



Request for Proposals
 Solicitation No.
ADSP018-00007994
 Description:
Professional Services for Arizona State Land Department

Arizona Department of Administration
State Procurement Office
 100 N 15th Ave., Suite 402
 Phoenix, AZ 85007

Attachment 1
Offer and Acceptance Form

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide **Professional Services for Arizona State Land Department** in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below.

| | | | | | | | |
|------------------------------|----|---------|---------|---------|---------|---------|---------|
| Initial Offer: | 1. | 5/23/18 | DB | | | | |
| | | date | initial | | | | |
| Revised Offers: | 2. | | | 3. | | 4. | |
| | | date #1 | initial | date #1 | initial | date #1 | initial |
| | 5. | | | 6. | | 7. | |
| | | date #4 | initial | date #5 | initial | date #6 | initial |
| Best and Final Offer: | 8. | | | | | | |
| | | date | initial | | | | |

| | | | | |
|-------------------------------------|--|--|--|----------------------|
| AECOM Technical Services, Inc. | | <i>DB</i> | | DB |
| Offeror company name | | Signature of person authorized to sign Offer | | Initials |
| 7720 N. 16th Street, Suite 100 | | Don Brice, Vice President | | |
| Address | | Printed name and title | | |
| Phoenix, Arizona, 85020 | | Marianne Burrus, Project Manager | | |
| City State ZIP | | Contact name and title | | |
| 95-2661922 | | marianne.burrus@aecom.com | | |
| Federal tax identifier (EIN or SSN) | | Contact Email Address | | Contact phone number |

CERTIFICATION: By signature in the above, Offeror certifies that it:

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER: State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by number _____ at the top of this form, and which was dated (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from Procurement Officer.

State's Contract No. is: **ADSP018-207062**

The effective date of the Contract is: **August 1, 2018** **Contract awarded: July 10, 2018**

| | | | |
|-------------------------------|--|----------------------------------|--|
| <i>R. Advani</i> | | <u>Rocky Advani</u> | |
| Procurement Officer signature | | Procurement Officer printed name | |



Douglas A. Ducey
Governor

Gilbert Davidson
Chief Operating
Officer and Interim
Director

ARIZONA DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT OFFICE

100 NORTH FIFTEENTH AVENUE • SUITE 402
PHOENIX, ARIZONA 85007

(602) 542-5511 (main)
<http://spo.az.gov>

Sent via e-mail to: marianne.burrus@aecom.com
June 27, 2018

Re: Award of Contract for Solicitation No.ADSPO18-00007994 for Professional Services for Arizona State Land Department

Dear Marianne,

Thank you for submitting a response to the Request for Proposal Solicitation No. ADSPO18-00007994 for Professional Services for Arizona State Land Department. I am pleased to inform you that your company's offer has been selected for award for the following work streams.

| | <u>Awarded</u> |
|-------------------------------|----------------|
| Planning | |
| Engineering | X |
| Archaeology | X |
| Environmental Site Assessment | X |
| GIS | |
| Hydrology | |
| Land Surveying | |

The initial contract term shall begin on **August 1, 2018**

All offers received were evaluated in accordance with the evaluation criteria set forth in the solicitation document. The procurement file for this solicitation, including evaluation documents and resultant contracts, will be shortly available for public viewing via the State's e-Procurement system, ProcureAZ.

In accordance with Special Terms and Conditions, Section 6.2 of the contract and prior to beginning work under the contract, your company is required to submit a Certificate of Insurance to the State Procurement Office if you have not already done so. The certificate of insurance shall indicate that your company is in compliance with insurance requirements contained in the contract. **Please submit your certificate of insurance to me no later than July 25, 2018**

You are cautioned not to begin any work under this new contract until the Procurement Officer assigned to your contract has issued a written notice to proceed.

If you have any questions regarding your company's contract, please contact me at rocky.advani@azdoa.gov or 602.542.0100. Thank you for your response and for your continued interest in doing business with the State of Arizona.

Sincerely,

Rocky Advani
State Procurement Manager



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Part 2: Scope, Pricing and Terms and Conditions

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SECTION 2-A: Scope of Work

1. STATEMENT OF NEED

The State of Arizona (hereinafter referred to as the State), is seeking to establish a comprehensive statewide term contract for Professional Services for the Arizona State Land Department; Any contract resulting from this Request for Proposal shall become a statewide contract for use by all State agencies, counties, municipalities, school districts, and other political subdivisions, herein after referred to as Using Entity.

To ensure statewide coverage, it is the State's intent to award multiple contracts to establish a pool of Vendors. The selection of Vendors from the pool to provide these services for an assignment will be determined by the Using Entity.

The Using Entity makes no guarantee as to the amount of work that will be available to any given Vendor during the term of this contract.

Vendors are requested to bid on any of the workstreams/modules they have capability in performing

WORKSTREAMS

1. PLANNING
2. ENGINEERING
3. ARCHAEOLOGY
4. ENVIRONMENTAL SITE ASSESSMENT
5. GIS
6. HYDROLOGY
7. LAND SURVEYING



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1.0 PLANNING

1. INTRODUCTION & BACKGROUND:

1.1 The purpose of this solicitation is develop a list of qualified firms and/or individuals that are able to provide a range of services related to planning and zoning. These services will be utilized by the Arizona State Land Department, hereafter referred to as the "State Agency" on an as needed, if needed basis. Submitting under this contract does not guarantee work and additional information may be required before a project is assigned.

2. GENERAL REQUIREMENTS:

2.1 The Contractor shall have the capacity, requisite experience and expertise necessary to provide consulting services in conjunction with planning and zoning studies, and actions.

2.2 The Contractor shall be able to successfully complete the assigned project (task and subtasks). To that end, the Contractor may elect to utilize the services of one (1) or more pre-approved Subcontractors. In the performance of the services specified in this solicitation, the Contractor shall expressly understand and agree that a contract exists between the Contractor and the State Procurement Office as evidenced by the submission of the Offer and Acceptance portion of its proposal submitted under this solicitation.

2.2.1 The Contractor will interface directly with the State Agency that is responsible for the administration and oversight of this contract. Additionally, the Contractor shall provide representatives of the State Agency access to its records, reports, related information and activities provided under the terms of this contract.

3. SPECIFIC REQUIREMENTS:

3.1 Any GIS work performed under this contract shall conform to the Agencies most current GIS standards. A copy of the standards as of the date of this solicitation is attached for information purposes; however, contractors will obtain the most current standards from the State Agency prior to beginning work on a project that requires GIS.

3.2 The performance of Planning and Zoning Studies and actions shall include, but are not limited to, the following subtasks:

- 3.2.1 Draw Conceptual Plans Utilizing Agency GIS Standards as outlined above
- 3.2.2 Draw Development Lotting Plans
- 3.2.3 Draw Specific Site Lotting Plans
- 3.2.4 Prepare and Process Planning and Zoning Applications
- 3.2.5 Prepare and Process General/ Comprehensive Plan Amendments
- 3.2.6 Conduct Special Planning Studies as determined by the State Land Commissioner

3.3 Make Presentations to Urban Land Planning Oversight Committee, State Agency Staff, City Staff and/or Appropriate Jurisdictions, and stakeholders

3.4 Prepare or Review and Critique Traffic, Drainage, Engineering, Landscape Plans, Design Guidelines and Related Studies

3.5 Attend Pre-Application Conferences and Public Hearings
Conduct and/or attend Stakeholder Meetings

3.6 Within fifteen (15) days after the award contract, submit written notification to the State Agency identifying the name, title, address, e-mail address, telephone and facsimile numbers of the individual, within its organization, who is designated as the Contractor's authorized representative.

3.6.1 The individual named will receive all correspondence, official notices, information related to the Contractor's performance, or that of its designated Subcontractor, and all other pertinent information as it relates to this contract.



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- 3.6.2 The Contractor shall have the right to change or substitute the name of the authorized representative as long as it provides written notification to the state Agency, by e-mail or facsimile, a minimum of five (5) calendar days in advance of the change or substitution.
- 3.6 When a project is assigned, the Contractor shall immediately provide the State Agency confirmation in writing, by e-mail or facsimile, the name of the individual assigned as the project manager with the understanding that the project manager shall be responsible and accountable for the planning, conduct, progress, and successful completion of the specific subtasks to be performed.
- 3.6.1 The Contractor shall understand and agree that the project manager it names is expected to have the ability and authority to make decisions and commitments on behalf of the Contractor.
- 3.7 Prior to the initiation of work, the Contractor may be requested to submit a proposal for a specific project and/or attend a meeting with State Agency representatives to discuss specific project, and subtask objectives, procedures, methods, materials, staffing, deliverables, completion dates, project costs, and other matters that are pertinent to the conduct and successful completion of the defined project and subtasks within the designated time frame.
- 3.8 At the request of the State Agency, the Contractor shall provide a written summary containing information that pertains to all major aspects of the designated project and subtasks. If utilizing the services of a Subcontractor, the Contractor shall specify which subtasks, or portions thereof, the Subcontractor will perform. Additionally, the Contractor shall include a statement certifying that the Contractor, and Subcontractor where utilized, has no interest, vested or otherwise, in the specific property or nearby property upon which the project is based.
- 3.8.1 Once approved by the State Agency, all parties concerned will then have a clear understanding of all service requirements, subtasks to be performed and by whom (key personnel of the Contractor or Subcontractor where appropriate), and the specific time frame within which the assigned project is to be successfully completed.
- 3.9 The Contractor shall submit written progress on a timeline determined by the State Agency project manager, and final reports, signed by the Contractor or the Contractor's designated representative, as required by the State Agency. In some instances, however, the Contractor may be directed to provide an oral progress report.
- 3.9.1 The State Agency shall establish the report format and have final approval of the report content, frequency, and submission deadline. The content of such reports may include, but is not limited to, the following:
- 3.9.1.1 project title and period covered from start to finish
- 3.9.1.2 a description of the work performed (identifying subtasks performed)
- 3.9.1.3 outcomes/findings or accomplishments to date and percent of project completed
- 3.9.1.4 problems encountered, specific steps taken (or recommended) to resolve them, and the short and long term impact these problems have had on the project
- 3.9.1.5 conformance to the approved project schedule
- 3.9.1.6 expenditure to date
- 3.9.1.7 subtasks for the next period
- 3.9.1.8 other recommendations and/or relevant comments
- 3.9.2 Unless otherwise specified by the State Agency, progress reports shall be submitted by the tenth (10th) of each month during the life of the project. All work documents (e.g., reports, research notes, charts, graphs, analyses, computer programs, etc.) is considered to be the property of the State and as such shall be submitted to the State Agency as requested.
- 3.10 The Contractor shall, upon the direction of the State Agency, provide a deposition and/or testimony in court or before the State Land Department's Board of Appeals concerning the work performed under this contract.
- 3.10.1 The Contractor shall receive approval from the State Agency before commencement of preparation work for a hearing or court action. The Contractor will be compensated for the



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provision of testimony, preparation work, and/or deposition related to the court of Board appearance.

3.11 Unless otherwise directed by the State Agency, the Contractor shall provide the State Agency with digital copies in a format compatible with the State Agency Software, and an original and ten (2) copies of each report prepared under this contract by the designated due date. Changes to the narrative report format and content, from that listed below, shall require the prior approval of the State Agency.

3.11.1 Conceptual Plan Report content shall include, but is not limited to, the following:
3.11.1.1 Title page that states: 1) location of the property; 2) name of the contractor; and, 3) date of the report.

3.11.1.2 Table of Contents/List of Figures, Charts and Tables

3.11.1.3 Introduction

3.11.1.4 Explanation of Data Gathering and Mapping Procedures

3.11.1.5 Site Suitability/Needs Analysis

Land Use Alternatives number to be determined prior to work and agreed to by the project manager.

3.11.1.6 Explanation of Rationale for The Land Use Alternatives and Associated Maps

3.11.1.7 Explanation of Rationale for Preferred Land Use Alternatives and Associated Map

3.11.1.8 Appendix Containing Data Layer Maps, Socioeconomic Data and Other Maps/Information Deemed Necessary by the Land Department

3.12.1 Development Plan Report content shall include, but is not limited to, the following:

3.12.1.1 Title Page that states: 1) location of property or project name; 2) development plan statement from ARS 37-334; and, 3) State Land Commissioner signature line and approval date line.

3.12.1.2 Letter of Transmittal

3.12.1.3 Secondary Title Page stating name of the Contractor

3.12.1.4 Table of Contents/List of Figures, Charts, and Tables

3.12.1.5 Introduction

3.12.1.6 Site and Area Analysis Summary

3.12.1.7 Market Analysis/Marketability Studies Summaries (if required by the project scope of work)

3.12.1.8 Explanation of Rationale of Alternative Plans and Associated Maps

3.12.1.9 Proposed Development Plan and Rationale for Preferred Alternative

3.12.1.10 Summary

3.12.1.11 Zoning Stipulations and Associated Maps

3.12.1.12 Local Zoning Ordinance Information

3.12.1.13 Phasing Plan

3.12.1.14 Plat per most current State Agency specifications

3.12.1.15 Appendix

3.13.1 Specific site/lotting plans will vary depending on project location, size and local jurisdiction requirements.

3.14.1 General Plan Amendments and Zoning/Rezoning Applications are dependent upon local jurisdiction requirements.

3.15.1 Special studies as determined by the State Land Commissioner.

4. STATE AGENCY RESPONSIBILITIES:

4.1 Define the level of service(s) to be provided then, where necessary, request a scope of work from the Consultant and attend a meeting with the Contractor to discuss the specific details of the project, reach an agreement with the contractor regarding all aspects of the service(s) to be provided, including a time line for the project and dates for deliverables.



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- 4.2 Review and approve, with or without noted changes, detailed written project information provided by the contractor to insure a clear understanding of all aspects of the services to be performed. This will include, but is not limited to, areas such as: key personnel assigned, time frames, prior approval for reimbursable travel related costs, and project costs prior to the commencement of services.
 - 4.2.1 Review and approve credentials of proposed key personnel provided by the contractor or subcontractor, as well as the credentials of temporary or permanent replacements prior to the start date for said personnel on the project.
 - 4.2.2 Work closely with the contractor concerning changes in key personnel regardless of which party is requesting the change in personnel.
 - 4.2.3 Clearly indicate to the contractor which sub-tasks are required for the successful completion of the assigned task(s).
 - 4.2.3.1 If any sub-task, listed in the service requirements is to be eliminated or substituted, insure this is clearly communicated to the contractor in writing.
- 4.3 Establish the report format and approve the final content, frequency, and deadline for progress and/or final reports as described herein.
- 4.4 Assign a specific individual to provide oversight and contract administration for all services provided by the contractor for a specific project (tasks and subtasks).
 - 4.4.1 This individual shall be responsible for insuring that all aspects of the project are conducted in accordance with stated requirements, including time frames and reports, changes required by the State Agency, or the actions that impact the contractor.



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2.0 ENGINEERING

1. INTRODUCTION & BACKGROUND:
 - 1.1 The purpose of this solicitation is to develop a list of qualified firms and/or individuals that are able to provide a range of services related to engineering consulting services. These services will be utilized by the Arizona State Land Department, hereafter referred to as the "State Agency" on an as needed, if needed basis. Submitting under this contract does not guarantee work and additional information may be required before a project is assigned.

2. GENERAL REQUIREMENTS:
 - 2.1 The Contractor shall have the capacity, requisite experience and expertise necessary to provide consulting services in conjunction with engineering review and design.
 - 2.2 The Contractor shall have the ability to successfully complete the assigned project (task and subtasks). To that end, the Contractor may elect to utilize the services of one (1) or more pre-approved Subcontractors.
 - 2.3 In the performance of the services specified in this solicitation, the Contractor shall expressly understand and agree that a contract exists between the Contractor and the State Procurement Office as evidenced by the submission of the Offer and Acceptance portion of its proposal submitted under this solicitation.
 - 2.3.1 The Contractor will interface directly with the State Agency that is responsible for the administration and oversight of this contract. Additionally, the Contractor shall provide representatives of the State Agency access to its records, reports, related information and activities provided under the terms of this contract.

3. SPECIFIC REQUIREMENTS:
 - 3.1 Any Geographic Information System (GIS) work performed under this contract shall conform to the State Agency's most current GIS standards. A copy of the standards as of the date of this solicitation is attached for information purposes; however, Contractors shall obtain the most current standards from the State Agency prior to beginning work on a project that requires GIS.
 - 3.2 The performance of Engineering Studies and actions shall include, but are not limited to, the following
 - 3.3 The ideal candidate firm will have the internal capacity to carry out the engineering-related tasks listed below, and to conduct 3rd-party reviews of the work products listed below and prepared by others. In cases involving specialized knowledge such as Clean Water Act Section 404 permitting, candidate firms may propose to utilize sub consultants with that specialization. This list is subject to revision.
 1. Drainage
 - a. Hydrology & Hydraulics-Develop Existing Conditions drainage exhibit identifying all FEMA floodplains, off-site flows and their conveyance through project site. Aerial and drainage studies and master plans will be reviewed in the project vicinity. Ability to prepare master drainage study, plan based on hydrologic and hydraulic analysis. Analysis conducted utilizing latest software such as HEC HMS, HEC RAS, FLO 2D.
 2. Floodplains: ability to map existing floodplains and ability to delineate new floodplains and prepare CLOMR/LOMR submittals for regulatory agency review and approval.
 3. Transportation Infrastructure
 - a. Prepare a master street plan based on existing roadway network in the vicinity. Also, the ability to design a system of arterial streets to support proposed conceptual site plan.
 - b. Prepare preliminary traffic demands and/or Traffic Impact Study (TIS) that support proposed conceptual site plan.



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4. Water and Wastewater Infrastructure
 - a. Prepare a master water and wastewater plan based on existing lines. Evaluate capacity of existing service lines and treatment plants. Evaluate potential water supply sources and water and wastewater providers. Ability to design water and wastewater distribution system utilizing latest engineering software.
 5. Dry Utility Infrastructure
 - a. Prepare a master dry utility plan based on existing lines. Evaluate capacity of existing dry utilities and service infrastructure. Evaluate potential dry utility providers. Ability to design dry utility distribution system utilizing latest engineering software.
 6. Plans and Mapping: Prepare and deliver site plans, improvement plans and other mapping products to ASLD in hard copy and electronic files in editable industry-standard CAD and/or GIS software, including:
 - a. Topography and contours
 - b. Aerial imagery
 7. Site Planning and Development
 - a. Ability to identify existing conditions, opportunities and constraints to site planning and development
 - b. Design and development of conceptual grading, drainage and lotting plans
 - c. Design and development of conceptual road and utility infrastructure
 - d. Utilize the plans listed above to estimate Development Impact Fees and available Fee Credits
 - e. Preparation of Development Cost Estimates
 - f. Conduct Geotechnical investigations and prepare reports of findings
 - g. Conduct Biological resource investigations and prepare reports of findings
 - h. Disposition phasing
 8. Survey
 - a. Legal Descriptions (text and depictions)
 - b. Title Reports
 - c. ALTA Survey
 9. Clean Water Act Section 404 Permitting
 - a. Preliminary and Approved Jurisdictional Determinations
 - b. Significant Nexus Analysis
 - c. Compensatory Mitigation Analysis
 - d. Mitigation measures and monitoring
-
- 3.4 Prepare or Review and Critique Traffic, Drainage, Engineering, Landscape Plans, Design Guidelines and Related Studies
 - 3.5 Attend Pre-Application Conferences and Public Hearings
 - 3.6 Conduct and/or attend Stakeholder Meetings
 - 3.7 When a project is assigned, the Contractor shall immediately provide the State Agency confirmation in writing, by e-mail or facsimile, the name of the individual assigned as the project manager with the understanding that the project manager shall be responsible and accountable for the planning, conduct, progress, and successful completion of the specific subtasks to be performed.
 - 3.7.1 The Contractor shall understand and agree that the project manager it names is expected to have the ability and authority to make decisions and commitments on behalf of the Contractor.
 - 3.8 Prior to the initiation of work, the Contractor may be requested to submit a proposal for a specific project and/or attend a meeting with State Agency representatives to discuss specific project, and subtask objectives, procedures, methods, materials, staffing, deliverables, completion dates, project costs, and other matters that are pertinent to the conduct and successful completion of the defined project and subtasks within the designated time frame.
 - 3.9 At the request of the State Agency, the Contractor shall provide a written summary containing information that pertains to all major aspects of the designated project and subtasks. If utilizing the services of a Subcontractor, the Contractor shall specify which subtasks, or portions thereof, the



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- Subcontractor will perform. Additionally, the Contractor shall include a statement certifying that the Contractor, and Subcontractor where utilized, has no interest, vested or otherwise, in the specific property or nearby property upon which the project is based.
- 3.9.1 Once approved by the State Agency, all parties concerned will then have a clear understanding of all service requirements, subtasks to be performed and by whom (key personnel of the Contractor or Subcontractor where appropriate), and the specific time frame within which the assigned project is to be successfully completed.
- 3.10 The Contractor shall submit monthly written progress, and final reports, signed by the Contractor or the Contractor's designated representative, or on a timeline determined by the State Agency project manager. In some instances, however, the Contractor may be directed to provide an oral progress report.
- 3.11 The State Agency shall establish the report format and have final approval of the report content, frequency, and submission deadline. The content of such reports may include, but is not limited to, the following:
- 3.11.1 project title and period covered from start to finish
 - 3.11.2 a description of the work performed (identifying subtasks performed)
 - 3.11.3 outcomes/findings or accomplishments to date and percent of project completed
 - 3.11.4 problems encountered, specific steps taken (or recommended) to resolve them, and the short and long term impact these problems have had on the project
 - 3.11.5 conformance to the approved project schedule
 - 3.11.6 expenditure to date
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 - 3.11.8 other recommendations and/or relevant comments
- 3.12 Unless otherwise specified by the State Agency, progress reports shall be submitted by the tenth (10th) of each month during the life of the project. All work documents (e.g., reports, research notes, charts, graphs, analyses, computer programs, etc.) is considered to be the property of the State and as such shall be submitted to the State Agency as requested.
- 3.13 The Contractor shall, upon the direction of the State Agency, provide a deposition and/or testimony in court or before the State Land Department's Board of Appeals concerning the work performed under this contract.
- 3.13.1 The Contractor shall receive approval from the State Agency before commencement of preparation work for a hearing or court action. The Contractor will be compensated for the provision of testimony, preparation work, and/or deposition related to the court of Board appearance.
- 3.14 Unless otherwise directed by the State Agency, the Contractor shall provide the State Agency with digital copies in a native file format compatible with the State Agency Software and in conformance with specifications as determined by the project manager. The Contractor shall submit an original hardcopy and a number of copies of each report prepared under this contract as determined by the State Agency project manager, by the designated due date. Changes to the narrative report format and content, from that listed below, shall require the prior approval of the State Agency.
4. STATE AGENCY RESPONSIBILITIES:
- 4.1 Define the level of service(s) to be provided then, where necessary, prepare a call for proposals or request and attend a meeting with the Contractor to discuss the specific details of the project, reach an agreement with the Contractor regarding all aspects of the service(s) to be provided, including a time line for the project and dates for deliverables.
 - 4.2 Review and approve, with or without noted changes, detailed written project information provided by the Contractor to insure a clear understanding of all aspects of the services to be performed. This will include, but is not limited to, areas such as: key personnel assigned, time frames, prior




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approval for reimbursable travel related costs, and project costs prior to the commencement of services.

- 4.2.1 Review and approve credentials of proposed key personnel provided by the Contractor or Subcontractor, as well as the credentials of temporary or permanent replacements prior to the start date for said personnel on the project.
 - 4.2.2 Work closely with the Contractor concerning changes in key personnel regardless of which party is requesting the change in personnel.
 - 4.2.3 Clearly indicate to the Contractor which sub-tasks are required for the successful completion of the assigned task(s).
 - 4.2.4 If any sub-task listed in the service requirements is to be eliminated or substituted, insure this is clearly communicated to the contractor in writing.
- 4.3 Establish the report format and approve the final content, frequency, and deadline for progress and/or final reports as described herein.
- 4.4 Assign a specific individual to provide oversight and contract administration for all services provided by the Contractor for a specific project (tasks and subtasks).
- 4.4.1 This individual shall be responsible for insuring that all aspects of the project are conducted in accordance with stated requirements, including time frames and reports, changes required by the State Agency, or the actions that impact the Contractor.

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3.0 ARCHAEOLOGY

1. INTRODUCTION & BACKGROUND:

This is a multi-year Contract for the Environmental Site Assessments. This contract shall be utilized by other state agencies as needed.

2. DEFINITIONS

a. ACCEPTED STANDARD

Shall mean a method or technology whose performance has withstood professional scrutiny and is currently employed successfully at sites contaminated with hazardous or regulated substances.

b. ARAR

Shall mean Applicable or Relevant and Appropriate Requirements. Is used to initiate identification of ARARs that may affect remedy selection.

c. A.R.S. TITLE 41-861, HISTORIC PRESERVATION ACT

Applicable Arizona Administrative Code (AAC) rules. The definitions within this document and the Arizona Revised Statutes and appropriate rules shall provide for a first interpretation of all definitions and terms.

d. BEST MANAGEMENT PRACTICES

Shall mean a method or combination of methods that is used in the treatment; storage and disposal of a pollutant and that achieves the maximum practical cost effective protection of public health and/or the environment.

e. CONSULTANT

Shall mean a highly-specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.

f. CONTRACT OFFICER REPRESENTATIVE

Authorized representative of State Procurement Office that is responsible for administering a contract and monitoring the contractor's performance

g. ENGINEERING EVALUATION & COST ANALYSIS (EE/CA)

Shall mean the analysis of removal alternatives for an area in accordance with EPA guidance document, "Guidance on Conducting Non-Time-Critical Removal Actions Under Cercla" EPA 540-R- 93-057, August 1993 or as delineated in the Task Order

h. ENVIRONMENTAL IMPACT AREAS

Shall mean an area contaminated by a pollutant or by criminal littering, or causing an environmental nuisance, health or safety hazard.

i. ENVIRONMENTAL SITE ASSESSMENT (ESA)

Shall mean overall property evaluation process. Due diligence study, investigation, characterization and evaluation of an area, and/or Phase I & II ESA to ASTM standards stamped by an Arizona Professional Engineer or Registered Geologist to meet the Environmental Protection Agency requirements of the Innocent Landowner Defense

j. FEASIBILITY STUDY



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Analysis of the practicability of a proposal; e.g., a description and analysis of potential cleanup alternatives for a site. The feasibility study usually recommends selection of a cost-effective alternative. It usually starts as soon as the remedial investigation is underway; together, they are commonly referred to as the RI/FS

k. **KEY PERSONNEL**

Shall mean those persons whose experience and knowledge is professional in nature as opposed to clerical. Professional work is that which is predominantly intellectual, varied in character (as opposed to routine, manual, mechanical or physical), and involves the consistent exercise of discretion and judgment in the theoretical principles and techniques of a recognized field of science or learning

l. **REMEDIAL ACTION (RA)**

The actual construction or implementation phase of a site cleanup that follows remedial design

m. **REMEDIAL DESIGN (RD)**

A phase of remedial action that follows the remedial investigation/feasibility study and includes development of engineering drawings and specification for a site cleanup

n. **REMEDIAL INVESTIGATION (RI)**

An in-depth study designed to gather data needed to determine the nature and extent of contamination at a site; establish site cleanup criteria; identify preliminary alternative for remedial action; and support technical and cost analyses of alternatives. The remedial investigation is usually done with the feasibility study. Together they are usually referred to as the "RI/FS"

o. **REMEDICATION**

Cleanup or other methods used to remove or contain a toxic spill or hazardous materials from a site

3.0 **SCOPE REQUIREMENTS**

3.1 **SCOPE SUMMARY**

Firm must have and maintain a valid Arizona State Museum (ASM) Arizona Antiquities Act (AAA) Blanket Permit to conduct cultural resources survey throughout the term of the contract. Projects may be located throughout Arizona. Projects must be overseen by an ASM-permitted Principal Investigator. Any fieldwork shall be supervised by an ASM-permitted Project Director. Services required may include Class I records searches/literature reviews, Class III pedestrian survey, archaeological site eligibility testing, and data recovery. Reporting of results shall conform to ASM, State Historic Preservation Office (SHPO), and ASLD guidelines. Any identified cultural resources shall be assessed regarding eligibility to the Registers, and recommendations regarding eligibility shall be made. An evaluation of the effect of the proposed project on each of the Register-eligible cultural resources shall be made. A draft report shall be submitted to the ASLD Cultural Resources Manager for review and comment. Final reports and consultation letters, prepared on ASLD letterhead, shall be submitted to the SHPO and applicable Indian tribes for consultation under the State Historic Preservation Act. Upon project completion, project shall be sent to the ASM for close-out per ASM guidelines.

3.2 **DELIVERY/SERVICE AREA**

This will be a Statewide contract

3.3 **DETAILED SCOPE REQUIREMENTS**

3.3.1 **Prior to Conducting Fieldwork:**

- The consultant will ensure that all required permits are in effect and all required notifications are made.



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- The consultant will request a map that defines the Area of Potential Effects (APE)/ project area for the undertaking from the Pima County Office of Sustainability and Conservation's Cultural Resources and Historic Preservation Division (OSC). OSC/ASLD will define the APE for the undertaking.

3.3.2 Need:

- A non-collection Class III surface inventory survey of the project area.
- Documentation of any cultural resources in the project area and recommendations regarding eligibility of each cultural resource to the Arizona and National Register of Historic Places (ARHP/NRHP/Registers).

3.3.3 Scope:

- An archaeological Class III inventory survey of the project area shall be conducted.
- All fieldwork and recording shall be conducted subject to the provisions of the consultant's current permits and shall be to ASLD, Arizona State Museum (ASM), and State Historic Preservation Office (SHPO) current standards.
- The cultural resources report shall conform to current ASLD, ASM and SHPO reporting standards, and shall be adequate for consultation under state law between ASLD and SHPO.
- Any identified cultural resources shall be assessed regarding eligibility to the Registers, and recommendations regarding eligibility shall be made.
- An evaluation of the effect of the proposed project on each of the Register-eligible cultural resources shall be made (if specific undertaking is known).
- The consultant is required to research ASLD-specific requirements for Class III surveys.


3.3.4 Deliverables:

- A draft (complete version) report (1 PDF copy), and a draft (redacted version- redacted of all information pertaining to the location of archaeological properties) report (1 PDF copy), both of which provide the results of the fieldwork and research, shall be submitted to OSC for review.
- A draft final (complete version) report (X bound paper copies) shall be submitted to OSC, with revisions based on comments on the draft, for submittal and review by ASLD.
- A final (complete version) report (X bound paper copies) shall be submitted to OSC, with revisions based on ASLD/SHPO comments on the draft final (complete version) report, if needed.
- A final (redacted version) report (X bound paper copies) shall be submitted to OSC following acceptance of the final (complete version) report by ASLD/SHPO). The title page of this document must state "REDACTED VERSION".
- A CD/DVD containing the following: 1 PDF copy of the final (complete version) report, 1 PDF copy of the final (redacted version) report, all associated project shapefiles (e.g. area surveyed, APE, archaeological sites, isolated occurrences, etc.).
- All deliverables shall contain the following confidentiality statement on the title page of all applicable documents, as well as on all maps which depict the locations of archaeological properties regardless of type or eligibility to the Registers:

STATEMENT OF CONFIDENTIALITY: Disclosure of the locations of historic properties to the public may be in violation of both federal and state laws. Applicable United States laws include, but may not be limited to, Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) and the Archaeological Resources Protection Act (16 U.S.C. §470hh). In Arizona, applicable state laws include, but may not be limited to, Arizona Revised Statute Title 39, Section 125.


3.4 STATE AGENCY RESPONSIBILITIES:

- 3.4.1 Define the level of service(s) to be provided then, where necessary, prepare a call for proposals or request and attend a meeting with the Contractor to discuss the specific details of the project,

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- reach an agreement with the Contractor regarding all aspects of the service(s) to be provided, including a time line for the project and dates for deliverables.
- 3.4.2 Review and approve, with or without noted changes, detailed written project information provided by the Contractor to insure a clear understanding of all aspects of the services to be performed. This will include, but is not limited to, areas such as: key personnel assigned, time frames, prior approval for reimbursable travel related costs, and project costs prior to the commencement of services.
- 3.5 Review and approve credentials of proposed key personnel provided by the Contractor or Subcontractor, as well as the credentials of temporary or permanent replacements

Unless otherwise directed by the State Agency, the Contractor shall provide the State Agency with digital copies in a native file format compatible with the State Agency Software and in conformance with specifications as determined by the project manager. The Contractor may submit an original hardcopy and a number of copies of each report prepared under this contract as determined by the State Agency project manager, by the designated due date. Changes to the narrative report format and content, from that listed below, shall require the prior approval of the State Agency

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4.0 ENVIRONMENTAL SITE ASSESSMENT

1. INTRODUCTION & BACKGROUND:

This is a multi-year Contract for the Environmental Site Assessments. This contract shall be utilized by other state agencies as needed.

2. DEFINITIONS

a. ACCEPTED STANDARD

Shall mean a method or technology whose performance has withstood professional scrutiny and is currently employed successfully at sites contaminated with hazardous or regulated substances.

b. ARAR

Shall mean Applicable or Relevant and Appropriate Requirements. Is used to initiate identification of ARARs that may affect remedy selection.

c. A.R.S. TITLE 49, THE ENVIRONMENT & A.R.S. TITLE 45, WATERS

Applicable Arizona Administrative Code (AAC) rules, and the U.S. Environmental Protection Agency, Terms of Environment, lists definitions and terms associated with this contract. The definitions within this document and the Arizona Revised Statutes and appropriate rules shall provide for a first interpretation of all definitions and terms.

d. BEST MANAGEMENT PRACTICES

Shall mean a method or combination of methods that is used in the treatment; storage and disposal of a pollutant and that achieves the maximum practical cost effective protection of public health and/or the environment.

e. CONSULTANT

Shall mean a highly-specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.

f. CONTRACT OFFICER REPRESENTATIVE

Authorized representative of State Procurement Office that is responsible for administering a contract and monitoring the contractor's performance

g. ENGINEERING EVALUATION & COST ANALYSIS (EE/CA)

Shall mean the analysis of removal alternatives for an area in accordance with EPA guidance document, "Guidance on Conducting Non-Time-Critical Removal Actions Under Cercla" EPA 540-R- 93-057, August 1993 or as delineated in the Task Order

h. ENVIRONMENTAL IMPACT AREAS

Shall mean an area contaminated by a pollutant or by criminal littering, or causing an environmental nuisance, health or safety hazard.

i. ENVIRONMENTAL SITE ASSESSMENT (ESA)

Shall mean overall property evaluation process. Due diligence study, investigation, characterization and evaluation of an area, and/or Phase I & II ESA to ASTM standards stamped by an Arizona Professional



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Engineer or Registered Geologist to meet the Environmental Protection Agency requirements of the Innocent Landowner Defense

j. FEASIBILITY STUDY

Analysis of the practicability of a proposal; e.g., a description and analysis of potential cleanup alternatives for a site. The feasibility study usually recommends selection of a cost-effective alternative. It usually starts as soon as the remedial investigation is underway; together, they are commonly referred to as the RI/FS

k. KEY PERSONNEL

Shall mean those persons whose experience and knowledge is professional in nature as opposed to clerical. Professional work is that which is predominantly intellectual, varied in character (as opposed to routine, manual, mechanical or physical), and involves the consistent exercise of discretion and judgment in the theoretical principles and techniques of a recognized field of science or learning

l. REMEDIAL ACTION (RA)

The actual construction or implementation phase of a site cleanup that follows remedial design

m. REMEDIAL DESIGN (RD)

A phase of remedial action that follows the remedial investigation/feasibility study and includes development of engineering drawings and specification for a site cleanup

n. REMEDIAL INVESTIGATION (RI)

An in-depth study designed to gather data needed to determine the nature and extent of contamination at a site; establish site cleanup criteria; identify preliminary alternative for remedial action; and support technical and cost analyses of alternatives. The remedial investigation is usually done with the feasibility study. Together they are usually referred to as the "RI/FS"

o. REMEDIATION

Cleanup or other methods used to remove or contain a toxic spill or hazardous materials from a site

3.0 SCOPE REQUIREMENTS

3.1 SCOPE SUMMARY

Contract services include performance of site management and site assessment. Services may include Phase I and II Environmental Site Assessments (ESAs) in accordance with current American Society of Testing Materials (ASTM) standards and U. S. Environmental Protection Agency (EPA) standards and/or guidelines. Some of the applicable ASTM standards are: E1527-13, E2247-08 and E1903-11. The objective is to provide Using Agencies assistance as specified in any Task Orders issued under this contract, in the identification and recommendations of corrective actions necessary to mitigate or eliminate the health and environmental dangers posed by various pollutants.

3.2 DELIVERY/SERVICE AREA

This is a Statewide Contract

3.3 DETAILED SCOPE REQUIREMENTS

3.3.1 Work Plan Preparation – **may include** the following documents:

1. Quality Assurance Project Plans (QAPP) or Sampling and Analysis Plans (SAP): This includes preparation of a QAPP or a SAP. A QAPP or a SAP is site specific and should be prepared in accordance with the Task Order, if applicable. The QAPP or a SAP may also include development of data quality objectives



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2. Health and Safety Plan (HASP). Field Sampling Plan (FSP) and Work plan: Prepare a site specific HASP and FSP. Both documents may be included as part of the Work plan
- 3.3.2 Work Plan – may include the following items:
 1. Locations of samples collected by all Contractors or Using Agency, which did investigations at the site
 2. A map or maps using all available data may include the following:
 - Concentrations of contaminants in soil;
 - Groundwater contaminant map with flow directions; and
 - Contour groundwater quality data if necessary;
 3. Soil sample summary table (showing laboratory analyses and sample depth);
 4. Groundwater data summary table (showing groundwater elevation and laboratory analyses);
 5. A historical evaluation of the property describing past site uses, if possible. The purpose of this task is to help gain a better understanding of the site to assist the Contractor in choosing sampling methods and locations.
 6. Remediation system design, installation, operation and maintenance
 7. Schedule of proposed work with times shown by units and not actual date.
- 3.3.3 Access: The Using Agency will be responsible for negotiating property access with the property owners. However, the Contractor may be requested to assist the Using Agency by providing back-up documentation, such as warranty deeds and any other information, which may be considered vital to obtaining access. The Contractor may be responsible for preparation of any required permits
- 3.3.4 Phase I Environmental Site Assessments: This activity includes conducting a Phase I ESA in accordance with ASTM current standards E 1527-13 and E2247-08, as applicable or as stated in the Task Order. Phase I ESA are intended to determine the existence of recognized environmental conditions hazards, identify environmental liabilities and/or provide a preliminary screening to facilitate the assignment of site priorities. The major activities include visual inspection of the site and surrounding areas, document reviews, database reviews, aerial photographic interpretation, Geological background study and/or recommendations and conclusions
- 3.3.5 Phase II Environmental Site Assessments: This activity includes conducting a Phase II ESA in accordance with ASTM standards, as applicable or as stated in the Task Order. A Phase II ESA is a site investigation/characterization that may to determine the nature and extent of contamination in any and all affected environmental media at the site. The major activities include characterization and description of soils, groundwater, surface water, air or other affected environmental media with respect to location, nature, extent of migration of contamination sources and their proximity to potentially impacted receptors; characterization of the hydro-geologic setting to determine most likely contaminant migration pathways and physical features that could affect potential remedial actions; and the gathering of data and information to the extent necessary and sufficient to help quantify risk to public health and all aspects of the environment
- 3.3.6 Contractor Support: This task includes providing support services to the Using Agency to plan, monitor and control all work issued under a Task Order. The Contractor shall be responsible for making sure that all work is completed in a timely, cost-effective and competent manner. This task includes the following types of support: Administrative; Technical and Professional.
- 3.3.7 Subcontractor Management Cost: Equipment rentals, commodities purchased, etc. which are directly required for the completion of the Task Order, and are approved by the Using Agency's



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Procurement Office or designee, shall be compensated at the actual cost of the services, rental fees, commodities purchased, etc. with no mark-up.


Administrative expenses for providing items such as insurance, bonds, equipment rentals, travel, per diem and incidental supplies (e.g. offices supplies, hardware supplies, petty cash, etc.), etc. shall be considered an administrative expense and shall not be used in computing the Subcontractor Management Cost

Subcontracted Services are defined as follows: e.g. well drillers, laboratory services, IDW containerization and transportation, utility locators, archaeologists, consultant services (i.e. community involvement, groundwater modeling risk assessors, etc.), and similar trade professions with the Using Agency's advance approval.

- 3.3.8 Project Documents: The Contractor shall devise, implement and maintain at the Contractor's place of business or project site, on a current basis, a structured document control system which includes and tracks records of all necessary contracts, shop drawings, samples, purchases, materials, equipment, operation and maintenance manuals and instructions, reports and any other documents and revisions thereto which arise out of the Task Order. These documents shall be readily available to the Using Agency any time during the performance of the Task Order.
- 3.3.9 Access Agreements and/or Consent Decrees: The Contractor shall comply with all requirements established in Access Agreements and/or Consent Decrees entered into between the Using Agency and current/former property owners/operators regarding the site. The Using Agency's Project Manager shall provide any relevant information to the Contractor. Additionally, the Contractor's Commercial General Liability Insurance shall be in conformance with the basic Contract provisions (Name of Landowner as provided by the Using Agency's Project Manager) and shall be named as additional insured, as their interests may appear for coverage on an occurrence basis for completed operations liability with an unlimited extended reporting period provision. The insurance certificate provided shall include the Using Agency's Project Manager Name and Task Order number for identification.

4. STATE AGENCY RESPONSIBILITIES:

- 4.1 Define the level of service(s) to be provided then, where necessary, prepare a call for proposals or request and attend a meeting with the Contractor to discuss the specific details of the project, reach an agreement with the Contractor regarding all aspects of the service(s) to be provided, including a time line for the project and dates for deliverables.
- 4.2 Review and approve, with or without noted changes, detailed written project information provided by the Contractor to insure a clear understanding of all aspects of the services to be performed. This will include, but is not limited to, areas such as: key personnel assigned, time frames, prior approval for reimbursable travel related costs, and project costs prior to the commencement of services.
5. Review and approve credentials of proposed key personnel provided by the Contractor or Subcontractor, as well as the credentials of temporary or permanent replacements
- 5.1 Unless otherwise directed by the State Agency, the Contractor shall provide the State Agency with digital copies in a native file format compatible with the State Agency Software and in conformance with specifications as determined by the project manager. The Contractor may submit an original hardcopy and a number of copies of each report prepared under this contract as determined by the State Agency project manager, by the designated due date. Changes to the narrative report format and content, from that listed below, shall require the prior approval of the State Agency.

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5.0 GIS

Introduction and Background

Solicit qualified organizations or individuals that can provide a range of services related to Geographic Information Systems (GIS).

General Requirements

1. Selected contractor shall have the capacity, experience and expertise necessary to provide services with regard to GIS data, analysis and development.
2. In the performance of the services specified in this solicitation, the Contractor shall understand and agree that a contract exists between the Contractor and the Arizona State Procurement Office as evidenced by the submission of the Offer and Acceptance portion of its proposal submitted under this solicitation.
 - 2.1. The Contractor will interface directly with the State Agency that is responsible for the administration and oversight of this contract. Additionally, the Contractor shall provide representative of the State Agency access to its records, reports, data, code and other information related to the activities performed under the terms of this contract.


Specific Requirements

1. Digitization of data originating in many formats Legal, Paper Maps
2. Analysis of data, be able to analyze and manipulate data in a wide variety of ways to show, patterns, trends and other relationships.
3. Data Management: Understanding on how to manage data with a spatial component.
 - 3.1. Clear understanding of a projections, datums, and transformations enabling them to be able to move data freely and accurately between them.
 - 3.2. Conversion of data between a wide variety of formats (KMZ, Shapefile, Geodatabase, RDBMS, CSV, JSON etc.)
4. Understand coordinate systems, datums, projections and transformations.
5. Geoprocessing
 - 5.1. Should have an extensive understanding of various geoprocessing tasks (Cutting, buffering, masking, nearest neighbor analysis, etc.)
 - 5.2. Should be able to use multiple geoprocessing tools to create repeatable workflows/analysis that can be verified by the offeror.
6. Image processing (wide variety of formats from legacy milars to TIFF's)
7. Production of high quality, large size, paper map products.
8. Development
 - 8.1. Customization of enterprise software through developed plugins.
 - 8.2. Ground up development of GIS solutions for both desktop and mobile environments.
 - 8.3. Proof of concept and documentation for custom solutions.
9. Server SQL support
10. Training of users

These requirements are laid out to give a general of idea of the kind of GIS work that can take place under this RFP. Detailed requirements, including specific products, data or analysis, are to be laid out in a scope of work.

Technical Definitions


1. GIS – Geographic Information Systems – Is a system designed to capture, store, manipulate, analysis or present spatially aware data.
2. Georeferencing - Aligning geographic data, often imagery or scanned maps, to a known coordinate system so that it can be viewed, queried, analyzed with other GIS data.

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3. Geoprocessing - An operation to process and manipulate geographic data, often for analysis or conversion.
4. GIS Modeling: Geoprocessing tools can be chained together to create repeatable workflows to process and analyze data.

State Agency Responsibilities

1. Define services and products to be provided then, where necessary, prepare a call for proposals or request and attend a meeting with the Contractor to discuss the specific details. Then, reach an agreement with the contractor regarding all aspects of the services and products to be provided, including a time line for the project with dates and deliverables.
2. Review and approve, with or without noted changes, a detailed written project plan provided by the contractor to insure a clear understanding of all aspects of the project. This will include, but is not limited to, areas such as: key personnel assigned, time frames, deliverables, agency commitments, training plans, and expected costs.
 - 2.1. Review and approve credentials of proposed key personnel provided by the contractor or subcontractor, as well as the credentials of temporary or permanent replacements prior to the start date for said personnel on the project.
 - 2.2. Work closely with the contractor concerning changes in key personnel regardless of which party is requesting the change in personnel.
 - 2.3. Clearly indicate to the contractor which sub-tasks are required for the successful completion of the assigned task(s).
 - 2.4. If any sub-task, listed in the service requirements is to be eliminated or substituted, insure this is clearly communicated to the contractor in writing.
3. Establish a project plan and approve the final content, frequency, and deadline for progress and/or final reports as described herein.
4. Assign individuals to provide project oversight and contract administration for all services provided by the Contractor for a specific project (tasks and subtasks).
5. These individuals shall be responsible for insuring that all aspects of the project are conducted in accordance with stated requirements, including time frames and reports, changes required by the State Agency, or actions that impact the contractor.

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6.0 HYDROLOGY

1.0 INTRODUCTION & BACKGROUND:

This is a multi-year Contract for well and groundwater management and evaluation services. This contract shall be utilized by other state agencies as needed.

2.0 DEFINITIONS

- 2.1 **ADWR**
 Arizona Department of Water Resources. The Department administers and enforces Arizona's groundwater code and surface water rights laws (except those related to water quality).
- 2.2 **A.R.S. TITLE 45, WATERS**
 Applicable Arizona Administrative Code (AAC) rules, lists definitions and terms associated with this contract. The definitions within this document and the Arizona Revised Statutes and appropriate rules shall provide for a first interpretation of all definitions and terms.
- 2.2 **CONSULTANT**
 Shall mean a highly-specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.
- 2.3 **CONTRACT OFFICER REPRESENTATIVE**
 Authorized representative of State Procurement Office that is responsible for administering a contract and monitoring the contractor's performance
- 2.4 **GROUNDWATER MODELS**
 Groundwater models are computer models of groundwater flow systems, and are used by hydrogeologists. Groundwater models are used to simulate and predict aquifer conditions.
- 2.5 **KEY PERSONNEL**
 Shall mean those persons whose experience and knowledge is professional in nature as opposed to clerical. Professional work is that which is predominantly intellectual, varied in character (as opposed to routine, manual, mechanical or physical), and involves the consistent exercise of discretion and judgment in the theoretical principles and techniques of a recognized field of science or learning
- 2.6 **MODFLOW**
 MODFLOW is a modular finite-difference computerized flow model, developed by the U.S. Geological Survey. The program is used to simulate the flow of groundwater through an aquifer.
- 2.7 **WELL IMPACT ANALYSIS**
 A well Impact Analysis is conducted pursuant to A.A.C. R12-15-1302-1307 and is required for new Non-Exempt wells (excluding replacement wells), proposed for installation in Active Management Areas (AMA's) in the state, demonstrating that the proposed well(s) will not cause undue hardship on surrounding land or other water users, and must be submitted prior to ADWR approval of the Notice of Intent (NOI) to Drill application.
- 2.8 **WELL ABANDONMENT**



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Well abandonment is conducted pursuant to A.A.C R12-15-816, in conformance with the requirements of ADWR's "Well Abandonment Handbook" (September 2008). Prior to undertaking abandonment ADWR Form 55-38 "Notice of Intent to Abandon a Well" shall be submitted for ADWR review and approval. Following completion of abandonment activities ADWR Form 55-58 "Well Abandonment Completion Report" shall be filed with ADWR.

3. SCOPE REQUIREMENTS

a. SCOPE SUMMARY

Well and groundwater management and evaluation related activities. Services may include water level measurements, groundwater sampling, video logging, well abandonment, impact analysis, aquifer testing, groundwater modelling, and valuation of water and water rights consulting.

b. DELIVERY/SERVICE AREA

This will be a Statewide contract

c. DETAILED SCOPE REQUIREMENTS

3.3.1 Conduct Well Evaluations; which may include, any, or all, of the following activities:

- Water level measurements - in wells which in some cases may be equipped with pumps, or alternatively be capped and in some situations, may require the use of a cutting torch to access the well.
- Water Sampling – in wells which may be equipped with operational pumps, or in wells where the pump is not operational and must be removed, prior to the installation of a sampling pump, or
- Well Video logging – which may require removal of a well cap, or in situations where the well is equipped, the pump must be removed prior to conducting video logging.

3.3.2 Conduct Well Abandonment; which may involve some, or all, of the following tasks in accordance with obtaining an ADWR approved "Notice of Intent to Abandon a Well" and issuance of a "Well Abandonment Card"

- In the event the well is equipped with a pump, it shall be removed from the well prior to abandonment.
- The Consultant shall collect all information necessary to develop the appropriate abandonment methodology and submit a "Notice of Intent to Abandon a Well" ADWR (Form 55-38) to ADWR for review and approval.
- Upon approval of the Notice of Intent and issuance of a Well Abandonment Card, the Consultant shall abandon the subject well in accordance with the approved methodology.
- Following completion of abandonment activities, the Consultant shall submit a "Well Abandonment Completion Report" to ADWR.

3.3.3 Conduct Well Impact Analysis; comprised of preparing a hydrological study including any, or all the following:

- 3.3.3.1 • Prepare an inventory of existing wells and well information in the vicinity of the proposed new well(s).
- 3.3.3.2 • Evaluate the geologic and hydrogeologic conditions to determine the relevant aquifer parameters and recharge/discharge boundaries.
- 3.3.3.3 • Using a methodology acceptable to ADWR estimate the drawdown associated with the proposed well(s) and delineate the area surrounding the proposed well(s) where the impact would exceed 10-feet of additional drawdown after the first 5-years of operation of the proposed well(s).



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- 3.3.3.4 ● In the event the proposed well(s) are located in an area of known land subsidence, a geophysical evaluation of the impact of the proposed well(s) on future land subsidence may also be required.
- 3.3.3.5 ● The “hydrologic study” shall then be submitted to ADWR for review and approval.

3.34 Conduct Aquifer Testing: Aquifer testing is conducted to determine the aquifer parameters in a groundwater basin or portion of a basin or sub-basin. This testing may consist of the following:

- Based on the specific project requirements, the Consultant may be provided information on the well(s) to be utilized in the aquifer test, or alternatively, may be tasked with conducting a preliminary groundwater evaluation to identify the recommended well(s) to be incorporated into the aquifer test program.
- The Consultant shall be responsible for providing and installing/removing all equipment for instrumentation of pumping and observation wells. This equipment may include, transducers, data loggers, and water level sounders.
- The Consultant shall provide or subcontract the test pump(s) and associated equipment needed to conduct the aquifer test. All Sub-Contractors shall be approved by ASLD.
- The Consultant shall provide all personnel necessary to conduct the aquifer test. The length of the test shall be determined by ASLD, and may be from 24-hours to two-weeks, and may involve multiple pumping and observation wells, depending upon the specific test configuration and objectives. The number of wells involved in the test will be determined prior to the test, however, the test length may be open-ended and based on an hourly rate.
- At the completion of the test the Consultant/Subcontractor shall remove all pumping and measurement equipment from the wells, and restore the wells to their original condition.
- Following the test, the Consultant shall download/compile all test data, and evaluate using accepted computerized aquifer test analytical software (e.g. AQTESOLV, AquiferWin32, etc.).
- The consultant shall then prepare a summary report, describing the aquifer test program and results

3.35 Develop/Update Groundwater Models. The model shall consist of a numeric model (i.e. MODFLOW), and may be required to be developed, in areas where no model currently exists, or updated in the event a model already exists. Under some circumstances, the model and accompanying report may be submitted to ADWR for review.

3.36 Prepare analysis regarding the value of water on State Trust land, and surface and groundwater rights held by the Land Department. The Consultant shall have the capability to ascertain the current and estimated future value of any, but not limited to the following:

- The value groundwater pumped from State Trust land in various areas of the state.
- Assist in assembling a marketable portfolio and determining the value for the lease/sale of water rights currently held by ASLD, including IGFR’s, Type 1 and Type 2 water rights and long term storage credits.
- Provide current and estimated future valuations for groundwater from State Trust land eligible for inter-basin transport under A.R.S. Title 45 Article 8.1 (551-559).

3.37 Consultant Support: This task includes providing support services to the Using Agency to plan, monitor and control all work issued under a Task Order. The Consultant shall be responsible for making sure that all work is completed in a timely, cost-effective and competent manner. This task includes the following types of support: Administrative; Technical and Professional.

3.38 Subcontractor Management Cost: Equipment rentals, commodities purchased, etc. which are directly



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required for the completion of the Task Order, and are approved by the Using Agency's Procurement Office or designee, shall be compensated at the actual cost of the services, rental fees, commodities purchased, etc. with no mark-up.


Administrative expenses for providing items such as insurance, bonds, equipment rentals, travel, per diem and incidental supplies (e.g. offices supplies, hardware supplies, petty cash, etc.), etc. shall be considered an administrative expense and shall not be used in computing the Subcontractor Management Cost.

Subcontracted Services are defined as follows: e.g. well drillers, pump, well logging and well abandonment contractor's, laboratory services, utility locators, archaeologists, and similar trade professions with the Using Agency's advance approval.

- 3.39 Project Documents: The Consultant shall devise, implement and maintain at the Consultant's place of business or project site, on a current basis, a structured document control system which includes and tracks records of all necessary contracts, shop drawings, samples, purchases, materials, equipment, operation and maintenance manuals and instructions, reports and any other documents and revisions thereto which arise out of the Task Order. These documents shall be readily available to the Using Agency any time during the performance of the Task Order.
- 3.40 Access Agreements: The Consultant shall comply with all requirements established in Access Agreements entered into between the Using Agency and lessees and adjacent property owners/operators regarding the site. The Using Agency's Project Manager shall provide any relevant information to the Consultant.

4 STATE AGENCY RESPONSIBILITIES:

- 4.1 Define the level of service(s) to be provided then, where necessary, prepare a call for proposals or request and attend a meeting with the Consultant to discuss the specific details of the project, reach an agreement with the Consultant regarding all aspects of the service(s) to be provided, including a time line for the project and dates for deliverables.
 - 4.2 Review and approve, with or without noted changes, detailed written project information provided by the Consultant to insure a clear understanding of all aspects of the services to be performed. This will include, but is not limited to, areas such as: key personnel assigned, time frames, prior
 - 4.3 approval for reimbursable travel related costs, and project costs prior to the commencement of services.
4. Review and approve credentials of proposed key personnel provided by the Consultant or Subcontractor, as well as the credentials of temporary or permanent replacements
- i. Unless otherwise directed by the State Agency, the Consultant shall provide the State Agency with digital copies in a native file format compatible with the State Agency Software and in conformance with specifications as determined by the project manager. The Consultant may submit an original hardcopy and a number of copies of each report prepared under this contract as determined by the State Agency project manager, by the designated due date. Changes to the narrative report format and content, from that listed below, shall require the prior approval of the State Agency.

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7.0 LAND SURVEYING

1. INTRODUCTION & BACKGROUND:
 - 1.1 The purpose of this solicitation is to develop a list of qualified firms and/or individuals that can provide ALTA Land Surveying Services. These services will be utilized by the Arizona State Land Department, hereafter referred to as the “State Agency” on an as needed, if needed basis. Submitting under this contract does not guarantee work and additional information may be required before a project is assigned.

2. GENERAL REQUIREMENTS:
 - 2.1 The Contractor shall have the capacity, requisite experience and expertise necessary to provide ALTA Surveying Services on Arizona State Trust properties.
 - 2.2 The Contractor shall have the ability to successfully complete the assigned project. To that end, the Contractor will be required to utilize the services of a professional title company to obtain a most recent title commitment for a subject property.
 - 2.3 In the performance of the services specified in this solicitation, the Contractor shall expressly understand and agree that a contract exists between the Contractor and the State Procurement Office as evidenced by the submission of the Offer and Acceptance portion of its proposal submitted under this solicitation.
 - 2.3.1 The Contractor will interface directly with the State Agency that is responsible for the administration and oversight of this contract. Additionally, the Contractor shall provide representatives of the State Agency access to its records, reports, related information and activities provided under the terms of this contract.

3. SPECIFIC REQUIREMENTS:
 - 3.1 Work performed under this contract shall conform to the MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS (Effective February 23, 2016), however, Contractors shall obtain the most current standards in affect.
 - 3.2 The ALTA survey will be prepared in accordance with a current title report and Schedule “B” documents and Items 1, 3, 4, 8, and 11 of the “Optional Survey Responsibilities and Specifications” from Table A of the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys as adopted in 2016. Additional Items may be added by the State Agency.
 - 3.3 The 2016 standard certification required on ALTA/NSPS Land Title Surveys shall be used for the survey and the certification shall be addressed to Arizona State Land Department and the title company utilized by the Contractor.

4. STATE AGENCY RESPONSIBILITIES:
 - 4.1 Reach an agreement with the Contractor regarding all aspects of the ALTA service(s) to be provided, including those items listed on Table A of the Optimal Survey Responsibilities and Specifications the State Agency wish to include and time line for the project and dates for deliverables.
 - 4.2 Review and approve, with or without noted changes, detailed written project information provided by the Contractor to insure a clear understanding of all aspects of the services to be performed. This will include, but is not limited to, areas such as: key personnel assigned, time frames, prior approval for reimbursable travel related costs, and project costs prior to the commencement of services.

EXHIBITS TO THE SCOPE DOCUMENT

No Exhibits apply to the Scope of Work.

End of Section 2-A

SECTION 2-B: Pricing Document

1.0 Compensation

- 1.1 **FIXED-PRICE.** Through the bidding process, a fixed price is determined. This fixed price encompasses all of the contractor's costs for the scope of work and represents the total compensation to the contractor
- 1.2 **CONTRACTED LABOR RATES.**

2.0 Reserved

- 2.1 **COST-REIMBURSEMENT.**
Reserved

3.0 Pricing

- 3.1 **FIXED-PRICE.** Through the bidding process, a fixed price is determined. This fixed price encompasses all the contractor's costs for the scope of work and represents the total compensation to the contractor
- 3.2 **UPCHARGES.** When required this will be handled on a case by case basis


4.0 Funding

No particular funding considerations apart from paragraph 4.3 of the Uniform Terms and Conditions [Availability of Funds] have been identified as of the Solicitation date.

5.0 Invoicing

- 5.1 **INVOICES GO TO BUYING ENTITY.** Contractor shall submit all billing notices or invoices to the ordering Eligible Agency or Co-Op Buyer at the address indicated on the applicable Order document.
- 5.2 **MINIMUM INVOICE REQUIREMENTS.** Every invoice must include the following information:

| Item | Required |
|--|----------|
| Bill-to name and address | ● |
| Contractor name and contact information | ● |
| Remit-to address | ● |
| State contract number | ● |
| Order number (typically the ProcureAZ PO #) | ● |
| Invoice number and date | ● |
| Date the items shipped or services performed | ● |
| Applicable payment terms | ● |
| Contract line item number | ● |
| Contract line item description | ● |

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| | |
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| Quantity delivered or performed | ● |
| Line item unit of measure | ● |
| Item price | ● |
| Extended pricing | ● |
| Total invoice amount due | ● |

- 5.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:
1. Services that have not been authorized.

6.0 Payments

- 6.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Article 4 of the Uniform Terms and Conditions
- 6.2 JOINT CHECKS OR DIRECT PAY. applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 6.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 6.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.
- 6.5 AUTOMATED CLEARING HOUSE. applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at:


<https://gao.az.gov/afis/vendor-information>

7.0 Exhibits to the Pricing Document

None

Please note that in order for Offeror to be susceptible, there must be a \$1.00 response under Unit Cost on the Items Tab in ProcureAZ

End of Section 2-B

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SECTION 2-C: Special Terms and Conditions

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- | | |
|---|---|
| 1.1 Acceptance | “Acceptance” means the document headed “Offer and Acceptance Form” bearing the State contract number once Procurement Officer has signed it to signify (1) State’s formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term “acceptance” used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services. |
| 1.2 Accepted Offer | If State did not request a Revised Offer, then “Accepted Offer” means the Initial Offer. If State did request a Revised Offer but not a Best and Final Offer, then “Accepted Offer” means the latest Revised Offer. If State requested a Best and Final Offer, then “Accepted Offer” means the Best and Final Offer. |
| 1.3 Arizona Procurement Code; A.R.S.; A.A.C. | “Arizona Procurement Code, “A.R.S.,” and “A.A.C.” are each defined in the <u>Instructions to Offerors</u> . |
| 1.4 Arizona TPT | “Arizona TPT” means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at: https://www.azdor.gov/business/transactionprivilegetax.aspx . |
| 1.5 Attachment | “Attachment” means any item that: the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO); was attached to an Offer when submitted; and was included in the Accepted Offer. |
| 1.6 Building Work | “Building Work” means everything covered by the definitions in A.R.S. § 41-2503 [<i>Definitions</i>] of the terms “construction” (para. 4), “maintenance services” (para. 26), and “operations services” (para. 28). |
| 1.7 Commercial Document | “Commercial Document” means <u>Section 2-B of Part 2 of the Solicitation Documents</u> , provided that, if there is no such Section in the Contract, then “Commercial Document” is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions. |
| 1.8 Contract | “Contract” means, collectively, the Acceptance, the Solicitation Documents, the Accepted Offer, all acknowledged Orders, and any Contract Amendments. See paragraph 1.22. The Contract is identified as a “Purchase Order” in ProcureAZ, since that is the terminology used in the software; use of that term in ProcureAZ is not to be confused with the contractual term “Order” defined in paragraph 1.21. |



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- 1.9 Contract Amendment** "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. The term "Change Order" in ProcureAZ is to be construed as being synonymous with "Contract Amendment".
- 1.10 Contract Terms and Conditions** "Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.11 Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.12 Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.13 Co-Op Buyer** "Co-Op Buyer" means a member of the State Purchasing Cooperative that has entered into a "Cooperative Purchasing Agreement" with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, "Co-Op Buyer" is to be construed as encompassing "eligible procurement unit" under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, "non-profit organizations" are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.
- 1.14 Day** "Day" means a calendar day unless otherwise specified in a particular context.
- 1.15 Eligible Agency** If the Special Terms and Conditions indicates that the Contract is a "single-agency" contract, then "Eligible Agency" means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a "statewide" contract, then "Eligible Agency" means any State of Arizona department, agency, university, commission, or board.
- 1.16 Gratuity** "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.17 Indemnified Basic Claims** "Indemnified Basic Claims" means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys' fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.
- 1.18 Instructions to Offerors** "Instructions to Offerors" is Section 1-B of Part 1 of the Solicitation Documents.
- 1.19 Materials** "Materials" has the meaning given in A.R.S. § 41-2503(7) to the extent those things are included in the Work, which, for convenience of reference only, is "... all property, including equipment, supplies, printing, insurance, and leases of property [but] does not include land, a permanent interest in land or real property or leasing space." Materials includes software, except that If software is sold or provided as a service, then to the extent it consists of encoded information or computer instructions it is included in "Materials" and to the extent it is a service it is in "Services".
- 1.20 Offer; Initial Offer; Revised Offer; Best and Final Offer (BAFO)** "Offer," "Initial Offer," "Revised Offer," and "Best and Final Offer" ("BAFO") are each defined in the Instructions to Offerors.
- 1.21 Order** "Order" means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the



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Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an "Order":

1. "Release" or "Release Purchase Order" in ProcureAZ;
"task order", "service order," or "job order" when a Release Purchase Order for Services has already been committed in ProcureAZ; or
"purchase order" for buying by Co-Op Buyers, if co-op buying applies.

- 1.22 Part, Section; Exhibit** "Part," "Section," and "Exhibit" are each defined in the Instructions to Offerors.
- 1.23 Person** "Person" means any corporation, business, individual, union, committee, club, or other organization or group of individuals.
- 1.24 Procurement Officer** "Procurement Officer" means the person, or his or her designee, who has been duly authorized by State to enter into and administer the Contract and to make written determinations with respect to the Contract. Procurement Officer is as identified on the Acceptance unless subsequently changed by Contract Amendment.
- 1.25 ProcureAZ** "ProcureAZ" means State's official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, ProcureAZ – The Official State eProcurement System*.

NOTE (1): Technical Bulletin No. 020 is available online at:

<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>

NOTE (2): The URL for ProcureAZ itself is:

<https://procure.az.gov/>

- 1.26 Scope of Work** "Scope of Work" means Section 2-A of Part 2 of the Solicitation Documents.
- 1.27 Services** "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.19.
- 1.28 Solicitation; Solicitation Documents** "Solicitation" and "Solicitation Documents" are defined in the Instructions to Offerors.
- 1.29 Special Terms and Conditions** "Special Terms and Conditions" are Section 3-A of Part 3 of the Solicitation Documents.
- 1.30 Specification** "Specification" has the meaning given in A.R.S. § 41-2561, which, for convenience of reference only, is "... any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery." Specifications (if any are included in the Contract), are indexed in the Scope of Work and could be bound separately from the other documents forming the Contract.
- 1.31 State** With respect to the Contract generally, "State" means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, "State" means each of Eligible Agency or Co-Op Buyer who has issued the Order.
- 1.32 State Indemnitees** "State Indemnitees" means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.



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- 1.33 State Fiscal Year** "State Fiscal Year" means the period beginning each July 1 and ending each June 30.
- 1.34 Subcontract** "Subcontract" means any contract, express or implied, between Contractor and another party or between a Subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any Materials, the performing of any Services, or the carrying out of any other aspect of the Work.
- 1.35 Subcontractor** "Subcontractor" has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is "... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . ."The Contract is to be construed as "a contract with a state governmental unit" for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.
- 1.36 Uniform Terms and Conditions** The "Uniform Terms and Conditions" are made up of this document and whichever of the Appendices are indicated in the Special Terms and Conditions as being applicable.
- 1.37 Work** "Work" means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

2.0 Contract Interpretation

- 2.1 Arizona Law** The Contract is governed by and is to be interpreted in accordance with the laws of the State of Arizona, including the Arizona Procurement Code, without consideration of conflict of laws principles.
- 2.2 Usage**
 1. Where the Contract:
 2. assigns obligations to Contractor, any reference to "Contractor" is to be construed to be a reference to "Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor's and the Subcontractors' respective agents, representatives, and employees" in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;
 3. uses the permissive "may" with respect to a party's actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) *Definitions*. For clarity of intent, any right given to State using "State may" or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written "may, at its discretion," the discretion extends to whatever is most advantageous to State; and (b) where written only as "may," the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
 4. uses the imperative "shall" with respect to a party's actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) *Definitions*. Conversely, the phrase "shall not" is to be interpreted as an imperative prohibition.
 5. uses the term "must" with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written "*must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes*" in every instance;



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- 6. uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
- 7. uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

2.3 Contract Order of Precedence

2.4.1 COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

2.4.2 CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

- (a) Contract Amendments;
- (b) the Solicitation Documents, in the order:
 - (1) Special Terms and Conditions;
 - (2) Exhibits to the Special Terms and Conditions;
 - (3) Uniform Terms and Conditions;
 - (4) Scope of Work;
 - (5) Exhibits to the Scope of Work;
 - (6) Commercial Document;
 - (7) Exhibits to the Commercial Document;
 - (8) Specifications; and
 - (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

2.4.3 ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an “Attachment” since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

2.4 Independent Contractor

Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

2.5 Severability

Any term or condition deemed or adjudged illegal or invalid is thereby stricken from the Contract and will not affect any other term or condition of the Contract.

2.6 Complete Integration

The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.



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2.7 No Waiver of Rights Either party's failure to insist on strict performance of any term or condition of the Contract is not and is not to be construed as being, nor will it be deemed to be, a waiver of that term or condition or a bar to, or diminishment of the right of, subsequent enforcement of any term or condition.

3.0 Contract Administration and Operation

3.1 Term of Contract The term of the Contract will commence on the date indicated on the Acceptance and continue for the period specified in the Special Terms and Conditions unless canceled, terminated, or permissibly extended. If the Special Terms and Conditions do not specify a period, then the initial term is 1 (one) year. State has no obligation to extend or renew the Contract past the initial term.

3.2 Contract Extensions State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the period specified in the Special Terms and Conditions. If the Special Terms and Conditions do not specify a period, then the maximum aggregate term is 5 (five) years.

3.3 Notices and Correspondence 3.3.1 TO CONTRACTOR. Unless stated otherwise in the Special Terms and Conditions, State shall:

- (a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding ProcureAZ Vendor Profile; and
- (b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 TO STATE. Unless stated otherwise in the Special Terms and Conditions, Contractor shall :

- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the ProcureAZ Summary for State; and
- (b) address any required notices to State to Procurement Officer identified as "Purchaser" in the ProcureAZ Summary at the following mailing address:

Arizona Department of Administration
State Procurement Office
100 N 15th Ave., Suite 201
Phoenix, AZ 85007

3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

3.4 Signing of Contract Amendments Contractor's counter-signature – or "approval" in ProcureAZ, in the case of a Change Order – is not required to give effect if the Contract Amendment only covers either:

- 2. extension of the term of the Contract within the maximum aggregate term;
- 3. revision to Procurement Officer appointment or contact information; or
- 4. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

In every case other than those listed in (1), (2), and (3) above, both parties' signature – or "approval" in ProcureAZ, in the case of a Change Order – are required to give it effect.

3.5 Click-Through Terms and Conditions Unless expressly stated otherwise in the Special Terms and Conditions, if either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do



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not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to “click through” or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

3.6 Books and Records

3.6.1 RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.

3.6.2 RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.

3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State’s demand, the choice of which being at State’s discretion. For the purpose of this paragraph, “reasonable times” are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

3.7 Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and, unless expressly stated otherwise in the Special Terms and Conditions, for the Work itself.

3.8 Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor’s or Subcontractors’ plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

3.9 Ownership of Intellectual Property

3.9.1 RIGHTS IN WORK PRODUCT. Unless otherwise provided for in the Special Terms and Conditions, all intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor’s administrative communications and records relating to the Contract, are considered work product and Contractor’s property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

“Government Purpose Rights” are:

- the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
- the right to release or disclose that work product to third parties for any State government purpose; and



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the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

“Government Purpose Rights” do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

3.9.2 JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.3 PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

- 4.1. any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
- 4.2. any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and
- 4.3. except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor’s or its affiliates’ ownership of such pre-existing materials.

3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Special Terms and Conditions, the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

3.10 Subcontracts

3.10.1 INITIAL LIST. At the time of Contract execution, Contractor’s candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [Proposed Subcontractors]. Agreeing to them being included in the Accepted Offer signified Procurement Officer’s advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.

3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer’s written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

3.11 Non-Discrimination

Contractor shall comply with [Arizona] State Executive Order No. 2009-09 and all other applicable federal and state laws, rules, and regulations regarding non-discrimination and equal opportunity, including the Americans with Disabilities Act.



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**3.12 E-Verify
Requirements**

As required by A.R.S. § 41-4401, Contractor and each Subcontractor warrants compliance with A.R.S. § 23-214(A) and all federal immigration laws and any regulations relating to the immigration status of their employees. Contractor and each Subcontractor acknowledge that under A.R.S. § 41-4401, State retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works under the Contract to ensure that Contractor or Subcontractor is in compliance with the foregoing warranty and understands that a breach of the foregoing warranty under shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract.

**3.13 Offshore
Performance
of Certain Work
Prohibited**

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Specifications or the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

3.14 Orders

3.14.1 ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued as set forth in the Special Terms and Conditions that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

3.14.2 ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.14.3 ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.14.4 SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract in the Special Terms and Conditions and (b) the Contract was created in ProcureAZ as something other than a "Master/ Blanket" type.

3.14.5 NO MINIMUMS OR COMMITMENTS. Unless expressly stated otherwise in the Special Terms and Conditions: (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

3.14.6 NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

**3.15 Statewide Contract
Provisions**

If the Special Terms and Conditions indicate that the Contract is for statewide use, then the following provisions apply:

5. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

<https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative>



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6. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).
7. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is specified in the Special Terms and Conditions. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
8. Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
9. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either: (a) "approving" the Order electronically in ProcureAZ, which will indicate Contractor's unqualified acceptance of the Order as-issued; or (b) "rejecting" the Order electronically in ProcureAZ, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in ProcureAZ, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically in ProcureAZ within 3 (three) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in ProcureAZ and if it does so the rejection will be void.
10. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

**3.16 Multiple-Use
Provisions**

If the Special Terms and Conditions indicate that the Contract is for statewide use, then Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in ProcureAZ. Orders issued by Co-Op



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Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

11. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Commercial Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.

By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.

As described in (2) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.

As described in (3) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

When evaluating the proposals under (3) and (4) above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

3.17 Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

3.18 Work on State Premises

3.20.1 COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.20.3 PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset].



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3.19 Advertising, Publishing and Promotion of Contract

Contractor shall not advertise, promote, or otherwise use information concerning the Contract for commercial benefit without the prior written approval of Procurement Officer, which approval Procurement Officer may withhold at his or her discretion.

4.0 Costs and Payments

4.1 Payments

4.1.1 PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Commercial Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Commercial Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in ProcureAZ and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.1.2 PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

4.2 Applicable Taxes

4.3.1 CONTRACTOR TO PAY ALL TAXES. State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor’s responsibility (as seller) to remit. Contractor’s failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Commercial Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

4.3.2 TAX INDEMNITY. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers’ compensation insurance.

4.3 Availability of Funds

By A.R.S. § 35-154, every State payment obligation under the Contract is conditioned on the availability of funds appropriated for payment of that obligation. If funds are not appropriated and available for continuance of the Contract, State may terminate the Contract at the end of the period for which funds are available, or, at State’s discretion, allow appropriate amendment to the Contract. No liability will accrue to State if it exercises the foregoing right or discretion, and State will have no obligation or liability for any future payments or for any damages as a result of having exercised it.

5.0 Contract Changes

5.1 Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract’s general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

5.2 Assignment and Delegation

5.2.1 IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer’s prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor’s proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State



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satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

5.2.2 IN PART. Subject to paragraph 3.10 [Subcontracts] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.

6.0 Risk and Liability

6.1 Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

6.2 Contractor Insurance

Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The Insurance Requirements herein are minimum requirements for this Contract and in no way, limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage

| | |
|--|-------------|
| General Aggregate | \$2,000,000 |
| Products – Completed Operations Aggregate | \$1,000,000 |
| Personal and Advertising Injury | \$1,000,000 |
| Blanket Contractual Liability – Written and Oral | \$1,000,000 |
| Damage to Rented Premises (Fire Legal Liability) | \$50,000 |
| Each Occurrence | \$1,000,000 |

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.



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2. Business Automobile Liability

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

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

- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker’s Compensation and Employers’ Liability

| | |
|-------------------------|-------------|
| Workers’ Compensation | Statutory |
| Employers’ Liability | |
| Each Accident | \$1,000,000 |
| Disease – Each Employee | \$1,000,000 |
| Disease – Policy Limit | \$1,000,000 |

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor that is exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

4. Professional Liability (Errors and Omissions Liability)

| | |
|------------------|--------------|
| Each Claim | \$ 2,000,000 |
| Annual Aggregate | \$ 2,000,000 |

- a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, the Contractor warrants that any retroactive date under the Policy shall precede the effective date of this Contract and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this Contract.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- a. The Contractor’s policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- b. Insurance provided by the Contractor shall not limit the Contractor’s liability assumed under the indemnification provisions of this Contract.



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NOTICE OF CANCELLATION: Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be electronically submitted via email to AZStateContractCOI@azdoa.gov and rocky.advani@azdoa.gov (State of Arizona, State Procurement Office, 100 N 15th Ave, Suite 402, Phoenix AZ 85007).

ACCEPTABILITY OF INSURERS: Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

1. All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
2. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
3. All certificates required by this Contract shall be sent directly to (**Rocky Advani, 100 N 15th Ave, Suite 402, Phoenix AZ 85007**). The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum insurance requirements identified above. The State reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

APPROVAL and MODIFICATIONS: The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

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. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

6.3 Basic Indemnification

6.3.1 CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless State Indemnitees from Indemnified Basic Claims that: (a) are caused or alleged to be caused in whole or in part by the negligent or willful acts or omissions of a Contractor Indemnitor; (b) arise out of or are recovered under



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worker compensation laws; and/or (c) arise out of a Contractor Indemnitor's failure to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. The parties specifically intend that the Contractor Indemnitors shall indemnify the relevant State Indemnitees from and against Indemnified Basic Claims in all instances except where the Indemnified Basic Claim arises solely from those State Indemnitees' own negligent or willful acts or omissions. Wherever the indemnification under this subparagraph applies, Contractor is responsible for primary loss investigation, defense, and judgment costs for an on behalf of the other Contractor Indemnitors with respect to State Indemnitees, and accordingly Contractor is also responsible for any cooperation, contribution, or subordination between or amongst the Contractor Indemnitors. In consideration of the award of the Contract by a State Indemnitee, Contractor hereby waives all rights of subrogation against State Indemnities for losses arising from the Work.

6.4 Patent and Copyright Indemnification

CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. State may elect to participate in such action at its own expense; and
4. State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, "force majeure" means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party's fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.7 [Performance in Public Health Emergency], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties



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shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

6.5.4 DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.

6.6 Third Party Antitrust Violations

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

7.0 Warranties

7.1 Conformity to Requirements

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

7.2 Contractor Personnel

Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.

7.3 Intellectual Property

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

7.4 Compliance with Laws

Contractor warrants that the Materials and Services do and will continue to comply with all applicable federal, state, and local laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the non-compliance.

7.5 Licenses and Permits

Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.

7.6 Operational Continuity

Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.2 [*Assignment and Delegation*] that expressly recognizes the event.

7.7 Performance in Public Health Emergency

Contractor warrants that it will:

12. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession



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and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and

13. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [Force Majeure] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.

7.8 Lobbying

7.11.1 PROHIBITION.

Contractor warrants that:

it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and

upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

Contractor shall implement and maintain adequate controls to assure compliance with (a) above.

Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

7.11.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

7.9 Survival of Warranties

All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

8.0 State's Contractual Remedies

8.1 Right to Assurance

If State in good faith has reason to believe that Contractor does not intend to, or is unable to, perform or continue performing under the Contract, Procurement Officer may demand that Contractor promptly provide written assurance of intent to perform. Failure by Contractor to provide the assurance within the time specified may be the basis for terminating the Contract or for State to exercise any other remedy available to it under the Contract or laws.

8.2 Stop Work Order

The State may at any time require Contractor to stop all or any part of the Work by written order. Upon receipt of a stop order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring of further costs during the period of stoppage that might be chargeable to State associated with the portions of the Work covered by the order. If Contractor incurs losses, it may make a claim under Article 10.

8.3 Non-exclusive Remedies

State's rights and remedies under the Contract are not exclusive.

8.4 Nonconforming Tender

The Materials provided and Services performed must comply fully with the Contract, and providing Materials or performing Services or any portion thereof that do not comply fully



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constitutes a breach of contract, in which event State will be entitled to exercise any remedy available to it under the Contract or laws.

8.5 Right of Offset

State is entitled to offset against any sums due Contractor any expenses or costs State incurs or damages it has assessed against it concerning Contractor's non-conforming performance or failure to carry out the Work, including any expenses, costs, and damages to which it is entitled by the Contract or laws.

9.0 Contract Termination

9.1 Termination for Conflict of Interest

By A.R.S. § 38-511, State may terminate the Contract within 3 (three) years after the effective date without penalty or further obligation if any Person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of State is or becomes an employee or agent of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. Any such termination will be effective when Contractor receives State's written notice of the termination unless the notice specifies a later date.

9.2 Gratuities

State may, by written notice, terminate the Contract, in whole or in part, if State determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of State for the purpose of influencing the outcome of the procurement or the administration of the Contract or any favorable treatment concerning the Contract or performance of the Contract. State, in addition to any other rights or remedies available to it, will be entitled to recover exemplary damages in the amount of 3 (three) times the value of the Gratuity offered by Contractor.

9.3 Suspension or Debarment

State may, by written notice to Contractor, terminate the Contract immediately if State discovers that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. State has taken Contractor's submittal of the Accepted Offer and will take its performance under the Contract as Contractor's attestation that it is not currently suspended or debarred. If Contractor subsequently becomes suspended or debarred, it shall notify Procurement Officer immediately.

9.4 Termination for Convenience

State may terminate the Contract when in the best interest of State, in whole or in part, at any time, and without penalty or recourse on Contractor's part other than as expressly stated in the Contract. Upon receipt of State's written termination notice, Contractor shall stop work as directed in the notice, notify all Subcontractors of the termination and its effective date, and minimize any further costs that might be chargeable to State. In the event of termination under this paragraph, all documents, data, and reports prepared by Contractor under the Contract will become State's property and Contractor shall deliver it all promptly on demand. Contractor will be entitled to receive just and equitable compensation for necessary and attributable unfinished materials on hand, work in progress, work completed, and work accepted before the effective date of the termination, provided that, the cost principles and procedures in A.A.C. R2-7-701 are to be applied.

9.5 Termination for Default

In addition to the rights reserved to it under the Contract, State may terminate the Contract in whole or in part due to Contractor's failure to: (a) comply with any term or condition of the Contract; (b) obtain and maintain all required insurance policies, bonds, licenses, and permits; or (c) make satisfactory progress in carrying out the Work. Procurement Officer shall give written notice of the termination and the reasons for it. Upon termination under this paragraph, all documents, data and reports prepared by Contractor under the Contract and all necessary and attributable unfinished materials on hand, work in progress, work completed, and work accepted will become State's property, and Contractor shall deliver all of it immediately on demand. State may, following termination of the Contract under this paragraph, procure on terms and in the manner it determines to be appropriate materials or services to replace those that were to have been provided or performed by Contractor, and Contractor will be liable to State for any excess cost State incurs in procuring such substitutes.



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9.6 Continued Performance Required Contractor shall continue to perform in accordance with the requirements of the Contract up to the effective date of any termination, as directed by State in the notice.

10.0 Contract Claims

10.1 Claim Resolution Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.

10.2 Mandatory Arbitration In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

11.0 General Provisions for Materials

11.1 Applicability Article 11 applies to the extent the Work is or includes Materials.

11.2 Off-Contract Materials Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders; State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.

11.3 Compensation for Late Deliveries Contractor shall have clear, published policies in place regarding late delivery, order cancelation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them.

11.4 Indicate Shipping Costs on Order Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one).

11.5 Current Products Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract.

11.6 Maintain Comprehensive Selection Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co-Op Buyers if applicable.

11.7 Additional Products State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of (b) typically



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requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products.

- 11.8 Discontinued Products** If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer's notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide: (a) manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones (with demonstration being as described in subparagraph 11.7).
- 11.9 Forced Substitutions** Forced substitutions will not be permitted; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.
- 11.10 Recalls** In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, "recalls" hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product. Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall.
- 11.11 Delivery**
- 11.11.1 **PRICING.** Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller's dock) Incoterms®2010, with "seller's dock" meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to "F.o.b. Origin, Contractor's Facility" under [FAR 52.247-30](#).
- 11.11.2 **LIABILITY.** Unless stated otherwise in the Commercial Document or an Order, Contractor's liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to "F.o.b. Destination, Within Consignee's Premises" under [FAR 52.247-35](#).
- 11.11.3 **PAYMENT.** Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller's dock) with no mark-up, which Contractor shall itemize and invoice separately.
- 11.12 Delivery Time** Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order.



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- 11.13 Delivery Locations** Contractor shall offer deliveries to every location served under the scope of the Contract, specifically:
1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
 2. if the Contract is for a single State agency in all its locations, then Contractor shall deliver to any of that agency's location in Arizona;
 3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
 4. if the Contract is for unrestricted statewide use, then:
 - a. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
 - b. if the Pricing Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.
- 11.14 Conditions at Delivery Location** Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions.
- 11.15 Materials Acceptance** State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.
- 11.16 Correcting Defects** Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials.
1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.
 2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.



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3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.

11.17 Returns

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within 30 (thirty) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

11.18 Order Cancellation

State may cancel Orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus 1 (one) additional business day;
2. reimburse Contractor for:
 - a. its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus 1 (one) additional business day; and
 - b. the cost of any obligations it incurred as of the cancellation effective date plus 1 (one) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and
3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice plus 1 (one) business day or for any lost profits or opportunity.

By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order.

11.19 Product Safety

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant.



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11.20 Hazardous Materials

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or (2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup.

12.0 Data and Information Handling

12.1 Applicability

Article 13 applies to the extent the Work includes handling of any (1) State's proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State's behest.

12.2 Data Protection and Confidentiality of Information

Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant:

1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

12.3 Personally Identifiable Information.

Without limiting the generality of paragraph 12.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract.

For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information*; and



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2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

<https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

NOTE (2): For convenience of reference only, the GSA directive is available at:

<http://www.gsa.gov/portal/directive/d0/content/658222>

12.4 Protected Health Information

Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and (c) State's current and published PHI/ePHI privacy and security policies and procedures;
2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (1) above; and
3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

12.5 Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 18-131 and § 18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

End of Section 2-C



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SECTION 2-D: Uniform Terms and Conditions

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1 Attachment** "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
- 1.2 Contract** "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3 Contract Amendment** "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4 Contractor** "Contractor" means any Person who has a Contract with the State.
- 1.5 Days** "Days" means calendar days unless otherwise specified.
- 1.6 Exhibit** "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7 Gratuity** "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8 Materials** "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9 Procurement Officer** "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10 Services** "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.19.
- 1.11 State** "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.12 State Fiscal Year** "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.13 Subcontract** "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.



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2.0 Contract Interpretation

- 2.1 Arizona Law** The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2 Implied Terms** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence** In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;
 - 2.3.4. Specifications;
 - 2.3.5. Attachments;
 - 2.3.6. Exhibits;
 - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parole Evidence** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3.0 Contract Administration and Operation

- 3.1 Records** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination** The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit** Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or



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- and Materials Testing** materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor’s facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property** Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9 Federal Immigration and Nationality Act** The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements** In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.



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3.11 Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4.0 Costs and Payments

4.1 Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

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

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4 Availability of Funds for the Next State fiscal year

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current State fiscal year

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements

5.0 Contract Changes

5.1 Amendments

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without



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effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2 Subcontracts

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor’s proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6.0 Risk and Liability

6.1 Risk of Loss

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3 Indemnification – Patent and Copyright

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure

6.4.1 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.

6.4.2. Force Majeure shall **not** include the following occurrences:



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- 6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer’s plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2. 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
- 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. 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.
- 6.4.4. 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.

6.5 Third Party Antitrust Violations

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7.0 Warranties

7.1 Liens

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
- 7.2.2. Fit for the intended purposes for which the materials are used;
- 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance with Laws

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.



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7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8.0 State's Contractual Remedies

- 8.1 Right to Assurance** If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State’s option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order** 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies** The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender** Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset** The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor’s non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9.0 Contract Termination

- 9.1 Cancellation for Conflict of Interests** Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.



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9.2 Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3 Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4 Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default

- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10.0 Contract Claims

10.1 Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.



Request for Proposals
Solicitation No: ADSO18-00007994
Description
Professional Services for Arizona State Land Department

Arizona Department of
Administration
**State Procurement
Office**
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

11.0 Arbitration

11.1 Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12.0 Comments Welcome

12.1 Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 402, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2