



INVITATION TO BID

LAKE HAVASU CITY, ARIZONA

ITB NO.: B10-SM341Q

FOR

Public Works Maintenance Facility Evaporative Coolers

**Harry Brown, Senior Engineering Technician Coordinator
E-Mail: BrownH@lhcaz.gov**

**PUBLIC WORKS DEPARTMENT
900 LONDON BRIDGE ROAD
Lake Havasu City, AZ 86404
Phone: (928) 855-3377 Fax: (928) 680-4247**

BID CLOSING DATE: March 30, 2010

BID CLOSING TIME: 11:00 a.m., ARIZONA TIME

BID OPENING ON THE SAME DAY at 11:00 a.m.

Pre-Bid Conference: None

SUBMITTED BY:

Company Name: _____

Address: _____

Phone No.: _____

Fax No.: _____

Contact: _____

An electronic copy of this ITB and attachments, if any, may be available from the Transportation Division, Onvia DemandStar website: www.demandstar.com or the City's website: www.lhcaz.gov . All ITB documents shall be submitted in hard copy. Electronic or e-mailed submissions shall be rejected.

ITB NO.: B10-SM341Q

ITB TITLE: Public Works Maintenance Facility Evaporative Coolers

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SECTION A - INVITATION TO BID

ITB NO.: B10-SM341Q

ITB TITLE: Public Works Maintenance Facility Evaporative Coolers

ITB DESCRIPTION: The Lake Havasu City Public Works Department is soliciting bids from licensed HVAC Contractors to provide all necessary labor, equipment, and materials to remove and replace five (5) existing evaporative coolers with new evaporative coolers in designated Mechanic Bays at the Public Works Maintenance Facility, 900 London Bridge Road, Lake Havasu City, Arizona as specified in Section H- Technical Specifications of the bid documents.

Notice is hereby given that sealed bids for Invitation To Bid Number (ITB): **B10-SM341Q** for ITB Title: **Public Works Maintenance Facility Evaporative Coolers** shall be received by the **City Clerk's Office, 2330 McCulloch Boulevard N., Lake Havasu City, Arizona, 86403**, until **11:00 a.m. Arizona Time on March 30, 2010**. All bids received in proper form shall be publicly opened and read aloud on the same day at 11:00 a.m., Room 109, City Hall, 2330 McCulloch Boulevard N., Lake Havasu City, Arizona, 86403.

It is the sole responsibility of the Bidder to ensure the City receives the bid by the specified time. ALL BIDS MUST BE TIME STAMPED BY THE CITY BY THE STATED DEADLINE. All late bids shall be rejected.

The outside of the sealed package must be clearly marked "**Sealed Bid**" with the **Bidder's Name, Address, Bid Title and Number**, and the **Closing Date**. **Bidder will submit one (1) original and two (2) complete copies of the bid response.** Bidder should retain a copy for their records. All bids must be completed in ink or typewritten on a form to be obtained from the ITB documents and returned by the time cited above.

Pre-Bid Conference: None

The following **MAY** be required, as stipulated in the bid. If required, they are to be submitted either with the bid or when the signed contract has been returned to the City.

BID SECURITY: YES NO Bid security in the form of a certified check or cashier's check payable to Lake Havasu City, or a satisfactory bid bond, in the amount of ten percent (10%) of the Contract total shall be submitted with each bid.

CERTIFICATE OF INSURANCE: The successful Bidder shall be required to submit a standard insurance certificate as evidence of compliance with the contract insurance requirements. This shall be sent to the City with the agreement before execution by the City and prior to commencing work.

Pursuant to the Americans with Disabilities Act (ADA), Lake Havasu City endeavors to ensure the accessibility of all of its programs, facilities and services to all persons with disabilities. If you need an accommodation for ITB meetings, please contact the City Clerk's Office, at (928) 453-4142. Please provide 24 hours notice so accommodations may be arranged.

Publication Dates: **March 11, 12, 13, and 14, 2010**

SECTION B - INSTRUCTIONS TO BIDDERS

1. **Bid Format.** Bid must be typewritten with a font size no less than 11 points or prepared in ink and must be submitted on the form(s) provided in the Invitation To Bid. Bidders shall return all information and forms as required on the Bidder's response sheet. Failure to complete all required forms may result in the bid being rejected as non-responsive. Bidder must submit one (1) original and two (2) copies of the bid document.
 - a. Unsigned offers will be considered non-responsive and will be rejected.
 - b. Erasures, interlineations or other modifications in the bid must be initialed by a duly authorized vendor or representative and must be the same person that signs the vendor(s) offer.
 - c. In case of error in the extension of prices in the bid, the unit price will govern. No bid shall be altered, amended, or withdrawn after the specified bid closing date and time.
 - d. It is the responsibility of the Bidder to examine the entire bid package and seek clarification of any item or requirement that may not be clear and to check Bidder responses for accuracy before submitting a bid.
 - e. All bids shall be submitted in a sealed package and must be clearly marked "**Sealed Bid**" with the **Bidder's Name, Address, ITB Number and Title**, and the **Closing Date**. Bid packages with insufficient postage will not be accepted by Lake Havasu City.
 - f. Lake Havasu City reserves the right to accept or reject any or all bids or any part thereof and waive informalities deemed in the best interest of the City.
2. **Bid Requirements.** The following forms must be completed, signed and submitted with the vendor's offer to be responsive and must include, but not limited to, the **COVER PAGE, BIDDER SIGNATURE PAGE, BID PRICE SCHEDULE, EXCEPTIONS TO SPECIFICATIONS** (if applicable), and **REFERENCES**. Bids must be signed by a duly authorized representative of the vendor. If a bid is signed by an agent of the Bidder, a Power of Attorney showing the authority of the agent to sign must be submitted with the bid or the bid shall be rejected. **FAILURE TO SIGN AND SUBMIT THE BIDDER SIGNATURE PAGE SHALL RESULT IN REJECTION OF THE BID.**
3. **Taxes.** Bid prices shall exclude Federal Excise Tax. Federal exemption certificates will be furnished upon written request. Lake Havasu City is not exempt from the applicable Arizona Sales Tax; Arizona Sales Tax will be indicated on the pricing sheet and marked as a separate line item after the total combined bid price. The applicable tax of any political subdivision shall not be a factor in determining the award of procurement.
4. **Price to Include Cost of Delivery.** If this is a bid for goods, then unless otherwise provided in the specifications, the bid price for each item must include the cost of delivery of the item(s) FOB within Lake Havasu City limits and to the specific destination shown in the specifications.
5. **Bids Must Conform to the Specifications.** The Bidder shall adhere to the specifications stated herein. Any exception taken to these specifications shall be so stated on the returned bid proposal. Deviations from any of the requirements in the specifications or drawings **MAY RESULT IN BID REJECTION**. Lake Havasu City shall hold the Bidder to all specification requirements. There is no time limit on this requirement. Deviations discovered after the unit(s) is accepted shall be corrected at no cost to the City. Any **VERBAL** communication from the City shall not be construed as approval of the acceptability of any deviation to any requirement or as authorization for any changes or additional charges on any contract. **WRITTEN APPROVAL** is required. Any deviation from the specification, or where submitted literature does not fully support the meeting of the specification, must be clearly cited in writing by the Bidder, but no deviation below minimum specification will be accepted. If this is a bid for goods and manufacturers' names, trade names, make, model or catalog numbers are used in the Specifications, they are for the purpose of describing and establishing commercial and industrial quality levels. Bids for equivalent items will be considered provided that such items are identified by manufacturer name, trade name, make, model and catalog number. If Bidder has any question whether an item is equivalent to the item specified, Bidder must submit a request for substitution.
6. **Silence of Specification.** The apparent silence of the general provisions and specifications as to any detail or the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only best commercial or industrial practice is to prevail and that only material and workmanship of first run manufacture quality are to be used.
7. **Periods of Time.** Periods of time, stated as a number of days, shall be calendar days unless otherwise specified.

8. **Descriptive Literature.** All Bidders must submit complete manufacturer's descriptive literature regarding the equipment they propose to furnish. Literature shall be sufficient in detail in order to allow full and fair evaluation of the bid submitted. Failure to include this information may result in the bid being rejected.
9. **Demonstrations.** The City may, at its discretion, require a demonstration of the equipment, material or product offered as part of the bid evaluation process. The equipment, material or product shall be provided by the Bidder at no cost to the City for a period of time deemed sufficient to properly evaluate the item.
10. **Replacement Parts.** Submission of this bid shall constitute a guarantee by the Bidder that a stock of replacement parts for the specified equipment, material or product is available to Lake Havasu City.

Captive parts must be available within 48 hours following the placement of an order. The Vendor shall provide part(s) delivery, to include deliveries on Saturday, Sunday and holidays if required for an emergency. If special handling and/or freight are required, the vendor will assume all charges.
11. **Substitutions.** Bidders may propose substitutions. Requests for substitutions will be considered only if physically received by the City's Finance Department, Procurement Official, not less than ten (10) days before the closing date of the bid. Substitution requests must be submitted in a package marked as follows:

Substitution Request, ITB No.: B10-SM341Q
Lake Havasu City
Finance Department
Attn: Lyle Block, Procurement Official
2330 N. McCulloch Boulevard
Lake Havasu City, AZ 86403

Samples must be presented for inspection and testing if requested. Samples must be furnished at no cost to the City. If not destroyed or mutilated in testing, samples will, upon request, be returned at Bidder's expense. If a proposed item is determined to be an acceptable substitute, an addendum will be issued.

12. **Bid Withdrawal.** Any bid may be withdrawn at any time prior to the specified date and time for bid closing by delivering a written request to the Finance Director or designee at the location where bids are received signed by a duly authorized representative of Bidder. All bids shall be irrevocable for ninety (90) calendar days from the day of bid closing.
13. **Removal from Bid Mailing List.** Vendors who do not respond when they receive an Invitation To Bid will be deleted from the Bidder's list for that commodity or service. A vendor that submits a "No Bid" is considered to be responsive and will remain on the Bidder's mailing list only.
14. **Document Conflict.** In case of conflict between Specifications and the Contract Terms and Conditions and Instructions for Bidders, the specifications shall take precedence over and will be used in lieu of such conflicting portions of the Contract Terms and Conditions and Instructions to Bidders.
15. **Clarification/Protest/Question.** Any Bidder requesting clarification of or protesting or questioning any of the Specifications must submit specific questions or protests in writing (includes email) to the Procurement Official. Requests for clarification and protests must be physically received not less than seven (7) calendar days prior to the date and time of bid closing. Requests must be submitted in a package marked as follows:

Clarification/Protest/Question
ITB No.: B10-SM341Q
Lake Havasu City
Finance Department
Attn: Lyle Block, Procurement Official
2330 N. McCulloch Boulevard
Lake Havasu City, AZ 86403
Email to: BlockL@lhcaz.gov

A written response will be provided to all written requests for clarification and protests, copies of which will be sent to all vendors in receipt of these bid documents. Questions will not be answered orally. Oral instructions or information concerning the specifications provided by City officers, employees, or agents to prospective Bidders shall not bind the City.

16. **Addenda.** All addenda shall be issued no later than five (5) calendar days prior to the bid closing.
17. **Addenda Acknowledgement.** Receipt of bid addenda must be acknowledged by signing and returning the appropriate procurement document and acknowledging receipt on the proposal form.

18. **Documents are Public Records.** Lake Havasu City is subject to the Arizona Revised Statutes, Title 39, Chapter 1, relating to public records. All documents, reports, bids, submittals, working papers or other materials submitted to the City by Bidders shall become the sole and exclusive property of the City and become a public record.
19. **Copies.** Bidders may request copies of current or past procurement documents. The charge per copy is payable in advance. Please call for a current per copy cost.
20. **Late Delivery of Bid.** Late bids will not be opened or considered under any circumstances. Late Bid Notification will be sent to vendor.
21. **Rejection of Bids.** The City reserves the right to waive technical defects, discrepancies and minor irregularities in a bid. The City reserves the right to re-seal any bid that was opened prematurely. The City has determined this event as a minor irregularity. The Procurement Official shall be notified and shall log the event and place it in the procurement file. The City reserves the right to award any alternatives set forth in the bid documents in its sole discretion. Bids may be rejected if there is any alteration of the bid form, additions not called for, conditional bids, incomplete bids, or irregularities of any kind. The City reserves the right to reject any bid not in compliance with the bid documents, or prescribed public bidding procedures and requirements. Written notice of rejection of all bids shall be sent to all Bidders. **ALL UNSIGNED BIDS SHALL BE REJECTED.**
22. **Collusion.** Upon evidence that collusion exists among Bidders, none of the bids of participants in such collusion will be considered. All involved bids shall be rejected. Bids in which prices are unbalanced may be rejected. The Vendor will be required to complete, notarize and submit a "No-Collusion Affidavit" upon request by the City. **Failure of the vendor to submit a properly executed affidavit upon request by the City shall be grounds for rejection of the bid.**
23. **Contract Award.**
 - a. Awards will be made with reasonable promptness to the vendor(s) whose bid(s) is determined to be responsive and responsible that best conforms to the Invitation To Bid and will be the most advantageous to the City with respect to price, conformity to the specifications and other factors. Other factors to be considered may include, but are not limited to, quality, uniformity of product, and vendors past performance on other Contracts with the City.
 - b. The award will be made by low bid or including but not limited to individual item, category, group or by any combination of these or other methods or by all-or-none basis that is in the best interest of the City.

Bidders to be considered for award by category or group are not required to bid on each item. However, if all or part of the bid is awarded by category or group, only those Bidders who have inserted a bid price for each item in the category or group and who have provided either a percentage off manufacturer's list or percentage mark-up over cost for similar items not listed will be considered for award for that category.

City reserves the right to award the Bid to a primary and an alternate Bidder for the same bid item. The alternate Bidder will be used when the primary Bidder is unable to provide the materials when required, or when such action will provide the lowest final cost to the City.
 - c. A bid response is an offer by a vendor to Contract with the City based upon the terms, conditions, and specifications contained in the Invitation To Bid. Bids do not become Contracts unless and until they are accepted and an Award is made by Lake Havasu City. A Contract is formed when Lake Havasu City gives written Notice of Award(s) to the successful Bidder(s) and issues a Purchase Order. All Invitation To Bid documents, including but not limited to the specifications, terms and conditions, become the Contract and is extended to every Purchase Order for items or services contained in the submitted offer. The delivery or furnishing of any of the bid items cannot commence until a Contract is duly and properly executed.
24. **Rejection of All Bids and Cancellation of Award.** The City reserves the right to reject all bids or to cancel award of the Contract at any time before execution of the Contract by both parties if rejection of all bids or cancellation of the award is deemed to be in the City's best interest. In no event shall the City have any liability for the cancellation of award. The Bidder assumes the sole risk and responsibility for all expenses connected with the preparation of its bid and Contract negotiations.
25. **Reissuance of Bid.** The City reserves the right to re-issue a subsequent procurement for this service at any time if deemed to be in the best interest of the City.

26. **Protest of Award.** A protest of award must be physically delivered to the Procurement Official within five (5) working days of the notice of award date. Packages containing protests shall be marked as follows:

Bid Award Protest, ITB No.: B10-SM341Q
Lake Havasu City
Finance Department
Attn: Lyle Block, Procurement Official
2330 N. McCulloch Boulevard
Lake Havasu City, AZ 86403

27. **Notice of Award.** Official Notice of Award, if any, shall be sent in the form of an "Award Letter" and shall be signed by the duly authorized Lake Havasu City Official.
28. **Vendor Registration and IRS Form.** Prior to the award of a Contract, the successful Bidder must properly fill out and complete a City Vendor Registration and IRS W-9 Form and file the documents with the City's Finance Department.
29. **Post Award Conference.** After the award has been made, the Contractor may be required to attend and participate in Post Award Conference. The purpose is to ensure the Contractor has a complete understanding of the specifications and the requirements of the Contract prior to commencing work.
30. **Disputes.** In the event any doubt or differences of opinions exists as to the items or service to be furnished hereunder, or from evaluation and/or testing of substitutes, or the interpretation of the provisions of this procurement, the decision of Lake Havasu City shall be final and binding upon all parties.
31. **Solicitation Document Conflicts.** In the event any discrepancies exist between the proposer(s) submitted response and the original solicitation document, the ITB on file with the City shall govern.
32. **Response Preparation Costs.** Costs incurred by any Bidder in preparation of a response to this Invitation To Bid shall be the sole responsibility of the Bidder and will not be reimbursed by the City.
33. **Bidder Exceptions.** Bidders that list and submit more than ten (10) separate items in "Section K – Exceptions to Specifications" shall be considered non-responsive; and said bid shall be rejected in its entirety.

SECTION C - CONTRACT TERMS AND CONDITIONS

Contract Documents. This Contract includes the following Exhibits listed below and attached herein and incorporated herein by this reference:

- EXHIBIT 1 - EMPLOYMENT ELIGIBILITY VERIFICATION & FORM
- EXHIBIT 2 - AFFIDAVIT OF LAWFUL PRESENCE IN THE UNITED STATES

STANDARD TERMS AND CONDITIONS

1. **Time is of the Essence.** Time is of the essence in the performance of this Contract. Contractor 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 as promised by the Contractor.
2. **Contract Amendments.** This Contract shall be modified only by a written Contract Amendment signed by the City Manager or designee or City Official and persons duly authorized to enter into Contracts on behalf of the City Council.
3. **Parole Evidence.** This Contract 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 of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall 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.
4. **Subcontracts and Assignment.** Contractor shall not Subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of City.
5. **No Third Party Beneficiaries.** City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
6. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
7. **Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification, or change in the terms of this Contract shall bind either party unless in writing and signed by both parties. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.
8. **Compliance with Applicable Law.** Contractor shall observe and comply with all established federal, state, and local administrative rules, codes, ordinances, regulations, standards, and laws applicable to the work under this Contract regardless of whether or not they are referred to by the City.
9. **Governing Law.** The provisions of this Contract shall be construed in accordance with the laws of the State of Arizona and the provisions of the Lake Havasu City Municipal Code. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in Mohave County, Arizona. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the U.S. District Court located in Phoenix, Maricopa County, Arizona.
10. **Arbitration.** The parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this agreement where the sole relief sought is monetary damages of \$10,000, or less, exclusive of interest and costs.
11. **Early Termination.** This Contract may be terminated as follows:
 - a. City and Contractor, by mutual written agreement, may terminate this Contract at any time.
 - b. City, in its sole discretion, may terminate this Contract for any reason on thirty (30) days written notice to Contractor.
 - c. Either the City or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

- d. Notwithstanding paragraph 11(c), City may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that Contractor must hold to provide services under this Contract.

12. Payment on Early Termination. Upon termination pursuant to paragraph 11, payment shall be made as follows:

- a. If terminated under 11(a) or 11(b) for the convenience of the City, the City shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. City shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim City may have against Contractor.
- b. If terminated under 11(c) by the Contractor due to a breach by the City, then the City shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.
- c. If terminated under 11(c) or 11(d) by the City due to a breach by the Contractor, then the City shall pay the Contractor for work performed prior to the termination date provided such work was performed in accordance with the Contract less any setoff to which the City is entitled.

13. Remedies. In the event of breach of this Contract, the parties shall have the following remedies:

- a. If terminated under 11(c) by the City due to a breach by the Contractor, the City may complete the work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the City the amount of the reasonable excess.
- b. In addition to the remedies in paragraphs 11 and 13 for a breach by the Contractor, the City also shall be entitled to any other equitable and legal remedies that are available.
- c. If the City breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

14. Waiver. Waiver of any default under this Contract by City shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

15. Non Waiver of Liability. The City as a public entity supported by monetary tax funding, in execution of its public trust, shall not agree to waive any lawful or legitimate right to recover monetary funds 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.

16. Conflict of Interest/Contract Cancellation. Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers, and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.

Pursuant to A.R.S. §38-511, this Contract is subject to cancellation by the City if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of Lake Havasu City is, at any time while the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.

17. No Kick Back Fee. Contractor stipulates that no person has been employed or has been retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of the City Council or any employee of City has any interest, financially or otherwise, in Contractor's firm.

In case of breach or violation of this requirement, the City shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

18. 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. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

19. Non Exclusive Contract. Any subsequent Contract resulting from the solicitation shall 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, service, or finished end product from another source when necessary.

20. Ownership of Work. All work products created by the Contractor as part of Contractor's performance of this Contract shall be the exclusive property of the City. If any such work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, Contractor hereby grants City a perpetual, royalty-free, fully paid-up, non-exclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use, re-use, in whole or in part, and to authorize others to do so, all such work products. City shall have no rights in

any pre-existing work product of Contractor provided to City by Contractor in the performance of this Contract except to copy, use, and re-use any such work product for City use only. If this Contract is terminated prior to completion, and the City is not in default, City, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed work products, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.

21. **Licenses and Permits.** Contractor shall maintain in current status all federal, state, and local laws, licenses, and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.
22. **Force Majeure.**
 - a. Except for payment of sums due, neither party shall 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. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
 - b. Force Majeure shall not include the following occurrences:
 - 1) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
 - 2) Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - 3) Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
 - c. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment 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.
 - d. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused, by force majeure.
23. **Late Submission of Claim.** The City shall not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.
24. **Access to Records.** Contractor shall maintain fiscal records and all other records pertinent to this Contract. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken. All such records shall be retained and kept accessible for no less than **six (6) years** following final payment. City's authorized representatives shall have the right to direct access to all of Contractor's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts. City shall reimburse Contractor for Contractor's cost of preparing copies.
25. **Insurance and Performance/Payment Bond Requirements.** Contractor shall maintain throughout the term of the Contract the amounts and limits established and referenced in the solicitation documents and included herein.
26. **Indemnity.** Contractor shall indemnify, defend, save, and hold harmless the City, its departments, agencies, boards, commissions, officers, officials, agents, and employees individually and collectively (hereinafter referred to as "Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of, arising out of, or relating to activities of the Contractor or any of its owners, officers, directors, agents, employees, or subcontractors, or agents under this Contract. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of City or any department of City, nor purport to act as legal representative of City or any of its departments, without first receiving from the Lake Havasu City Attorney's Office,

authority to act as legal counsel for City, nor shall Contractor settle any claim on behalf of City without the approval of the Lake Havasu City Attorney's Office. City may, at its election and expense, assume its own defense and settlement.

27. **Indemnity–Patents, Copyright, and Trademark.** Contractor agrees to defend City, mayor, council, appointed boards and commissions, officers, officials, employees, and agents individually and collectively at Contractor's own expense, in all suits, actions, or proceedings in which Contractor is made a defendant for actual or alleged infringement of any United States of America or foreign letters patents resulting from Contractor's use of the goods, service, or finished end product purchased as a result of this Procurement (Invitation To Bid (ITB) or Request For Proposal (RFP)) and subsequent Contract. Contractor further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action, or proceedings against City. Contractor agrees to indemnify and hold harmless the City from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of City's purchase and use of goods, service, or finished end product supplied by the Contractor. Contractor will indemnify City against all claims for damages to persons or property resulting from defects in materials or workmanship. It is expressly agreed by Contractor that these covenants are irrevocable and perpetual.
28. **No Advance Payments.** Advance payments are not authorized. Payment will be made for only actual services or commodities that have been received and accepted by the City.
29. **Advertisement.** Contractor shall not advertise or publish news releases concerning this Contract without the prior written consent of the City Manager or designee.
30. **Americans with Disabilities Act.** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act, Public Law 101-336, 42 U.S.C. 12101-12213, and applicable federal regulations under the Act.
31. **Anti-Discrimination Clause.** Contractor shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or political affiliation in programs, activities, services, benefits, or employment. Contractor shall not discriminate against minority-owned, women-owned, or disadvantaged small businesses. Contractor shall include a provision in each sub-contract requiring subcontractors to comply with the requirements of this clause.
32. **OMB Circular A-133.** If Contractor is determined by the City to be a sub-recipient of federal funds passed through the City, the Contractor must submit an annual Federal Compliance Audit in conformity with the OMB Circular A-133, which applies the Federal Single Audit Act of 1984, Public Law 98-502, to non-profit organizations.
33. **Disadvantaged/Minority/Woman Business Enterprise.** Contractor agrees to give Disadvantaged/ Minority/Woman Businesses the maximum practical opportunity to participate in this Contract when possible, by obtaining supplies, materials, and services from such firms.
34. **Non Appropriation Clause - Fiscal Year.** If appropriations are reallocated, reduced or eliminated by legislative action or for any reason these goods and / or services are not funded, during any fiscal year the City may take any of the following actions:
 - a. Accept a decrease in price offered by the Contractor and complete the Contract;
 - b. Place the Contract on-hold and pay the Contractor for work performed up to the date of the non-appropriation notice. Work must be performed in accordance with the Contract prior to payment and be less any setoff to which the City is entitled. The contract may be resumed at a later date when funding is reestablished. Contract cannot be resumed beyond a (4) four year time period from the date of non-appropriation notice. Contractor must also reaffirm pricing and resubmit insurance and bonding certificates, if applicable. Documents must be received by the City prior to resuming the Contract;
 - c. Cancel the Contract and pay the Contractor for work performed up to the date of the non-appropriation notice. Work must be performed in accordance with the Contract prior to payment and be less any setoff to which the City is entitled, and re-solicit a new procurement;
 - d. Cancel the contract and re-solicit the requirements;
 - e. Cancel the contract.
35. **Non Appropriation Clause - Future Fiscal Year.** Funds may not presently be available for performance under this Contract beyond the current City's fiscal year. If payment for performance under this Contract extends into next fiscal year, the City's obligation to pay for such performance is subject to approval of future appropriations to fund this Contract by legislative action. The City shall have no legal liability to pay funds due for performance under the terms of the Contract until and unless funds are appropriated by legislative action.
36. **Notice to Proceed.** The Contractor agrees to render services promptly and diligently upon receipt of written notice by a duly authorized City agent and to proceed with any or all of the services set forth herein.
37. **Right to Assurance.** 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 **seven (7) days**, the demanding party may treat this failure as an anticipatory repudiation of this Contract.

38. **Non Performance.** In the event of nonperformance under this Contract, the City, after **seven (7) days** written notice to the Contractor, shall have the right to obtain from other sources such products and/or services as may be required to accomplish the work not performed, and it is agreed that the difference in cost, if any, for said work or goods shall be borne by the Contractor.

For purposes of this section, nonperformance shall be defined as failure to appear and perform work and/or deliver goods as specified and scheduled.

39. **Liens.** Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the work required under this Contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied, before the City will make final payment.
40. **Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.
41. **Title and Risk of Loss.** The title and risk of loss of materials or service shall not pass to the City until the City actually receives the material or service at the point of delivery FOB; and such loss, injury, or destruction shall not release seller from any obligation hereunder. The City shall notify the Seller promptly of any damaged goods, service, or finished end product, and further shall assist the Seller in arranging for inspection.
42. **FOB Point of Delivery.** All pricing, labor, materials, and services are to be FOB destination and delivered within the city limits of Lake Havasu City, Arizona, unless otherwise specified elsewhere in the solicitation documents.
43. **Employment Standards.** The Contractor agrees that upon request by Lake Havasu City, it shall remove from the City's premises any Contractor's employee, who, in the reasonable opinion of Lake Havasu City, is guilty of improper conduct, bringing any unauthorized personnel (including their own children) into a facility or work area, or is not qualified to perform the work assigned. The Contractor shall understand that its employees shall complete and pass a security background check, if so requested.
44. **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 right and obligations of the parties shall 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 employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor shall have total responsibility for all salaries, wage bonuses, retirement, withholdings, workers' compensation, occupational disease compensation, unemployment compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such persons and shall save and hold the City harmless with respect thereto.
45. **Cooperative Governmental Purchasing.** Pursuant to A.R.S. § 41-2632, other public agencies may contract directly with Contractor under the terms of the Contract. Contractor shall be charged a one percent (1%) administrative fee for the use of said Contract. Contractor shall notify the City prior to their use of the Contract in providing goods, service, or finished end product to other agencies. Contractor shall pay the administrative fee upon execution of said Contract. Contractor shall provide a yearly sales report to the City ending December 31 of each year. Contractor shall make fees payable to the City at time of cooperative agency payment.
46. **Quarterly Reports.** If requested, parties agree that Contractor shall provide quarterly reports to City which shows each item purchased from City in the prior quarter, the individual cost of each item, and the total cost of all items purchased in the quarter.
47. **General Product Requirements.** All items delivered shall conform to the Specifications and shall be in first class condition. Acceptance by the City shall be subject to inspection and approval. In case of conflict between the Specifications and Additional Contract Terms and these Standard Terms and Conditions, the Specifications and Additional Contract Terms shall prevail. The apparent silence of the Standard Terms and Conditions and Specifications and Additional Contract Terms as to any detail or the apparent omission of a detailed description concerning any point shall be regarded as meaning that only best commercial practice is to prevail and that only items manufactured with material and workmanship of first quality are to be supplied. All items delivered shall be of identical style, quality, and appointments as those offered to the trade in general during the course of the model year. All items delivered shall be new current models, free and clear of all liens and encumbrances. Unless otherwise provided in the Specifications, items shall, where appropriate, be prepared for delivery to and use by the City by a factory franchised agent. Each item delivered shall be accompanied by all pre-delivery inspection sheets, coupons, certificates, descriptive literature, warranty cards, and information provided by the manufacturer and furnished to the trade in general. All such documents shall be properly completed and signed in accordance with industry standards. All items required by the Specifications to be UL listed shall indicate the current UL listing on the item. All items that are

required by the Specifications to have any other certification shall indicate that certification on the item or in the accompanying documentation.

48. **Inspection and Acceptance.** Goods, service, or finished end product furnished under this Contract shall be subject to inspection and testing by the City at times and places determined by the City within a reasonable time after arrival at its ultimate destination. If the City finds goods, service, or finished end product to be incomplete, unsatisfactory, defective, or of inferior quality or workmanship, or fails to meet the specifications or other requirements or not in compliance with the Contract, the City, at its sole discretion, may either reject the goods, service, or finished end product, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods, service, or finished end product to the City at a reduced price, whichever the City deems equitable under the circumstances. Lake Havasu City may return such goods, service, or finished end product to Contractor at Contractor's expense. Contractor shall reimburse Lake Havasu City for any amounts paid by the City for the returned goods, service, or finished end product and any costs incurred by the City to return the goods to the Contractor. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the City, the City may reject the goods, service, or finished end product and cancel the Contract in whole or in part. Payment for merchandise, service, or finished end product prior to inspection shall not be construed to be an acceptance of unsatisfactory or defective merchandise, service, or finished end product. Nothing in this paragraph shall in any way affect or limit the City's rights as buyer under the Uniform Commercial Code, including the rights and remedies relating to rejection or revocation of acceptance under A.R.S. § 47-2711 et seq.
49. **Warranty and Service.** Contractor warrants all goods, service, or finished end product delivered to be free from defects in labor, material and manufacture and to be in compliance with the specifications set out in this Contract. All implied and express warranty provisions of the UCC are hereby incorporated by reference. Further, Contractor represents and warrants that Contractor has the power and authority to enter into and perform this Contract and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms. All items delivered shall carry either the standard manufacturer's warranty or service policy providing that warranty work will be performed by any authorized manufacturer's dealer, or if specified in the Specifications, the warranty and service policy called for in the Specifications. In addition, unless otherwise noted in the Specifications, the warranty and service policy indicated above shall include the following terms and conditions:
- a. There shall be no distance or time limitations, not applicable to the trade in general, on either standard or extended warranty or labor. All franchised or authorized dealers of the item in the state shall honor warranty. Warranty maintenance requirements, when performed by City, shall be acceptable to dealer when said work performance meets or exceeds the dealer certification requirements. City shall provide evidence of such work performance upon request, as required by the manufacturer. Any extended warranty period customarily granted shall be made available to City at no additional cost, and
 - b. City shall be advised of all product recalls on all or any part of the item at no additional cost. All product recall information, replacement parts and labor, shall be provided to the City as soon as available to dealer.
50. **Shipment Reservation Prohibited.** Contractor shall not ship the goods, service, or finished end product under reservation and no tender of a bill of lading will operate or function as a tender of the goods or finished end product.
51. **No Replacement of Defective Tender.** Contractor tender of goods, service, or finished end product must fully comply with all provisions of this Contract as to time of delivery, quantity, assortment, quality, and the like. If a tender is made which does not fully conform, this shall constitute a breach, and the Contractor shall not have the right to substitute a conforming tender.
52. **Product Correction.** It is agreed that Contractor shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance. In the event of any call back, Contractor agrees to give the City first priority. Contractor agrees that if the product or service offered does not comply with the foregoing, the City has the right to cancel the purchase at any time with a full refund within thirty (30) days after notice of non-compliance and Contractor further agrees to be fully responsible for any consequential damages suffered by the City.
53. **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 nonconforming goods, service, or finished end product or a default of any nature under one installment or lot will impair the value of the whole agreement and constitute a breach of the agreement as a whole.
54. **Hazardous Materials.** Contractor warrants that goods, service, or finished end product provided under this Contract comply with all federal, state, and local safety and health requirements. All items that include hazardous materials shall be labeled in accordance with law with the names of the hazardous ingredients, the hazards of the materials, and the appropriate precautions. Contractor shall provide a Material Safety Data Sheet as defined by OSHA for any goods, service, or finished end product provided under this Contract which may release, or otherwise result in exposure to, a hazardous substance under normal conditions of use. In addition, Contractor shall label, tag, or mark such goods, service, or finished end product. Those materials for which toxicological or hazard data are unavailable shall carry a label stating: "Toxicological and other hazards unknown. Handle as extremely hazardous."
55. **Security.** Any disclosure or removal of any City material and/or information marked as confidential or private on the part of Contractor shall be cause for immediate cancellation of the Contract. Any liability, including, but not limited to,

attorney fees, resulting from any action or suit brought against the City as a result of the Contractor's willful or negligent release of information, documents, or property contained in City facilities shall be borne solely by the Contractor.

56. **Preference for Recycled Materials.** The City shall prefer materials or supplies manufactured from recycled materials if the recycled product is available, it meets the requirements set forth in the Specifications, and the cost of the product does not exceed the cost of non-recycled products by more than five percent (5%).
57. **Prohibition on Government Contracts.** The Contractor shall comply with all applicable provisions of the A.R.S. § 35 Public Finances. Contractor further agrees that they shall not have any scrutinized business operations in Sudan and/or Iran.
58. **Terrorism Country Divestments.** In accordance with A.R.S. § 35 Public Finances, the City is prohibited from purchasing from a company that is in violation of the Export Administration Act. By entering into the Contract, Contractor warrants compliance with the Export Administration Act.
59. **Contractor's Employee E-Verify Eligibility Requirement.** The Contractor shall comply with all applicable provisions of the Federal Immigration and Nationality Act (FINA), A.R.S. § 41-4401 and A.R.S. § 23-214, which requires compliance with federal immigration laws by State employers, State Contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program. See the following website for further information: www.dhs.gov/e-verify.

Pursuant to A.R.S. § 41-4401, the City may request verification of compliance from any Contractor or subcontractor performing work under this Contract. The City reserves the right to confirm compliance. Should the City suspect or find that the Contractor or any of its subcontractors are not in compliance, the City may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the Contract for breach or default, and suspension and/or debarment of the Contractor. All costs necessary for compliance shall be solely borne by the Contractor.

60. **Evidence of lawful presence in the United States.** In accordance with A.R.S. §§ 1-501, 1-502 and as a condition of entering into this Contract, individual person(s) or duly authorized company representatives shall execute the affidavit attached hereto as **Exhibit 1** and present one of the identification documents contained therein (the "Identification Documents") to verify their lawful presence in the U.S. Failure to execute the affidavit and present one of the Identification Documents upon submittal of the Contract Documents shall be considered nonresponsive and shall result in rejection of the submitted response and automatic cancellation of this Contract.

EXHIBIT 1
LAKE HAVASU CITY CONTRACT TERMS & CONDITIONS
EMPLOYMENT ELIGIBILITY VERIFICATION & FORM

INSTRUCTIONS FOR COMPLETION OF EMPLOYMENT ELIGIBILITY VERIFICATION FORM

All employers, contractors, and subcontractors as identified in Ordinance Number 07-869 entitled "Employment of Aliens by Companies Doing Business with the City" must complete the Employment Eligibility Verification Form upon award. An explanation of who must complete the form, instructions, and the actual form can be found on the City's website at www.lhcaz.gov (click on: "DOCUMENTS ONLINE", then click on: "Employment Eligibility Verification Form").

EXHIBIT 2
LAKE HAVASU CITY CONTRACT TERMS & CONDITIONS
AFFIDAVIT OF LAWFUL PRESENCE IN THE UNITED STATES

ARS §§1-501 and 502 require individual person(s) or duly authorized company representative to complete this form to apply to Lake Havasu City for a local public benefit (defined as a grant, contract or loan). Authorized party must demonstrate through the presentation of one of the following documents that you are lawfully present in the United States.

LAWFUL PRESENCE IN THE UNITED STATES CAN BE DEMONSTRATED BY PRESENTATION OF ONE (1) OF THE DOCUMENTS LISTED BELOW.

Please present the document indicated below to a Notary for review and signing of the affidavit. Attach a copy of the indicated and supporting documentation to this affidavit. Upon completion, submit to copy to: Lake Havasu City, City Clerk's Office, 2330 McCulloch Blvd, Lake Havasu City, AZ, 86403.

- _____ 1. An Arizona driver license issued after 1996.
Print first 4 numbers / letters from license: _____
- _____ 2. An Arizona non-operating identification License.
Print first 4 numbers / letters: _____
- _____ 3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
Year of birth: _____: Place of birth: _____
- _____ 4. A United States Certificate of Birth abroad.
Year of birth: _____: Place of birth: _____
- _____ 5. A United States passport.
Print first 4 numbers / letters on Passport: _____
- _____ 6. A foreign passport with a United States Visa.
Print first 4 numbers / letters on Passport _____
Print first 4 numbers / letters on Visa _____
- _____ 7. An I-94 form with a photograph.
Print first 4 numbers on I-94: _____
- _____ 8. **A UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES EMPLOYMENT AUTHORIZATION DOCUMENT (EAD).**
Print first 4 numbers / letters on EAD: _____
- _____ 9. **REFUGEE TRAVEL DOCUMENT.**
Date of Issuance: _____ Refugee Country: _____
- _____ 10. **A UNITED STATES CERTIFICATE OF NATURALIZATION.**
Print first 4 digits of CIS Reg. No.: _____
- _____ 11. **A UNITED STATES CERTIFICATE OF CITIZENSHIP.**
Date of Issuance: _____ Place of Issuance: _____
- _____ 12. **A TRIBAL CERTIFICATE OF INDIAN BLOOD.**
Date of Issuance: _____ Name of Tribe: _____
- _____ 13. **A TRIBAL OR BUREAU OF INDIAN AFFAIRS AFFIDAVIT OF BIRTH.**
Year of Birth: _____
Place of Birth: _____

I DO SWEAR OR AFFIRM UNDER PENALTY OF LAW THAT I AM LAWFULLY PRESENT IN THE UNITED STATES AND THAT THE DOCUMENT I PRESENTED ABOVE AS VERIFICATION IS TRUE.

Signature	Business / Company Address (if applicable)
Print Name	Address
Date: _____	City, State, Zip Code

Return completed form and supporting documentation to: Lake Havasu City, City Clerk's Office, 2330 McCulloch Blvd, Lake Havasu City, AZ, 86403.

OFFICE USE ONLY: NOTARY NAME: _____
(Print Name)

NOTARY SIGNATURE (Stamp) & DATE: _____

ALL VIOLATIONS OF FEDERAL IMMIGRATION LAW SHALL BE REPORTED TO 1-866-347-2423

SECTION D - EMPLOYMENT ELIGIBILITY VERIFICATION FORM

INSTRUCTIONS FOR COMPLETION OF EMPLOYMENT ELIGIBILITY VERIFICATION FORM

All employers, contractors, and subcontractors as identified in Ordinance Number 07-869 entitled "Employment of Aliens by Companies Doing Business with the City" must complete the Employment Eligibility Verification Form upon award. An explanation of who must complete the form, instructions, and the actual form can be found on the City's website at www.lhcaz.gov (click on: "DOCUMENTS ONLINE", then click on: "Employment Eligibility Verification Form").

SECTION E - ADDITIONAL TERMS AND CONDITIONS

ITB NO.: B10-SM341Q

ITB TITLE: Public Works Maintenance Facility Evaporative Coolers

1. **Pre-Proposal Conference.** None
2. **Contract Term.** The Contract term shall be for one year (1) year.

This Contract may be renewed at the expiration of its term by mutual agreement of both parties. The renewal may be for a maximum of two additional twelve (12) month periods or less if agreeable to both parties.

Notice of intent to renew or extend will be given to the Contractor in writing by a purchasing representative sixty (60) days prior to expiration of the current Contract. (This notice shall not be deemed to commit the City to a Contract renewal.)

3. **Estimated Purchases.** The quantities indicated are estimates of anticipated purchases and are offered solely for the purpose of bid evaluation. The estimates provided are based on the previous year's purchases. Larger or smaller quantities may be purchased and the Contractor agrees to deliver as ordered. The single purchase amount for removal and replacement is estimated to be **\$5,500** per unit for the **Public Works Maintenance Facility Evaporative Coolers** as detailed in these solicitation documents. The City in no way implies or guarantees that the estimated amounts or any amount will be purchased during the term of any Contract resulting from this Invitation To Bid.
4. **Add/Delete Items.** City reserves the right to add or delete items during term of awarded Contract as dictated by the changing/updating of employees, buildings, equipment, roads, or services. The Bid Sheets may be a partial and not a complete list of items to be purchased.

5. **Pricing and Escalation/De-Escalation.** All pricing shall be protected from increase for the first twelve (12) month period of the Contract. Changes in proposed prices or discounts shall only be accepted bi-annually and be submitted in writing forty-five (45) days prior to the date of the change, which should be the anniversary date of the Contract. The change shall only be in the same proportion that changes have occurred on the manufacturer's latest published model price lists, discount schedules, federal price index, or by other means of positive verification. The City shall have the right to accept or reject any proposed change(s) in any of the originally bid prices or discounts.

The City shall be given the immediate benefit of any price decrease given another agency of like make up or size. Contractor shall promptly notify the City's Authorized Agent of the amount and effective date of such decrease.

This decrease shall apply to orders placed on or after the effective date of the decrease. Invoices shall reflect prices in effect on the date the order was placed with the Contractor.

Should such decreased prices again increase during the term of the contract, including extensions, the City shall honor the increase if acceptable documentation verifying the increase is submitted to the City. The City shall determine what constitutes acceptable documentation.

6. **Purchase Orders.** Lake Havasu City shall issue a purchase order for the goods or services covered by this Contract. All such Purchase Orders will reference the Contract number. Bidder shall have 24-hour order and delivery capability in the event of emergencies, if so required by specifications.
7. **Inventory.** Bidder agrees to maintain reasonable inventories to insure that back orders will be kept to a minimum and delivery can be accomplished according to the terms of this Invitation To Bid. Repeated back-ordering by the successful Bidder on City orders may be cause for Contract cancellation or the City to affect cover by utilizing alternate sources.
8. **Packing and Shipping.** Contractor shall be responsible for industry standard packing which conforms to product and the requirements of carrier's tariffs, ICC regulations, and other applicable regulations. Containers must be clearly marked with the Purchase Order number, contact person, phone number, department, and FOB delivery address.
9. **Terms of Payment.** Bidder shall indicate terms of payment where indicated in the bid documents and any discounts proposed for early payment. For purposes of comparing discounts bids, the City shall only consider discounts that allow a minimum of twenty (20) days for payment. Discount period will start from the date of receipt of goods or current invoice, whichever is later, to the date the City's payment is mailed. Unless freight and other charges are itemized, any discount provided will be taken on full amount of invoice. Payments shall comply with the requirements of A.R.S. § 35-342.
10. **Invoice.** The Contract shall be paid per terms and conditions set herein and upon receipt and acceptance of either the deliverables under Contract or an invoice that is documented and itemized, whichever occurs later. A separate invoice shall be issued for each shipment of deliverables.

The City reserves the right to reject any and all invoices that do not meet the City's accounting standard levels of acceptability. The City will instruct the Contractor on an acceptable invoice format. The City reserves the right to update and make changes to the invoice format that will enhance the City's business practices.

INVOICES FOR ALL DELIVERABLES SHALL BE SUBMITTED IN DUPLICATE TO:

**Lake Havasu City
Accounts Payable
2330 McCulloch Boulevard N.
Lake Havasu City, AZ 86403**

11. **Returns.** Bidder shall allow returns within thirty (30) days of purchase at no charge. Within five (5) calendar days of notice of award, successful Bidder shall submit complete return policy including all terms and conditions for all items listed on pricing sheets. Failure to submit return policy within five (5) calendars days of notice of award may result in City awarding to next lowest, responsive, responsible Bidder.

SECTION F - INSURANCE REQUIREMENTS

Insurance. Contractor shall provide the following insurance:

- a. **Workers Compensation Insurance** in compliance with A.R.S. Title 23, Chapter 6, together with Employer's Liability insurance with coverage limits of not less than \$1,000,000.
- b. **Commercial General Liability Insurance**, on an occurrence basis, with a combined single limit of not less than \$1,000,000, each occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000. This insurance shall include contractual liability coverage.
- c. **Automobile Liability Insurance** with a combined single limit, or the equivalent of not less than \$1,000,000 each occurrence for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles.

Coverage must be provided by an insurance company admitted to do business in Arizona and rated A VII or better by Best's Insurance Rating. Contractor's coverage will be primary in the event of loss. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insured's condition will be included in all commercial general liability policies required by this Contract.

Contractor shall furnish a Certificate of Insurance to the City with the signed Contract.

The Certificate shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without **ten (10) working days** written notice from the Contractor's insurer to the City. The Certificate shall also state the deductible or retention level. If requested, complete copies of insurance policies shall be provided to the City.

If Contractor ships all goods to be supplied under this Contract by common carrier and will not make deliveries to the City using its own employees, proof of insurance as set forth in Section F will not be required.

The amount and type of insurance coverage as required herein is not intended to, and shall not be interpreted to, limit the scope of the indemnity set forth in this section.

Product Liability Coverage. Certificates of Insurance for product liability coverage are required from Contractors or product manufacturers of higher hazard equipment where potential for loss is greater than normal (i.e., chemicals, heavy road equipment, machinery, etc.). This procedure verifies that the manufacturing company has proper product liability insurance and economic backing in the event of a catastrophic loss relating to a failure, malfunction, defect or other condition relating to the manufacture of the specific product.

Additional Insureds. For commercial general liability and automobile liability insurance policies, the Insurance Certificate shall also provide that "**Lake Havasu City, its agents, directors, officers, officials, and employees are additional Insureds with respect to Contractor's services to be provided under this Contract.**" If requested, complete copies of insurance policies shall be provided to the City.

SECTION G - NO BID NOTIFICATION

ITB NO.: B10-SM341Q

ITB TITLE: Public Works Maintenance Facility Evaporative Coolers

CLOSING DATE & TIME: March 30, 2010 at 11:00 a.m. Arizona Time

Lake Havasu City is interested in receiving competitive pricing on all procurements. It is the desire to keep your firm as a vendor and a supplier of materials, equipment, services, etc. Therefore, it is important for us to determine why you are not submitting a bid on this procurement. Your input will be carefully analyzed to try and determine if future changes are needed in our specifications and procedures.

Please indicate which statement is true for your firm: (PLEASE CHECK ITEMS THAT APPLY)

_____ Time frame for bidding was too short; retain on mailing list.

_____ No bid at this time; retain on mailing list.

_____ Remove from mailing list; we do not supply the requested product or service(s).

_____ Remove from mailing list.

_____ Quantities offered are too small or too large to be supplied by our company. (Please circle one of the underlined.)

_____ Specifications are "restrictive" or written around a particular product. (Please elaborate by submitting information on a separate sheet.)

_____ Can not bid against the manufacturer, distributor or jobber on this procurement.

_____ Other: _____

COMPANY NAME: _____

AUTHORIZED SIGNATURE: _____

RETURN TO: Jerri Bracamonte, Administrative Specialist I
Public Works Department/Transportation Division
900 London Bridge Road
Lake Havasu City, AZ 86404
Phone: (928) 855-3377 Fax: (928) 680-4247

NOTE: IF A REPLY IS NOT RECEIVED FROM TWO (2) CONSECUTIVE INVITATIONS TO BID MAILINGS, YOU WILL AUTOMATICALLY BE REMOVED FROM THE MAILING LIST.

SECTION H - TECHNICAL SPECIFICATIONS

ITB NO.: B10-SM341Q

ITB TITLE: Public Works Maintenance Facility Evaporative Coolers

Project Description: The Lake Havasu City Public Works Department is soliciting bids from licensed HVAC Contractors to provide all necessary labor, equipment, and materials to remove and replace five (5) existing evaporative coolers with new evaporative coolers in designated Mechanic Bays at the Public Works Maintenance Facility, 900 London Bridge Road, Lake Havasu City, Arizona as specified within this section.

Review of the Project:

The Contractor will be responsible for reviewing the entire extent of the proposed project, and assuring a full understanding of the existing conditions at the site. No allowances will be made after bidding for the conditions at the site, and the Contractor shall be responsible for furnishing all labor, equipment, and materials necessary to carry out the provisions of the contract. City forces shall remove and cap the interfering fire sprinkler line and sprinkler head located below each of the existing evaporative coolers prior to beginning the project, and then reinstall the removed portion of fire protection system after the new evaporative coolers have been installed and accepted.

The Contractor shall be responsible for and comply with all applicable aspects of this type of project, which may include but not be limited to; building codes, rules, statutes (federal, state and local), licenses, OSHA Safety, permitting (if applicable) and inspections.

Specifications for New Evaporative Coolers:

Champion Model-SAS/SAD 150B- 3 Phase 230/460 Volt, 1.5 horse power with variable-pitch pulley, with blower at 0.2" static pressure, 365 RPM, and 8205 CFM.

Approved Equal -Such item must be identified by manufacturer name, trade name, make, model, and catalog number. If bidder has any question whether an item is equivalent to the item specified, Bidder must submit a request for substitution. *Information must be provided in Section K-Exceptions to Specifications.*

Evaporative Cooler Submittals:

The Contractor shall submit manufacturer's specification sheets indicating the evaporative cooler and specified components being provided with the bid documents. **Failure to provide submittals for the evaporative cooler and specified components with the bid documents will be cause for bid rejection.**

Warranty:

Contractor shall provide the minimum manufacturer's warranty on equipment, and a minimum of one (1) year warranty for labor and materials. Please also refer to Section C-Contract Terms and Conditions -Warranty and Service of this bid document.

The length and conditions of warranty must be attached with submitted bid and stated on the Warranty Item of Section J-Bid Schedule of this document.

Evaporative Cooler Location:

The work areas will be in Mechanic Bays 2, 3, 6, 7, and 10 at the Public Works Maintenance Facility. The Contractor shall coordinate with the Shop Maintenance Lead for each work area.

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The Contractor shall only be given permission to occupy two (2) Mechanic Bays at any given time. Each evaporative cooler shall be completely assembled in accepted condition and readily available for immediate operational use before work is allowed to move onto another location.

Contract Time:

This project is expected to begin in mid May, 2010. After a Purchase Order is issued, and a mutually agreed upon date is determined, the completion time for this work shall be within 14 calendar days.

Work Hours:

The working hours at the Public Works Maintenance Facility will be from 6:00 a.m. to 2:00 p.m. Monday through Friday excluding city observed holidays.

Work Description:

Removal - This portion of the work shall involve the Contractor using care to remove existing electrical power supply or electrical disconnect at each location, removing existing water supply and drain lines, removing the diffuser and disconnecting the intake ductwork at the flex joint, and removing any other brackets, braces, or interfering items in order to safely disconnect the evaporative cooler from its hangers and lower it to the ground. All removed evaporative coolers will be placed at a specified location within the PVMF yard and disposed of at a later time by city forces.

Installation – This portion of the work shall involve the Contractor installing new evaporative coolers as specified, lifting and reattaching the units to the suspension hangers; reattaching the existing electrical power supply or electrical disconnect; reattaching the diffusers and making necessary sheet metal transitions from the existing intake duct work to the new evaporative cooler while maintaining a 32” clear distance from the roof purlins for future pad replacement. The Contractor shall modify the existing drain lines by providing a braided flexible stainless steel line 8” to 12” long between the overflow connection point at the bottom of the unit to the existing drain line. The Contractor shall also provide a new copper supply line from the connection point at the cooler and the existing shut off valve. All interfering items previously removed or temporarily relocated for the removal and installation of the new evaporative coolers shall be replaced in as good or better than when found condition. The diffusers shall be re-aimed for each bay at the direction of the Shop Maintenance Lead, and the motor to blower output shall be maximized utilizing an amp meter.

The Contractor shall ensure a quiet, watertight, and vibration free installation. Each evaporative cooler shall be installed in a workman like manner according to manufacturer and industry guidelines and standards. Any required small parts, repairs or adjustments to existing re-used parts or components will be considered incidental to the project and provided by the Contractor at no additional charge in order to provide a trouble free and fully operational cooling system. All shipping crates, packing material, construction debris, etc., as a result of the installation of these units, is the responsibility of the Contractor and shall be disposed of in an approved manner.

Evaporative Cooler Disposal:

The Contractor shall place the removed evaporative coolers at a pre-determined location at the Public Works Maintenance Facility. The Contractor shall have no salvage rights to the removed units. Final disposal of the discarded evaporative coolers will be the responsibility of the Public Works Department.

See Section J, Bid Price Schedule.

SECTION I - BIDDER SIGNATURE PAGE

ITB NO.: B10-SM341Q

ITB TITLE: Public Works Maintenance Facility Evaporative Coolers

By signature below, the Bidder certifies that the specifications, general provisions and the attached Contract Terms and Conditions have been carefully examined. If the bid is accepted, Bidder agrees to contract with Lake Havasu City to furnish the item(s) and/or services in the manner and time herein prescribed and according to all the requirements set forth.

The Bidder hereby certifies that Bidder:

1) Has not discriminated against disadvantaged, minority, or women small business enterprises in obtaining any required subcontracts in accordance with A.R.S.

2) Is a Preferred Resident Bidder as defined by A.R.S. § 34-241, if applicable.

A.R.S. § 34-241 states in awarding a public works contract for work to be paid for from public funds the bids submitted by resident Contractors shall be deemed a better bid than the bid of a competing Contractor who is not a resident and awarded the contract.

A 'Preferred Resident Bidder' means "a Contractor licensed under A.R.S. Title 32, Chapter 1 or Chapter 10, who has satisfactorily performed prior public contracts, and who has paid real or personal property taxes assessed under A.R.S. Title 42 for at least two consecutive years in an amount of at least two hundred dollars per year immediately prior to submitting a bid on a plant and equipment such as may be used in the performance of the contract for which the bid is submitted, or on other real or personal property in the state equivalent in value to such plant or equipment, shall be deemed a better bid than the bid of a competing Contractor, who has not paid such taxes, whenever the bid of the competing Contractor is less than five percent lower." A.R.S. § 34-241.

3) Acknowledge receipt of Addendum(s). The modifications to the bid documents noted therein have been considered and all costs thereto are included in the bid sum.

Addendum #	_____	Dated	_____
Addendum #	_____	Dated	_____
Addendum #	_____	Dated	_____
Addendum #	_____	Dated	_____

4) Complete, sign and return the attached bid documentation:

- Cover Title/Page
- Section I - Bidder Signature Page
- Section J - Bid Price Schedule
- Section K - Exceptions to the Specifications
- Section L - References

5) The term "CONTRACT DOCUMENTS" includes, but may not be limited to, the documents incorporated into this **ITB No.:** B10-SM341Q, **ITB TITLE:** Public Works Maintenance Facility Evaporative Coolers, issued on **March 11, 2010**, as follows:

- A. Invitation To Bid
- B. Instructions To Bidders
- C. Contract Terms and Conditions
- D. Employment Eligibility Verification Form
- E. Additional Terms and Conditions
- F. Insurance Requirements
- G. No Bid Notification
- H. Technical Specifications
- I. Bidder Signature Page
- J. Bid Price Schedule
- K. Exceptions to Specifications
- L. References

6) The Bidder may withdraw a bid at any time prior to the bid opening by providing written request to the Finance Director or designee. However, all bids shall be irrevocable for ninety (90) calendar days from the day of the bid opening.

7) Discount payment terms are _____% _____ days/net _____ days.

The Bidder agrees that pursuant to Section 34-253 of the Arizona Revised Statutes, the undersigned certifies that neither he/she nor anyone associated with vendor's company listed below has directly, or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this procurement. Further, vendor agrees to provide a notarized "NO COLLUSION AFFIDAVIT" if so required by the City, at a future date.

NAME/TITLE _____
SIGNATURE _____
ARIZONA TAX ID: _____
FEDERAL TAX ID: _____
NAME OF FIRM: _____
ADDRESS: _____
PHONE: _____ **FAX:** _____

SEAL, IF BID BY CORPORATION:

FAILURE TO SIGN AND SUBMIT THIS FORM SHALL BE CAUSE FOR BID REJECTION

SECTION J - BID PRICE SCHEDULE

ITB NO.: B10-SM341Q

ITB TITLE: Public Works Maintenance Facility Evaporative Coolers

BIDDER AGREES TO PROVIDE ALL REQUIRED EQUIPMENT, MATERIAL, FREIGHT AND / OR LABOR AS SPECIFIED IN BID DOCUMENTS HEREIN FOR THE FOLLOWING PRICES AS LISTED:

QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
5 each	Provide evaporative coolers as specified in Section H – Technical Specifications		
	SUB TOTAL		
	(If bidding outside of Arizona, vendor to apply the Lake Havasu City Sales Tax of 7.85 percent.)	_____% SALES TAX RATE	
	GRAND TOTAL		

CATALOG DISCOUNT (if applicable): _____

LABOR WARRANTY (minimum one year labor and materials): _____

EQUIPMENT WARRANTY (Manufacturer Minimum): _____

VENDOR'S NAME: _____

FAILURE TO SUBMIT THIS FORM SHALL BE CAUSE FOR BID REJECTION

**FAILURE TO SUBMIT THIS FORM MAY BE CAUSE FOR BID REJECTION
SECTION L - REFERENCES**

ITB NO.: B10-SM341Q

ITB TITLE: Public Works Maintenance Facility Evaporative Coolers

1. Agency/Company _____
Address _____
Phone/Fax: _____
Contact Person _____

2. Agency/Company _____
Address _____
Phone/Fax: _____
Contact Person _____

3. Agency/Company _____
Address _____
Phone/Fax: _____
Contact Person _____

4. Agency/Company _____
Address _____
Phone/Fax: _____
Contact Person _____

5. Agency/Company _____
Address _____
Phone/Fax: _____
Contact Person _____

The references indicated above will be current contacts responsible for purchasing or the end user of the item bid.

VENDOR'S NAME: _____

FAILURE TO SUBMIT THIS FORM MAY BE CAUSE FOR BID REJECTION