax No.:	<u>07-195093-D</u>	or	
Arizona Use Tax No.:	_____		
Federal I.D. No.:	<u>86-0324978</u>		
City & State Where Sales Tax Is Paid:	<u>Chandler, Arizona</u>		
If a Tempe based firm, provide Tempe Transaction Privilege (Sales) Tax No.:	<u>n/a</u>		

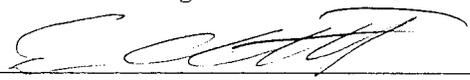
THIS BID IS OFFERED BY

Name of Authorized Individual (Type or Print in Ink) Ed Myers

Title of Authorized Individual (Type of Print in Ink) Sales Representative

REQUIRED SIGNATURE OF AUTHORIZED OFFEROR (Must Sign in Ink)

By signing this offer, Bidder acknowledges acceptance of all terms and conditions contained herein and that prices offered were independently developed without consultation with any other bidder or potential bidder. In accordance with A.R.S. 35-391.06 and 35.393.06, et seq., the offeror hereby certifies that it does not have scrutinized business operations in Iran or Sudan. Failure to sign and return this form with bid response will be considered nonresponsive and rejected.



Signature of Authorized Offeror

July 1, 2009

Date

INSTRUCTIONS TO BIDDERS

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

1. **Preparation of Bid:**
 - A. Bids shall be submitted to the City of Tempe ("City") on the forms provided herein, including Vendor's Offer, form no. 201-B (IFB).
 - B. Forms for offer, acceptance, price and any solicitation amendments shall be signed by an authorized signer and returned with the bid to the City.
 - C. Completed and signed bid forms for offer, acceptance, price and any solicitation amendments shall constitute an irrevocable offer to sell the good and/or service specified in the Invitation for Bid. Bidder shall submit all additional data, documentation, or information as requested by the City.
 - D. Negligence in preparation of a bid confers no right of withdrawal. The City shall not reimburse any costs for a bid, or its submission or presentation, for any reason.
2. **Late, Unsigned and/or Incomplete Bid:** A late, unsigned and/or incomplete bid shall be considered nonresponsive and rejected.
3. **Inquiries:** Questions regarding this Invitation for Bid shall be directed to the City Procurement Officer identified on the cover page of this document, form 201-A (IFB); unless another City contact is specifically named. Questions shall be submitted in writing. Inquiries must identify the Invitation for Bid number, page and paragraph at issue. However, Bidder must not place the Invitation for Bid number on the outside of an envelope containing questions. Oral responses shall have no legal or binding effect. Inquiries should be submitted no later than ten (10) days before bid opening. Those received within ten (10) days of bid opening may not be considered. The City reserves the right to contact bidders to obtain additional information for use in determining bidders' response(s) and/or solicitation requirements.
4. **Bidders Conference:** If a bidders' conference is scheduled, Bidder shall attend the conference to seek clarification of any points of confusion or requirements at issue.
5. **Withdrawal of Bid:** At any time before the specified bid opening date and time, a Bidder may withdraw its bid by way of written correspondence from the Bidder or authorized representative.
6. **Bid Addendum(s):** Receipt and acceptance of a bid addendum shall be acknowledged by Bidder by signing and returning the document either with the bid or by separate envelope prior to bid opening date and time. Failure to sign and return an addendum prior to proposal opening time and date shall result in the bid being considered nonresponsive to that portion of the Invitation for Bid and may result in rejection.
7. **Payment:** For a single requirement purchase, the City will make reasonable efforts to remit payment within thirty (30) calendar days from receipt of acceptable products, materials and/or services and approval of correct invoice. For ongoing term contract purchases, the City will make reasonable efforts to remit payment within thirty (30) calendar days from approval of monthly statement.
8. **Discounts:** Payment discounts period(s) shall be computed from the date of receipt of acceptable products, materials and/or services or correct invoice, whichever is later, to the date payment is mailed. Discounts shall be taken on the full amount of the invoice, unless otherwise indicated. City shall be entitled to receive any payment discount offered by Vendor, if payment is made within the discount period.

9. **Compliance with Bid Solicitation Requirements:** Unless stated otherwise herein, the City reserves the right to award by individual line item, by group of items, or as a total, at the City's discretion. The City expressly reserves the right to waive any immaterial defect or informality in bid responses, or reject any or all bids, or portions thereof, or reissue this Invitation for Bid.
10. **Award of Contract:** A bid shall constitute a binding offer to contract with the City based on the terms, conditions and specifications contained in this Invitation for Bid. A Bidder shall become a Contractor only upon execution of a formal contract from the City Procurement Office ("Contract"). Unless this Invitation for Bid includes a separate contract document(s) or requires the Bidder to submit a contract for review, a contract shall be formed when the City Procurement Office provides a written notice of award or a purchase order to the successful Bidder. All terms and conditions of the Contract are contained herein, unless modified by an amendment approved by the City. Bids or proposed contract terms that take exception to the terms, conditions, specifications and/or other requirements stated within this Invitation for Bid shall cause the bid to be considered as nonresponsive and rejected.
11. **Taxes:** All materials, equipment and/or products shall be bid as F.O.B. City, prepaid. Unless specified herein, sales, use or federal excise tax shall not be included in bid pricing. The City is exempt from payment of federal excise tax. For bid evaluation, transaction (sales) privilege tax paid (returned) to the City is considered a pass-through cost, calculated as zero (0) expense. For information on privilege (sales) tax, please contact the City's Tax and License Office at (480) 350-8327 or visit the web site at www.tempe.gov/salestax.
12. **Payment by City Procurement Card:** The City Procurement Office may elect to remit payment through the use of a City procurement card. Bidder may indicate on the Price Sheet of this Invitation for Bid, its ability to accept City procurement card payments. The inability to accept payment by City procurement card will not disqualify a bid.
13. **Bid Results:** Bidders may attend the scheduled bid opening at which time the name, pertinent information and prices for each bid will be publicly read (as determined appropriate by the bid opening Officer). After the public bid opening, bid tab results may be obtained in person or by sending the City Procurement Office a written request for the bid tab with a self-address, pre-stamped envelope, or viewed on the City Procurement Office Web Page (www.tempe.gov/purchase) within ten (10) days after bid opening. Bid tab results will not be provided over the telephone, by email or facsimile. Bid tab figures only indicate pricing and do not indicate other evaluation factors such as responsiveness or responsibility of Bidders as will be determined during bid evaluation. Bid files are not open for review until after a formal award has been made by the City. After award of bid, an appointment may be made with the City Procurement Officer to review bid documents. Formal award recommendations with an estimated contract value over \$30,000 shall be placed on the Procurement Office web page and posted at the front counter of the Procurement Office, at the time the award recommendation provided to the City Council.
14. **Protests:** Any actual or prospective Bidder who is aggrieved in conjunction with this Invitation for Bid or award may submit a protest at the City Procurement Office pursuant to City Code Sec. 26A-21. A protest based upon alleged improprieties in this Invitation for Bid that are apparent before the bid opening shall be filed prior to the bid opening. A protest concerning an award recommendation must be filed within ten (10) business days after the date of contract award. Up to five (5) days before award of a contract, the City Procurement Office will post award recommendations on its web page (www.tempe.gov/purchase) and at the Procurement Office front counter for public review. Bidders and other interested parties should review the Procurement Office web page for posted award recommendations. A protest shall be in writing and include the protester's name, address and phone number, identification of the solicitation or contract being protested, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents, and the form of relief requested. A protest shall be on the protester's company letterhead and signed by the protestor or its authorized representative.

15. **Request for Taxpayer I.D. Number and Certification, IRS W-9 Form:** Any bidder awarded a contract as a result of this solicitation must become a registered firm with the City prior to work start. The City has elected to create a customized W-9 form that is one and the same with the Bidder Registration Form. To complete the Bidder Registration process please go to the City's Procurement web site at www.tempe.gov/purchasing and push the link titled Bidder Registration Form. This form may be returned by FAX or e-mailed back per the instructions provided.
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16. **Compliance with City Solicitation & Forms:** Any documents including, a separate contract, maintenance agreement, or training agreement, intended by the Bidder to be utilized in any resulting contract, must be submitted with bid. Any documents inconsistent with or taking exception to any of the terms, conditions, specifications and/or other requirements stated herein shall cause the bid to be considered non-responsive and rejected. No documents shall be considered unless submitted with bid for evaluation purposes and approved by the City Procurement Office.
17. **Definitions:** For purposes of this Invitation for Bid and resultant contract, the following definitions apply:
- A. "Bid" means a written offer to furnish goods, services, work, materials, construction and/or concessions to the City, in conformity with the standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.
 - B. "City" means the municipal corporation of the City of Tempe, Arizona.
 - C. "Contract" means agreements for the procurement of goods, services, work, materials, construction and/or concessions.
 - D. "Contractor" means an Offeror, Vendor or Bidder who has been awarded a Contract with the City.
 - E. "Invitation for Bid" means a competitive solicitation issued by the City for the procurement of goods, services, work, materials, construction and/or concessions.
 - F. "Offeror", "Vendor" or "Bidder" means a vendor, business, entity or person who submits a bid in response to a competitive solicitation.
18. **Code Governance:** Unless otherwise specified herein, the provisions of the Tempe City Code, Chapter 26A shall apply and govern this Invitation for Bid.
19. **Public Record:** Bids and all other documents submitted in response to this solicitation shall become the property of the City and shall be a matter of public record available for review following the Contract award. Material portions of the recommended offer(s) as determined by the City may be posted to the City's web site up to five days prior to City Council meeting.
20. **Responsiveness to Specifications:** Performance or feature requirements which are designated as mandatory or minimums are necessary in order to satisfy an identified task or performance need. A description is given for each designated feature. This description shall be used to determine if Bidder's proposed product(s) and/or service(s) is/are capable of performing the function.

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

"Must", "shall", "will", "minimum", "required" and/or "mandatory" performance/feature statements must be met or exceeded by a responsive Bidder. Should no Bidder be found totally responsive to all designated bid

requirements, the City at its option, may either award the Contract to the most responsive Bidder or cancel the bid and re-bid the need under revised specifications.

21. **Technical Questionnaire:** Offeror must complete the Technical Questionnaire portion of this Invitation for Bid (if included herein) and provide any documentation required to support the answers given to the Questionnaire. Questionnaire items which are designated as mandatory are required in order to satisfy a required task or performance criteria. Items listed as desirable are not required in order to be responsive to the Invitation for Bid but will be evaluated against others in making a final award.

If supporting documentation is required, information must be provided in the sequence set forth in the Invitation for Bid. Bidder must ensure that all technical literature and/or narrative explanations must fully address the specifics of the question. Vague or disorganized supportive responses that do not allow sufficient information for evaluation purposes shall result in a bid response being rejected as nonresponsive.

22. **Confidential Information and Public Record:** After award of a Contract, bids shall be available for public inspection, except to the extent that the withholding of information is required or permitted by law. Pursuant to A.R.S. § 35-214, and 41-1330 *et seq.*, all records relating to the Invitation for Bid and Contract shall be subject to inspection at all reasonable times by the City for five (5) years after completion of the Contract. Such records shall be produced by Bidder or Contractor at the time and place designated by the City.

- A. If a person believes that an offer or specification contains information that should be withheld as confidential, a statement advising the procurement officer of this fact shall accompany the submission and the information shall be so identified wherever it appears.
- B. The information identified by the person as confidential shall not be disclosed until the City Procurement Office makes a written determination pursuant to A.R.S. § 121, *et seq.*
- C. If the City determines to disclose the information, the Bidder shall be informed in writing of such determination. Notwithstanding the foregoing, following an award of Contract, all bid response information shall be available for public inspection.

23. **Bid Evaluation:** Award shall be made to the lowest responsible and responsive Bidder whose bid conforms in all material respects to the requirements and criteria set forth in the Invitation for Bid. The City shall be the sole judge as to the acceptability of the products and/or services offered.

Evaluation criteria includes, but is not limited to:

- A. Conformity with bid specifications, performance requirements, terms and conditions. Bidder instructions and any other contractual clauses and/or requirements;
- B. Demonstrated performance and/or rated quality of items bid as reported in trade journals, professional reports and published testing results;
- C. Operational and/or ergonomic compatibility with existing City resources, as applicable;
- D. Availability of competent service and prompt delivery of materials, parts and services;
- E. Possession of current legally required licenses, certifications and/or qualifications to perform the Contract;
- F. Cost consideration including item pricing, delivery, installation, operation and life cycle and costs, Bidder's financial capability to perform the Contract, and any other factors that would be advantageous to the City;
- G. Record of past performance and integrity on City and/or other public agency contracts;
- H. Production capability of equipment as determined by product samples, customer references, and/or City inspection; and
- I. Record of payment in full for all taxes due and owing.

STANDARD TERMS & CONDITIONS

These Standard Terms & Conditions shall be followed by Bidder/Contractor. Failure to comply with these requirements shall result in rejection of a bid for non-responsiveness, or cancellation or termination of any awarded Contract.

1. **Applicable Law:** This Contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code as adopted in the State of Arizona, except as otherwise provided in this Invitation for Bid and resultant Contract, and all statutes or ordinances pertaining specifically to the City. This Contract shall be governed by State of Arizona law and suits pertaining to this Contract may only be brought in courts located in Maricopa County, Arizona.
2. **Arizona Climate Action Compliance:** Contractor shall comply with all applicable standards, laws, rules, orders and regulations issued pursuant to A.R.S. § 49-101, *et seq.*, including but not limited to, Arizona Executive Orders Nos. 2006-13 and 2005-02, with regard to reducing GHG emissions, increasing energy efficiency, conserving natural resources and developing renewable energy sources.
3. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of this Contract is contingent upon the availability of funds from which payment for Contract purposes can be made. No legal liability on the part of the City for any payment may arise for performance under this Contract.
4. **Certification:** By signing the "Vendor's Offer", form CS-P201 (B), the Bidder certifies:
 - A. The submission of the bid response did not involve collusion or other anti-competitive practices.
 - B. City is an equal opportunity, affirmative action employer. Bidder hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Bidder covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, Arizona Executive Order No. 99.4 and any other applicable state and federal statutes governing equal opportunity.
 - C. The Bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to sign the "Vendor's Offer" or signing it with a false statement shall void the submitted offer and/or any resulting contract. In addition, the Bidder may be debarred from future bidding participation with the City and may be subject to such actions as permitted by law.
 - D. The Bidder agrees to promote and offer to the City only those materials and/or services as stated and allowed by this Invitation for Bid and resultant Contract award. Violation of this condition will be grounds for Contract termination by the City.
 - E. The Bidder expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. §23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. Bidder further warrants that to the extent permitted by law, it will fully indemnify City for any and all losses arising from or relating to any violation thereof.

- F. Bidder agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Bidder acknowledges that a breach of this warranty is a material breach of this Contract and Bidder is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Bidder. Bidder hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
5. **Commencement of Work:** Bidder is cautioned not to commence any work or provide any materials or services under the Contract until and unless Bidder receives a purchase order, Notice to Proceed, or is otherwise directed in writing to do so, by the City.
6. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Any third parties requesting information related to the Contract shall be referred to the City. Contractor agrees that no information pertaining to individual persons will be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless previously authorized in writing by the City.
7. **Contract Formation:** This Contract shall consist of this Invitation for Bid document and the bid submitted, as may be found responsive and approved by the City. In the event of a conflict in language between the documents, the provisions of the City's Invitation for Bid shall govern. The City's Invitation for Bid shall govern in all other matters not otherwise specified by the Contract between the parties. All previous contracts between the Bidder and the City are not applicable to this Contract or other resultant contracts. Any contracted vendor document(s) that conflict with the language and requirements of the City's solicitation are not acceptable and void the Contract.
8. **Contract Modification(s):** This Invitation for Bid may only be modified by a written solicitation addendum issued by the City Procurement Office. A resulting Contract may only be modified by a written contract modification issued by the City Procurement Office. Contractors are not authorized to modify any portion of this solicitation or resulting Contract without the written approval of the City Procurement Office and issuance of an official modification notice.
9. **Contracts Administration:** Contractor must notify the City Procurement Office contact for guidance or direction of matters of Contract interpretation or problems regarding the terms, conditions or scope of this Contract. The Contract shall contain the entire agreement between the City and the Contractor relating to this provision and the Contract shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.
10. **Cooperative Use of Contract:** Any Contract resulting from this solicitation shall be for the use of the City of Tempe. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tempe's Department of Procurement are eligible to participate in

any subsequent Contract. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/SAVE/save-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter and/or rules and regulations of the respective political entity

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

11. **Dispute Resolution:** This Contract is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the Contractor agree to negotiate with each other in good faith to resolve any disputes arising out of the Contract. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred, with such fees and costs to be included in any judgment rendered.
12. **Energy Efficient Products:** The City may consider energy conservation factors including costs in the evaluation of equipment and product purchases for the purpose of obtaining energy efficient products. In addition, offers may specify items that have been given an energy efficient classification by the federal government for consideration by the City.
13. **Estimated Quantities:** This Invitation for Bid references quantities as a general indication of the needs of the City. The City anticipates considerable activity resulting from contracts that will be awarded as a result of this Invitation for Bid; however, the quantities shown are estimates only and the City of Tempe reserves the right to increase or decrease any quantities actually acquired in its sole discretion. No commitment of any kind is made by the City concerning quantities and Bidder hereby acknowledges and accepts same.
14. **Events of Default and Termination:**
 - A. The occurrence of any or more of the following events shall constitute a material breach and default of this Contract. The City reserves the right to terminate the whole or any part of the Contract due to Contractor's failure to fully comply with any term or condition herein.
 - (i) Any failure by Contractor to pay funds or furnish materials and/or goods that fail to conform to any requirement of this Contract;
 - (ii) Any failure by Contractor to observe, perform or undertake any provision, covenant or condition of this Contract to be observed or performed by Contractor herein, including but not limited to failing to submit any report required herein;
 - (iii) Any failure to make progress in the performance required pursuant to the Contract and/or any acts or failure to act that gives the City reason to believe that Contractor cannot or will not perform to the requirements of the Contract; or,
 - (iv) Any failure of Contractor to commence construction, work or services or furnish materials within the time specified herein, or to diligently undertake Contractor's work to completion.

- B. Upon and during the continuance of an event of default, City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to Contractor, may do the following:
- (i) Terminate the Contract;
 - (ii) Pursue and/or reserve any and all rights for claims to damages for breach or default of the Contract; and/or,
 - (iii) Recover any and all monies due from Contractor, including but not limited to, the detriment proximately caused by Contractor's failure to perform its obligations under the Contract, or which in the ordinary course would likely result therefrom, including, any and all costs and expenses incurred by City in: (a) maintaining, repairing, altering and/or preserving the jobsite or premises (if any) of the Project; (b) costs incurred in selecting and retaining substitute contractor(s) for the purchase of services, materials and/or work from another source; and/or (c) attorneys' fees and costs in pursuing any remedies under the Contract and/or arising therefrom.
- C. The exercise of any one of City's remedies shall not preclude subsequent or concurrent exercise of further or additional remedies. In addition, the City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, pursuant to A.R.S. § 38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the Contractor.
- D. Termination shall be commenced by delivery of written notice to Contractor by the City personally or by certified mail, return receipt requested. Upon notice of termination, Contractor shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. Contractor shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that Contractor could reasonably have avoided.
- E. The City, in its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.
15. **Termination for Convenience:** The City at its sole discretion may terminate this contract for convenience with 30 days advance notice to Contractor. Contractor shall be reimbursed for all appropriate costs as provided for within the contract up to the termination date specified.
16. **Force Majeure:**
- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract only in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

B. Force majeure shall not include the following occurrences:

- i) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- ii) Late performance by any subcontractor.

C. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing by hand delivery or certified mail when it has done so. The time of completion shall be extended by Contract modification by the City for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the Contract.

17. **Gratuities:** The City may elect to terminate any resultant Contract, if it is found that gratuities in any form were offered or given by the Bidder or agent thereof, to any employee of the City or member of a City evaluation committee with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order. In event the Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from Bidder the amount of gratuity.
18. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Contract.
19. **Interpretation of Parol Evidence:** This Contract is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the Contract, unless the signing of a subsequent contract is specifically called for in this Invitation for Bid. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of the Contract, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

20. **Key Personnel:** Contractor shall provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract during the Contract term and any renewal periods. The Contractor must agree to assign specific individuals to the key positions.
- A. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without prior written notice to and approval by the City.
- B. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the approval of the City, replace such personnel with personnel of substantially equal ability and qualifications.
21. **Legal Compliance:** Bidder acknowledges that a breach of this warranty is a material breach of this Contract and Bidder is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all Bidders, sub-bidders and sub-sub-bidders performing work and/or services relating to the Contract to ensure compliance with this warranty.
22. **Licenses and Permits:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor, at its sole expense.
23. **No Assignment:** No right or interest in this Contract shall be assigned by Contractor and no delegation of any duty of Contractor shall be made without prior written permission of the City Procurement Office.
24. **Non-exclusive Contract:** Any Contract resulting from this Invitation for Bid shall be awarded with the understanding and agreement that it is non-exclusive and entered into for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source to secure cost savings or if timely delivery may be met by the Contractor.
25. **Notices:** All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand-delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

CITY PROCUREMENT OFFICE
 CITY OF TEMPE
 20 E. 6th Street (Second Floor)
 PO Box 5002
 Tempe, Arizona 85280

[Contractor's Name]
 [Attention of Bidder named in Contract]
 [Address]

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

26. **No Waiver:** No breach or default hereunder shall be deemed to have been waived the City, except by a written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default, or as a waiver of that breach or default after demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
27. **Ordering Process:** Upon award of a Contract by the City Procurement Office, the City may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate Contractor. Each purchase order must cite the correct Contract number. Such purchase order is required for the City to order and the Contractor to deliver the material and/or service.
28. **Overcharges by Antitrust Violations:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the City. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as the goods and/or services used fulfill the Contract.
29. **Preparation of Specifications by Persons Other Than City Personnel:** No person preparing specifications for this Invitation for Bids shall receive any direct or indirect benefit from the use of these specifications.
30. **Procurement of Recycled Materials:** If the price of recycled material that conforms to specifications is within five percent (5%) of the low bid material that is not recycled and the recycled Bidder is otherwise the lowest responsible and responsible Bidder, the award shall be made to the Bidder offering the recycled material; provided the item(s) to be obtained contains at least the minimum amount of recycled content material as defined in the City's Invitation for Bid and sufficient funds have been budgeted for the purchase.
31. **Provisions By Law:** Each and every provision of law and any clause required by law to be in this Contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract will forthwith be physically amended to make such insertion or correction.
32. **Relationship of Parties:** It is clearly understood that each party to this Contract will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other party. The Contractor is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, and/or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Bidder. An employee or agent of one party shall not be construed to be an employee or agent of the other party for any purpose whatsoever.
33. **Retention of Records:** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §35-214 and §36-215, Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced for the City Attorney and/or City Procurement Office at no cost to the City.

34. **Rights and Remedies:** No provisions of this Invitation for Bid or in the bid shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of the City to insist upon strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, shall not release the Contractor from any responsibilities or obligations imposed by the Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
35. **Safety Standards:** All items supplied on this Contract must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.
36. **Seller's Risk:** Contractor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered as a result of this Invitation for Bid which occurs prior to delivery to the City; and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.
37. **Serial Numbers:** Bids shall include equipment on which the original manufacturer's serial number has not been altered in any way. The City reserves the right to reject any and all equipment.
38. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
39. **Specially Designated Nationals and Blocked Persons List:** Contractor represents and warrants to City that neither Contractor nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.
40. **Survival:** Any and all representations, obligations, indemnities, warranties, covenants, conditions and agreements contained in this Contract which are expressed as surviving the expiration or earlier termination of this Contract, or by their nature, are to be performed, observed or survive, in whole or in part, after the termination or expiration of this Contract Term, shall survive the termination or expiration of this Contract.
41. **Time of the Essence:** Time is and shall be of the essence in this Contract. If the delivery date(s) specified herein cannot be met, Contractor shall notify City using an acknowledgement of receipt of order and intent to perform without delay, for instruction. City reserves the right to terminate this Contract and hold Contractor liable for any cost of cover, excess cost(s) or damage(s) incurred as a result of delay.
42. **Unauthorized Firearms & Explosives:** No person conducting business on City property shall carry a firearm or explosive of any type. All City Bidders, Contractors and subcontractors shall honor this requirement at all times. Failure to honor this requirement shall result in Contract termination and additional penalties. This requirement applies to any and persons, including those who maintain a concealed weapon's permit. In addition to Contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.

43. **Warranties:** Contractor expressly warrants that all materials and/or goods delivered under the Contract shall be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. Contractor expressly warrants the following:
- A. All workmanship shall be finest and first-class;
 - B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and,
 - C. All services will be performed in a good and workmanlike manner. Contractor's warranties shall survive inspection, acceptance and/or payment by the City as well as the Contractor, and shall run to the City, its successors, agents and assigns.

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

44. **Work for Hire and Ownership of Deliverables:** Contractor hereby agrees and covenants that all the results and proceeds of Contractor's work and/or services for the Project specified herein, for Contractor and all of its agents, employees, officers and subcontractors, shall be owned by the City, including the copyright thereto, as work for hire. In the event, for any reason such results and proceeds are not deemed work for hire, Contractor agrees and covenants that it shall be deemed to have assigned to City all of its right, title and interests in such results, proceeds and content to the City, without limitation. Contractor agrees to indemnify and hold City harmless from and against all claims, liability, losses, damages and expenses, including without limitation, legal fees and costs, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, with respect to any work, services and/or materials contemplated in this Contract. Contractor agrees to pay to defend any and all such actions brought against the City. Contractor's obligations hereunder shall survive acceptance by the City of all covenants herein as well as the term of the Contract itself.
45. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection. Shipments under reservation are prohibited. No tender of a bill of lading shall operate as a tender of the materials.
46. **Billing:** All invoices submitted by Contractor for City's review and approval shall be in itemized form to identify the specific item(s) being billed. Items must be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the City shall refer to the Contract number resulting from this Invitation for Bid. Separate invoices are required on individual contracts or purchase orders. Only invoices with items resulting from this Invitation for Bid will be accepted for review and approval by the City.

47. **Delegated Awards:** In the event this contract(s) is administratively awarded via delegated authority as provided for in Section 26A-5 of the Procurement Ordinance, the successful firm acknowledges that a final contract with the City of Tempe requires City Council approval and possibly the signature of the Mayor. Should this contract be rejected by the City Council, Contractor agrees that it is immediately void and unenforceable against any party. The awarded firm(s) will be compensated only for any and all costs incurred up to the date of notification of such termination.

SPECIAL TERMS & CONDITIONS

Bids taking exception to Special Terms & Conditions stated within this Invitation for Bid shall cause the bid to be considered non-responsive and rejected.

1. **City Procurement Document:** This Invitation for Bid is issued by the City Procurement Office. No alteration of any portion of the Invitation for Bid by a Bidder is permitted and any attempt to do so shall result in Bid being considered nonresponsive and rejected. No alteration of any portion of a resultant Contract is permitted without the written approval of the City Procurement Office and any attempt to do so shall be considered a breach of the Contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract termination and/or suspension of the Contractor.
2. **Offer Acceptance Period:** In order to allow for an adequate evaluation, the City requires an offer in response to this Invitation for Bid to be valid and irrevocable for ninety (90) days after the bid opening time and date.
3. **Contract Type:** Term with justifiable price adjustment allowed, indefinite quantity.
4. **Term of Contract:** The term of the Contract shall commence and take effect on the date of award and shall continue for a period of two (2) year(s) thereafter, unless terminated, canceled, extended or renewed as otherwise provided herein.
5. **Contract Renewal:** The City reserves the right to unilaterally extend the period of any resultant Contract for 90 days beyond the stated *maximum term*. In addition, the City at its option may mutually renew the Contract for supplemental terms up to a maximum of four (4) additional years. The period for any single renewal increment shall be determined by the City Procurement Office. Such increment shall not be for more than a period of two (2) months each, unless the City is eligible to obtain a significant cost and/or supply advantage by a longer Contract renewal period.
6. **Price Adjustment:**
 - A. The City Procurement Office will review fully documented requests for price increases after the Contract has been in effect for six (6) months. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. The City Procurement Office will determine in its sole discretion, whether the requested price increase, or an alternative option, is in the best interest of the City. Advanced thirty (30) day written notification by Contractor is required for City approval of any price changes. All price adjustments will be effective on the first day of the month following approval or acceptance by the City Procurement Office. After the City approves a price increase the contractor shall not be eligible to receive an additional increase until six (6) months from the date of the last approved price increase.
 - B. Price increase requests must be acknowledged in writing by the City Procurement Office before becoming effective. If not acknowledged within thirty (30) days, Contractor's shall contact the City Procurement Office to assure the price increase request was received and approved.
 - C. The Contractor shall offer any published price reduction or if applicable to Contract, profit sharing price advantage to the City concurrent with its announcement to other customers. A price reduction or profit sharing price advantage may be offered at any time during the term of the Contract and shall become effective upon the first announcement. The City shall take

advantage of any special sales discounts offered to the general public which exceeds price discounts extended to the City by the Contractor.

7. **Samples:** Samples of items, when requested, must be submitted within a reasonable period of time. Unless otherwise specified by the City Procurement Office, samples will be furnished at no expense to the City. Samples must be identified as to supplier, manufacturer, part number, model number, type, grade, applicable stock number, etc. If not destroyed by testing, samples will be returned at Bidder's request and sole expense. If no instructions are received for their return, samples will be discarded thirty (30) days after award date.

8. **Insurance:**

- A. **Insurance Required:** Prior to commencing services under this Contract, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors. For Contractors with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of Contract.

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

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

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

a. **Commercial General Liability**

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

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

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

b. Worker's Compensation

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

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

c. Automobile Liability

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

- C. Additional Insured. The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Contractor shall be primary insurance, and that any insurance coverage carried by the City or its employees shall be excess coverage, and not contributory coverage to that provided by the Contractor.
- D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Contract.
- E. Primary Coverage. Contractor's insurance shall be primary insurance to the City, and any insurance or self insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute to it.
- F. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect City.
- G. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Contractor.
- H. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Contractor shall be solely responsible for deductible and/or self-insurance retention and City, at its option, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

- I. Certificates of Insurance. Prior to commencing work or services under this Contract, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
 - J. Copies of Policies. City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. City of Tempe shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
9. Payments - After Monthly Statement: Payment in full shall be made to the Contractor within thirty (30) days after receipt and approval of monthly itemized statement, unless terms other than net thirty (30) days are offered as a discount, at the City's sole discretion.

Cancellation of IFB 09-143
Crack Sealing Compound

No responses for solicitation 09-143 were received – documents associated with it have been sealed until the new solicitation is awarded.

IFB 10-006 replaces that solicitation.

Scope of Work

The City of Tempe is seeking to obtain bids for the supply of rubberized crack sealant for use by the Streets Division for a period of 12 months. The resulting contract is subject to renewals per the Special Terms and Conditions of this Invitation for Bid (IFB).

Material shall be Polyflex asphalt/vulcanized rubber material, Type 3 and Type 4.

Bidders may be required to furnish a sample pallet of the materials to be supplied within five (5) business days of request. All samples become City of Tempe property, unless designated otherwise by the bidder.

It is preferred that the material be packaged in polyethylene lined boxes weighing approximately forty (40) pounds and palletized on non-returnable pallets covered with a weather-resistant covering.

The following Cities have expressed an interest in cooperating in this contact. Cities and volumes are listed below. The volumes are estimated annual usages only – actual purchases will vary from these amounts

Polyflex Type 3

Location	Annual Estimated Volume
City of Tempe	75,000 pounds
Apache Junction	180,000 pounds
City of Gilbert	200,000 pounds
Total Volume	455,000 pounds

Polyflex Type 4

Location	Annual Estimated Volume
City of Tempe	75,000 pounds
Total Volume	75,000 pounds

All material shall be delivered to valley wide locations. Quoted cost is to include all delivery cost including pallets and unloading to ground level.

Bidder shall submit a copy of MSDS for all products bid.

Contract award shall be made on an all-or-none basis.

Specifications

The compound to be used shall have a maximum penetration of 150 when tested in accordance with procedures outlined by the American Association of State Highway Officials.

Sealants are single component, hot applied, elastically modified asphalt compositions, which are specifically produced as economical, yet effective pavement maintenance sealing materials for use in cracks and joints in asphalt or Portland cement concrete pavements.

Conformance Testing shall be to ASTM D5075 at the safe heating limits for the product.

Polyflex Type 3

Indicate your values for the specification in the right hand column.

Specifications – Polyflex Type 3			
Description	ASTM Standard	Required Specification	Vendor Specification
Cone Penetration	D5329	20-40	
Resilience	D5329	30% Minimum	
Softening Point	D36	210°F (99°C) minimum	
Ductility, 77°F (25°C)	D113	30 cm minimum	
Flexibility	D3111 Modified	Pass at 30°F (-1°C)	
Flow @ 140°F (60°C)	D5329	3 mm maximum	
Brookfield Viscosity @ 400°F (204°C)	D2669	100 Poise maximum	
Asphalt Compatibility	D5329	Pass	
Bitumen Content	D4	60% minimum	
Tensile Adhesion	D5329	400% minimum	
Safe Heating Temperature		400°F (204°C)	
Recommended Pour Temperature		380°F (193°C)	

Polyflex 4

Indicate your values for the specification in the right hand column.

Specifications – Polyflex Type 4			
Description	ASTM Standard	Required Specification	Vendor Specification
Cone Penetration @77°F (25°C)	D5329	10-25	
Resilience	D5329	25% Minimum	
Softening Point	D36	225°F (107°C) minimum	
Ductility, 77°F (25°C)	D113	20 cm minimum	
Flexibility	D3111 Modified	Pass at 30°F (-1°C)	
Flow @ 140°F (60°C)	D5329	0 mm maximum	
Brookfield Viscosity @ 400°F (204°C)	D2669	100 Poise maximum	
Asphalt Compatibility	D5329	Pass	
Bitumen Content	D4	60% minimum	
Tensile Adhesion	D5329	400% minimum	
Safe Heating Temperature		400°F (204°C)	
Recommended Pour Temperature		380°F (193°C)	

Application

The product shall be specially designed for placement in the Phoenix metropolitan area on a year-round basis.

The manufacturer shall change material design (as required) to meet seasonal weather and temperature change requirements at no added cost and shall issue a credit or exchange for out-of-season materials which are in inventory.

The material shall rapidly obtain sufficient viscosity, after application, to prevent tracking by traffic. In the event the material is being tracked after one hour, the manufacturer will replace all inventoried material with a material that will not track.

Sanding to prevent tracking is not an option.

Bid Questionnaire

1. Local sales office location:

Crafco, Inc., 420 N. Roosevelt Avenue, Chandler, AZ 85226

2. Warehouse/shipping location:

Crafco, Inc., 6975 W. Crafco Way, Chandler, AZ 85226

If you do not have a local warehouse, will vendor warehouse a minimum order shipment on a local basis if so requested?

Yes _____ No _____

3. Name and contact information for sale representative assigned to this account.

Name Ed Myers

Phone 602-206-8176 e-mail edward.myers@crafco.com

4. Product delivery time 1 to 5 days ARO.

5. Describe packaging/palletization of your product.

PACKAGING Packaging consists of individual boxes of product which are palletized into shipping units. Boxes contain a non-adherent film which permits easy removal of the product. Each pallet contains 72 boxes which are stacked in six layers of 12 boxes per layer. The weight of product in each box does not exceed 40 lbs. (18kg) and pallet weights do not exceed 2,880 lbs. (1310kg). Pallets of product are weighed and product is sold by the net weight of product. Product boxes are manufactured from double wall kraft board producing a minimum bursting test certification of 350 psi (241 N/cm²) and using water resistant adhesives. Boxes use tape closure and do not contain any staples. Boxes are labeled with the product name, part number, lot number, specification conformance, application temperatures and safety instructions. Palletized units are protected from the weather using a three mil thick plastic bag, a weather and moisture resistant cap sheet and a minimum of two layers of six month u.v. protected stretch wrap. Pallets are labeled with the product part number, lot number and net weight. Installation Instructions are provided with each pallet in a weather resistant enclosure.

Weight per package Not to exceed 40 lbs.

Quantity per pallet 72 boxes

Approximate loaded pallet weight 2,880 lbs.

6. Does your product meet or exceed all stated specifications?

Yes No

If no explain:

7. What is the cure time, after application, to prevent tracking of product by traffic?

Cure time is dependant on ambient temperature of road, material temperature,
road conditions and amount of material applied.

8. What warranty do you provide on your product?

WARRANTY CRAFCO, Inc. warrants that CRAFCO products meet applicable ASTM, AASHTO, Federal or State specifications at time of shipment. Techniques used for the preparation of the cracks and joints prior to sealing or filling are beyond our control as are the use and application of the products; therefore, CrafcO shall not be responsible for improperly applied or misused products. Remedies against CrafcO, Inc., as agreed to by CrafcO, are limited to replacing nonconforming product or refund (full or partial) of purchase price from CrafcO, Inc. All claims for breach of this warranty must be made within three (3) months of the date of use or twelve (12) months from the date of delivery by CrafcO, Inc. whichever is earlier. There shall be no other warranties expressed or implied. For optimum performance, follow CrafcO recommendations for product installation

9. Will you comply with all Terms and Conditions of this Invitation for Bid?

Yes No

10. List three governmental or large corporate references to which you have provided similar products. Include company name, contact person and telephone number.

Firm	Contact	Phone Number
City of Goodyear	Ron Sievwright	623-882-7632
Town of Gilbert	Curtis Yardley	480-503-6419
City of Avondale	Steve Quezada	623-478-3310

IFB Checklist For Submittals

- One- (1) signed and complete original of the Bid response, including "Vendor's Bid Offer" (Form 201-B).
- Four (4) copies of vendor supplied information in bid (copy of base bid is not required)
- The Bid Questionnaire has been completed and included
- Price Information completed and included.
- MSDS for all items bid have been included.
- Any addendum(s) have been included

Company Crafco, Inc.

Pricing Section

Quantities listed on the Price Sheet are best guest estimates for evaluations purposes and do not obligate the participating Cities to order or accept more than actual needs and availability of appropriated funds permit.

ITEM NO	DESCRIPTION OF REQUIRED MATERIAL SERVICE OR CONSTRUCTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
1.	Polyflex Type 3 Rubberized Crack Sealant Material or approved equal.	455,000	Lbs	\$ <u>0.3290</u>	\$ <u>149,695.00</u>
	Manufacturer/Brand <u>Crafco Polyflex III</u>				
	Part Number <u>P/N 34521</u>				
2.	Polyflex Type 4 Rubberized Crack Sealant Material or approved equal.	75,000	Lbs	\$ <u>0.3290</u>	\$ <u>24,675.00</u>
	Manufacturer/Brand <u>Crafco Polyflex IV</u>				
	Part Number <u>P/N 34526</u>				
			Total		\$ <u>174,370.00</u>

* Applicable Tax 7.8%

* State correct jurisdiction to receive sales tax on the Vendor's Bid Offer form CS-P201 (B) included in this Invitation for Bid document.

Less prompt payments discount terms of 0% 0 days/ or net thirty (30) days. (To apply after receipt and acceptance of itemized monthly statement.) For bid evaluation purposes, the City cannot utilize pricing discounts based upon payments being made in less than thirty (30) days from receipt of statement.

Ordering and Invoice Instructions

In order to facilitate internal control and accounting, each City Department will order and must be invoiced separately. Monthly invoices must be segregated by City Department number and mailed or delivered directly to the City Customer Department. For most materials, there will be between three (3) and six (6) ordering departments. At the time an order is placed, the Contractor must obtain the ordering department's cost center numbers for billing purposes. The use of the department's cost center numbers will be in addition to the purchase order number. Once a month, the Contractor shall submit a consolidated statement which shall itemize the invoice numbers, invoice date, invoice amounts, and the total amount billed to Accounting. Discount offering will be based upon days from receipt of the consolidated monthly statement. Invoice(s) shall not show previous balances.

Invoices shall include:

1. Listing Of All Delivery/Pickup Receipt Numbers Being Invoiced.
2. Total Cost Per Item.
3. Applicable Tax.
4. Payment Terms.
5. Blanket Purchase Order Number.

Invoices that do not follow the above minimum invoicing requirements will not be paid. Payment must be applied to only invoices referenced on check/payment stub. The City reserves the right to bill contracted vendor for researching invoices that have been paid, but not properly applied by vendor account receivables office.

Statement mailing address: City of Tempe
Accounting (see Invitation for Bid for your contact person)
P.O. Box 5002
Tempe, Arizona 85280
Phone: 480-350-8355

Accounting Contacts:	Cecilia Miller	Letters A-E
	Ramona Zapien	Letters F-O
	Penny Brophy	Letters P-Z



PRODUCT DATA SHEET

POLYFLEX TYPE 3

PART NO. 34521

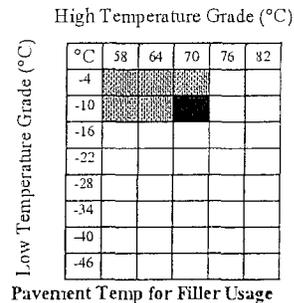
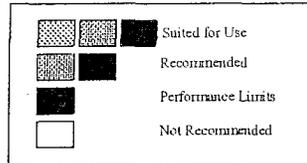
MARCH 2009

420 N. Roosevelt Ave. • Chandler AZ 85226
 1-800-528-8242 • (602) 276-0406 • FAX (480) 961-0513
 www.crafco.com

READ BEFORE USING THIS PRODUCT

GENERAL Crafco PolyFlex Type 3 is a hot-applied, asphalt based product used to fill cracks and joints in asphalt and portland cement concrete pavements in warm to hot climates. PolyFlex Type 3 is supplied in solid form which when melted and properly applied forms a highly adhesive and flexible compound that resists cracking in the winter and resists flow and pick-up at summer temperatures. Polyflex Type 3 is used in highway, street, airfield and parking lot pavements and is applied to pavement cracks using either pressure feed melter applicators or pour pots. At application temperature, PolyFlex Type 3 is a medium viscosity product which flows and penetrates cracks. PolyFlex Type 3 is formulated as an economical yet effective pavement maintenance crack filler product. Compared to products based on reclaimed rubber, PolyFlex Type 3 offers lower viscosity for easier application, improved summer temperature pick-up resistance, quicker set-up times and improved low temperature flexibility. Polyflex Type 3 has been a quality Crafco product for 20 years. Several states have adopted specifications based on the performance of Polyflex Type 3. VOC = 0 g/l.

USAGE GUIDELINES PolyFlex Type 3 pavement temperature performance limits are 70-10 for crack filling. Usage recommendations are shown in Crafco pavement temperature grade charts shown at the right. Refer to Crafco Product Selection Procedures to determine sealant or filler use and pavement temperature grades.



SPECIFICATION CONFORMANCE The Crafco recommended specification limits for PolyFlex Type 3 when heated in accordance with ASTM D5078 to the maximum heating temperature are as follows:

Test	Recommended Specification
Cone Penetration (ASTM D5329)	20-40
Resilience (ASTM D5329)	30% min.
Softening Point (ASTM D36)	210°F (99°C) min.
Ductility, 77°F (25°C) (ASTM D113)	30 cm min.
Flexibility (ASTM D3111 Modified)	Pass at 30°F (-1°C)
Flow 140 F (60 C) (ASTM D5329)	3 mm max
Brookfield Viscosity, 400°F (204°C) (ASTM D2669)	100 Poise max.
Asphalt Compatibility (ASTM D5329)	Pass
Bitumen Content (ASTM D4)	60% min
Tensile Adhesion (ASTM D5329)	400% min.
Maximum Heating Temperature	400°F (204°C)
Minimum Application Temperature	380°F (193°C)

INSTALLATION The unit weight of Crafco PolyFlex Type 3 is 10.0 lbs. per gallon (1.20 kg/L) at 60°F (15.5°C). Prior to use, the user must read and follow Installation Instructions for Hot-Applied RoadSaver, PolyFlex, Parking Lot and Asphalt Rubber Products to verify proper product selection, heating methods, pavement preparation procedures, application geometry, usage precautions and safety procedures. These instructions are provided with each pallet of product.

PACKAGING Packaging consists of individual boxes of product which are palletized into shipping units. Boxes contain a non-adherent film which permits easy removal of the product. Each pallet contains 72 boxes which are stacked in six layers of 12 boxes per layer. The weight of product in each box does not exceed 40 lbs. (18kg) and pallet weights do not exceed 2,880 lbs. (1310kg). Pallets of product are weighed and product is sold by the net weight of product. Product boxes are manufactured from double wall kraft board producing a minimum bursting test certification of 350 psi (241 N/cm²) and using water resistant adhesives. Boxes use tape closure and do not contain any staples. Boxes are labeled with the product name, part number, lot number, specification conformance, application temperatures and safety instructions. Palletized units are protected from the weather using a three mil thick plastic bag, a weather and moisture resistant cap sheet and a minimum of two layers of six month u.v. protected stretch wrap. Pallets are labeled with the product part number, lot number and net weight. Installation Instructions are provided with each pallet in a weather resistant enclosure.

WARRANTY Crafco, Inc. warrants that Crafco products meet applicable ASTM, AASHTO, Federal or State specifications at time of shipment. Techniques used for the preparation of the cracks and joints prior to sealing or filling are beyond our control as are the use and application of the products; therefore, Crafco shall not be responsible for improperly applied or misused products. Remedies against Crafco, Inc., as agreed to by Crafco, are limited to replacing nonconforming product or refund (full or partial) of purchase price from Crafco, Inc. All claims for breach of this warranty must be made within three (3) months of the date of use or twelve (12) months from the date of delivery by Crafco, Inc. whichever is earlier. There shall be no other warranties expressed or implied. For optimum performance, follow Crafco recommendations for product installation



PRODUCT DATA SHEET

POLYFLEX TYPE 4

PART NO. 34526

JANUARY 2008

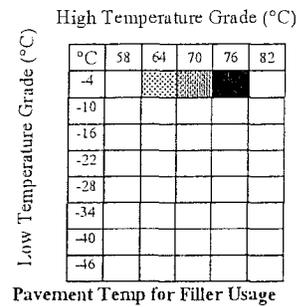
420 N. Roosevelt Ave. • Chandler AZ 85226
 1-800-528-8242 • (602) 276-0406 • FAX (480) 961-0513
 www.crafco.com

READ BEFORE USING THIS PRODUCT

GENERAL Crafco PolyFlex Type 4 is a hot-applied, asphalt based product used to fill cracks in asphalt or portland cement concrete pavements in hot climates. PolyFlex Type 4 is supplied in solid form which when melted and properly applied forms a stiff, adhesive and flexible compound that bonds strongly to pavement cracks and is highly resistant to tracking or pick-up of vehicle tires in hot climates. Polyflex Type 4 is used in highway, street, airfield and parking lot pavements and is applied to pavement cracks using pressure feed melter applicators. At application temperature, PolyFlex Type 4 is a medium viscosity product which flows and penetrates cracks. PolyFlex Type 4 is formulated as an economical yet effective pavement maintenance crack filler product. Compared to products based on reclaimed rubber, PolyFlex Type 4 offers lower viscosity for easier application, improved summer temperature pick-up resistance, quicker set-up times and improved lower temperature flexibility. VOC = 0 g/l.

USAGE GUIDELINES PolyFlex Type 4 pavement temperature performance limits are 76-4 for crack filling. Usage recommendations are shown in Crafco pavement temperature grade charts shown at the right. Refer to Crafco Product Selection Procedures to determine sealant or filler use and pavement temperature grades.

	Suited for Use
	Recommended
	Performance Limits
	Not Recommended



SPECIFICATION CONFORMANCE The Crafco recommended specification limits for PolyFlex Type 4 when heated in accordance with ASTM D5078 to the maximum heating temperature are as follows: Error! Bookmark not defined.

Test	Recommended Specification
Cone Penetration, 77°F (25°C) (ASTM D5329)	10-25
Resilience (ASTM D5329)	25% min.
Softening Point (ASTM D36)	225°F (107°C) min.
Ductility, 77°F (25°C) (ASTM D113)	20 cm min.
Flow 140°F (60°C) (ASTM D5329)	0 mm max
Brookfield Viscosity, 400°F (204°C) (ASTM D2669)	100 Poise max.
Asphalt Compatibility (ASTM D5329)	Pass
Maximum Heating Temperature	400°F (204°C)
Minimum Application Temperature	380°F (193°C)

INSTALLATION The unit weight of Crafco PolyFlex Type 4 is 10.5 lbs. per gallon (1.26 kg L) at 60°F (15.5°C). Prior to use, the user must read and follow Installation Instructions for Hot- Applied RoadSaver, PolyFlex and Asphalt Rubber Products to verify proper product selection, heating methods, pavement preparation procedures, application geometry, usage precautions and safety procedures. These instructions are provided with each pallet of product.

PACKAGING Packaging consists of individual boxes of product which are palletized into shipping units. Boxes contain a non-adherent film which permits easy removal of the product. Each pallet contains 72 boxes which are stacked in six layers of 12 boxes per layer. The weight of product in each box does not exceed 40 lbs. (18kg) and pallet weights do not exceed 2,880 lbs. (1310kg). Pallets of product are weighed and product is sold by the net weight of product. Product boxes are manufactured from double wall kraft board producing a minimum bursting test certification of 350 psi (241 N/cm²) and using water resistant adhesives. Boxes use tape closure and do not contain any staples. Boxes are labeled with the product name, part number, lot number, specification conformance, application temperatures and safety instructions. Palletized units are protected from the weather using a three mil thick plastic bag, a weather and moisture resistant cap sheet and a minimum of two layers of six month u.v. protected stretch wrap. Pallets are labeled with the product part number, lot number and net weight. Installation Instructions are provided with each pallet in a weather resistant enclosure.

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