

REQUEST FOR PROPOSAL

RFP-23-LAW-001

REQUEST FOR PROPOSAL TO DEVELOP AND OPERATE A DIVERSION PROGRAM FOR PERSONS ARRESTED FOR PROSTITUTION

City of Phoenix

Law

300 W Washington Street,

9th Floor, City Prosecutors Office

Phoenix, AZ

85003

RELEASE DATE: March 17, 2023

DEADLINE FOR QUESTIONS: March 29, 2023

RESPONSE DEADLINE: April 21, 2023, 12:00 pm

City of Phoenix
REQUEST FOR PROPOSAL
RFP-23-LAW-001
Request for Proposal to Develop and Operate a Diversion Program for Persons Arrested for Prostitution

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Attachments:

C - Prostitution Diversion Program Redacted

D - Pricing Proposal Template

E - Program Budget and Fiscal Questionarre

F - Attachment\_A,\_F,\_G\_and\_H-\_Description\_of\_Proposed\_Program-\_Method\_of\_Approach\_PDP\_RFP\_2023

K - Addendum Form

M - Acceptance Form 2023 rev 2-2023

N - Submittals - 24 Hour Emergency Contact rev 2-2023.

O - Submittals - Certification of Recycled Products rev 2-2023

P - Submittals - Conflict of Interest and Transparency rev 2-2023

Q - Submittals - Contractor Licensing Requirements rev 2-2023

R - Submittals - Costs and Payments rev 2-2023

S - Submittals - Debarment & Exclusion rev 2-2023

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X - Submittals - References rev 2-2023

# INTRODUCTION

## Summary

The City of Phoenix through its Prosecutor’s Office is issuing this request for proposals to qualified proposers to develop and operate a program for persons who are arrested for prostitution or other offenses and meet the criteria established by the City to participate in a diversion program. The purpose of the Prostitution Diversion Program is to move such Offenders out of the criminal justice system into a program that combines a comprehensive personal assessment of the Offender with support, training, services, counseling and education, referrals, and other opportunities to help the Offender build a new life upon completion of the Program and avoid returning to a life of prostitution, and at the same time reduce the number of cases in the criminal justice system.

## Background

Since 1997, the City through its Prosecutor’s Office has offered Offenders, who have violated the criminal provisions of the City Code reflected on Exhibit “A”, a Prostitution Diversion Program. Offenders who are arrested for the crimes identified on Exhibit “A” enter into a plea agreement in the form of Exhibit “B” and meet any other set criteria of the City are eligible to complete the Program. Under the plea agreement, the Offender’s case is continued for 180 calendar days to allow the Offender to complete the Program. Upon successful completion of the Program by an Offender that entered into a plea agreement, the City will dismiss the charge against the Offender. The current Prostitution Diversion Program was developed by a non-profit organization, which contracted with the City to develop the Program and currently operates its Program under the oversight of the City’s Prosecutor’s Office. That contract will expire on June 30th, 2023, and the City is issuing this RFP for the purpose of selecting one qualified contractor which operates a diversion program for the above Offenders that satisfies the criteria of the City. The new contract, if any, may be implemented prior to the expiration date.

Offenders who have been charged with any of the offenses are eligible to participate in the Program. Persons eligible for the Program pre-conviction must enter into the City’s form of diversion plea agreement (Exhibit “B”), admit guilt, and agree to comply with the terms of the Program. If such an Offender fails to complete the Program as required by the plea agreement, the sentence described in the plea agreement is imposed. If the Offender completes the Program, the City will dismiss the subject charge without prejudice.

## Contact Information

**Narda Aldaco**
Diversion Unit Administrator
300 W Washington Street,
9th Floor, City Prosecutors Office
Phoenix, AZ 85003
Email: rfpdiversion@phoenix.gov
Phone: (602) 261-8188

**Department:**
Law

## Timeline

**Schedule of Events**

The City reserves the right to change dates, times, and locations, as necessary. The City does not always hold a Pre-Offer Conference or Site Visit.

To request a reasonable accommodation or alternative format for any public meeting, please contact the Procurement Officer (Narda Aldaco) at (602) 261-8188/Voice or 711/TTY, or rfpdiversion@phoenix.gov, no later than two (2) weeks prior to the meeting.

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| --- | --- |
| **Solicitation Issue Date** | March 17, 2023 |
| **Pre-Offer Conference (Non-Mandatory)** | March 22, 2023, 2:13pmPMC802 Conf Room LAW |
| **Written Inquiries Due Date** | March 29, 2023, 3:00pm |
| **Offer Due Date** | April 21, 2023, 12:00pmPMC802 Conf Room LAW |

# INSTRUCTIONS

## Description – Statement of Need

The City of Phoenix invites sealed offers for The City of Phoenix through its Prosecutor’s Office is issuing this request for proposals to qualified proposers to develop and operate a program for persons who are arrested for prostitution or other offenses, and meet the criteria established by the City to participate in a diversion program. The purpose of the Prostitution Diversion Program is to move such Offenders out of the criminal justice system into a program that combines a comprehensive personal assessment of the Offender with support, training, services, counseling and education, referrals, and other opportunities to help the Offender build a new life upon completion of the Program and avoid returning to a life of prostitution, and at the same time reduce the number of cases in the criminal justice system. for a three-year term, with two option years commencing on or about July 1st, 2023, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.

This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

## City’s Vendor Self-Registration and Notification

Vendors must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/procure> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered.

## Preparation of Offer

All forms provided in Submittal Section must be completed and submitted with the Offer. The signed and completed Conflict of Interest and Transparency form must be included or your Offer may be deemed non-responsive.

It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the Offer must be initialed in original ink by the authorized person signing the Offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror’s errors or omissions.

All time periods stated as a number of days will be calendar days.

It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

1. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
2. Study and carefully correlate Offeror’s knowledge and observations with the solicitation and other related data.
3. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.
4. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
5. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
6. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer’s catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City’s use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
7. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

## Fixed Offer Price Period

All offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date.

## Obtaining a Copy of the Solicitation and Addenda

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Any interested Offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix, Finance Department, Central Procurement Division, 251 W Washington Street, 8th Floor, Phoenix, AZ. It is the Offeror’s responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their Offer.

## Exceptions

Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City’s sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the Procurement Officer rather than including exceptions in their Offer.

## Inquiries

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.

No informal contact initiated by Offerors on the proposed service will be allowed with members of City’s staff from date of distribution of this solicitation until after City Council awards the contract. All questions concerning or issues related to this solicitation must be presented in writing.

The Procurement Officer will answer written inquiries in an addendum and publish any addendums on the Procurement Website.

## Addenda

The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the Offer submittal.

## Business in Arizona

The City will not enter contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the Offeror asserts a statutory exception prior to entering a contract with the City.

## Licenses

If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

## Certifications

By signature in the Offer section of the Offer and Acceptance page(s), Offeror certifies:

* The submission of the Offer did not involve collusion or other anti-competitive practices.
* The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
* The Offeror 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.

## Submission of Offer

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. The prevailing clock will be the City Department’s clock.

Offers must be submitted in one of the following ways:

1. Submitted in a sealed envelope and the following information should be noted on the outside of the envelope:
	1. Offeror’s Name
	2. Offeror’s Address (as shown on the Certification Page)
	3. Solicitation Number
	4. Solicitation Title
	5. Offer Opening Date
	6. Such offers must be completed in ink or typewritten. Include the number of copies that are required as indicated in the Submittal section.
2. Submitted electronically by email to rfpdiversion@phoenix.gov and the following information should be noted in the email:
	1. Offeror’s Name
	2. Offeror’s Address (as shown on the Certification Page)
	3. Solicitation Number
	4. Solicitation Title
	5. Offer Opening Date
	6. Due to file size limitations for electronic transmission (for sending or receiving), Offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the Offer (including all parts if sent in multiple emails) is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the email(s) as received/stamped by the City’s inbox will provide proof of submission and verification whether the Offer was received on or prior to the exact time and date indicated in the Schedule of Events.
	7. Any original documents (such as bonds, guaranties, powers of attorney), if required by the solicitation, must be separately delivered to and received by the City on or prior to the exact time and date indicated in the Schedule of Events, with a clear indication of the Offer for which it is attributed.

## Withdrawal of Offer

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the Offer by submitting a request in writing and signed by a duly authorized representative. If Offeror withdraws the Offer electronically by email to the Procurement Officer, the request to withdraw must be in the form of a letter attached to the email that includes either an image of the duly authorized representative’s signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign or a similar verifiable software program.

## Offer Results

Offers will be opened on the offer due date, time and location indicated in the Schedule of Events, at which time the name of each Offeror, and the prices may be read. Offers and other information received in response to the solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City’s website.

The City will post a preliminary offer tabulation on the City’s website, <https://solicitations.phoenix.gov/Awards> within five calendar days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the offers, the City will post an award recommendation on the website. By signing and submitting its Offer, each Offeror agrees that this posting of the award recommendation to the City’s website effectively serves as the Offeror’s receipt of that notice of award recommendation. The City has no obligation to provide any further notification to unsuccessful Offerors.

## Pre-Award Qualifications

Offeror must have been in operation a minimum of twoyears experience. All persons who will provided services under the program must be fully qualified to carry out their duties. The Offeror’s normal business activity during the past two years will have been for providing the goods or services in this solicitation.

Upon notification of an intent to award, the Offeror will have ten calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this agreement. Insurance requirements are non-negotiable.

## Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.

1. Factors that may be considered by the City include:
	1. Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
	2. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
	3. Safety record; and,
	4. Offeror history of complaints and termination for convenience or cause.
2. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
3. A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City’s solicitation. Offers do not become contracts until they are executed by the Chief Procurement Officer or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

## Solicitation Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual Offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated Procurement Officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.

Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

“To discuss” means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

## Protest Process

Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City’s best interests to set new deadlines, amend the solicitation, cancel or re-bid.

Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.

Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.

Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City’s website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City’s full and final discretion.

All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:

* Identification of the solicitation number;
* The name, address and telephone number of the protester;
* A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
* The form of relief requested; and
* The signature of the protester or its authorized representative.

The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City’s Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

## Public Record

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information “confidential.” To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request to view any portion of its Offer marked “confidential.” The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

## Late Offers

Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being late.

## Right to Disqualify

The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.

## Contract Award

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award.

## Determining Responsiveness and Responsibility

Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers (as the case may be) will render an Offer nonresponsive.

Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.

Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible contractor. Responsibility includes the Offeror’s integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

The Procurement Officer will review each Offer to determine if the Offeror is responsible. The City’s determination as to whether an Offeror is responsible will be based on all information furnished by the Offeror, interviews (if any), and information received from Offeror’s references, including information about Offeror’s history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.

The Offeror’s unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

## Evaluation of Competitive Sealed Offers

The City will use its discretion in applying the following processes to this solicitation. Any ties in scoring will be resolved with a best and final price request and the lowest price will prevail.

## Detailed Evaluation of Offers and Determination of Competitive Range

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Offerors’ rankings and which offers are within the Competitive Range, when appropriate.

## Offers Not Within the Competitive Range

The City may notify Offerors of Offers that the City determined are not in the Competitive Range.

## Discussions with Offerors in the Competitive Range

The City will notify each Offeror whose Offer is in the Competitive Range or made the ‘short list’ and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so, the City may determine the Offer is nonresponsive, and the City may revoke its determination that the Offer is in the Competitive Range.

To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.

## Best and Final Offers (BAFO)

A BAFO is an option available for negotiations. Each Offeror in the Competitive Range, which is determined in the City’s sole discretion, may be afforded the opportunity to amend its Offer and make one BAFO.

If an Offeror’s BAFO modifies its initial Offer, the modifications must be identified in the BAFO. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. The City will adjust appropriately the initial scores for criteria that have been affected by offer modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.

The Evaluation Panel will recommend the Offer that is the best value and most advantageous to the City based on the evaluation criteria.

The City reserves the right to make an award to an Offeror whose Offer is the highest rated, best value, and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.

# SCOPE OF WORK

## Overview

Since 1997, the City through its Prosecutor’s Office has offered Offenders, who have violated the criminal provisions of the City Code reflected on Exhibit “A”, a Prostitution Diversion Program. Offenders who are arrested for the crimes identified on Exhibit “A” enter into a plea agreement in the form of Exhibit “B” and meet any other set criteria of the City are eligible to complete the Program. Under the plea agreement, the Offender’s case is continued for 180 calendar days to allow the Offender to complete the Program. Upon successful completion of the Program by an Offender that entered into a plea agreement, the City will dismiss the charge against the Offender. The current Prostitution Diversion Program was developed by a non-profit organization, which contracted with the City to develop the Program and currently operates its Program under the oversight of the City’s Prosecutor’s Office. That contract will expire on June 30th, 2023 and the City is issuing this RFP for the purpose of selecting one qualified contractor which operates a diversion program for the above Offenders that satisfies the criteria of the City. The new contract, if any, may be implemented prior to the expiration date.

## Program Information and Statistics

The City initiated the Program in 1997 and it has been in effect ever since. The statistics provided below reflect the actual number of Offenders signing the plea agreement or completing the Program during the time periods reflected. These numbers are historical and are offered to help the Proposer estimate the Program services that may be required. The actual number of Offenders offered the Program, signing plea agreements and/or completing the Program during the term of any contract resulting from this RFP is impossible to determine. By submitting a proposal, each Proposer expressly agrees to provide Program services for the actual number of Offenders who meet the Program criteria and initially agree to participate in the Program during the term of any contract resulting from this RFP.

Fiscal Year: 20/21

* Offenders signing plea agreements: 63
* Offenders Re-Ordered: 32
* Offenders completing Program: 57
* Offenders Closed Unsuccessful: 42

Fiscal Year: 21/22

* Offenders signing plea agreements: 88
* Offenders Re-Ordered: 26
* Offenders completing Program: 55
* Offenders Closed Unsuccessful: 49

Women are the primary participants in the Program. Last calendar year (January 1, 2022 - December 31, 2022), 90% of the Offenders in the Program were female and 10% declined to answer. These Offenders were 18 to 45 years of age, as reflected below:

* 19% between 16-20 years old
* 40% between 21-25 years old
* 21% between 26-30 years old
* 11% between 30-35 years old
* 4% between 36-40 years old
* 3% between 41-45 years old

English is the predominant language, with Spanish being the secondary language. For Calendar Year 2022, 34% have attended up to 11th grade, 33 % are high school graduates, 15% have some college, 10% have attended up to 10th grade, 4% have a GED, 4% have Vocational/Technical School, and 1% have an Undergraduate degree.

## Responsibilities of the Prosecutor's Office

* Eligibility Criteria: Determine the eligibility criteria for the program, including updating, amending and supplementing the eligibility criteria over the term of any contract resulting from this RFP.
* Approval of Program: Approve the program and oversee the program as operated by the successful Offeror.
* Coordinate: Coordinate the operation of the program by the successful Offeror with the Phoenix Municipal Court.
* Notice of Change in Law: Provide the successful Offeror with reasonable prior notice of any changes in Arizona statutes and City ordinances, rules and procedures that affect program, either operationally or substantively.
* Change in Forms/Procedures: Add and modify program forms and procedures provided that, the City's Diversion Programs Administrator reviews and discusses any such changes with the successful Offeror.
* Approval of Forms: Review and approve forms used to document Defendants’ participation in the program.
* Forms Documentation Outcomes: Provide samples of all documents necessary for the successful Offeror to document the success or failure of a Defendant who participates in the program and to close the file.

## Obligations of Successful Offeror to Satisfy Scope of Work

The successful Offeror will be required to develop and operate the programs which comply with the requirements of the City, the City Code, and other applicable laws, rules and regulations. The programs must satisfy the following requirements and the proposal must address all the elements in the Attachment.

* Services: Provide complete services to each Defendant referred to the program for diversion and pre-diversion. Program counselor will determine which services will be assigned at time of screening/intake.
* Office Required: Maintain an office location readily accessible to Defendants located within 10 miles of the Phoenix Municipal Court Building, 300 West Washington Street, Phoenix, Arizona, 85003 by the effective date of the contract for conducting intake appointments, exchanging documents with the Prosecutor’s Office, and assisting Defendants. The office hours must be open for services from 8:00 a.m. to 5:00 p.m. on all regular workdays scheduled by the City.
* Individualized Case Plan: Establish, implement, and oversee an individualized case plan for each Defendant who requires services instead of, or in addition to, the regular program. This includes case management of services provided by other agencies.
* Out of Maricopa County/State of Arizona Defendants: Provide a case management plan and monitoring for all necessary services for Defendants who live outside of Maricopa County or the State of Arizona.
* Resource Information and Referrals: Provide resource information and appropriate community referrals to the Defendants based on each Defendant’s needs determined at screening/intake and throughout the program.
* Confirmation of Eligibility: If not ordered by the Phoenix Municipal Court, confirm eligibility of the Defendant prior to enrollment in accordance with criteria established by the Prosecutor's Office.
* Messages After Hours: Establish a method of receiving messages from Defendants during non-business hours.
* Bilingual Requirement: Employ bilingual staff who are fluent in English and Spanish and ensure that all services, program forms, and materials are provided in English and Spanish.
* Interpreters: Provide interpreters for all non-English speaking Defendants at no additional cost to the Defendants for all services.
* Americans with Disabilities Act: Comply with the Americans with Disabilities Act.
* Availability for Court- Have staff accessible by phone during regular City business hours to answer compliance questions. If subpoenaed, ensure staff are available court-ordered to appear and testify in Municipal Court about the status of Offenders in the Program as needed during regular City business hours.
* Cap on Session Participants: Have a maximum of 20 Defendants per group session.
* Confidentiality Policy: Develop and maintain a confidentiality policy including the duty to warn requirements as required by law.
* Participation in City's Program Evaluation: Participate in any evaluation of the Offeror’s program in multiple formats conducted by the Prosecutor’s Office.
* Screening/Intake: Schedule Defendants for screening/ intake and services, and ensure that Defendants are active in the program.
* Outreach: Establish a written policy to contact Offenders who do not initiate contact with the Program within the five-day period described in the plea agreement. The policy shall include the requirement to systematically document all outreach efforts.
* Closing Cases: Establish a process to close cases when Defendants do not complete screening intake within 30 days of signing the plea agreement.
* Inactive Cases: For Defendants who become inactive (e.g. stops participating after intake) in the program, establish a process to close cases within two weeks after following established aggressive outreach efforts and no later than three weeks prior to the next scheduled court date.
* Completion Courses: For Defendants who complete the program, establish a process to close the case within two business weeks of each Defendant’s completion date or before their scheduled court date, whichever comes first.
* No Program Re-Entry: Enforce the City policy prohibiting a Defendant to re-enter the program after the Defendant’s case has been closed, unless the re-entry is approved in writing by the Prosecutor’s Office.
* Closure Forms: Submit closure forms in the format provided by the Prosecutor’s Office. To be filed with the Phoenix Municipal Court, (typically a motion or status report).
* Community Resources and Referrals: Develop and maintain professional and community affiliations and referral sources necessary to conduct the program.
* Community Outreach- Provide coordination of community resources and outreach services to aid defendants with obtaining additional services or assistance including outreach to the community as needed.
* Computer System: Maintain a computer system with sufficient number of computers and capacity to allow program staff to access the system. Program staff to access the system and properly installed software meets the following requirements: Internet Explorer 11 (or higher); PDF reader, i.e., Adobe Reader 8 (or higher); ZIP utility for viewing and extracting ZIP compressed files (ZIP utility is automatically installed by Microsoft for Windows XP SP2 or higher); Picture file viewer; Media player for MP3; Internet access; and an email account.
* Courier Service: Provide courier service to deliver documents required by the Prosecutor’s Office as needed.
* File Maintenance and Retention: Maintain and retain files, hard copy files or computer files that reflect each Defendant's attendance at, participation, and completion, if any, of the program. If only computer files are kept, hard copies of files must be provided when requested by the Prosecutor’s Office. These documents must be accessible to the Prosecutor’s Office at all times.
* Availability of Defendants Status Information: Provide a Defendant’s status in the program at no cost to the Defendant, the Prosecutor's Office, and the Phoenix Municipal Court when requested.
* Operations Manual: Complete and submit an operations manual within 30 calendar days following the effective date of any contract awarded pursuant to this RFP. A current operations manual must be submitted at the beginning of each fiscal year. The operations manual must be revised during the term of the contract to ensure it remains up to date and reflects any and all changes in procedures.
* Participant Evaluation: A monthly summary of the evaluation data, including participants written responses and comments, must be submitted by the last day of the month for the preceding month.

## Monthly Report

1. Monthly Report: Complete a monthly report for the preceding month due to the Prosecutor’s Office by the 10th of each month. The following program data will be included:
	1. The names and total number of Defendants referred to the program. Cases should be identified as pre plea diversion and post plea diversion.
	2. The names and total number of Defendants who completed the program. Cases should be identified as pre plea diversion and post plea diversion.
	3. The names and total number of Defendants who did not complete the program. Cases should be identified as pre plea diversion and post plea diversion.
	4. The names of any new subcontractors and group facilitators performing services under the Agreement.
	5. Program accomplishments, modifications, and concerns; community outreach, issues raised by criminal justice personnel.
2. Six-Month Reports: Every six months after the commencement of any contract resulting from this RFP, prepare and deliver an initial report to the Prosecutor’s Office within 30 calendar days after the end of such six-month period, due January 30 and July 30. This report will describe the demographics of the Offenders in the Program, the services provided, the Program's successes and failures using measurable criteria, and recommendations for Program improvements based on performance measures identified in the contract resulting from this RFP. This will also include measurable reasons why Offenders were closed non-compliant. The report shall also include a detailed cumulative accounting of expenses for the Program. Access to raw data must be made available to the Prosecutor’s Office. Demographics shall include, but is not limited to:
	1. Annual Household Income
	2. Education
	3. Age
	4. Gender Identity
	5. Primary Language
	6. Ethnicity
	7. Zip Code

## Human Trafficking Prevention

Attend the City's Human Trafficking Task Force meetings, as well as other community based Human Trafficking prevention meetings. Include best practices of Human Trafficking prevention in the program.

## Service Guarantee

All services required by the terms of this RFP shall include the complete and normal processing of all defendants referred during the entire term of the Agreement. Defendants may be ordered during the entire term of the Agreement to complete the program, and the Offeror will complete all services to all defendants ordered to the program.

## Description of Proposed Program

See Attachment A for:

Method of Approach

Proposer's Qualifications and Experience

Program Evaluation and Measures

# EVALUATION PROCESS

Evaluation Criteria

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Evaluation Criteria** | **Scoring Method** | **Weight (Points)** |
| 1. | **Method of Approach- Program Structure and Assessment**Points70 Research/literature philosophy35 Intake procedures and forms50 Outreach procedures100 Content and structure of educational sessions50 Performance measures used to evaluate the program50 Explanation of ongoing program improvements50 Quality of plan to provide resource information and make appropriate community referrals through case management70 Human Trafficking prevention and services25 Job development500 Subtotal Possible | Points Based | 500*(50% of Total)* |
| 2. | **Accessibility**75 Location/availability/accessibility for intake and groups50 Program accessibility, including access for monolingual, non-English and non-Spanish speaking people, and compliance with American with Disabilities Act (ADA)125 Subtotal Possible | Points Based | 125*(12.5% of Total)* |
| 3. | **Computerized Information System**25 Existing web-based case management system or quality of plan to implement system25 Electronic record keeping and capabilities to generate reports and forms50 Subtotal Possible | Points Based | 50*(5% of Total)* |
| 4. | **Qualifications and Experience**Points50 Staff qualifications40 Training and supervision of staff30 Personnel/administration sufficient to provide services taking into account staff turnover rate50 Agency experience and past performance30 Proposers performance evaluations (reference checks)200 Subtotal Possible | Points Based | 200*(20% of Total)* |
| 5. | **Financial Assurances**25 Fiscal Ability Questionnaire25 Subtotal Possible | Points Based | 25*(2.5% of Total)* |
| 6. | **Program Budget and Cost**100 Subtotal Possible | Points Based | 100*(10% of Total)* |

# STANDARD TERMS AND CONDITIONS

## Definition of Key Words Used in the Solicitation

**Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.

**Should:** Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the Offer without the information.

**May:** Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions will apply:

“A.R.S.” Arizona Revised Statute

“Buyer” or “Procurement Officer” City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.

"City" The City of Phoenix

"Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.

"Contract” or “Agreement" The legal agreement executed between the City of Phoenix, AZ and the Contractor.

“Days” Means calendar days unless otherwise specified.

“Chief Procurement Officer” The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.

“Employer” Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).

“Offer” Means a response from a Supplier, Contractor, or Service Provider to a solicitation request that, if awarded, binds the Supplier, Contractor, or Service Provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.

“Offeror” Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.

“Solicitation” Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed bids, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, bids or quotes from suppliers.

“Suppliers” Firms, entities or individuals furnishing goods or services to the City.

“Vendor or Seller” A seller of goods or services.

## Contract Interpretation

1. **APPLICABLE LAW:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
2. **CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
	1. Federal terms and conditions, if any
	2. Special terms and conditions
	3. Standard terms and conditions
	4. Amendments
	5. Statement or scope of work
	6. Specifications
	7. Attachments
	8. Exhibits
	9. Instructions to Contractors
	10. Other documents referenced or included in the Solicitation
3. **ORGANIZATION – EMPLOYMENT DISCLAIMER:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.
4. **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
5. **NON-WAIVER OF LIABILITY:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
6. **PAROL EVIDENCE:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

## Contract Administration and Operation

1. **RECORDS:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements Contractor has in place.
2. **DISCRIMINATION PROHIBITED:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.
3. **EQUAL EMPLOYMENT OPPORTUNITY AND PAY:** In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.
	1. **For a Contractor with 35 employees or fewer:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.
	2. **For a Contractor with more than 35 employees:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.
	3. **Documentation:** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
	4. **Monitoring:** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.
4. **LEGAL WORKER REQUIREMENTS:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:
	1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
	2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
	3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.
5. **HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor’s products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City. At the request of City representatives, the Contractor will provide the City:
	1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
	2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.
	3. The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor’s facilities (during normal business hours).
6. **COMPLIANCE WITH LAWS:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor’s business records, including personnel records to verify any such compliance. Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor’s acts.
7. **LAWFUL PRESENCE REQUIREMENT:** Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.
8. **CONTINUATION DURING DISPUTES:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
9. **EMERGENCY PURCHASES:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

## Costs and Payments

1. **GENERAL:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.
2. **PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
3. **LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
4. **DISCOUNTS:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
5. **NO ADVANCE PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
6. **FUND APPROPRIATION CONTINGENCY:** The Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
7. **MAXIMUM PRICES:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.
8. **F.O.B. POINT:** All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

## Contract Changes

1. **CONTRACT AMENDMENTS:** Contracts will be modified only by a written contract amendment signed by persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.
2. **ASSIGNMENT - DELEGATION:** No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.
3. **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

## Risk of Loss and Liability

1. **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.
2. **ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.
3. **FORCE MAJEURE:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.
4. **LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the City.
5. **CONTRACT PERFORMANCE:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor. The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.
6. **DAMAGE TO CITY PROPERTY:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City. Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

## City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

1. **NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
2. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
3. **ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
4. **DEFAULT:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
5. **COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.
6. **COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.
7. **WORK PRODUCT, EQUIPMENT AND MATERIALS:** All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City’s request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are “works for hire” within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

## Contract Termination

1. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
2. **CONDITIONS AND CAUSES FOR TERMINATION:**
	1. This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.
	2. The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:
		1. In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
		2. In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
		3. In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality;
		4. Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
		5. In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.
3. **CONTRACT CANCELLATION:** All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

## State and Local Transaction Privilege Taxes

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden and legal liability to remit taxes are on the Contractor that is conducting business in Arizona and the City of Phoenix. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your Offer. You may also find information at https://www.phoenix.gov/finance/plt or https://www.azdor.gov/Business.aspx. Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

## Tax Indemnification

Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor, and require the same of all subcontractors. Contractor will hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

## Tax Responsibility Qualification

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

## No Israel Boycott

If this Contract is valued at $100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.

## No Forced Labor of Ethnic Uyghurs

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People’s Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People’s Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

## Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

## Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

## Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Chief Procurement Officer prior to the institution of the change.

# SPECIAL TERMS AND CONDITIONS

## Price

All prices offered shall be firm and fixed for the entire term of the contract.

## Performance Interference

Contractor shall notify the City’s authorized Department representative immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

## Background Screening

Contractor agrees that all Contractor and subcontractors’ workers (collectively “Contract Worker(s))” pursuant to this Agreement will be subject to background and security checks and screening (collectively “Background Screening”) at Contractor’s sole cost and expense, unless otherwise provided for in the scope of work. Contractor’s background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

## Background Screening Risk Level

The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges.

## Terms of This Section Applicable to all Contractor’s Contracts and Subcontracts

Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.

## Materiality of Background Screening Requirements; Indemnity

The background screening requirements are material to City’s entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor’s services under this Agreement or Contractor’s failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

## Continuing Duty; Audit

Contractor’s obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor’s records.

## Variances and Exemptions

Contract Workers who fall under the following areas may be considered exempt from this policy:

* Federal Homeland Defense Bureau.
* Transportation Security Administration.
* Federal Aviation Administration.
* Department of Public Safety (DPS) Administration – presenting a current Level One Department of Public Safety fingerprint card.
* Arizona or other State Bars.
* Other background checks performed within the last three to five years may be approved if they fit all required criteria herein, at the City’s discretion.

## Employee Identification and Access

Contract Workers are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contract Workers are not authorized access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.

Only authorized Contract Workers are allowed on the premises of the City facilities/buildings. Contract Workers are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contract Worker.

Unless otherwise provided for in the scope of work:

* Contract Workers must always have city issued badges and some form of verifiable company identification (badge, uniform, employee id).
* Contractor will supply a list of the names and titles of all employees requiring access to the buildings. It is the Contractor's responsibility to provide updates and changes of personnel as necessary.

## Background Screening – Maximum Risk

1. Determined Risk Level: The current risk level and background screening required is MAXIMUM RISK.
2. Maximum Risk Level: A maximum risk background screening will be performed every **five** years when the Contract Worker’s work assignment will:
	1. work directly with vulnerable adults or children, (under age 18); or
	2. any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
	3. unescorted access to:
		1. City data centers, money rooms, high-value equipment rooms; or
		2. unescorted access to private residences; or
		3. access to critical infrastructure sites/facilities; or
		4. direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.
3. Requirements: The background screening for maximum risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker’s proposed date of hire. In addition, Maximum screening levels may require additional checks as included herein, depending on the scope of work, and may be amended if the scope of work changes.

## Additional Maximum Risk Background Checks

Maximum screening will additionally require:

* Fingerprint verification (when Contract Worker is working directly with children or vulnerable adults or scope takes the individual to a City location with Criminal Justice Information System (CJIS) access.)

## Maximum Risk Background Criminal Justice Information Services (CJIS) Check Must Include

* Criminal records - Conviction of a misdemeanor(s) (not including traffic or parking violation) or felony(ies).
* Sexual offender search
* All outstanding warrants
* Currently the focus of a criminal investigation
* Currently on parole or probation

## Contractor Certification; City Approval of Maximum Risk Background Screening

Unless otherwise provided for in the Scope of Work, Contractor will be responsible for:

1. determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
2. submitting pass/fail results to the City for approval; and,
3. reviewing the results of the background check every three to five years, dependent on scope; and,
4. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
5. Submitting the list of qualified Contract Workers to the contracting department; and,
6. If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.
7. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
8. By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
9. The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
10. The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
11. By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
12. Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.
13. The Contractor will submit prior to scheduling any services, a current list of names, addresses, and social security numbers of all employees requiring access to the facility. The Contractor is responsible for obtaining security clearance from the Police Department for all employees. The City reserves the right to change the restricted areas as needed. The Contractor grants the rights to the Police Department to conduct background checks of all employees entering the building. All employees will submit to the background check before access to the facility is given.
14. The background checks will be conducted prior to any employee entering to work and will be based upon information provided to the Police Department including, but not limited to: name, address, date and place of birth, social security number, INS number if applicable, and a copy of a valid photo identification. The information will be provided to the City’s authorized Department representative at least five business days (excluding weekends and holidays) in advance of the need for access. The form will be provided by the City’s authorized Department representative. The City’s authorized Department representative will conduct the security check.
15. The City may, at any time, in its sole discretion, refuse to allow an employee access to an area for any of the following reasons, but not limited to:
	1. Conviction of a felony.
	2. Conviction of a misdemeanor (not including traffic or parking violation).
	3. Any outstanding warrants (including traffic and parking violations).
	4. A person currently on parole or probation.
	5. A person currently involved in an investigation

## CJIS Security Addendum

This agreement incorporates by reference the requirements of the Criminal Justice Information Services (CJIS) Security Policy (current version 5.9.1, dated October 1, 2022), and as referenced in Title 28 CFR 20.33(a)(7), issued by the Federal Bureau of Investigation, Criminal Justice Information Services Division, as in force as of the date of this Agreement and as may, from time to time hereafter, be amended. Contractor warrants that it has the technological capability to handle Criminal Justice Information (CJI), as that term is defined by the FBI CJIS Security Policy, in the manner required by the CJIS Security Policy. Contractor expressly acknowledges that the CJIS Security Policy places restrictions and limitations on the access to, use of, and dissemination of CJI and hereby warrants that its system abides by those restrictions and limitations.

Private contractors are permitted access to criminal history record information systems pursuant to a specific agreement for the purpose of providing services for the administration of criminal justice pursuant to that agreement. Private contractors who perform the administration of criminal justice shall meet the same training and certification criteria required by governmental agencies performing a similar function, and shall be subject to the same extent of audit review as are local user agencies. In accordance with the CJIS Security Addendum, a minimum of a background check (fingerprint) will be administered and required through the Arizona state and federal criminal justice system for all contracted employees who may have access to CJIS information. Background checks (fingerprints) will be performed and received with required clearance prior to receipt of any CJIS information.

## Confidentiality

“Confidential Information” means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively “Recipient”), whether disclosed before or after the Effective Date, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Agreement; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Agreement; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Agreement. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City’s written request or expiration of this Agreement, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys’ fees, damages or proceedings arising out of Contractor’s breach of this Section (Confidentiality). Contractor’s obligations pursuant to this Section (Confidentiality) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City’s discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

## Data Protection

The parties agree this Section shall apply to the City’s Confidential Information and all categories of legally protected personally identifiable information (collectively “PII”) that Contractor processes pursuant to the Agreement. “Personally identifiable information” is defined as in the Federal Privacy Council’s Glossary available at: <https://www.fpc.gov/resources/glossary/>.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term “process,” “processing,” or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

1. When Contractor processes PII pursuant to the Agreement, Contractor shall, at no additional cost to the City:
	1. process PII only within the United States and only in accordance with the Agreement and not for Contractor’s own purposes, including product research, product development, marketing, or commercial data mining, even if the City’s data has been aggregated, anonymized, or pseudonymized;
	2. implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
	3. not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
	4. as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
	5. take reasonable steps to ensure the competence and reliability of Contractor’s personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;
	6. maintain written records of all information reasonably necessary to demonstrate Contractor’s compliance with this Agreement and applicable laws;
	7. allow the City or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor’s sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section;
2. If the Contractor becomes aware of any actual or potential data breach (each an “Incident”) arising from Contractor’s processing obligations pursuant to the Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:
	1. provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;
	2. take action immediately, at Contractor’s own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;
	3. cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and
	4. not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City’s prior written approval (except where required to do so by applicable laws).

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys’ fees, damages or proceedings arising out of Contractor’s breach of this Section (Data Protection). Contractor’s obligations pursuant to this Section (Data Protection) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City’s discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

## Security Inquiries

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor’s expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City’s prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

* require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
* act on newly acquired information whether or not such information should have been previously discovered;
* unilaterally change its standards and criteria relative to the acceptability of Contractor’s employees and/or prospective employees; and
* object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.

# DEFENSE AND INDEMNIFICATION

## Professional Services

Consultant (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

# INSURANCE REQUIREMENTS

## Contractor's Insurance

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor may purchase additional insurance as they determine necessary.

## Scope and Limits of Insurance

Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

## Commercial General Liability – Occurrence Form

General Aggregate $2,000,000
Products – Completed Operations Aggregate $1,000,000
Personal and Advertising Injury $1,000,000
Each Occurrence $1,000,000

* The policy must be endorsed to include coverage for sexual abuse and molestation.
* The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.
* There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
* City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
* The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

## Automobile Liability

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

Combined Single Limit (CSL) $1,000,000

* The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.
* City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
* The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

## Worker’s Compensation and Employers’ Liability

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

* Policy must contain a waiver of subrogation against the City of Phoenix.,
* This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

## Professional Liability (Errors and Omissions Liability)

Each Claim $1,000,000
Annual Aggregate $1,000,000

* The policy must cover liability arising from the failure to meet the professional standards required or expected in the delivery of those services as defined in the Scope of Services of this Contract.
* Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

## Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to Diversion Prosecutor's Office 9th Floor, 300 W. Washington, Phoenix, AZ 85003.

## Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

## Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly toDiversion Prosecutor's Office 9th Floor, 300 W. Washington, Phoenix, AZ 85003. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

## Subcontractors

Contractor’s certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract’s Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

## Approval

Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.

# SUBMITTALS

## Copies

Please submit one original, 4 copies, and one electronic copy (portable drive or CD) of the Submittal Section and all other required documentation. Please do not lock the electronic copy with password protection so that the CITY may digitally incorporate the successful offer into the awarded contract.

**Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This Offer will remain in effect for a period of 180 calendar days from the opening date, and is irrevocable unless it is in the City’s best interest to release offer(s).

## Solicitation Response Check List

Use this check list as a tool to review your submission to ensure that all required documents and forms are included.

The written offer should be:

* Typewritten for ease of evaluation
* Submitted in a 8 ½ x 11 inch loose leaf binder, preferably using double- sided copying and at least **30% post-consumer content paper**
* Must be numbered using continuous page numbers
* Signed by an authorized representative of the Offeror
* Submitted with contact information for the individual(s) authorized to negotiate with the City
1. Offeror's Proposal - A detailed proposal describing the firm or individual’s qualifications and experience responsive to the requirements of the solicitation and evaluation criteria.
2. Pricing Proposal - A completed pricing proposal with all requested prices, quantities, and/or discounts completed.
3. Submittal Forms - All submittal forms are completed and signed.
4. Addenda - Signed copies of all published addenda.

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. Electronic submission is preferred. Due to file size limitations for electronic transmission, offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the offer is received timely and that there are no technical reasons for delay. Please refer to the Instructions Section for complete information regarding the submission of offers.

## Additional Quantities

The City anticipates considerable activity under the resultant contract(s). However, no guarantee can be made as to actual The City of Phoenix through its Prosecutor’s Office is issuing this request for proposals to qualified proposers to develop and operate a program for persons who are arrested for prostitution or other offenses, and meet the criteria established by the City to participate in a diversion program. The purpose of the Prostitution Diversion Program is to move such Offenders out of the criminal justice system into a program that combines a comprehensive personal assessment of the Offender with support, training, services, counseling and education, referrals, and other opportunities to help the Offender build a new life upon completion of the Program and avoid returning to a life of prostitution, and at the same time reduce the number of cases in the criminal justice system., that will be purchased under this contract. The City reserves the right to add, change or delete quantities or items as circumstances may require.

Note: Offers taking exception to this option for additional quantities clause shall indicate in their offer.