

Contract #192163

Maintenance Repair and Operations (MRO) Supplies, Parts, Equipment, Materials

Grainger

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B. PRODUCT REQUIREMENTS:

1. **PRODUCTS:** A complete and comprehensive line of quality made MRO supplies to support the daily maintenance, repair and operations functions of the agency. The categories include but are not limited to the following.
 - a. **Motors and Power Transmission-** General, Definite Purpose and HVAC motors, gear motors, bearings, V-belts and accessories.
 - b. **Electrical Supplies** – Distribution, controls, wire, cable, voice & data and supplies.
 - c. **Lighting** – Lamps, ballasts, fixtures, task lighting, flashlights and batteries.
 - d. **Tools** – Hand, power, outdoor and automotive tools and tool storage.
 - e. **Measuring Tools & Test Instruments** – Calipers, gauges, inspection, micrometers and multimeters.
 - f. **Pneumatic** – Pneumatic tools and system components, air compressors and hydraulics.
 - g. **Machining and Cutting Tools** – Drill bits, taps, dies, blades, counterbores, countersinks and abrasives.
 - h. **Material Handling, Storage and Packaging** – Ladders, hoists, shelving, storage, furniture, packaging, casters, cart, trucks and drums.
 - i. **Welding** – Welding equipment and supplies.
 - j. **Fasteners and Adhesives** – Nuts, bolts, washers, screws, hooks, flat stock, raw materials (metal, rubber, plastic), glue and cement.
 - k. **Lubricants, Sealants and Paint** - Grease, oil, penetrates sealants, caulk and paint.
 - l. **Safety and Security Supplies** – Spill containment, storage, fire protection, person protective equipment, instrumentation, signs, labels, tags and security.
 - m. **Cleaning Equipment and Supplies** – Chemicals, equipment, restroom, paper, waste containers, cleaning.
 - n. **HVAC Supplies** – Controls, heaters, air conditioning, air treatment, fans, ventilators and blowers.
 - o. **Pumps and Plumbing** – Submersible, centrifugal, water system and positive displacement pumps, pipe, valves, fittings, heaters, coolers, filtration and faucets.
 - p. **Emergency Preparedness** – Sandbags, first-aid supplies, disaster recovery products etc.
 - q. **Other Categories**

2. **CURRENT PRODUCTS:** All products being offered in response to this solicitation shall be in current and ongoing production; shall be formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
3. **DEFECTIVE PRODUCT:** All defective products shall be replaced and exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Contractor. All replacement products must be received by the City within seven (7) days of initial notification **or a mutually agreed upon timeframe.**
4. **PRICING: Market Basket products** Prices and **base category contract** discounts shall remain firm and will include all charges that may be incurred in fulfilling requirement(s) for the twelve-month period following contract award. **For Catalog Products, Contractor will no longer compute percentage-off discounts from the Contractor "list" price previously set forth on Contractor's Website, Contractor's Catalog or any other electronic or published media. All percentage-off discounts for Catalog Products shall be deducted from Contract Reference Price ("CRP") in effect at the time the Catalog Product is purchased by member from Contract. Current Contract Reference Prices for Catalog Products shall be available when the member logs into its account on Contractor's Website.**
5. **SALES PROMOTIONS:** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period.

SPECIAL TERMS AND CONDITIONS

1. **COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have registered with OMNIA Partners or entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See http://www.tucsonprocurement.com/coop_partners.aspx and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.mesaaz.gov/home/showdocument?id=23638> for a listing of participating agencies. The parties agree that these lists are subject to change.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

2. **FEDERAL, STATE AND LOCAL TAXES, LICENSES AND PERMITS:** The Supplier shall comply with all Federal, State, and local licenses and permits required for the operation of the business conducted by the Supplier as applicable to this Contract. The Supplier shall, at no expense to the City, OMNIA Partners, or other Participating Public Agencies, procure and keep in force during the entire period of the Agreement all such permits and licenses.
3. **SUBCONTRACTORS:** No subcontract shall be made by the contractor with any other party for furnishing any of the services herein contracted for without the advance written approval of the Department of Procurement. All subcontractors shall comply with Federal and State laws and regulations that are applicable to the services covered by the subcontractor and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. Contractor is responsible for contract performance whether or not subcontractors are used.
4. **FOB DESTINATION FREIGHT PREPAID:** Prices shall be FOB Destination Freight Prepaid to the delivery location designated. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The City will assist the Contractor in arranging for inspection.
5. **PAYMENTS:** All payments made by the City of Tucson for goods or services will be made to the vendor named on the Offer and Acceptance form. If you do not wish payment to be made to that address, you must submit an attached sheet indicating the proper mailing address with this bid.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

- H. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- I. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance

11. **CONTRACT:** The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.
12. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.
13. **DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
14. **EQUAL PAY:** The Contractor shall comply with the applicable provisions of the Equal Pay Act of 1963 (Pub.L. 88-38, 29 U.S.C. section 206(d)); Title VII of the Civil Rights Act of 1964 (Pub.L. 88-352, 42 U.S.C. 2000e *et seq.*; and, the Lily Ledbetter Fair Pay Act of 2009 (Pub.L. 111-2).
15. **EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
16. **FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

17. **FORCE MAJEURE:** 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. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-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 modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

18. **GRATUITIES:** The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals 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 amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
19. **HUMAN RELATIONS:** Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.
20. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractors agrees to waive all rights of subrogation against the City of Tucson, its agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

21. **INDEPENDENT CONTRACTOR:** It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees.

22. **INSPECTION AND ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the Contractor. If returned, all costs are

the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

- 23. INTERPRETATION-PAROL EVIDENCE:** This Contract is intended by the parties to be 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 the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.
- 24. ISRAEL BOYCOTT DIVESTMENTS:** Acceptance of the contract warrants that the vendor is in compliance with A.R.S. § 35-393 and does not participate in a boycott of Israel as that term is defined within A.R.S. § 35-393.
- 25. LICENSES:** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.
- 26. LIENS:** All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.
- 27. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.
- 28. NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods or services from another source when necessary.
- 29. OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.
- 30. PAYMENT:** The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice. The invoice shall not be dated prior to the receipt of goods or completion of services.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

- 31. PROTECTION OF GOVERNMENT PROPERTY:** The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of

Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

32. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.
33. **RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.
34. **RIGHT TO ASSURANCE:** Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.
35. **RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.
36. **RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.
37. **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.
38. **SHIPMENT UNDER RESERVATION PROHIBITED:** No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.
39. **SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Procurement. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.
40. **SUBSEQUENT EMPLOYMENT:** The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.

- 41. TERMINATION OF CONTRACT:** This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate, **following a written ten (10) business day notice to cure to the Contractor**, the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. **If the Contract fails to take appropriate action within the period to cure**, the City will issue a written notice of default to the Contractor for acting or failing to act as specified in any of the following:

In the opinion of the City, the Contractor provides personnel that do not meet the requirements of the Contract;

In the opinion of the City, the Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;

The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;

The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

- 42. TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

- 43. WARRANTIES:** Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

OFFER AND ACCEPTANCE

OFFER

TO THE CITY OF TUCSON:

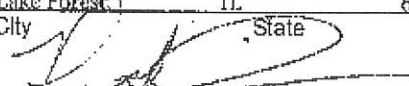
The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

W.W. Grainger, Inc.
Company Name

100 Grainger Parkway
Address

Lake Forest IL 60045
City State Zip


Signature of Person Authorized to Sign

Ron Price
Printed Name

Sr. Government Sales Manager
Title

Name: Ron Price

Title: Sr. Government Sales Manager

Phone: 979-224-6794

Fax: NA

E-mail: Ron.Price@grainger.com

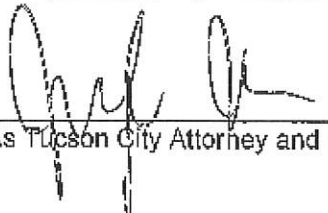
ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. 192163

CITY OF TUCSON, a municipal corporation

Approved as to form:

This 19th day of June 2019


As Tucson City Attorney and not personally

Awarded:

This 19th day of June 2019

Nathan Dawson
As Director of Business Services and not personally