



Linda Hartmann, Grants Administrator

433 N. Virginia
Prescott AZ 86301
928-777-1143

December 20, 2010

ALL PROSPECTIVE BIDDERS

ADDENDUM No. 1 INDEMNIFICATION AND INSURANCE
BID: EECBG HAVAC 0001 GRANTS
HVAC EQUIPMEN REMOVAL AND INSTALLATION

Notice is hereby given that certain sections contained in the above referenced solicitation are being amended, clarified, and/or deleted and are identified as Addendum No. 1 and attached hereto.

THEREFORE: All bidders are required to note this Addendum No. 1 on Form A when submitting the bid package that it was received.

Should you have any questions, please contact the grants Administrator, Linda Hartmann at 777-1143.

Sincerely,

Linda Hartmann

Attachment as stated

- 3.8. Unlawful Overcharges: The Contractor assigns to the City all claims for anti-trust violations and overcharges relating to items purchased by the City.
- 3.9. Price Warranty: The Contractor warrants that the prices for the items sold to the City hereunder are not less favorable than those currently extended to any other customer for the same or similar items in similar quantities. The Contractor warrants that prices shown on this Contract are complete, and that no additional charge of any type shall be added without the City's express written consent.
- 3.10. Warranties: The Contractor warrants that all goods are merchantable, comply with the City's latest drawings and specifications, and are fit for the City's intended use; all goods comply with all applicable safety and health standards established for such products; all goods are properly packaged; and all appropriate instructions or warnings are supplied.
- 3.11. Equal Employment Opportunity: During the term of this Contract, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 3.12. Diversity: The City encourages the Contractor to employ a workforce reflective of the region's diversity.
- 3.13. Discrimination in Contracting: The Contractor shall not create barriers to open and fair opportunities for subcontractors and suppliers in obtaining or competing for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.
- 3.14. Record-Keeping: The Contractor shall maintain, for at least 36 months after expiration or earlier termination of the term of this Contract, relevant records and information necessary to document the Contractor's utilization of other businesses as subcontractors and suppliers in this contract and in its overall public and private business activities. The Contractor shall also maintain all written quotes, bids, estimates, or proposals submitted to the Contractor by all businesses seeking to participate as subcontractors or suppliers in the contract. The City shall have the right to inspect and copy such records. If this Contract involves federal funds, the Contractor shall comply with all record-keeping requirements set forth in every applicable federal rule, regulation and statute referenced in the contract documents.
- 3.15. Publicity: The Contractor shall not advertise or publish the fact that the City has contracted to purchase items from the Contractor without the City's prior written approval.
- 3.16. Proprietary and Confidential Information: The Contractor acknowledges that the City is required by law to make its records available for public inspection, with certain exceptions. City staff believes that this legal obligation would not require the disclosure of proprietary descriptive information that contains valuable designs, drawings or formulas. The Contractor, by submission of materials marked proprietary and confidential, nevertheless acknowledges and agrees that the City will have no obligation or any liability to the Contractor in the event that the City must disclose these materials by law.
- 3.17. Indemnification: The CONTRACTOR hereby agrees to defend, indemnify, and hold harmless the City, its officers, departments and divisions, employees and agents, from and against any and all claims, damages, losses, expenses, liabilities, attorney fees, court costs or other alternative dispute resolution costs arising out of or resulting from the performance of work under this Agreement or any other claim resulting from Contractor's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or his/her agents. The Contractor further releases and discharges the City, officers, departments and divisions, agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the Contractor has or may have against the City, its agents or employees, arising out of or in any way connected with the Contractor's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents

Addendum No. 1 is highlighted in yellow. On pages 9 and 10 and

- 3.18. **Insurance:** The Contractor shall secure and maintain, at all times during the term of this Contract, at its own expense, a policy or policies of insurance known as:
- 3.18.1. Commercial General Liability written on an insurance industry standard occurrence form (ISO form CG 00 01) or equivalent including premises/operations, products/completed operations, personal/advertising injury, contractual liability, and independent contractors liability;
 - 3.18.2. If any vehicle is used in the performance of this Contract, a policy of Business Automobile Liability written on an insurance industry standard form (ISO form CA 00 01) or equivalent, including coverage for owned, non-owned, leased or hired vehicles; and
 - 3.18.3. If any work under this Contract will be performed by a resident of the state of Arizona, Worker's Compensation ("Industrial Insurance") as required by the State of Arizona. The insurance as provided under items 3.19.1 and 3.19.2 above shall be endorsed to include The City of Prescott, its officers, elected officials, employees, agents and volunteers as an Additional Insured per ISO form CG2010 11/85 or CG2026 or equivalent, and to not permit reduction or cancellation by the insurer without forty-five (45) days prior written notice to the City. The Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and non-contributing with the Contractor's insurance.
- 3.19. **Compliance with Law:** The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Arizona; the Charter, Municipal Code, and ordinances of The City of Prescott; and rules, regulations, orders, and directives of their respective administrative agencies and officers.
- 3.20. **Licenses and Similar Authorizations:** The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.
- 3.21. **Taxes:** The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.
- 3.22. **Americans with Disabilities Act:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- 3.23. **Adjustments:** The City's Agent at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; and ancillary matters that Contractor may accommodate without substantial additional expense to the City.
- 3.24. **Amendments:** Except for adjustments authorized above, modifications or amendments to the Contract may only be made by a change order or by written document signed by or for both parties. Unless Contractor is otherwise notified, the City's Grants Administrator shall be the City's authorized agent.
- 3.25. **Assignment:** Neither party shall assign any right or interest nor delegate any obligation owed without the written consent of the other, except Contractor may assign the proceeds of this Contract for the benefit of creditors upon 21 days advance written notice to the City.
- 3.26. **Binding Effect:** The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.
- 3.27. **Waiver:** The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.
- 3.28. **Applicable Law:** This Contract shall be construed under the laws of the State of Arizona. The venue for any action relating to this Contract shall be in the Superior Court for Yavapai County, State of Arizona.
- 3.29. **Remedies Cumulative:** Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.
- 3.30. **Severability:** Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.
- 3.31. **Gratuities:** The City may, by written notice to the Contractor, terminate Contractor's right to proceed under this Contract upon one (1) calendar day's notice, if the City finds that any gratuity in the form

ARTICLE VIII - NONDISCRIMINATION

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

ARTICLE IX - INDEMNIFICATION AND HOLD HARMLESS

The CONTRACTOR hereby agrees to defend, indemnify, and hold harmless the City, its officers, departments, divisions, employees and agents, from and against any and all claims, damages, losses, expenses, liabilities, attorney court costs or other alternative dispute resolution costs arising out of or resulting from the performance of work under Agreement or any other claim resulting from Contractor's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or his/her agents. The Contractor releases and discharges the City, officers, departments and divisions, agents and employees, and any and all persons responsible for the acts or omissions of the City, from any and all claims which the Contractor has or may have against the City, its agents or employees, arising out of or in any way connected with the Contractor's activities as set forth herein, other than those acts which occur due to the negligence of the City, its employees or agents.

Addendum
No 1 Page
30 thru 32.

ARTICLE X – INSURANCE

The Contractor agrees, at its sole expense, to maintain on a primary basis during the life of this Contract, or the performance of Work hereunder, insurance coverages, limits, and endorsements, unless otherwise noted herein.

The Contractor agrees the insurance requirements herein as well as City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Contract. Contractor shall obtain and maintain in effect during the term of this Agreement a policy or policies of liability insurance with limits not less than those stated below:

Commercial General Liability – Occurrence Form

1. Commercial General Liability – Contractor agrees to maintain Commercial General Liability at a limit of liability no less than \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate. Contractor agrees it's coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability or Cross Liability. The Contractor agrees any Self-Insured Retention or deductible shall not exceed \$25,000.

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

2. Automobile Liability

Business Automobile Liability – Contractor agrees to maintain Business Automobile Liability at a limit of liability no less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

3. Worker's Compensation and Employers' Liability

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

ADDITIONAL INSURED ENDORSEMENTS – The Contractor agrees to endorse the City of Prescott as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured – Owners, Lessees, or

Contractors, or CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement of CG2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the Contractor’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard. Attach an actual copy of the endorsement(s). The name of the organization endorsed as Additional Insured for all endorsements shall read “City of Prescott”.

Deductibles, Coinsurance Penalties & Self-Insured Retention. – Contractor agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation. For deductible amounts that exceed the amounts stated herein that are acceptable to City, the Contractor agrees, when requested by City, to maintain a Commercial Surety Bond in an amount equal to said deductible amount.

WAIVER OF SUBROGATION – Contractor agrees by entering in to this written Contract to a Waiver of Subrogation in favor of the City for each required policy providing coverage during the life of this Contract. When required by the insurer, or should a policy condition not permit the Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, the Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the Contractor enter into such an agreement on a pre-loss basis.

RIGHT TO REVISE OR REJECT – Contractor agrees the City reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due to its poor financial condition or failure to operate legally in the State of Arizona. In such events, the City shall provide Contractor written notice of such revisions or rejections.

NO REPRESENTATION OF COVERAGE ADEQUACY – The coverages, limits or endorsements required herein protect the primary interests of the City, and the Contractor agrees in no way should these coverages, limits or endorsements required to be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of the Project or otherwise.

CERTIFICATES OF INSURANCE – Contractor agrees to provide City a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available by Contractor’s insurer. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City by fax within 5 business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by City, the Contractor agrees to not continue Work pursuant to this Contract, unless all required insurance remains in effect.

The City shall have the right, but not the obligation, of prohibiting Contractor from entering the Work site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Contractor agrees the City reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to the City. If the Contractor fails to maintain the insurance as set forth herein, the Contractor agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Contractor agrees to reimburse any premiums or expenses incurred by the City.

The Contractor agrees the Certificate(s) of Insurance shall:

1. Clearly indicate the City has been endorsed on the Commercial General Liability with a CG 2010 10 01 Additional Insured – Owners, Lessees, or Contractors – Schedule Person or Organization, or CG 2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization in combination with the CG 2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations, or similar endorsement providing equal or broader Additional Insured coverage. Attach an actual copy of the endorsement.

2. Clearly indicate the project name and project number.
3. Clearly identify each policy's limits, flat & percentage deductibles, sub limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
4. Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
5. Clearly indicate Certificate Holder(s) as follows:
City of Prescott, 201 South Cortez St., Prescott, AZ 86303

(1) Original: c/o Grants Administrator

(1) Copy: c/o Risk Management

ARTICLE XI - AMBIGUITY

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

ARTICLE XI - BONDS

(A) On or before the execution of the Contract, the CONTRACTOR shall obtain in an amount equal to the full Contract price a performance bond pursuant to A.R.S. Section 34-222, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions herein. Such bond shall be solely for the protection of the CITY. A copy of this bond shall be filed with the Prescott City Clerk according to the Bid Documents.

(B) On or before the execution of the Contract, the CONTRACTOR shall also obtain a payment bond, pursuant to the provisions of A.R.S. Section 34-222, in an amount equal to the full Contract price herein, said bond to be solely for the protection of claimants supplying labor or materials to the CONTRACTOR or his subcontractors in the prosecution of the work provided for in the Contract. A copy of this bond shall be filed with the Prescott City Clerk according to the Bid Documents.

(C) All bonds must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. Section 20-217, a copy of which certificate is to be attached to the applicable bid bond, payment bond and performance bond.

ARTICLE XII – DISPUTES

The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project which is the subject of this Agreement. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.

DATED this ____ day of _____, 2011

CONTRACTOR

Name:

Title:

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott

this _____ day of _____, 2011