

April 6, 2023



**BY EMAIL ONLY TO:**

Kristy Garcia  
Procurement Administrator  
Email: Kristy.Garcia@MesaAZ.gov

Edward Quedens  
Chief Procurement Officer  
Email: Ed.Quedens@MesaAZ.gov

Re: **City of Mesa Dead Animal Collection Services**  
AquaCrossings LLC Vendor Code: VS0000016014  
AquaCrossings LLC RFB: #2023217

Dear Ms. Garcia and Mr. Quedens:

This firm represents AquaCrossings LLC, an Arizona limited liability company (“Aqua”). As you may be aware, in March, the city of Mesa (the “City”) published a Notice of Solicitation (the “Notice”) to request bids for a contract with the city (the “Contract”) to provide dead animal collection services (the “Services”).<sup>1</sup> Aqua fully complied with all applicable requirements listed in the Notice and submitted its bid on March 28, 2023 (the “Bid”). Later that day, Aqua was on the response reading call for the bids, at which point it learned that it had the lowest bid and would be awarded the Contract. However, on April 4, 2023, Aqua was informed that the City decided to add a requirement for a state license that was not listed on the original Notice and cancel the original solicitation. The purpose of this letter is to request that Aqua still be awarded the Contract.

Under the response checklist for the Notice, a number of attachments were required to be submitted with the Bid, along with a W-9 and a copy of the company’s Medical Waste Haulers Permit from Maricopa County Environmental Services Department (the “County Permit”). No other permit or license was listed or required under the Notice. As such, when Aqua submitted its Bid to the City with all the required paperwork, it was fully compliant with the requirements listed.

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<sup>1</sup> See copy of the original Notice attached as Exhibit A.

*fowler/st.clair*

It is our understanding that after the closing of the solicitation time period, the City was informed that there was an additional state license that would be required for performing the Services: the Arizona Department of Environmental Quality (“AZDEQ”) Biohazardous Medical Waste Transport License (the “State License”). Again, the State License was never mentioned in the original Notice and was not added as a requirement until after the due date and response reading call on March 28, 2023. Had Aqua been informed that the State License was required or needed, it would have obtained the State License prior to submitting its Bid. Instead, Aqua was notified that the City was cancelling the Solicitation due to the State License requirement, instead of giving Aqua time to obtain it to comply with Arizona law.

Under the City of Mesa Procurement Rules (“Procurement Rules”), Paragraph 4.23 covers the Cancellation of Solicitation After Due Date. This paragraph lays out what happens when the City decides that after the due date, but before the award, it may cancel the Solicitation and reject all of the responses, if cancellation is in the best interest of the city. The paragraph then lists seven (7) reasons that would apply (which is not a conclusive list). None of those reasons apply here. Aqua fully complied under the original Notice and would have been awarded the Contract, but for the new requirement for the State License.

Additionally, Procurement Rule 4.27 covers extending the response time for a solicitation. This Rule states, in part, that “after the Due Date, the Procurement Officer may request from any or all of the Respondents that they extend the time for the Response to remain firm in order for the City to have additional time to evaluate and Award a Contract.” Thus, the City could have (and should have) extended the time to make a decision, and request that any company that had submitted a bid be given the opportunity to obtain the State License as an additional requirement.

As such, instead of cancelling and redoing the bidding process for the Contract, the City should allow Aqua the opportunity to be considered with its State License. Aqua has already submitted its application to AZDEQ, and once Aqua obtains the State License, it will be able to fully perform under the Contract. It is not equitable or fair to Aqua to make them re-bid when they would have won the Bid **but for** the State License requirement, which was not part of the original Notice. It is nonsensical to cancel the award of the Contract for a requirement that was never listed. Had the State License been listed originally on the Notice, Aqua would have obtained it prior to submitting its Bid.

Therefore, Aqua respectfully requests that instead of cancelling the Bid, the City should review Aqua's Bid with the State License to determine if Aqua should still be awarded the Contract.

I look forward to your anticipated cooperation and professionalism. Please do not hesitate to reach out to me should you have any questions.

Sincerely,

**/s/ Elizabeth Best**

Elizabeth Best  
480-788-9911

*fowler/st.clair*

# **EXHIBIT A**



# NOTICE OF SOLICITATION

Publish Date: March 6, 2023

**SOLICITATION # 2023217**

**REQUEST FOR BID FOR: DEAD ANIMAL COLLECTION SERVICES**

**BID DUE DATE AND TIME: MARCH 21, 2023 – 3:00 P.M. LOCAL ARIZONA TIME**

Notice is hereby given that sealed bids will be received by the Purchasing Division, City of Mesa until the date and time cited above. Responses received by the correct date and time will be opened publicly and read aloud by the Purchasing Division's Procurement Administrator (or designated representative).

**To join the response reading at 4:00 P.M. local Arizona time on the due date via Microsoft Teams, please click on the following link: [Bid Opening Link](#)**

**Teleconference Number: 480-535-7460; Conference ID: 666 089 827#**

Please read the entire Solicitation package and submit the bid in accordance with the instructions. This document (less this invitation and the instructions) and any required response documents, attachments, and submissions will constitute the bid.

Responses must be in the actual possession of the Purchasing Division Office submitted electronically, on or before the exact date and time indicated above. Late submittals shall not be considered under any circumstances.

Questions concerning this Solicitation should be submitted in writing through the City of Mesa's Purchasing Website Vendor Self Service portal at <https://vendor.mesaaz.gov/> or by email to the following Purchasing contacts or their designees:

**Technical Questions:**

**Robert Cochran**

Procurement Officer I

Phone: 480-644-2543

[robert.cochran@MesaAZ.gov](mailto:robert.cochran@MesaAZ.gov)

**General or Process Questions:**

**Honey Schuchard**

Procurement Specialist

Phone: 480-644-2179

[honey.schuchard@mesaaz.gov](mailto:honey.schuchard@mesaaz.gov)

**NOTE:** THE CITY OF MESA PUBLISHES ITS SOLICITATIONS, ATTACHMENTS, AND ADDENDA ONLINE AND THEY ARE AVAILABLE FOR VIEWING AND/OR DOWNLOADING AT THE FOLLOWING INTERNET ADDRESS: <https://vendor.mesaaz.gov/>

Current contracts and related information are available for viewing and/or downloading at: <http://apps.mesaaz.gov/purchasingcontracts/Search>

**All vendors wishing to conduct business with the City are required to register and maintain all information used for the notification of Solicitation opportunities and issuance of payment in the Vendor Self Service (VSS) system. To register and view additional vendor information, go to <https://vendor.mesaaz.gov/>**

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## **INSTRUCTIONS**

1. **GENERAL:** Please read the entire Solicitation package and all attachments before submitting a Response. Responses must be in accordance with the provisions, specifications, and instructions set forth herein and will be accepted until the date and time the Response is due.
2. **VENDOR QUESTIONS:** All questions regarding the contents of this Solicitation, and Solicitation process (including requests for ADA accommodations), must be directed solely to the Procurement Officer/Supervisor and/or the Purchasing Specialist. Questions should be submitted in writing through the City of Mesa's Purchasing Website Vendor Self Service portal at <https://vendor.mesaaz.gov/> or by email. Questions received less than seven (7) calendar days before the due date and time for Responses may be answered at the discretion of the City.
3. **INSTRUCTIONS FOR PREPARING AND SUBMITTING RESPONSE:** Respondents must submit their responses electronically. Any Respondent needing assistance or guidance using the online Vendor Self Service (VSS) portal may contact the Procurement Officer/Supervisor. Do not wait for the last day to submit a response. Start early so we can fix any issues before trying to submit a response. ALL RESPONDENTS ARE ENCOURAGED TO REVIEW INSTRUCTIONS FOR HOW TO RESPOND TO A SOLICITATION available under Download Vendor Forms in the online VSS portal. Respondents shall provide their Responses in accordance with the following form and content requirements:
  - a. Responses shall be submitted through the City of Mesa's Purchasing Website Vendor Self Service portal at <https://vendor.mesaaz.gov> under the appropriate Solicitation opportunity. Submissions submitted elsewhere or under the wrong Solicitation will not be considered.
  - b. Responses must be signed by an authorized representative of Respondent with the authority to bind Respondent to make such commitments to the City set forth in the Response.
  - c. Responses should be specific to the Solicitation and present details on all requested information in a concise manner.
4. **RESPONSE CHECKLIST:** This checklist is provided for your convenience. It is not necessary to return a copy with your Response. Only submit the requested forms and any other requested or descriptive literature.
  - ☐ Response will be sent in time to be received by City before Bid due date and time.
  - ☐ Pricing, math double-checked, form completed and included (Attachment A)
  - ☐ Required Response Forms completed and included (Attachment B)
  - ☐ Respondent Questionnaire form completed and included (Attachment C)
  - ☐ Sustainability Questionnaire form completed and included (Attachment D)
  - ☐ W-9 Request for Taxpayer Identification Number and Certification form completed and included (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>)
  - ☐ Medical Waste Haulers Permit from Maricopa County Environmental Services Department
5. **ADDENDA:** Any changes to the Solicitation document will be in the form of an addendum. Addenda are posted on the City's Vendor Self Service portal. Contractors are highly encouraged to add Solicitations to "My Watchlist" to be notified of modifications or addenda to a Solicitation. Contractors are cautioned to always check the Self-Service portal for addenda before submitting their Response. The City will not be held responsible if a vendor fails to receive any addenda issued. *The City shall not be responsible for any oral changes to these specifications made by any employees or officer of the City and Contractors are cautioned not to rely on any such changes.* Failure to acknowledge receipt of an addendum may result in disqualification of a Response.
6. **RESPONSE OPENING:** The City will open all Responses properly and timely submitted and will

## **INSTRUCTIONS**

record the names and other information specified by law and rule. The Response Opening will be conducted at 4:00 P.M. local Arizona time following the final **SOLICITATION DUE DATE AND TIME** via Microsoft Teams. No responsibility will attach to the City of Mesa, its employees, or agents for the premature opening of a Response. All Responses become the property of the City and will not be returned. Results, as read at the public opening, will be posted on the City website. Responses will be available to the public in accordance with the City Procurement Rules.

7. **LATE RESPONSES:** The Respondent assumes responsibility for having the Response submitted on time. All Responses received after the Response Due date and time shall not be considered and will be unopened. **The Respondent assumes the risk of any delay caused by not being able to access the system. Respondents must allow adequate time to accommodate all registration and submission requirements.** It shall not be sufficient to show that Respondent attempted to submit a response before the due date and time as the Response must be received by the City. All times are Mesa, Arizona local times. Respondents agree to accept the time stamp in the Vendor Self Service portal as the official time. Any Respondent needing assistance or guidance using the online system may contact the Procurement Officer/Supervisor. Do not wait for the last day to submit a response. Start early so we can fix any issues before trying to submit a response. ALL RESPONDENTS ARE ENCOURAGED TO REVIEW INSTRUCTIONS FOR HOW TO RESPOND TO A SOLICITATION available under Download Vendor Forms in the online VSS portal.
8. **RESPONSE FIRM TIME:** Responses shall remain firm and unaltered after opening for **180** Days unless the time is extended or amended as agreed upon by Respondent and the City. Examples of where an extension or amendment may be necessary include but are not limited to: (i) contract negotiations with selected Respondent; (ii) submission of a Best and Final Offer by Respondent; (iii) City needing additional time to review responses. The City may accept the Response, subject to successful contract negotiations, at any time during this period.
9. **LOBBYING PROHIBITION:** Any communication regarding this Solicitation for the purpose of influencing the process or the award, between any person or affiliates seeking an award from this Solicitation and the City including, but not limited to, City Council, City employees, and consultants hired to assist the City in the Solicitation, is prohibited.

This prohibition is imposed from the time of the first public notice of the Solicitation until the City cancels the Solicitation, rejects all Responses, awards a contract, or otherwise takes action which ends the Solicitation process. This section shall not prohibit public comment at any City Council meeting, study session, or City Council committee meeting.

This prohibition shall not apply to Respondent-initiated communication with the contact(s) identified in the Solicitation or City-initiated communications for the purposes of conducting the procurement including, but not limited to, vendor conferences, clarification of Responses, presentations if provided pursuant to the Solicitation, requests for Best and Final Responses (as set forth in the City Procurement Rules), contract negotiations, protest/appeal resolution, or surveying non-responsive vendors.

Violations of this provision shall be reported to the Purchasing Administrator. Persons violating this prohibition may be subject to a warning letter or rejection of their Response depending on the nature of the violation.
10. **LAWFUL PRESENCE IN THE UNITED STATES:** Arizona Revised Statutes § 1-501 and § 1-502 require all persons who will be awarded a contract (a Public Benefit as defined in 8 USC Section 1621) must demonstrate they are lawfully present in the United States. Person under the statute is defined as a natural person and therefore excludes Limited Liability Companies, Corporations, Partnerships, or other similar types of business entities as indicated on a W-9 form.

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Individuals (natural persons) or Sole Proprietorships must complete the affidavit in the "Required Response Forms" section of this Solicitation. Respondents that fail to provide a completed affidavit and fail to provide the necessary documentation may be deemed non-responsive.

11. **COMMENCEMENT OF WORK:** If a Respondent begins any billable work before the City's final approval and execution of the contract, Respondent does so at its own risk.
12. **RESPONSIBILITY TO READ AND UNDERSTAND:** Failure to read, examine and understand the Solicitation and any of its addenda will not excuse any failure to comply with the requirements of the Solicitation or any resulting contract, nor shall such failure be a basis for claiming additional compensation. The City is not responsible for and will not pay any costs associated with the preparation and submission of a Response. Respondents are cautioned to verify their Responses before submission, as amendments to or withdrawal of Responses submitted after the time specified for the opening of Responses may not be considered. The City will not be responsible for any Respondent errors or omissions.
13. **FORM AND CONTENT OF RESPONSES:** Responses must be submitted online through the City of Mesa's Purchasing Website Vendor Self Service portal at <https://vendor.mesaaz.gov> under the appropriate Solicitation opportunity. Physical submissions, e-mail, or fax submissions will not be accepted unless explicitly allowed by the City of Mesa Purchasing Division. Unless otherwise instructed or allowed, Responses shall be submitted on the forms provided. Responses, including modifications, must be submitted electronically, and signed by an authorized representative of the Respondent. Please line through and initial rather than erase changes. Any modifications to the Solicitation must be identified in the "Exceptions" section of the required response forms. The City does not encourage exceptions. The City is not required to grant exceptions and depending on the exception, the City may reject the Response as non-responsive. The City reserves the right at its sole discretion to negotiate exceptions with a Respondent. If the Response is not properly signed or if any changes are not initialed, it may be considered non-responsive. In the event of a disparity between the unit price and the extended price, the unit price shall prevail unless obviously in error, as determined by the City. The Response must provide all information requested and must address all points set forth in the Solicitation.
14. **SPECIFICATIONS:** Technical specifications define the minimum acceptable standard. When the specification calls for "Brand Name or Equal," the brand name product is acceptable. The use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and are not intended to limit or restrict competition. If a Respondent wishes to provide a material or service that is not the brand name, the equivalent material or service must meet the standard of quality of the brand name product, which is determined at the City's sole discretion. Equivalent products will be considered upon showing the other product meets stated specifications and is equivalent to the brand-name product in terms of quality, performance, and desired characteristics. Products that are substantially equivalent to those brands designated will qualify for consideration.  
  
Minor differences that do not affect the suitability of the supply or service for the City's needs may be accepted. The burden of proof that the product meets the minimum standards or is equal to the brand name product is on the Respondent. The City reserves the right to reject Responses that the City deems unacceptable for any reason.
15. **MODIFICATION/WITHDRAWAL OF RESPONSE:** The Respondent will be able to modify/withdraw their response through the Vendor Self Service portal up until the Response Due Date and Time. No oral requests will be allowed. Requests for withdrawal after the Response Due date and time will only be granted upon proof of undue hardship and may result in the forfeiture of any Response security. Any withdrawal after the Response due date and time shall be allowed solely at the City's discretion.
16. **DEBARMENT DISCLOSURE:** If the Respondent has been debarred, suspended, or otherwise

## **INSTRUCTIONS**

lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government or agency, or if any such preclusion from participation from any public procurement activity is currently pending, the Respondent shall include a letter with its Response identifying the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances must be provided by the Respondent, including the details enumerated above. A Response from a Respondent who is currently debarred, suspended, or otherwise lawfully prohibited from any public procurement activity may be rejected. Failure of a Respondent to disclose a debarment or suspension in accordance with this Section may result in the Response being disqualified for an award of the Solicitation.

17. **RESERVATIONS:** The City reserves the right to reject any or all Responses or any part thereof; to re-issue the Solicitation; to reject non-responsive or non-responsible Responses; to reject unbalanced Responses; to reject Responses where the terms, prices, or awards are conditioned upon another event; to reject individual Responses for failure to meet any requirement; to award by item, part or portion of an item, group of items, or total; to make multiple awards; to waive minor irregularities, defects, omissions, informalities, technicalities or form errors in any Response; to conduct exclusive or concurrent negotiations of any terms, conditions, or exceptions taken by a Respondent or the terms of any agreement/document a Respondent would require the City to sign should Respondent be awarded a contract; and to reject Responses that are outside the City's budgeted amount for the materials or services that are the subject of the Solicitation. The City may seek clarification of the Response from Respondent at any time, and failure to respond is cause for rejection. Submission of a Response confers no right to an award or a subsequent contract. The City is charged by its Charter to make an award that is in the best interest of the City. All decisions on compliance, evaluation, terms, and conditions shall be made solely at the City's discretion and made to favor the City. No binding contract will exist between the Respondent and the City until the City executes a written contract or purchase order.
18. **EXCEPTIONS TO A SOLICITATION:** Changes to the Solicitation document requested by a Respondent may not be acknowledged or accepted by the City. Award or execution of a contract does not constitute acceptance of a changed term, condition, or specification in the Solicitation unless specifically acknowledged and agreed to by the City. The copy of the Solicitation, including all addenda, maintained, and published by the City shall be the official Solicitation document. Any exception to the Solicitation must be set forth in the "Exceptions" portion of the Response; any exceptions not indicated in the "Exceptions" portion of the Response will be deemed rejected by the City, void and of no contractual significance. The City reserves the right to: (i) reject any or all exceptions requested by a Respondent; (ii), determine a bid non-responsive due to the exception(s) made by Respondent; (iii) enter into negotiations with a Respondent regarding any of the Respondent's exceptions, or (iv) accept any or all of a Respondent's exceptions outright.
19. **COPYING OF RESPONSES:** The Respondent hereby grants the City permission to copy all parts of its Response including, without limitation, any documents and/or materials copyrighted by the Respondent. The City's right to copy shall be for internal use in evaluating the Response.
20. **CONTRACTOR ETHICS:** Contractors doing business with the City shall adhere to the Procurement Ethics Standards, Article 7 of the Procurement Rules. It is the policy of the City to promote courtesy, fairness, impartiality, integrity, service, professionalism, economy, and government by law in the Procurement process. The responsibility for implementing this policy rests with each individual who participates in the Procurement process, including Respondents and Contractors. The failure of a Respondent or Contractor to meet the ethical standards may result in the disqualification of an award under the Solicitation or the termination of a contract with the City.

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To achieve the purpose of this Section, it is essential Respondents and Contractors doing business with the City observe the ethical standards prescribed herein and in the City Charter, Code Procurement Rules, and Management Policy 200. It shall be a breach of ethical standards to:

- a. Exert any effort to influence any City official, employee, or agent to breach the standards of ethical conduct.
  - b. Intentionally invoice any amount greater than provided in a contract or to invoice for materials or services not provided.
  - c. Intentionally offer or provide sub-standard materials or services or intentionally not comply with any term, condition, specification, or other requirements of a City contract.
21. **GIFTS:** The City will accept no gifts, gratuities, or advertising products from Respondents or prospective Respondents and affiliates. The City may request product samples from Respondents solely for product evaluation.
22. **EVALUATION PROCESS:** Responses will be reviewed by a screening committee comprised of City employees and/or any agents authorized by the City to participate in the evaluation. City staff may initiate discussions with Respondents for clarification purposes; however, a request for clarification is not an opportunity for a Respondent to change the Response. A request for clarification from a Respondent does not guarantee clarification will be requested from any other Respondents. Respondents shall not initiate discussions with any City employee, agent, or official as set forth in the Lobbying section of these instructions including, but not limited to, members of the evaluation committee.
23. **PRESENTATIONS/INTERVIEWS:** A Respondent must provide a formal presentation/interview upon request of the City.
24. **CRITERIA FOR EVALUATION AND AWARD:** The City evaluates three categories of information: responsiveness, responsibility, and price. All bids must meet the following responsiveness and responsibility criteria.
- a. Each Response will be evaluated based upon responsiveness and responsibility criteria. A failure to meet responsiveness or responsibility criteria will render a Respondent ineligible for the award of a contract under the Solicitation.
    1. **Responsiveness.** The City will determine whether the Response complies with the instructions for submitting a Response set forth in the Solicitation (i.e., the completeness of the Response which encompasses the inclusion of all required attachments and submissions). Responsiveness will also be examined as it pertains to items set forth in this Solicitation that state a Respondent may be deemed non-responsive based upon the content of their Response. The City will reject any Responses that are submitted late. Failure to meet any requirements in the Solicitation may result in rejection of a Response as non-responsive.
    2. **Responsibility.** The City will determine whether a Respondent is one with whom the City should do business. Factors the City may evaluate to determine responsibility include, but are not limited to: an excessively high or low priced Response; past performance under any agreement with the City; references from any source including, but not limited to, those found outside the references listed in the Response and City employees, agents or officials who have experience with the Respondent; compliance with applicable laws; Respondent's record of performance and integrity (e.g. has the Respondent been delinquent or unfaithful to any contract with the City, whether the Respondent is qualified legally to contract with the City, financial stability and the perceived ability to perform completely as specified). A Respondent must at all times have financial resources sufficient, in

## **INSTRUCTIONS**

the opinion of the City, to ensure performance of the contract and must provide proof upon request. City staff may also use Dun & Bradstreet or any generally available industry information to evaluate the Respondent. The City reserves the right to inspect and review Respondent's facilities, equipment, and personnel and those of any identified subcontractors. The City will determine whether any failure to supply information, or the quality of the information, will result in Respondent being deemed non-responsible.

3. **Price.** The City will then evaluate the bids that have met the requirements above.
- b. Respondents who have a Transaction Privilege Tax license for Mesa and who, if awarded a contract, would charge the City TPT to be paid to Mesa, will have 2.00% removed from the taxable item(s) from the price set forth in the Response for the purpose of award evaluation. The awarded Respondent shall however charge the full amount of tax on their invoice(s).

This consideration does not apply to:

  1. Construction procurements or any other procurement done using Arizona Revised Statutes Title 34 processes.
  2. Purchases using federal or other funds where the agreement that provided the funds precludes any local consideration or preference.
25. **COST JUSTIFICATION:** In the event, only one Response to the Solicitation is received, the City may require the Respondent to submit a cost offer in sufficient detail for the City to perform a cost/price analysis to determine if the Response price is fair and reasonable.
26. **CONTRACT AWARD AND ACCEPTANCE:** Respondent must be prepared for the City to accept the Response as submitted. If Respondent fails to sign all documents necessary to successfully execute the final contract within a reasonable time as specified, or any negotiation of exceptions do not result in an acceptable agreement, the City may reject the Response or revoke the award and may seek a contract with another Respondent. Final contract terms must be approved or signed by the appropriately authorized City official(s). No binding contract will exist between the Respondent and the City until the City executes a written contract or purchase order.
27. **NOTICE OF INTENT TO AWARD:** Notices of the City's intent to award a contract are posted to the Purchasing Division's website before 6:00 P.M. local Arizona time at least seven (7) calendar days before award. **It is the Respondent's responsibility to check the City of Mesa's Vendor Self Service portal at <https://vendor.mesaaz.gov/> to view Purchasing's Intent to Award notices.** This may be the only notification you will receive regarding the City's Intent to Award a contract related to this Solicitation.
28. **PROTESTS AND APPEALS:** If a Respondent or any person believes there is a mistake, impropriety, or defect in the Solicitation, believes the City improperly rejected its Response or believes the selected Response should not receive the City contract based upon a fact supported issue with the Solicitation or selected Respondent or otherwise protests the award to the Respondent, the Respondent may submit a written protest. All protests and appeals are governed by the City Procurement Rules ("Procurement Rules"). The rules surrounding protests and appeals may be found in Section 6 of the Procurement Rules which are located on the Purchasing Division website at <http://mesaaz.gov/business/purchasing>. Please see the Procurement Rules for more information on the submission of a protest and corresponding appeal rights; if there exist any discrepancy in this Section and the Procurement Rules, the language of the Procurement Rules will control.

**ADDRESS PROTESTS TO:**

Kristy Garcia

**ADDRESS APPEALS TO:**

Edward Quedens

## **INSTRUCTIONS**

Procurement Administrator  
20 East Main Street, Suite 450  
PO Box 1466  
Mesa, Arizona 85211-1466  
Fax: (480) 644-2655  
Email: [Kristy.Garcia@MesaAZ.gov](mailto:Kristy.Garcia@MesaAZ.gov)

Chief Procurement Officer  
20 East Main Street, Suite 450  
PO Box 1466  
Mesa, Arizona 85211-1466  
Fax: (480) 644-2687  
Email: [Ed.Quedens@MesaAZ.gov](mailto:Ed.Quedens@MesaAZ.gov)

29. **POLICY DOCUMENTS:** The City of Mesa Charter, Code, Procurement Rules, and Management Policy 200 govern this procurement and are incorporated as a part of this Solicitation by this reference. A copy of these documents may be found on Mesa Purchasing Division's website at [www.mesaaz.gov/business/purchasing](http://www.mesaaz.gov/business/purchasing).



20 E Main St Suite 450  
PO Box 1466  
Mesa, Arizona 85211-1466

April 18, 2023

Elizabeth Best  
Fowler/St.Clair  
8655 E. Via De Ventura, Suite G-225  
Scottsdale, AZ 85258  
**Sent via email to:** [clerk@fowlerstclair.com](mailto:clerk@fowlerstclair.com)

Matthew Mansour, Owner  
AquaCrossings LLC  
1818 W. 4<sup>th</sup> St.  
Tempe, AZ 85016  
**Sent via email to:** [Matthew@aquacrossings.com](mailto:Matthew@aquacrossings.com)

Subject: City of Mesa Response to Protest; Solicitation No. 2023217 ("RFP")  
Dead Animal Collection Services

Dear Ms. Best,

This letter is submitted to you following the City of Mesa Procurement Rules ("Procurement Rule(s)") Section 6.3 and will serve as the City of Mesa's ("City") response to your letter received by email on April 6, 2023, in which AquaCrossings protests the cancellation of Solicitation 2023217 and request it is awarded to AquaCrossings ("Protest"). To issue this response to the Protest, City reviewed the claims made in the protest and discussed the claims with City staff. City responds to each claim made by AquaCrossings in the Protest as follows:

**Claim #1:** In March, the City published a Notice of Solicitation to request bids for a contract with the City to provide dead animal collection services. Aqua fully complied with all applicable requirements listed in the Notice and submitted its bid on March 28, 2023. Later that day, Aqua was on the response reading call for the bids, at which point it learned that it had the lowest bid and would be awarded the Contract. However, on April 4, 2023, Aqua was informed that the City decided to add a requirement for a state license that was not listed on the original Notice and cancel the original solicitation. Aqua requests that the contract still be awarded to Aqua.

**City Response:** The City did conduct the bid opening/reading on March 28, 2023. Results, as read at the public opening, are not official results and do not guarantee a bid award to the lowest-priced Respondent. Results are subject to review for compliance with specifications and correction of mathematical errors (if applicable). A Notice of Intent to Award (NOITA) which is an official notice to all respondents is posted to the Purchasing Division's website at least seven (7) calendar days before the award. This NOITA was never done. Before any award recommendation, the City discovered the solicitation did not provide for consideration of all factors of significance to the City. City was not aware of the State of Arizona Biohazardous Medical Waste Transporter License requirement. Because of this requirement and inadequate specifications, the solicitation was canceled, City specifications and requirements were updated to include the state license requirement, and the solicitation was re-issued.

**Claim #2:** It is our understanding that after the closing of the solicitation time period, the City was informed that there was an additional state license that would be required for performing the Services: the Arizona Department of Environmental Quality ("AZDEQ") Biohazardous Medical Waste Transport License (the "State License"). Again, the State License was never mentioned in the original Notice and was not added as a requirement until after the due date and response reading on March 28, 2023. Had Aqua been informed that the State License was required or needed, it would have obtained the State License prior to submitting its Bid. Instead, Aqua was notified that the City was cancelling the Solicitaion due to the State License requirements, instead of giving Aqua time to obtain it to comply with Arizona law.

**City Response:** The City was not aware of an additional state license requirement until after the solicitation opening. The state license was never mentioned in the original solicitation and was not added as a requirement because we were not made aware of it until after the solicitation opening. If City had known of this requirement before the solicitation opening, City would have issued an Addendum to the solicitation adding this requirement. Because it was discovered after the solicitation opening, and to be open, fair, and transparent to all vendors, the only solution was to cancel the solicitation, update the requirements and issue a new solicitation with the correct requirements.

**Claim #3:** Under the City of Mesa Procurement Rules ("Procurement Rules"), Paragraph 4.23 covers the Cancellation of Solicitation After Due Date. This paragraph lays out what happens when the City decides that after the due date, but before the award, it may cancel the Solicitation and reject all of the responses, if cancellation is in the best interest of the City. The paragraph then lists seven (7) reasons that would apply (which is not a conclusive list). None of those reasons apply here. Aqua fully complied under the original Notice and would have been awarded the Contract, but for the new requirement for the State License.

**City Response:** The determination to cancel the Solicitation After Due Date, but before Award is in the best interest of the City for the following reasons which do apply here. Procurement Rules, Paragraph 4.23, A. 2. Ambiguous or otherwise inadequate Specifications were part of the Solicitation, and Paragraph 4.23, A. 3. The Solicitation did not provide for consideration of all factors of significance to the City. Even though Aqua fully complied under the original Notice they did not meet the requirements of the revised Specifications. Because of this new requirement that the City was not aware of until after the Solicitation opening it was in the best interest of the City to cancel and rebid with the correct Specifications and requirements. The new Solicitation now allows Aqua the time needed to get the required State license and comply with the new requirements.

**Claim #4:** Additionally, Procurement Rule 4.27 covers extending the response time for a solicitation. This Rule states, in part, that "after the Due Date, the Procurement Officer may request from any or all of the Respondents that they extend the time for the Response to remain firm in order for the City to have additional time to evaluate and Award a Contract." Thus, the City could have (and should have) extended the time to make a decision, and request that any company that had submitted a bid be given the opportunity to obtain the State License as an additional requirement.

**City Response:** This rule applies to the time needed to evaluate responses and make an award after the solicitation opening. Refer to Item 9. of the Solicitation Instructions. This rule applies to needing more than the original 180 days needed to evaluate a response. Additional time was not required in this situation.

**Claim #5:** As such, instead of cancelling and redoing the bidding process for the Contract, the City should allow Aqua the opportunity to be considered with its State License. Aqua has already submitted its application to AZDEQ, and once Aqua obtains the State License, it will be able to fully perform under the Contract. It is not equitable or fair to Aqua to make them re-bid when they would have won the Bid but for the State License requirement, which was not part of the original Notice. It is nonsensical to cancel the award of the Contract for a requirement that was never listed. Had the State License been listed originally on the Notice, Aqua would have obtained it prior to submitting its Bid.

**City Response:** It has always been Procurement best practice and precedent to cancel and rebid a solicitation when this type of situation happens. It is not equitable or fair to other vendors who may not have bid. It is not best practice to change requirements or specifications after a solicitation opening. We acknowledge our mistake in not including the State license requirement but we were not aware of it at the time. Because it was discovered after the Solicitation opening our experience and legal advice was to cancel, correct, and re-issue the solicitation.

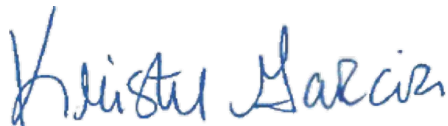
After reviewing the allegations in the Protest, City did not find a valid basis to protest this solicitation. For the aforementioned reasons, your Protest is denied. According to Procurement Rules Section 6.4, you may appeal this decision within seven (7) calendar days to the Chief Procurement Officer.

The City of Mesa Procurement Rules is available at <https://www.mesaaz.gov/business/purchasing> under Policy Documents.

Please address all correspondence to:

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City of Mesa  
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Sincerely,



Kristy Garcia, NIGP-CPP, CPPO, CPPB  
Procurement Administrator