

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
MESA ENERGY SYSTEMS, INC. dba EMCOR SERVICES ARIZONA, INC.**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this _____ day of _____, 2022, between the City of Glendale, an Arizona municipal corporation (the "City"), and Mesa Energy Systems, Inc. dba Emcor Services Arizona, Inc., a California corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

- A. On May 20, 2020, the State of Arizona entered into a contract with Contractor to purchase the goods and services described in the HVAC Maintenance, Repair, and Emergency Services Contract, Contract No. CTR049764 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was May 20, 2020, until the date the contract expires on May 20, 2023 unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond May 20, 2025. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until May 20, 2023. The City may renew the term of this Agreement for two (2) one year periods if the Cooperative Purchasing Agreement is

likewise extended. Glendale renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed five hundred thousand dollars (\$500,000) annually or one million five hundred thousand dollars (\$1,500,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Todd Blair Supervisor, Building Maintenance
6210 W. Myrtle Avenue, Suite 111
Glendale, AZ 85301

And

Mesa Energy Systems, Inc. dba Emcor Services Arizona, Inc.
4125 E. Madison St.
Phoenix, AZ 85034
toni_klenner@emcor.net

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

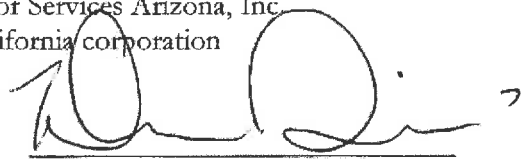
"City"

City of Glendale, an Arizona
municipal corporation

By: _____
Kevin R. Phelps
City Manager

"Contractor"

Mesa Energy Systems, Inc., dba
Emcor Services Arizona, Inc.
a California corporation

By: 
Name: Stephen P. Hunt
Title: SCP & Chief Financial Officer

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
MESA ENERGY SYSTEMS, INC. dba EMCOR SERVICES ARIZONA, INC.**

**EXHIBIT A
STATE OF ARIZONA
CONTRACT NO. CTR049764
HVAC MAINTENANCE, REPAIR, AND EMERGENCY SERVICES**



Request for Proposal

Solicitation No. **BPM002434**

Description:

HVAC Maintenance, Repair, and Emergency Services

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 **HVAC Maintenance, Repair, and Emergency Services** in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Initial Offer:	1.	4/30/20	DG						
		Date	initial						
Revised Offers:	2.	X	X	3.	X	X	4.	X	X
		date #1	initial		date #1	initial		date #1	initial
	5.	X	X	6.	X	X	7.	X	X
		date #4	initial		date #5	initial		date #6	initial
Best and Final Offer:	8.	X	X						
		Date	initial						

EMCOR Services Mesa Energy Systems

Offeror company name

4125 E. Madison St.

Address

Phoenix, AZ 85034

City | State | ZIP

33-0112640

Federal tax identifier (EIN or SSN)

Signature of person authorized to sign Offer

Don Griffin, Branch Manager

Printed name and title

Don Griffin, Branch Manager

Contact name and title

dgriffin@emcor.net

Contact Email Address

602-314-3189

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 the latest date and number at the top of this form (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: CTR049764

The effective date of the Contract is: 5/20/2020

Contract awarded 5/20/2020

Dustin Deason

PART 3 of the Solicitation Documents
Template version 6.0 (18-NOV-2019)

SECTION 3-B: Offer Forms
Page 15 of 51

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Available online at: APP.AZ.gov

	Contract Amendment		Arizona Department of Administration General Services Division 1100 W. Washington St, Suite 155 Phoenix, AZ 85007
	APP: CTR049764		
	Amendment #2 Contract Extension	Date: 5/11/2022	

MESA Energy Systems Inc - EMCOR Services Arizona

1. The above mentioned contract is hereby amended as follows:
 - a. In accordance with Uniform Terms and Conditions Section 3.1 Term of Contract, this contract shall be extended through **May 20, 2023**.

All other terms, conditions and provisions remain unchanged.

**ALL OTHER REQUIREMENTS, SPECIFICATIONS, TERMS AND CONDITIONS REMAIN UNCHANGED
ACKNOWLEDGEMENT AND AUTHORIZATION**

This change order shall be fully executed upon the approval electronically in APP by an authorized representative of the Contractor and applied to the contract in APP by the Procurement Officer or delegate.

Available online
at APP.AZ.gov



Request for Proposal
Solicitation No. BPM002434
Description:
HVAC Maintenance, Repair, and Emergency Services

Arizona Department of
Administration
General Services Division
100 N 15th Avenue, Suite 103
Phoenix, AZ 85007

Part 2: Scope, Pricing and Terms and Conditions

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SECTION 2-A: Scope of Work

1.0 Introduction

The Arizona Department of Administration, General Services Division on behalf of the State of Arizona (hereinafter referred to as the "State") is responsible for administering the HVAC Maintenance, Repair and Emergency Services Contract (hereinafter the "Program") for all state departments, agencies, boards and commissions (hereinafter referred to as "Eligible Agencies") The Program is self-funded for all eligible participants under A.R.S. §41-621.

The Arizona Department of Administration (ADOA) and Arizona Exposition and State Fair (AESF) is requesting proposals from qualified firms for the purpose of providing **HVAC Maintenance, Repair and Emergency Services**. These services will be provided for multiple facilities owned and/or managed by ADOA and AESF.

2.0 Objective

To provide HVAC Maintenance, Repair and Emergency Services to include, but not limited to, the following; cooling towers, chillers, supplemental support equipment, cooling tower fans, motors, all split units, evaporative coolers, refrigerant monitoring system, smoke/fire dampers, plate and frame, valves, pumps, air handler units and support equipment, all open and closed loop piping, all system pumps, all air and/or dirt separators, all variable frequency drives and other specified items.

3.0 Clarifications

- 3.1 For clarification purposes within the scope of work as well as the attachments, the following abbreviations are defined:

AHU	Air handling unit	CFM	Cubic feet per minute
CLG TWR	Cooling Tower	TSP	Total static pressure
CHWR	Chilled water return	PNEU	Pneumatic
CDWS	Condenser water supply	ELEC	Electric
CDWR	Condenser water return	D	Daily
PPS	Pumps	W	Weekly
GPM	Gallons per minute	M	Monthly
TDH	Total dynamic head	Q	Quarterly
HVAC	Heating, ventilating and	SA	Semi-annually
AC	air conditioning	A	Annually
RPM	Revolutions per minute	HX	Plate Heat Exchangers
CRAC	Computer Room Air Conditioner		

3.2 Building Information:



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- 3.2.1 Attachments A through D contain inventories of equipment for ADOA and AESF that will be covered under this contract.
- 3.2.2 Each Attachment has individual tabs that contain the location, building address, task schedules and equipment for each agency.
- 3.2.3 All attachments are as complete and accurate as possible. Any changes found that differ from these inventories once the contract is awarded shall not affect the services or pricing under this contract. Any modifications to existing equipment, as outlined in this RFP, will be covered under this agreement.

4.0 Service Requirements – General

- 4.1 The selected firm shall furnish all labor, materials, tools, and resources necessary to design, develop and implement a maintenance procedure and provide normal maintenance repair and emergency services for all heating, cooling, ventilating systems in the facilities listed in Attachments A and B. (Building automation systems are NOT covered but the chiller automation systems are covered.) The goods and services provided shall include, but are not limited to, those outlined below:
 - 4.1.1 Provide maintenance and repair services on all equipment related to the heating, ventilation, air conditioning, humidity control, building control systems (pneumatic, electric, and DDC) within the facilities listed in Attachments A and B. This involves maintenance and repair of chillers, chiller controls, chilled water and condenser piping in chiller rooms, in air handler rooms, in cooling towers, and in boiler rooms as well as pumps and pump controls, cooling towers, cooling tower controls, chemical water treatment equipment (including pumps, piping and controls) and air handling equipment. Maintenance consists of pre scheduled recurring actions that are to be performed on a regular interval determined by equipment operating hours that may be recommended by each equipment manufacturer. The maintenance tasks are designed to maintain the equipment for prime operating conditions so that the equipment will operate effectively, reliably, and efficiently.
 - 4.1.2 Furnish all labor, parts, materials, test equipment, tools, programming materials, and services in conformance with the terms and conditions as stated in this RFP. All work shall be performed in compliance with applicable standards, regulations and codes established by local, state and federal agencies.
 - 4.1.3 The agency shall inform the contractor of hazardous conditions such as asbestos containing material, confined space, lockout-tagout, fall hazards and other OSHA regulated work hazards. If the vendor encounters any additional hazardous materials or conditions all work must stop and the Agency shall be notified immediately.
 - 4.1.4 Vendor shall notify the Agency immediately of any occurrence or condition within the service areas that interfere with the full performance of the contract, and confirm it in writing within 24 hours.
 - 4.1.5 During the performance of work under this contract, the Vendor shall take all necessary precautions for the protection of the public and prevention of accidents. This includes, but is not limited to, the use of barricades, cones and electric warning lights, approved by the Agency in order to guard the public against any impending



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danger. The Vendor shall provide and maintain all barricades and other barriers related to the work during the period of the contract.

4.2 Personnel

4.2.1 Qualifications Of Personnel

The selected firm shall employ sufficient qualified staff who can arrive on the site within the specified time period. Technicians shall have the training and necessary experience needed for proper performance of this work. The selected firm shall have a minimum of three (3) factory trained service technicians who have a minimum of five (5) years' experience in servicing and maintaining the equipment listed in this contract.

4.2.2 Onsite Personnel

4.2.2.1 The name(s), and cell phone number(s) of all key onsite personnel shall be provided by the selected firm. Once assigned to work under the contract, key personnel shall **not** be removed or replaced without the prior written approval of the issuing agency and a copy to the procurement officer of record.

4.2.2.2 The key onsite personnel shall have the authority to facilitate the work, prioritize the activities, determine the weekly (seasonal) schedules, participate in the day to day decisions concerning maintenance, and assist the authorized designee in making onsite inspections and coordinating the facilities operational needs and requirements. A set of facility access keys may be available to the approved key onsite personnel. Should any of these facility access keys be damaged, lost, or destroyed, the selected firm shall bear the cost of lost key replacement.

4.2.2.3 All onsite personnel shall be attired in appropriate uniforms (hats or shirts, etc.) that identify the selected firm while on State property.

4.2.2.4 Onsite personnel may be required to follow special procedures per the Building Manager or their designee when accessing buildings and shall follow the required procedures.

4.3 Subcontracting

All subcontractors shall meet the same requirements as outlined in this RFP. Under no condition will any work specified be subcontracted without the designated agency's representative's prior approval. If there is a subcontractor, qualifications shall be provided to the Agency for review and approval;

4.4 Inventory and Test Equipment

To ensure ability to meet response times as outlined in the RFP, the selected firm shall maintain or have access to an adequate inventory of standard replacement parts for common components in the systems under contract

4.5 Maintenance

4.5.1 Maintenance and Scheduling

4.5.1.1 To ensure a uniform and detailed method of defining maintenance tasks, all maintenance tasks shall be scheduled based on the manufacturers' maintenance recommendations and according to industry standards. The selected firm shall maintain and may be required to show copies of



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maintenance reports to demonstrate compliance to this requirement. The maintenance tasks shall be as specified in the Tasks Schedules found in Attachments A through D. Where these Task Schedules differ from the equipment manufacturer's recommendations, the manufacturer's recommended maintenance procedures shall take precedence.

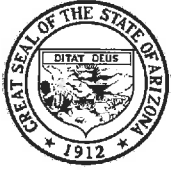
- 4.5.1.2 Within 60 days of request, the selected firm shall submit to the Agency Facilities Management Professional for agency approval all scheduling documentation for the performance of all required work under this contract including annual inspections and equipment overhauls.

4.5.2 General Maintenance Procedures

- 4.5.2.1 Vendor shall maintain and may be required to show copies of complete and detailed service and maintenance records for each piece of equipment, in a secure central database that will be provided to using Agency upon request.
- 4.5.2.2 Vendor shall provide real time records to each and all technicians servicing any piece of equipment on the site.
- 4.5.2.3 Vendor shall provide work orders that clearly identify the equipment to be serviced and contain sufficient information about the task required to complete the work
- 4.5.2.4 Vendor shall have the ability to provide "real time" status of any current work order at any time and make that status available via the Internet, e-mail, or phone.
- 4.5.2.5 Vendor shall have the ability to receive service requests via an Internet web site or centralized call center on a 24/7, 365-day basis
- 4.5.2.6 Vendor shall have quality processes that ensure equipment is serviced and work actions are recorded in a uniform manner every time, regardless of the assigned technician.
- 4.5.2.7 Vendor shall have the ability for service requests and maintenance activities to be tracked to completion in a timely manner.

4.5.3 Maintenance and Repair Calls

- 4.5.3.1 Maintenance under this agreement shall be performed during the normal working hours defined as 8:00 AM through 5:00 PM. When major equipment needs to be turned off for servicing, including but not limited to maintenance, repairs and any scheduled overhauls, and it would not be acceptable to do so during normal business hours, the Vendor shall be available to do work after normal business hours at no additional charge to the Agency.
- 4.5.4 The Vendor must respond to all service requests, including repair calls regardless of weather conditions. Repair calls shall be responded to within two (2) hours. All repair service shall be determined by a designated Agency representative. Repair services are defined as those services that are required to keep chillers, cooling towers, air moving equipment and pumps in operating condition. The Agency will provide reasonable means of access to all equipment covered by the resulting agreement. The Vendor shall schedule the start and stop of all primary equipment that is incidental to the operation of the systems as arranged with Agency



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representatives. All equipment shall be repaired to equipment manufacturer's specifications.

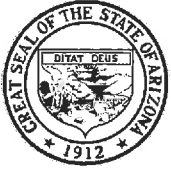
- 4.5.5 The Vendor as part of the monthly service fee shall, regardless of cause or fault, provide labor; overtime; travel costs; temporary equipment; all parts necessary to repair or replace permanent equipment to manufacturer's specifications; and other incidental expenses incurred. Any temporary equipment used shall be required to maintain the buildings at 75 degrees F and shall be provided on a continuous basis, including weekends and holidays, until the necessary repairs are made and the permanent equipment is back in full service.

4.6 Emergency Service

- 4.6.1 Unless an exception is approved by the Agency, all major systems must be back on line and operating whether by repair or use of temporary equipment within eight hours of notification of systems failure.
- 4.6.2 The selected firm shall provide emergency service as a part of this agreement including:
- 4.6.2.1 All labor, overtime, travel costs, parts, supplies, etc to diagnose and repair any failed equipment. All expenses incurred and expended on such a call are included in the cost of this program and there will be no additional compensation to the selected firm.
- 4.6.2.2 Emergency service shall be provided as often as needed, on a 24-hour basis, weekends and holidays included.
- 4.6.2.3 Service personnel shall arrive on-site within 2 hours after notification of an emergency situation.
- 4.6.2.4 At least one emergency phone number, available 24/7, that shall be answered by a person, not a recording.

4.7 Parts, Labor and Complete Replacement

- 4.7.1 The Vendor will repair or replace worn parts or complete components covered under this contract with new parts to original equipment manufacturer's specifications.
- 4.7.2 With the exception of major equipment, and if it's mutually determined that equipment cannot be repaired; the cost for replacement will be covered under this agreement. Major equipment shall include but not be limited to chillers, cooling towers, air handlers and flat plates.
- 4.7.3 The Vendor shall be responsible for proper disposal of old parts and equipment in accordance to government and environmental regulations.
- 4.7.4 All repair and replacement parts, components, and devices for the mechanical systems and equipment shall be provided by the selected firm and will be included in the cost of this service program.
- 4.7.4.1 If a part is determined to be obsolete
- 4.7.4.1.1 If the part(s) is/are obsolete and there is an equivalent part(s); the eligible agency will pay only the difference in the price of the part(s)
- 4.7.4.1.2 If the part(s) is/are obsolete and there is not an equivalent part(s); and the upgrade does not require a major control



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change or expansion; the eligible agency will pay only the difference in the price of the part(s).

4.7.4.1.3 If the part(s) is/are obsolete and there is not an equivalent part(s); and the upgrade requires a major control change or expansion; then the eligible agency has the option to accept the contractor's proposal or go for bidding.

4.7.4.1.4 All labor to replace obsolete or equivalent parts shall be completed at no cost to the state and will be covered under the monthly maintenance agreement. If after-hour work is required, the state shall pay the difference between the normal hourly rate and overtime rate but only if prior authorization has been received

4.7.5 All labor to replace obsolete or equivalent parts shall be completed at no cost to the state and will be covered under the monthly maintenance agreement. If after-hour work is required, the state shall pay the difference between the normal hourly rate and overtime rate but only if prior authorization has been received. All miscellaneous parts and supplies, including but not limited to those necessary to maintain the mechanical systems and equipment shall be supplied by the Vendor and shall be included in the cost of this service program (belts, fuses, valves, valve packing, insulation, lubricants, oil, tools, paints, refrigerant, test instruments, meters, etc).

4.7.6 If it is determined, and mutually agreed upon, that any major equipment under this agreement has passed its useful life and cannot be repaired, the selected firm shall provide a quote for the replacement of the equipment upon request of the using agency.

4.7.7 Major equipment replacement to be performed under this agreement will be for the cost of equipment only and all conditions of the contract shall apply. Any other additional charges for installation, freight, other materials, travel, etc. will not be allowed.

4.7.8 The Vendor shall have written approval prior to proceeding with major repairs. It is understood and agreed that the State of Arizona has the right to reject the written quotation for the major equipment replacement and subject the requirement to competitive quotation separate from this contract.

4.7.9 The Vendor shall provide documentation in cases of major equipment failure that all maintenance was completed per manufacturer's requirements to ensure that failure was not the result of neglect or deferred maintenance

4.8 Designated State Representative

4.8.1 All work performed by the selected firm for the Arizona Department of Administration shall be reviewed and approved by an authorized representative of the ADOA Facilities Operations and Maintenance group. Any reports, schedules and invoices shall be submitted to:

ADOA Facilities Operations and Maintenance
Attn: Kent Bostick
100 N. 15th Ave., Suite 202
Phoenix, AZ 85007



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Arizona Department of
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- 4.8.2 All work performed for the Arizona Exposition and State Fair shall be reviewed and approved by an authorized representative for that agency. Any reports, schedules and invoices shall be submitted to:
Arizona Exposition and State Fair
Attn: Tom Youngs
1826 W. McDowell Rd
Phoenix, AZ 85007
- 4.8.3 All work performed for the Arizona State Hospital shall be reviewed and approved by an authorized representative for that agency. Any reports, schedules and invoices shall be submitted to:
Arizona State Hospital
Attn: Mikel Adair
501 N. 24th St
Phoenix, AZ 85008

5.0 Services for Mechanical Systems

- 5.1 Routine maintenance services shall be performed in accordance with the task schedule for each equipment type. A designated state representative must authorize, in writing, task schedule activities prior to services being performed and may elect to be present for maintenance activities performed.
- 5.1.1 Pumps
In accordance with the Task Schedule found in Attachments A and B, and as required by the manufacturer, the Vendor shall maintain pumps back to include but not limited to, the main service entrance section breaker. Maintenance shall incorporate all associated valves, check valves, isolation valves, pneumatic valves, flanges, welds and chemical feed systems including all associated pumps, injectors and piping. Maintenance shall also include but not limited to pump motors and their components, electrical breakers and their components, including starter heaters, contactors, disconnects, all fuses and control wiring between pumps and other equipment
- 5.1.2 Chillers
In accordance with the Task Schedule shown in Attachments A and B, and as required by the manufacturer, the Vendor shall maintain entire chillers (including but not limited to condenser and evaporator tubes) back to and including but not limited to the main service entrance section breaker. Maintenance shall also incorporate but not be limited to starter heaters, contactors, chiller control panels, disconnects, all fuses and control wiring between chillers and other equipment. Starter panels shall be cleaned and maintained semiannually. An oil analysis shall be done annually. Additionally, the Vendor shall also inspect all chillers on a biennial basis. This inspection shall include an eddy current test on condensers and evaporators
- 5.1.3 Cooling Towers and Cooling Tower Fans



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In accordance with the Task Schedule shown in Attachments A and B, and as required by the manufacturer, the Vendor shall provide maintenance and repair services for the cooling towers and cooling tower fans. All cooling towers listed are to have a complete annual tear down, which will include but not be limited to maintenance on the cooling tower fan(s). As part of the cooling tower annual teardown, work on the fans is to include but not be limited to: gear box cleaning, fan and motor cleaning and adjusting and calibrating fan vibrations switch as part of the maintenance contract. The annual teardown shall be completed during the first quarter of the contract.

5.1.4 Plate Heat Exchangers

The Vendor shall inspect all plate heat exchangers in accordance with the appropriate Task Schedule found in Attachments A and B, and as required by the manufacturer, shall provide evidence that the plate heat exchangers are operating per manufacturer specifications. Should they scale, the

Vendor shall chemically clean and flush the exchangers in accordance with the manufacturer's recommended procedures for removing scale.

5.1.5 Water Treatment Systems

5.1.5.1 The water treatment systems for the closed loop (cooling, heating & glycol) water and open cooling towers shall be maintained in accordance with the relevant Task Schedule. The Vendor shall test water supply source and tower water for Total Dissolved Solids (TDS), PH, alkalinity and inhibitor level; clean and adjust bleed control based on analysis; add and adjust chemicals to towers including inhibitor and biocides. Appropriate Personal Protective Equipment (PPE) shall be used such as gloves when handling chemicals.

5.1.5.2 TDS is to be maintained at 2.5 to 3.5 cycles, in all towers. Nitrate levels in closed loop systems (cooling and heating) within the first 90 days shall be brought up to and maintained for the duration of the contract between 500 to 600 Parts Per Million (PPM) for chilled water and 700 to 800 PPM for hot water. The selected firm shall clean and calibrate TDS and PH sensor probes weekly and replace as needed. Maintenance and replacement of chemical feed systems shall be the single source responsibility of the Vendor. Within 10 days after notice to proceed, the Vendor shall provide initial water testing on all cooling towers and have reports available upon request from the agency. Water treatment chemicals', manufacturer's safety data sheets (SDS), and test procedures shall be submitted within thirty (30) days of contract award. A representative of the State of Arizona may, at any time, monitor any and all water treatment activities, test procedures, chemical treatment or adjustments.

5.1.5.3 The Vendor shall quarterly, or as the State deems necessary, drain and clean the cooling towers. The Vendor shall notify the State prior to cleaning and shall chemically readjust tower water after completion of tower cleaning. On site chemical storage will be allowed as follows: no more than 4 barrels inside and 4 barrels outside the Tucson location, and at most 1 barrel at each location in Phoenix.



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5.1.6 Air Moving Equipment

5.1.6.1 In accordance with the relevant Task Schedule, and as required by the manufacturer, the Vendor shall maintain fans back to and including the motor control centers.

5.1.6.2 In-line vane axial fans, including those manufactured by JOY and American SF products, and the axial type fans (identified as "VF" in the equipment list) shall be kept balanced to manufacturer's specifications.

5.1.7 Variable Speed Drives

The variable speed/frequency drive controllers for equipment shall be maintained in accordance with the appropriate Task Schedule and as required by the manufacturer. Maintenance shall include prom chip, wiring back to and including breaker, microprocessors, integrated circuits, all electrical components and wiring and devices such as control wiring and duct sensors. VFD/VSD shall be cleaned on an annual basis with the external covers removed and all dust and debris removed. All electrical connections shall be checked for tightness.

5.1.8 Evaporative Cooler Equipment

The Vendor, in accordance with the Task Schedule, and as required by the manufacturer, shall provide maintenance and repair services for the evaporative cooler equipment. All evaporative cooler equipment maintenance shall include at a minimum but not limited to five (5) site visits per year, to include one (1) spring start-up, three mid-season service calls, and one (1) winter shut-down visit.

6.0 Quality Control and Performance Data

6.1 General

6.1.1 Within one month after contract award, the Vendor shall establish and submit evidence of a complete quality control program ensuring that proper services are to be provided. Using Agencies shall review and advise of approval or denial of the quality control program within 10 working days of submittal. In the event of denial, the selected firm shall resolve all found deficiencies and re-submit.

6.1.2 The Vendor's performance shall be subject to periodic inspection by the using agency at any time. The Vendor shall provide to the Agency evidence, through service performance data, that the service requirements of this RFP are being met. The performance data shall be captured electronically and stored with the selected firm who shall make performance reports available as directed by the Agency.

6.2 Service Performance Data

6.2.1 The minimum information required to be captured and stored electronically shall consist of the following:

6.2.1.1 An inventory of all equipment, including the serial numbers and model numbers for all mechanical equipment under coverage of the contract resulting from this RFP;

6.2.1.2 Records of every service order issued during the term of the contract. These records shall include customer initiated service requests and computer generated maintenance requests; and,



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6.2.1.3 Each service record shall include the description of the request, date and time of the service request, name of the service mechanic assigned, date and time that the mechanic arrived at the site, resolution of the request with a description of the work performed and the date and time that the work was completed.

6.2.2 Viewing of Service Performance Information

The information shall be provided electronically (in a format approved by the Agency) to the Agency on a monthly basis and as reasonably requested. The service history should be retrievable by individual building or by the type of service request (maintenance, emergency service, etc).

End of Scope

SECTION 2-A SUPPLEMENTS:

(Offeror to insert as required and list here or type "None" on first line)

	Title	Document Date	No. of pages	Purpose in Offer
1.	Enter or type "None"			
2.	Enter or delete row if not needed			
3.	Enter or delete row if not needed			
4.	Enter or delete row if not needed			
5.	Enter or delete row if not needed			
6.	Enter or delete row if not needed			
7.	Enter or delete row if not needed			

The following Exhibit applies to the Scope of Work:

Attachment A – ADOA

Attachment B – State Fair

End of Section 2-A



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SECTION 2-B: Pricing Document

1.0 Compensation

1.1 COMPENSATION METHOD

Contractor will be compensated based on the final detailed written quote approved by the Customer. Pricing shall not exceed the labor rates indicated on the Pricing Document.

2.0 Pricing

2.1 **CONTRACTOR'S BEST PRICING.** Supplier warrants that, for the term of the Contract, the prices and discounts set out in Attachments/Exhibits titled ATTACHMENT 4 PRICING SHEET to this Pricing Document, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent services, items of equipment and materials.

2.1.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.1.2 If Contractor's Best Pricing for equivalent services, items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.1.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

2.2 PRICING-ALL-INCLUSIVE:

2.2.1 Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

2.3 PRICE INCREASES:

2.3.1 The State may review a fully documented request for a price increase. The requested increase shall be in writing and be based upon a cost increase to the contractor that was clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. Contractor must provide conclusive evidence of a need for any price increases such as being substantiated by the Producer Price Index, Consumer Price Index, or similar pricing guide.

(a) Initial Contract prices will be honored for one year after award of Contract.

(b) All written requests for price adjustments made by the contractor shall be initiated thirty (30) days in advance of any desired price increase to allow State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.



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- (c) All price adjustments will be implemented by a formal contract amendment. State shall determine whether the requested price increase or an alternate option is in the best interest of State.

2.4 PRICE REDUCTIONS:

- 2.4.1 Price reductions shall be immediately passed along to State and may be submitted in writing to State for consideration at any time during the Contract period. The contractor shall offer State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. State at its own discretion may accept a price reduction. The price reduction request shall be in writing and include documentation showing the actual reduction of cost. Sales promotions requests shall include difference in pricing, begin, and end date of promotion along with the products covered.

2.5 ADDITIONAL CHARGES:

- 2.5.1 Any charges or fees not delineated in the Contract may not be added, billed, or invoiced under the Contract.

2.6 TRAVEL.

- 2.6.1 Contractor shall get written approval prior to any travel under the Contract in which reimbursement of expenses will be requested. Contractor will be reimbursed for actual expenses incurred in accordance with the current rates specified in State's Travel Policy. Contractor shall itemize all per diem and lodging charges. State Travel Policy, including State rates, may be located at <https://gao.az.gov/travel>. The Eligible Entity / Customer shall reject any claim for travel reimbursement without prior written approval.

3.0 Funding

No particular funding considerations apart from paragraph 4.4 [Availability of Funds for the Next State fiscal year] and 4.5 [Availability of Funds for the current State fiscal year] of the Uniform Terms and Conditions have been identified as of the Solicitation date.

4.0 Invoicing

- 4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g. Eligible Agency or Co-Op Buyer) at the address indicated on the applicable Order document or by utilizing the Buying Entity's purchasing tool/process.

- 4.2 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 The State's e-Procurement System 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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Quantity delivered or performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●
Taxes <i>(as a separate invoice line item)</i>	●
Upcharge shipping/freight, etc. <i>(as a separate invoice line item)</i>	Materials only
Total invoice amount due	●

- 4.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:
1. Materials or Services that have not been authorized on an acknowledged Order;
 2. Expediting, overtime, premiums, or upcharges absent State's express prior approval; or
 3. Materials or Services that are the subject of a Contract Amendment that has not been fully signed.
- 4.4 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.
- 4.5 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.
- 4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.
- 4.6.1 The ordering Authorize Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
- 4.6.2 Invoices will be deemed automatically rejected upon delivery if they:
- (a) are sent to an incorrect address;
 - (b) do not reference the correct State contract number; or
 - (c) are payable to any Person other than the Contractor.
- 4.6.3 The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

5.0 Payments

- 5.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions
- 5.2 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.



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- 5.3 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.
- 5.4 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.
- 5.5 PURCHASING CARD. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 5.6 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>

6.0 Exhibits to the Pricing Document

■ Attachment 4 PRICING SHEET

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 Instructions to Offerors.
- 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:
1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
2. was attached to an Offer when submitted; and
3. was included in the Accepted Offer.
- 1.6 Pricing Document** "Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.7 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.
- 1.8 Contract Terms and Conditions** "Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.9 Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.10 Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.11 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).



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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.

- 1.12 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.
- 1.13 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.
- 1.14 Instructions to Offerors** "Instructions to Offerors" is Section 3-a of Part 3 of the Solicitation Documents.
- 1.15 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 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 The State's e-Procurement System;
 2. "task order", "service order," or "job order" when a Release Purchase Order for Services has already been committed in The State's e-Procurement System; or
 3. "purchase order" for buying by Co-Op Buyers, if co-op buying applies.
- 1.16 The State's e-Procurement System** "The State's e-Procurement System" 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, The State's e-Procurement System – 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>
- 1.17 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.
- 1.18 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.
- 1.19 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.
- 1.20 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.



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2.0 Contract Interpretation

2.1 Usage

Where the Contract:

1. 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;
2. 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;
3. 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.
4. 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;
5. 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
6. 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.

2.2 Contract Order of Precedence

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.

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 final 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) Pricing Document;
 - (7) Exhibits to the Pricing Document;



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- (8) Specifications; and
- (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

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.

2.3 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.

2.4 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.

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 **twelve (12) months unless cancelled, terminated, or permissibly extended.**

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 maximum aggregate term of five (5) years.

3.3 Notices and Correspondence

3.3.1 TO CONTRACTOR. 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 The State's e-Procurement System 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. Contractor shall :

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

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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 The State's e-Procurement System, in the case of an amendment – is not required to give effect if the Contract Amendment only covers either:

1. extension of the term of the Contract within the maximum aggregate term;



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2. revision to Procurement Officer appointment or contact information; or
3. 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 The State's e-Procurement System, in the case of an Amendment – are required to give it effect.

3.5 Click-Through 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 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 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 to 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. 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,



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provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

- (a) "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
 - 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.

- (b) "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:

- any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
- 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
- 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 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



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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 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 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.

3.12 Orders

3.12.1 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 that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

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

3.12.3 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.

3.12.4 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 and (b) the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.

3.12.5 NO MINIMUMS OR COMMITMENTS. (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.

3.12.6 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.

3.13 Provisions for Statewide Contracts:

- Co-Op Usage
- Eligible Agencies
- Quarterly Reporting

The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a "delivery order" sub-type of ID/IQ contract to the extent the Work is Materials, and a "task order" sub-type to the extent the Work is Services.

Co-Op Usage

1. 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:



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

2. 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).
3. 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 one (1%) percent. 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>

4. 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.

Eligible Agencies – Orders

Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either:

- (a) "Approving" the Order electronically in The State's e-Procurement System, which will indicate Contractor's unqualified acceptance of the Order as-issued; or,
- (b) "Rejecting" the Order electronically in The State's e-Procurement System, 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 the State's e-Procurement System, 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 The State's e-Procurement System within three (3) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State's e-Procurement System and if it does so the rejection will be void.

Quarterly Usage Reports

Contractor shall submit to State a *Quarterly Usage Report* documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted, even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. 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>

3.14 Multiple-Use Provisions

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders issued by



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Co-Op 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:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. 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.
3. 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.
4. 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.

3.15 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.

3.16 Work on State Premises

3.16.1 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.

3.16.2 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].

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



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in the Pricing 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 Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.2 Applicable Taxes

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.

4.2.1 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 Pricing 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.

4.2.2 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.

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 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



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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 which may arise 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 might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and 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
Damage to Rented Premises	\$ 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.

2. Business Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its 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, leased, 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.



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3. Worker's Compensation and Employers' Liability

Workers' Compensation.....	Statutory
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 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/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, 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, the following provisions:

1. 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
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

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 mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

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.

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



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endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

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.

All such certificates required by this Contract shall be sent directly to the Arizona State Procurement Office. 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, certified copies of all insurance policies required by this Contract at any time.

SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insured 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 Department reserves the right to require, at any time throughout the life of this 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 Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor.

This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

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:



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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 7.66 [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 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



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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 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.

7.5 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 5.3 [*Assignment and Delegation*] that expressly recognizes the event.

7.6 Performance in Public Health Emergency

Contractor warrants that it will:

1. 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 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
2. 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.

7.7 Lobbying

7.7.1 PROHIBITION.

(a) Contractor warrants that:

- i. 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
- ii. 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.



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

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

7.7.2 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.

7.8 Survival of Warranties

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

8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

9.0 Contract Termination

No modifications to uniform terms and conditions section

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 cancellation, 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



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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 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 Discounted 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.

11.9 Forced Substitutes

11.10 Recalls

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.

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.



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11.12 Delivery Time

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

11.13 Delivery Locations

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

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:
 - i. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
 - b) If a prospective Co-Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and,
 - c) if the Commercial 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 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



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11.17 Returns

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.
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.

11.18 Order Cancellations

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 thirty (30) 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.

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 one (1) additional business day
2. reimburse Contractor for:
 - (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;
 - (b) the cost of any obligations it incurred in fulfilling the Order up to the cancellation effective date plus one (1) 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,

11.19 Product Safety

3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice.

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

11.20 Hazardous Materials

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

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



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"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 General Provisions for Services

12.1 Applicability

Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.

12.2 Comprehensive Services Offering

State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services 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 documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.

12.3 Additional Services

Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, "off-contract service" refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded service" refers to any service expressly excluded from the scope of the Contract.

12.4 Off-Contract Services

Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State's facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.

12.5 Removal of Personnel

During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing) to



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complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

12.6 Transitions

Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.

12.7 Accuracy of Work

Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

12.8 Requirements at Services Location

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.

12.9 Services Acceptance

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.

Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

12.10 Corrective Action Required

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.



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3. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
4. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
5. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

13.0 Data and Information Handling

13.1 Applicability

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

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.

13.2 Data Protection and Confidentiality of Information

Without limiting the generality of paragraph 13.2, 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-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information*, January 3, 2017; and
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:

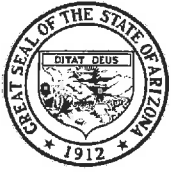
<https://dpold.defense.gov/Privacy/Authorities-and-Guidance/>

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

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

13.3 Personally Identifiable 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:



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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>

13.4 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:

4. 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;
5. 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
6. 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>

14.0 Information Technology Work

14.1 Applicability

Each of Contractor's personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S § 41-710. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.

14.2 Background Checks

- 14.3.1 SYSTEM MEASURES. Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State's proprietary data or confidential information.
- 14.3.2 INDIVIDUAL MEASURES. Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only



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provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.

14.3.3 ACCESS CONTROL. Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.

14.3 Information Access

14.4.1 INDEMNITY FROM THIRD PARTY. For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.

14.4.2 NOTIFY OF CLAIMS. State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:

- (a) State reserves the right to elect to participate in the action at its own expense;
- (b) State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and

(c) State shall in any case cooperate in the defense and any related settlement negotiations.

14.4 Pass-Through Indemnity

In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

14.5 Systems and Controls

14.6.1 REPLACE, LICENSE, OR MODIFY. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Contractor shall at its sole cost and expense and in consultation with State either:

- (a) replace any infringing items with non-infringing ones;
- (b) obtain for State the right to continue using the infringing items; or
- (c) modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.

14.6.2 CANCELLATION OPTION. In every case under 14.6.1, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:

- (a) for any software created for State under the Contract, the amount State paid to Contractor for creating it;



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- (b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
- (c) for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.
- 14.6.3. EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:
- (a) modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
- (b) operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
- (c) combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.
- 14.6 Redress of Infringement.**
- 14.7.1 LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.
- 14.7.2 PROVISOs. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:
- (a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
- (b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or
- (c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.
- 14.7.3 PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all Contract Amendments having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.
- 14.7.4 NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.
- 14.7 First Party Liability Limitation**
- 14.8.1 SPECIFIED DESIGN. Where the Scope of Work for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:
- (a) modified or altered by anyone not authorized by Contractor to do so;
- (b) maintained in a way inconsistent to any applicable manufacturer recommendations; or
- (c) operated in a manner not within its intended use or environment.



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14.8.2 COTS SOFTWARE. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:

- (a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
- (b) the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and
- (c) it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.

14.8.3 PAYMENT HAS NO EFFECT. The warranties in this paragraph are not affected by State's inspection, testing, or payment.

14.8 Information Technology Warranty

Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty under paragraph 14.8 includes, at State's discretion, re-performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor's payment of State's additional, documented, and reasonable costs to procure materials or services equivalent in function, capability, and performance at that first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 14.7. If none of the foregoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.

14.9 Specific Remedies

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.

14.10 Section 508 Compliance

The following are required for Contractor of any "cloud" solution that hosts State data outside of the State's network, or transmits and/or receives State data.

1. Submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://aset.az.gov/resources/policies-standards-and-procedures>, and mitigate or install compensating controls for any issues of concern identified by State. Contractor is required to provide any requested documentation supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.
2. State reserves the right to conduct Penetration tests or hire a third party to conduct penetration tests of the Contractor's application. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.
3. Contractor must submit copy of system logs from cloud system to State of AZ security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data.

End of Section 2-C



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SECTION 2-D:
Uniform Terms and Conditions

Version: 9 (7/1/2013)

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 of 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 1.8. |
| 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. |

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 |
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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 and Materials Testing** 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 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



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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.

**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.



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- 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 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



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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:

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.



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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.
 - 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.



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- 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.
- 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.



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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.

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 201, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2

	Solicitation Amendment 1		Arizona Department of Administration General Services Division 100 N. 15 th Avenue, Suite 103 Phoenix, AZ 85007	
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	Date 4/9/20			
Solicitation Amendment No.: 1				

Pursuant to the Uniform Instructions to Offerors, Item 2.6., Solicitation Amendments, the above referenced solicitation shall be amended as follows:

- 1. Remove and Replace Attachment 4 PRICING SHEET Rev1 – Added time duration for pricing (Per Month)**

ACKNOWLEDGEMENT

ACKNOWLEDGEMENT OF SOLICITATION AMENDMENT SHALL BE DONE ELECTRONICALLY PRIOR TO OFFER DUE DATE AND TIME. All other all terms, conditions, specifications and amendments to the Solicitation remain unchanged.

	Solicitation Amendment 2		Arizona Department of Administration General Services Division 100 N. 15 th Avenue, Suite 103 Phoenix, AZ 85007	
	Solicitation No.: BPM002434			Page 1 of 1
	Description: HVAC Maintenance, Repair, and Emergency Services			
	Date 4/15/20			
Solicitation Amendment No.: 2				

Pursuant to the Uniform Instructions to Offerors, Item 2.6., Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. Remove and Replace Attachment A – ADOA

- All equipment has been integrated into Tab A Equipment List
- Tab C Building List has been updated.

ACKNOWLEDGEMENT

ACKNOWLEDGEMENT OF SOLICITATION AMENDMENT SHALL BE DONE ELECTRONICALLY PRIOR TO OFFER DUE DATE AND TIME. All other all terms, conditions, specifications and amendments to the Solicitation remain unchanged.



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Part 3 of the Solicitation

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Section 3-A: Instructions to Offerors

1.0 Definition of Terms

As used in these Instructions to Offerors, the terms listed below are defined as follows:

- 1.1 Arizona Procurement Code; A.R.S.; A.A.C.** "Arizona Procurement Code" means, collectively, Title 41 Chapter 23, *et. sequitur*, in the Arizona Revised Statutes (abbreviated "A.R.S.") and administrative rules R2-7-101 *et. sequitur* in the Arizona Administrative Code (abbreviated "A.A.C.").
NOTE: There are frequent references to the Arizona Procurement Code throughout the Solicitation Documents, therefore, you will need to be familiar with its provisions to be able to understand the Solicitation Documents fully.
The Arizona Department of Administration State Procurement Office provides a reference compilation of the Arizona Procurement Code on its website:
<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>
The Arizona State Legislature provides the official A.R.S. online at:
<http://www.azleg.gov/ArizonaRevisedStatutes.asp>
The Office of the Arizona Secretary of State provides the official A.A.C. online at:
<http://www.azsos.gov/rules/arizona-administrative-code>
- 1.2 Clarifications** "Clarifications" means, per A.A.C. R2-7-C313, communications between the Procurement Officer and Offeror for the purpose of providing a greater mutual understanding of the Offer. Clarifications may include demonstrations, questions and answers, or elaborations on previously-submitted information.
- 1.3 Contract** "Contract" is defined in paragraph 1.2 of the Uniform Terms and Conditions.
- 1.4 Contract Amendment** "Contract Amendment" is defined in paragraph 1.3 of the Uniform Terms and Conditions.
- 1.5 Contract Terms and Conditions** "Contract Terms and Conditions" is defined in paragraph 1.8 of the Special Terms and Conditions.
- 1.6 Contractor** "Contractor" is defined in paragraph 1.4 of the Uniform Terms and Conditions.
- 1.7 Evaluation** "Evaluation" means, per A.A.C. R2-7-316, the process whereby the Procurement Officer will determine which Responsive offers, revised offers, and best and final offers are the most advantageous to State taking into consideration the evaluation factors set forth in the Solicitation Documents.
- 1.8 Negotiation** "Negotiation" means, per A.A.C. R2-7-101(32), an exchange or series of exchanges between State and an offeror for the purposes set forth in A.A.C. R2-7-C314.
- 1.9 Not Susceptible for Award** "Not Susceptible for Award" means, per A.A.C. R2-7-C311, that the relevant offer has been determined by the Procurement Officer to fail one or more of the tests and comparisons set forth therein. NOTE: A determination of Not Susceptible for Award and a determination of Responsive are mutually exclusive.



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- 1.10 Offer:**
Initial Offer;
Revised Offer;
Best and Final
Offer (BAFO)
- "Initial Offer" means, per A.A.C. R2-7-101(33), Offeror's proposal submitted to State in response to the Solicitation, as initially submitted.
- "Revised Offer" means any revised versions of the Initial Offer that Offeror has submitted to State at State's request as permitted under A.A.C. R2-7-C314 and R2-7-C315.
- "Best and Final Offer" ("BAFO") means, per A.A.C. R2-7-101(8), the Revised Offer submitted after negotiations have been completed that contain Offeror's most favorable terms for price, service, and products to be delivered.
- Reference to "an Offer," "the Offer," or "your Offer" means any of the Initial Offer, a Revised Offer, or the Best and Final Offer.
- 1.11 Offeror**
- "Offeror" is the Person submitting an Offer; instructions addressed to "you" and references to "your" items are to be construed as being synonymous with "Offeror" and "Offeror's" throughout these Instructions to Offerors.
- 1.12 Pricing Document**
- "Pricing Document" means Section 2-B of the Solicitation Documents. Also known as Pricing Document as defined in the Special Terms and Conditions.
- 1.13 The State's e-Procurement System**
- "The State's e-Procurement System" is defined in paragraph 1.16 of the Special Terms and Conditions.
- 1.14 Procurement Officer**
- "Procurement Officer" means the person, or his or her designee, who has been duly authorized by State to administer the Solicitation and make written determinations with respect to the Solicitation. The Procurement Officer is identified in The State's e-Procurement System.
- 1.15 Small Business**
- "Small Business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.
- 1.16 Solicitation**
- "Solicitation" means this procurement solicitation, which State is issuing as either:
1. an invitation for bids ("IFB") under A.R.S. § 41-2533;
 2. a request for proposals ("RFP") under A.R.S. § 41-2534;
 3. a request for quotations ("RFQ") under A.R.S. § 41-2535; or
 4. a request for qualifications under A.R.S. §41-2558.
- Refer to the Solicitation Summary for which of the foregoing is this Solicitation.
- 1.17 Solicitation Amendment**
- "Solicitation Amendment" means, per A.A.C. R2-7-303, a change to the Solicitation that has been issued by Procurement Officer.
- 1.18 Solicitation Summary**
- "Solicitation Summary" means Section 1 of the Solicitation Documents.
- 1.19 State**
- "State" is defined in paragraph 1.11 of the Uniform Terms and Conditions.
- 1.20 Subcontract**
- "Subcontract" is defined in paragraph 1.13 of the Uniform Terms and Conditions.
- 1.21 Subcontractor**
- "Subcontractor" is defined in paragraph 1.19 of the Special Terms and Conditions.



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2.0 Solicitation Inquiries

- 2.1 Duty to Examine** Examine the entire Solicitation, obtain clarification in writing for any questions or concerns by submitting inquiries, then examine your Offer thoroughly and carefully for completeness and accuracy before submitting it. Lack of care in preparing an Offer will not be grounds for modifying or withdrawing it after the due date and time.
- 2.2 State Contact Person** Direct all inquiries related to the Solicitation to Procurement Officer, including requests for or inquiries regarding standards referenced in the Solicitation. Apart from the State's e-Procurement System Help Desk, do not contact any State personnel other than Procurement Officer concerning the Solicitation while it is in progress, through and including award.
- 2.3 Submission of Inquiries** Submit all inquiries related to the Solicitation in The State's e-Procurement System. The Procurement Officer will not respond to inquiries received in any other manner.
1. Submit technical inquiries about navigating and/or submitting proposals in the State's e-Procurement System to the State's e-Procurement System Help Desk:
 - by phone at (602) 542-7600, option2; or
 - by email to app@azdoa.gov.
 2. Submit all other inquiries about the Solicitation using the **"Discussions with Buyer" tab in the State's e-Procurement System**. Always refer to the appropriate Solicitation document by page and paragraph number. Except for technical inquiries about navigating and/or submitting proposals in the State's e-Procurement system, the State is not responsible for responding to any inquiries submitted **less than three (3) business days before the Bid/Offer due date and time**.
- 2.4 Timeliness** Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least three (3) days before the Bid/Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
- 2.5 Verbal or Email Responses** An Offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.
- 2.6 Solicitation Amendments** Only a Solicitation Amendment issued in The State's e-Procurement System can change the Solicitation.
- 2.7 Pre-Offer Conference** A Pre-Offer Conference will be held online via Google Hangouts Meeting. The link will be listed in APP in the Process field.

3.0 Offer Preparation

- 3.1 Online Documents** The Solicitation Documents are only provided online in The State's e-Procurement System; State will not provide any printed copies or other formats.
SUPPLIER REFERENCE GUIDES at: <https://spo.az.gov/app/supplier/QRG>
- 3.2 Electronic Submissions** When submitting an Offer, only include files that are Microsoft Word documents, Excel workbooks, or PowerPoint presentations and Adobe Acrobat documents.



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Obtain advance approval from the State's e-Procurement Help Desk before submitting files in any other format.

Maximum file size allowed is 25mbp.

3.2.1 Separate your documents into three (3) parts/files:

Pricing: Prepare your pricing submission following the instructions in 4.3 *Pricing* below.

Confidential documents:

- Use Attachment 5-A (Designation of Confidential Information) to indicate that your offer contains Confidential Information.
- Prepare and submit your confidential information following the instructions in 4.7 *Confidential Information* below.

Non-Confidential documents: All other documents not considered Confidential can be uploaded in a single file following the file size requirement.

3.3 Deviations in Offer

When submitting an Offer, clearly indicate in writing any deviations from the Specifications or other Solicitation technical requirements documents. Any unidentified deviation will be deemed void upon submission.

NOTE: Deviations are technical exceptions of a significant but not material nature, typically having to do with part/model numbers, details of attachments, mountings, clearances, internal configurations, etc., and are not to be confused with the material exceptions covered in paragraph 3.5.

3.4 Evidence of Intent

Every one of your Offer submissions (**e.g. initial submission and any subsequent re-submission**) must contain Attachment 1 [Offer and Acceptance Form] with a signature by your duly authorized officer, executive, principal, or agent. The signature will be deemed to signify your intent to be bound by that Offer and the terms of the Solicitation, and your representation that the information you have provided in that Offer is true and accurate.

3.5 Exceptions to Solicitation Documents

If you are submitting an Offer conditioned on exceptions to the Solicitation Documents, indicate "NO" on Attachment 5-B [Conformance Statement] and provide the required justification. Any exceptions taken elsewhere in an Offer or any of your preprinted or standard terms will be void in that Offer and without force or effect in any resulting contract.

3.6 Insurance and Bonds

Provide the evidence of insurance availability, evidence of insurance in place, evidence of bonding capacity, bonds in hand, or other security that are called for in Attachment 5-C [Insurance and Bonding Evidence].

If you intend to withhold or redact any element of your evidence of insurance policy compliance required by Section 6.2 of the Special Terms and Conditions [Contractor Insurance Requirements] on the grounds that it is confidential information, then **you must claim it as such and submit the necessary substantiated justification with each Offer using Attachment 5-A [Designation of Confidential Information] and as per Instruction 4.7 Confidential Documents below.**

Unless Procurement Officer has determined that your evidence documentation, or some or all your insurance program, is confidential information under paragraph 4.7, refusing after contract award to provide the complete, un-redacted copies of policies as called for in that exhibit will be a material breach of the Contract.



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- 3.7 Identification of Taxes in Offer** State is subject to Arizona Transaction Privilege Tax as well as certain local sales/use taxes, as described in the Contract Terms and Conditions.
- 3.8 Excise Tax** State is exempt from certain federal excise tax on manufactured goods; State will provide the necessary exemption certificates as evidence to the extent exemption applies to the Work.
- 3.9 Tax Identification** You must provide to State your federal employer identification number or social security number for the purposes of reporting monies paid under the Contract to appropriate taxing authorities. The submission is mandatory under 26 U.S.C. §6041A. If the identifier provided is a social security number, State shall only use it for tax reporting purposes and only share it with appropriate government officials.
- 3.10 Disclosure** If you are submitting an Offer despite having been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, then you must provide with that Offer the name and address of the governmental unit, the effective date, duration, and circumstances of the suspension, debarment, or other preclusion, and your justification for State to consider the Offer despite the suspension, debarment, or other preclusion. Include in your disclosure any suspension, debarment, or other preclusion that is pending, but indicate that it is pending.
- 3.11 Federal Immigration Laws** By signing an Offer, you will be deemed to have represented that both you and all your proposed subcontractors are in compliance with federal immigration laws and regulations relating to the immigration status of their personnel. State may, at its discretion, demand evidence of compliance during Evaluation, which you must provide promptly. Not providing the evidence will be grounds for Procurement Officer to determine that the Offer is Not Susceptible for Award.
- 3.12 Cost of Offer Preparation** State will not reimburse to you or any of your prospective subcontractors, suppliers, or consultants any costs associated with responding to the Solicitation.
- 3.13 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. Offerors shall declare all anticipated offshore services in the proposal.

4.0 Submission of Offer

- 4.1 Required Offer Content**
- INITIAL SUBMISSION:**
Submit all of the Initial Offer content called for in Section 3-B: Offer Forms (Attachments).
- BEST and FINAL OFFER**
A new round is created in APP for the submission of the Best and Final Offer (BAFO).



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The BAFO must contain all of the Attachments indicated in the applicable Procurement Officer request for a Submitted Offer. Make revisions in response to the negotiations / discussions and the Procurement Officer's Request for Best and Final Offer in all applicable documents and pricing grid in the State's e-procurement system.

The new round must be acknowledged and an updated *Offer and Acceptance Form* with the required signature and date must be uploaded.

4.2 Attachment Forms

If an Attachment indicates that a "Form" is being provided for an Attachment, then the Solicitation includes the required form and format for submitting the Attachment. No other form or format will be accepted, and your Offer can be determined to be Not Susceptible for Award if you submit an unofficial form.

If, however, the Solicitation Documents indicate that you are allowed to attach additional documents regarding a particular question or line item, then doing so will be acceptable so long as the filled-out Attachment clearly states "**See Attachment X Supplement (#1 of 2)**", etc., and the additional document is clearly marked as "**Attachment X Supplement (#1 of 2)**," etc.

NOTE (1): Each Form has a blank space to list your Attachment Supplements.

NOTE (2): You must upload each such "additional" document as an individual file and name the file to match the document title.

NOTE (3): Do not include non-specific marketing materials in an Offer. If something is not specifically called for, then including it will not be helpful during Evaluation, and might in fact be grounds for down-grading if it does not address your experience and capacity to carry out the work for this Solicitation.

4.3 Pricing

Pricing must be shown in the EXCEL document titled as follows:

ATTACHMENT 4 PRICING DOCUMENT

Please enter the amount of \$1.00 in the Items Tab in APP.

You must complete at least one (1) Optional Line Item or all Required Line Items in the Items (F) tab in APP in order for your Offer to be considered.

4.4 Submission

Submit each Offer online in The State's e-Procurement System before the "Bid Opening Date" indicated for the "Solicitation No." State will not consider a proposal submitted by any other method other than The State's e-Procurement System, and it will be deemed void upon submission. **By A.A.C. R2-7-C307, State will not consider later offers.** State will give no extension or grace period for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in The State's e-Procurement System. If your proposal is not submitted correctly, completely, and in conformance to these Instructions herein, then Procurement Officer may determine it Not Susceptible for Award.

NOTE: Using the State's e-Procurement System requires a certain level of technical competency; select your staff to submit proposals and handle other Solicitation general matters in The State's e-Procurement System carefully, since the State's e-Procurement System Help Desk cannot do any of the required actions for you.



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4.5 Solicitation Amendments

Acknowledge each Solicitation Amendment in The State's e-Procurement System. By A.A.C. R2-7-C303(C), you must acknowledge every Solicitation Amendment issued as of the due date and time for an Offer to be Responsive.

Amendments to the Solicitation create new rounds in APP. You must acknowledge each round created by an amendment for your Offer in order for your Offer to be Responsive.

In the event you have submitted an offer prior to a Solicitation amendment, you must acknowledge and upload your offer documents to the new round.

If you have submitted your proposal early, you must be alert for subsequent Solicitation Amendment. If an Amendment is issued after your submission, but before Bid/Offer due date and time, then the Procurement Officer may determine the Offer to be Non-Responsive if you have not acknowledged the Amendment.

4.6 Amending or Withdrawing

You cannot amend or withdraw a submitted proposal after the Bid/Offer due date and time unless expressly permitted under applicable law.

4.7 Confidential Information

If you believe that a portion of your Offer (or a protest or other correspondence) contains a trade secret or other manner of your proprietary information, you must:

1. Indicate on Attachment 5-A [Designation of Confidential Information] that your proposal contains such claimed confidential information; and,
2. Separate the documents you claim to be confidential from the offer documents and upload them separately. Prepare to upload each confidential document as a separate confidential document in your response following the instructions in the Arizona Department of Administration Procurement page under AZ Procurement Portal - APP for Suppliers Tab. Click on the Supplier Reference Guides, scroll down to How to Add Confidential Documents to a Response.
<https://spo.az.gov/app/supplier/QRG>.

If the RFP requires completion of the **AZ Baseline Security Controls**, upload your completed form as a separate confidential document.

and,

3. Upload each document you claim to be confidential separate from each other and follow the naming convention:

Section_A_Supplement_Your file Name_Confidential.

Simply indicating that the proposal contains confidential information is not sufficient to claim the protections under A.A.C. R2-7-C317 – Attachment 5 A **must be accompanied** by a detailed explanation as to why each item or category of items in the proposal should be designated confidential information.

Submit Confidential Information/Documentation as a Supplement(s) to Section 5-A, follow the naming convention: *Section_A_Supplement_Your File Name_Confidential*. **DO NOT incorporate information you are requesting to be determined as Confidential in any other section of your response.** If the Confidential information is to be responsive to another Section/Question, simply provide a statement providing the Section 5-A Supplement Title to be reviewed by the Evaluators.

Procurement Officer shall review your claim of confidentiality and provide a written determination; until a written determination has been made, Procurement Officer shall not disclose the claimed information to anyone who does not have a legitimate State interest. If Procurement Officer denies the claim of confidentiality, you may



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appeal the determination to the State Procurement Administrator within the time specified in the determination.

NOTE: Contract terms and conditions, pricing, and information generally available to the public are not and will not be designated confidential information.

4.8 Public Record

Once submitted and opened by Procurement Officer, your Offer is a public record and must be retained by State for 6 (six) years. All offers will be available for public inspection in the State's e-Procurement System after the resulting contracts have been awarded, except for any portions that were determined to be confidential information.

Procurement Officer shall make the names of Persons who submitted offers available in The State's e-Procurement System promptly after the opening date.

4.9 Offeror Certification

By signing the Offer and Acceptance Form (or other official contract form specified by Procurement Officer), you will be deemed to have certified that:

1. you did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of your Offer; and
2. you do not discriminate against any employee or applicant for employment or person to whom you provide services because of race, color, religion, sex, national origin, or disability, and that you comply with an applicable federal, state, and local laws and executive orders regarding employment.

5.0 Responsibility; Responsiveness and Acceptability

5.1 Responsibility

In accordance with A.R.S. 41-2534(G), A.A.C. R27-C312 and R2-7-C316, the State shall consider the following in determining Offeror's responsibility, as well, as the responsiveness and acceptability of their proposals. The State will consider, but is not limited to, the following in determining an Offeror's responsibility as well as susceptibility to Contract Award:

1. Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
2. Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints and/or negative references;
3. Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including subcontractors;
4. Legally qualified includes if the vendor or if key personnel have 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.
5. Whether the Offeror promptly supplied all requested information concerning its responsibility;



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6. Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, signed Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
7. Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation and its Amendments, including the documents incorporated by reference;
8. Whether the Offer limits the rights of the State;
9. Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the State or necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;
10. Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions; and,
11. Whether the Offeror provides misleading or inaccurate information.

5.2 Responsiveness and Acceptability

Proposals that do not contain information sufficient to evaluate the proposal in accordance with the factors identified in the solicitation or other necessary proposal components may not be considered responsive and/or acceptable. Necessary components include an indication of the Offeror's intent to be bound, price proposal, solicitation amendments, bond and reference data as required.

Proposal Content. The Offeror shall make a firm commitment to provide services as required and proposed.

- The material contained in the Offer shall be relevant to the service requirements stated in the solicitation.
- It is to be submitted in a sequence that reflects the scope of work section of this document.
- It is to include information relevant to the designated evaluation criteria.
- Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.

5.3 Eligibility for Evaluation and Negotiation

If Procurement Officer determines an offeror is Not Responsible, then he or she is not permitted by A.A.C. R2-7-C314 to give further consideration to its offer or include it in any Negotiation or make Evaluation of its offer. If, however, Procurement Officer determines that an offer is Responsive (i.e., there is no applicable determination of Not Susceptible for Award), then he or she is obliged by A.A.C. R2-7-C314 to make Evaluation of it and include the offeror in the immediate round of Negotiation (if there is any Negotiation).

If Procurement Officer determines subsequently that your Revised Offer is Not Susceptible for Award by virtue of comparison to other revised offers per A.A.C. R2-7-C314(A)(3), then he or she will not include you in any further Negotiation. For clarity of intent, the foregoing means that Procurement Officer may reduce the number of offers that are "susceptible for award" with each successive round of Negotiation, since the purpose of Negotiation is to achieve best value for State.



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6.0 Evaluation of Offers

- 6.1 Offer Validity Period** By submitting an Offer, you agree to hold it open for the validity period specified in the Solicitation Summary. If no validity period is specified therein, then you shall hold your Offer open for 180 (one hundred eighty) days. The specified or default validity period (whichever applies) re-starts upon submission of each Revised Offer or a Best and Final Offer.
- 6.2 Clarifications** Upon receipt and opening of proposals submitted in response to this solicitation, the State may request oral or written clarifications, including demonstrations or questions and answers, for the sole purpose of information gathering or for eliminating minor informalities or correcting nonjudgmental mistakes in proposals. Clarifications shall not otherwise afford Offerors the opportunity to alter or change their proposal.
- 6.3 Oral Presentations** The State may request oral presentations. If requested, the Offeror shall be available for oral presentations with no more than ten (10) business days advance notice. Participants in the oral presentations should include the Offeror's key persons. Such oral presentations shall not otherwise afford an Offeror the opportunity to alter or change its Offer.
- 6.4 Cost or Pricing Data** Submit any cost or pricing data promptly that Procurement Officer requests under A.R.S § 41-2543 per A.A.C. R2-7-702(B)(2). Procurement Officer may make the following preconditions for eligibility and award:
1. submission of appropriate cost or pricing data under A.A.C. R2-7-704;
 2. determination that the submitted cost or pricing data demonstrates that pricing is fair and reasonable under A.A.C. R2-7-702(A); and,
 3. determination that the data is not defective under A.A.C. R2-7-705.
- 6.5 Evaluation Criteria** In accordance with the Arizona Procurement code A.R.S. § 41-2534, awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.
- | | | |
|-------|--|---------|
| 6.5.1 | Capacity of Offeror, Experience..... | 200 pts |
| 6.5.2 | Experience and Organizational Profile..... | 300 pts |
| 6.5.3 | Methodology: and..... | 250 pts |
| 6.5.4 | Cost..... | 250 pts |
- 6.6 Negotiations** In accordance with A.R.S. § 41-2534, after the initial receipt of proposals, the Procurement Officer may conduct discussions with those Offerors who submit proposals determined by the State to be reasonably susceptible of being selected for award.
- Procurement Officer will request a best and final offer from any offerors with whom negotiation has been conducted, provided that, State may make award made without any Negotiation and therefore every offeror is forewarned to always submit its offer complete and on the most favorable terms initially, and not to assume any opportunity for Negotiation.
- 6.7 Financial Stability** You must be able to substantiate your financial stability to State's satisfaction as a precondition of any contract award. Procurement Officer may demand documentation such as current and audited financial statements, including income and balance sheets, directly from you or may obtain reports from independent



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financial rating services. Not providing the evidence will be grounds for Procurement Officer determining your Offer is Not Susceptible for Award.

- 6.8 Consideration of Exceptions** Procurement Officer may determine that your Offer is Not Susceptible for Award if it is conditioned on an exception to a material aspect of the Solicitation. Even if Procurement Officer determines that an exception is one that does not merit Not Susceptible for Award determination, he or she may down-grade your Offer in Evaluation if the exception is significant.
- 6.9 Consideration of Deviations** Procurement Officer may down-grade your Offer in Evaluation if it contains deviations that, in his or her determination, materially reduce the value to State of affected Materials or Services across the life-cycle thereof.
- 6.10 Consideration of Prompt Payment Discount** Procurement Officer may credit any proposed prompt payment discounts for the purpose of evaluating offer prices.
- 6.11 Consideration of Taxes** Procurement Officer shall not include Arizona Transaction Privilege Tax and other sales/use taxes for the purpose of evaluating offer prices.
- 6.12 Consideration of Cost** Regardless of the relative order assigned to cost in the Solicitation Summary, cost is an essential consideration in every award State makes; State's intent is always to obtain the best pricing available and it strives to make its evaluations be a straightforward comparison of best value between the responsible and responsive proposals as far as possible to the extent permissible under the Arizona Procurement Code.
- 6.13 Unit Price Prevails** In the case of discrepancy in your Offer between a unit price or rate and an extension of that unit price or rate, the unit price or rate will prevail.
- 6.14 Waiver and Rejection** Notwithstanding any other provision of the Solicitation Documents, State reserves the right to waive any minor informality, reject any or all offers or portions thereof or cancel the Solicitation.

7.0 Award of Contract

- 7.1 Best Advantage to State** Under A.A.C. R2-7-C317, contracts will be awarded to the responsible offeror(s) whose offer(s) is/are determined to be most advantageous to the State based on the stated evaluation criteria.
- 7.2 Number of Types of Awards** State may make multiple awards or to award contracts by individual line items or alternates, by group of line items or alternates, or to make an aggregate award, or regional awards, whichever is determined to be most advantageous to State.
- 7.3 Contract Inception** Your Offer does not constitute a contract nor does it confer any right on you to the award of a contract. A contract is not created until your Offer has been accepted for State by Procurement Officer's signature on the Offer and Acceptance Form. Notice of award or of intent to award will not constitute State's acceptance of your Offer.
- 7.4 Contract Document Consolidation** State may, at its option, consolidate the resulting contract documents after contract award. Examples of such consolidation are reorganizing Solicitation Documents and those components of the Accepted Offer not pertaining to the contract's operation and excluding any components of the Accepted Offer that were not awarded.



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Contract document consolidation will not, however, include or be construed to include any materially change the Solicitation or the Contract.

To view awarded Contracts:

7.5 Viewing Awarded Contracts

1. Go to app.az.gov
2. Select: State Contracts (Blue tab)
3. Search using "Keywords:" enter name of solicitation Label and click on "Search". A listing of Contracts with the description (name of Contract Set) will appear below.
4. To view a Contract, click on pencil next to Contract number.
5. Contact Help Desk at 602-542-7600 for assistance.

8.0 Solicitation or Award Protests

Any protest must comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder. Protests must be in writing and be filed with both Procurement Officer and the State Procurement Administrator. Protest of the Solicitation must be received before the Bid/Offer due date and time. Protest of a proposed award or of an award must be received within 10 (ten) days after Procurement Officer makes the procurement file available for public inspection. In either case, the protest must include:

1. the name, address, email address and telephone number of the interested party;
2. signature of the interested party or its representative;
3. identification of the purchasing agency and the solicitation or contract number;
4. a detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. the form of relief being requested.

9.0 Comments Welcome

SEPARATELY AND APART FROM THIS SOLICITATION, The State Procurement Office periodically reviews these Instructions to Offerors and welcomes any comments the public may have.

Please submit your comments to:

State Procurement Administrator,
State Procurement Office, 100 North 15th Avenue, Suite 402
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End of Section 3-A



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Attachment 1 Offer and Acceptance Form

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide **HVAC Maintenance, Repair, and Emergency Services** in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Initial Offer:	1.	☒	☒						
	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						

X

Offeror company name

X

Signature of person authorized to sign Offer

X

Address

X

Printed name and title

X

City | State | ZIP

X

Contact name and title

X

Federal tax identifier (EIN or SSN)

X

Contact Email Address

X

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 the latest date and number at the top of this form (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: _____ The effective date of the Contract is: _____ Contract awarded _____
Date Date

Procurement Officer Signature

Procurement Officer Printed Name



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Attachment 2-A Experience and Capacity Questionnaire

STATE MAY DETERMINE YOUR PROPOSAL IS NON-RESPONSIVE IF YOU DO NOT ANSWER ALL QUESTIONS FULLY.

The Offeror shall provide a narrative response to each question that demonstrates their understanding of the Scope of Work requirements and describes your company's overall method of approach for providing the service stated in this solicitation. If there is a question that is not applicable to the services required by the Scope of Work, you may mark it N/A.

EXPERIENCE AND CAPACITY QUESTIONS:

Question 1: Company Profile

The Offeror must include a narrative description of its organization. The narrative must include the following:

- 1.1 Brief overview of business operations, with an emphasis on experience in regards to the scope of work.
- 1.2 Date established;
- 1.3 Ownership (public, partnership, subsidiary, etc.);
- 1.4 Location in which the Offeror is incorporated;
- 1.5 Address of "Main Office" (e.g. Corporate Headquarters and any satellite offices responsible for performance of proposed tasks;
- 1.6 Offeror's organizational chart relevant to the Contract, specifically identifying the key point of contact for all questions related to the submitted offer;
- 1.7 Full disclosure of any potential conflict of interest between the Offeror and any State employee who functions or has responsibilities in the review or approval of the undertaking or carrying out of the Contract;
- 1.8 A Statement of whether, in the last five (5) years, the Offeror has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details and current status;
- 1.9 A Statement of whether there are any pending Securities Exchange Commission investigations involving the Offeror, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) may impair the Offeror's performance in a Contract under this RFP;
- 1.10 A Statement documenting all open or pending litigation initiated by Offeror or where Offeror is a defendant or party in any litigation that may have a material impact on Offeror's ability to deliver the contracted services;
- 1.11 A Statement documenting all open or pending litigation initiated by Offeror or where Offeror is a defendant or party in any litigation with a Public sector client;
- 1.12 Full disclosure of any Public Sector contracts terminated for cause or convenience in the past five (5) years; and,



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1.13 Full disclosure of any criminal or civil offense.

1.14 Offeror shall provide evidence of any Arizona required business license to provide these services.

1.15 Offeror shall provide copies of any professional or industry certifications that represent the services detailed in this RFP.

Offeror Response:

[Click here to enter your response.](#)

Question 2: Company Experience

- A. What market(s) are your current clients primarily in?
- B. What experience do you have serving clients in Business Markets within the State of Arizona?
- C. What is the range in size of your current clients?
- D. Provide two (2) examples that exhibit your experience with different types and sizes of (Label) related goods/services for clients?
- E. How long have you provided goods/services to your longest tenured client?
- F. Why did your last three former clients cancel their contracts?
- G. With what relevant trade and/or professional associations are you involved? How does this participation give you an advantage over your competition?

Offeror Response:

[Click here to enter your response.](#)

Question 3: Financial/Accounting Information

Offeror must provide evidence of financial stability and capability to fund all costs associated with providing the services throughout the term of the Contract. The latest two (2) years audited annual financial statements including Total Revenue, Net Income, and Total Assets must be submitted with the Offeror's proposal. If audited financial data is unavailable, explain in full the reason, and provide the latest non-audited financial information to include Balance Sheet, Income Statement, as well as Statements of Cash flows and Change in Financial Position. Include information to attest to the accuracy of the information provided.

Offeror shall provide information regarding any irregularities that were discovered in any accounts maintained by the Offeror on behalf of others. Describe the circumstances and disposition of the irregularities.

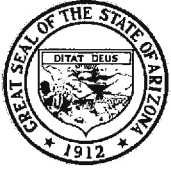
Offeror Response:

[Click here to enter your response.](#)

Question 4: Proposed Project Members and Organization

Utilize Attachment 3-B to identify Key Personnel to be utilized to perform services within a resultant contract.

In addition, also state the Members related experience with large local, state or federal government agencies.



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Offeror Response:

Click here to enter your response.

Question 5: Subcontractors

Utilize Attachment 3-C to identify Proposed Subcontractors to be utilized to perform services within a resultant contract.

Offeror Response:

Click here to enter your response.

Question 6: Submit copies of all applicable certificates and licenses that support Offeror's ability to provide the related goods/services being proposed.

Offeror Response:

Click here to enter your response.



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EXPERIENCE REFERENCES:

The State intends to conduct reference checks for account referenced provided by Offerors. It may, at its sole discretion contact additional clients not presented as references.

Offerors shall provide at least three (3) client references for assignments that replicate or mirror the requirements of this RFP. At least one (1) of the projects referenced must be Arizona government related.

All assignments shall be for assignments received and completed within the last five (5) years.

1	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
	Phone Number	Email Address		
	x	x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project (major milestones)				
x				
List job positions provided and technologies utilized to supplement services.				
x				

2	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
	Phone Number	Email Address		
	x	x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project (major milestones)				
x				
List job positions provided and technologies utilized to supplement services.				
x				



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3	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
	Phone Number	Email Address		
	x	x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project(major milestones)				
x				
List job positions provided and technologies utilized to supplement services.				
x				

4	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
	Phone Number	Email Address		
	x	x		
Project Scope and deliverables, include number of resources engaged in project, timeline of project(major milestones)				
x				
List job positions provided and technologies utilized to supplement services.				
x				

End of Attachment 2-A



Request for Proposal

Solicitation No. **BPM002434**

Description:

HVAC Maintenance, Repair, and Emergency Services

Arizona Department of Administration

State Procurement Office

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Attachment 2-B Organization Profile

STATE MAY DETERMINE YOUR PROPOSAL IS NON-RESPONSIVE IF YOU DO NOT ANSWER ALL QUESTIONS FULLY.

ORGANIZATION PROFILE

Firm Name	x	Year established	x	
Principal address (street, city, state)	x			
Entity type:	x	Structure:	x	
Branch or Division:	x	Parent:	x	
Years of experience providing goods similar in type and quantity as required by this Solicitation.			x	
Years of experience performing services similar in size and scope as required by this Solicitation.			x	
Years the organization has conducted business in Arizona.			x	
Contract Representatives to Contact				
	Name	Title	Telephone Number	E-Mail Address
1.	x	x	x	x
2.	x	x	x	x
3.	x	x	x	x
Licenses/Certifications				
	Description	Issuer	Number	Expiration
4.				
5.				
6.				
7.				
8.				
9.				
10.				
Financial Information (attach financial statements with income/balance sheets as Supplements)				
	Rating/Issuer	Score/Rank	Date	
11.				
12.				
13.				



Request for Proposal

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Arizona Department of Administration

State Procurement Office

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Capacity				
	Location	Work Performed	Number Staff	Capacity
14				
15				
16				
17				
18				

ATTACHMENT 2-B SUPPLEMENTS:

(Offeror to insert as required and list here or type "None" on first line)

	Title	Document Date	No. of pages	Purpose In Offer
19	Enter or type "None"	x	x	x
20	Enter or delete row if not needed			
21	Enter or delete row if not needed			
22	Enter or delete row if not needed			
23	Enter or delete row if not needed			
24	Enter or delete row if not needed			
25	Enter or delete row if not needed			

End of Attachment 2-B



Request for Proposal

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Attachment 3-A Method Proposal (Method of Approach)

The Offeror shall provide a narrative response to each question that demonstrates their understanding of the Scope of Work requirements and describes your company's overall method of approach for providing the service stated in this solicitation. If there is a question that is not applicable to the services required by the Scope of Work, you may mark it N/A.

Question 1: Offeror shall clearly state your understanding of the Scope of Work and acceptance of all Requirements.

Offeror Response:

[Click here to enter your response.](#)

Question 2: Offeror shall provide a description of an inter-organizational structured communication process that will support a successful business relationship.

Offeror Response:

[Click here to enter your response.](#)

Question 3: Offeror shall provide a description of how your organization tracks problem resolution and customer satisfaction in a quantifiable manner to ensure quality service.

Offeror Response:

[Click here to enter your response.](#)

Question 4: Offeror shall provide a description of your complaint resolution process. The description should include a clear, hierarchical path for complaint escalation.

Offeror Response:

[Click here to enter your response.](#)

End of Attachment 3-A



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Attachment 3-B Key Personnel Proposal

Answer all questions thoroughly in the spaces provided. **Complete this form in full for each one of the key personnel proposed to be involved in carrying out the Work.** Insert or attach a separate resume if desired, but any attached resumes are supplemental to this form and do not substitute for this form. If there are more than three (3) Key Personnel, please utilize the same form for each additional Personnel.

1	Name:	x	How long with company?	x years
	Current position in company:	x	How long in position?	x years
	Position for the Services:	x	How much of time will be dedicated to the Services?	x %
	What primary functions will be assigned?	x		
	Describe person's experience in performing services like those that are to be assigned:	x		
	List person's job-related training and education:	x		
	Resume:	filename		



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2	Name:	x	How long with company?	x years
	Current position in company:	x	How long in position?	x years
	Position for the Services:	x	How much of time will be dedicated to the Services?	x %
	What primary functions will be assigned?	x		
	Describe person's experience in performing services like those that are to be assigned:	x		
	List person's job-related training and education:	x		
	Resume:	filename		



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3	Name:	x	How long with company?	x years
	Current position in company:	x	How long in position?	x years
	Position for the Services:	x	How much of time will be dedicated to the Services?	x %
	What primary functions will be assigned?	x		
	Describe person's experience in performing services like those that are to be assigned:	x		
	List person's job-related training and education:	x		
	Resume:	filename		

End of Attachment 3-B



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Attachment 3-C Proposed Subcontractors

Check "NO" if you WILL NOT subcontract any portion of the Work and will therefore be carrying out all of the Work with your own personnel.

☐

NO, the Offeror will not subcontract any portion of the Work.

If you WILL subcontract any portion of the Work, check "YES" below and list name of persons or companies you propose to use as subcontractors.

1. Fill in the information for every significant subcontractor – indicate the type of work the subcontractor will perform under the Contract, and their approximate percentage of the total Contract work.
2. Provide copies of relevant certifications each one possesses in the Attachment Supplements section.
3. Provide description of quality assurance methods and quality control measures that you will use to ensure that Subcontractor work meets the Contract requirements.
4. State may demand additional information about proposed subcontractors as a precondition of award.

☐

YES, the Offeror will use the Subcontractors listed below:

	Name and contact information	Small Business	Work to be performed	%
1.	Name	select		
2.	Name	select		
3.	Name	select		
4.	Name	select		
5.	Name	select		
6.	Name	select		
7.	Name	select		
8.	Name	select		
9.	Name	select		
10.	Name	select		

End of Attachment 3-C



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Attachment 3-D Boycott of Israel Disclosure

Please note that if any of the following apply to this Solicitation, Contract, or Contractor, then the Offeror shall select the "Exempt Solicitation, Contract, or Contractor" option below:

- The Solicitation or Contract has an estimated value of less than \$100,000;
- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. §35-393.01, public entities are prohibited from entering into contracts "unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel."

Under A.R.S. §35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
 - (a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
- ...
5. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

The certification below does not include boycotts prohibited by 50 United States Code Section 4842 or a regulation issued pursuant to that section. See A.R.S. §35-393.03.

In compliance with A.R.S. §§35-393 et seq., all offerors must select one of the following:

- ☐ The Company submitting this Offer does not participate in, and agrees not to participate in during the term of the contract, a boycott of Israel in accordance with A.R.S. §§35-393 et seq. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.
- ☐ The Company submitting this Offer does participate in a boycott of Israel as described in A.R.S. §§35-393 et seq.



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☐ **Exempt Solicitation, Contract, or Contractor.**

Indicate which of the following statements applies to this Contract:

- ☐ Solicitation or Contract has an estimated value of less than \$100,000;
- ☐ Contractor is a sole proprietorship;
- ☐ Contractor has fewer than ten (10) employees; and/or
- ☐ Contractor is a non-profit organization.

Company Name

Signature of Person Authorized to Sign

Address

Printed Name

City

State

Zip

Title

End of Attachment 3-D



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Attachment 4 Pricing Sheet

Pricing must be shown in the EXCEL sheet(s) titled as shown below:

1. The following EXCEL document(s) has/have been provided for Offeror's completion and submission - titled as follows:

ATTACHMENT 4 PRICING DOCUMENT

VERY IMPORTANT

For APP functionality you must enter an amount of \$1.00 Items (F) tab in APP in order for your Offer to be considered.

Response

☐	Code	Label	Qty	Order	Unit	Deliv. date	Unit price
--------------------------	------	-------	-----	-------	------	-------------	------------

☐	11_1	Required Item	1				Enter \$1.00 to complete your bid.
--------------------------	------	---------------	---	--	--	--	------------------------------------

\$1.00

Enter \$1.00 here

End of Attachment 4



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Attachment 5-A Confidential Information Designation

All materials submitted as part of a response to a solicitation are subject to Arizona public records law and will be disclosed if there is an appropriate public records request at the time of or after the award of the contract. Recognizing there may be materials included in a solicitation response that are proprietary or a trade secret, a process is set out in A.A.C. R2-7-103 (copy attached) that will allow qualifying materials to be designated as confidential and excluded from disclosure. For purposes of this process the definition of "trade secret" will be the same as that set out in A.A.C. R2-7-101(52).

Complete this form return it with your Offer **along with the appropriate supporting information** to assist State in making its determination as to whether any of the materials submitted as part of your Offer should be designated confidential because the material is proprietary or a trade secret and therefore not subject to disclosure.

STATE WILL NOT CONSIDER ANY MATERIAL IN YOUR OFFER "CONFIDENTIAL" UNLESS DESIGNATED ON THIS FORM.

Check one of the following – if neither is checked, State will assume that as equivalent to "DOES NOT":

☐	This response DOES NOT contain proprietary or trade secret information. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.
☐	This response DOES contain trade secret information because it contains information that: 1. Is a formula, pattern, compilation, program, device, method, technique or process, AND 2. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; AND 3. Is the subject of efforts by myself or my organization that are reasonable under the circumstances to maintain its secrecy.

NOTE: Failure to attach an explanation may result in a determination that the information does not meet the statutory trade secret definition. All information that does not meet the definition of trade secret as defined by A.A.C. R2-7-101(52) will become public in accordance with A.A.C. R2-7-C317. State may make its own determination on materials in accordance with A.A.C. R2-7-103.

If State agrees with Offeror's designation of trade secret or confidentiality and the determination is challenged, the undersigned hereby agrees to cooperate and support the defense of the determination with all interested parties, including legal counsel or other necessary assistance.

By submitting this response, Offeror agrees that the entire Offer, including confidential, trade secret and proprietary information may be shared with an evaluation committee and technical advisors during the evaluation process. Offeror agrees to indemnify and hold State, its agents and employees, harmless from any claims or causes of action relating to State's withholding of information based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by State in defending such an action.

X	
Offeror Company Name	Signature of Authorized Person
X	X
Address	Printed Name
X	X
City State Zip	Title

End of Attachment 5-A



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Copy of A.A.C. R2-7-103 [Confidential Information] as was current at time of Solicitation issuance

PROVIDED FOR REFERENCE ONLY

- A. *If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.*
- B. *Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.*
- C. *Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:*
1. *The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest;*
 2. *The designated information is not confidential; or*
 3. *Additional information is required before a final confidentiality determination can be made.*
- D. *If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.*
- E. *An agency chief procurement officer may release information designated as confidential under subsection (A) if:*
1. *A request for review is not received by the state procurement administrator within the time period specified in the notice; or*
 2. *The state procurement administrator, after review, makes a written determination that the designated information is not confidential.*



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Attachment 5-B Conformance Statements

(When taking exceptions, Attachment 5-B and supplements must be uploaded as a separate word doc. file titled "Attachment 5-B".)

STATE WILL NOT CONSIDER ANY EXCEPTIONS UNLESS DESIGNATED ON THIS FORM.

READ PARAGRAPH 6.8 OF THE INSTRUCTIONS TO OFFERORS BEFORE TAKING ANY EXCEPTIONS – TAKING EXCEPTIONS CAN BE GROUNDS FOR STATE REJECTING OR DOWN-GRADING YOUR OFFER IN EVALUATION.

CONFORMANCE TO THE INSTRUCTIONS: (PART 3 OF THE SOLICITATION)

Check one of the following – if neither is checked, State will assume that as equivalent to "YES":

- ☐ YES – Offeror acknowledges that it has read and understands the Instructions to Offerors in Section 3-A of the Solicitation Documents and attests that its Offer complies.
- ☐ NO – Offeror acknowledges that it has read and understands the Instructions to Offerors in Section 3-A of the Solicitation Documents, and attests that its Offer complies with both EXCEPT FOR the exceptions listed in **Attachment 5-B Supplement 1**.

CONFORMANCE TO THE SCOPE AND PRICING DOCUMENTS: (PART 2 OF THE SOLICITATION)

Check one of the following – if neither is checked, State will assume that as equivalent to "YES":

- ☐ YES – Offeror acknowledges that it has read and understands the Scope Document and the Pricing Document in Part 2 of the Solicitation Documents and attests that its Offer complies with both.
- ☐ NO – Offeror acknowledges that it has read and understands the Scope Document and the Pricing Document in Part 2 of the Solicitation Documents and attests that its Offer complies with both EXCEPT FOR the exceptions listed in **Attachment 5-B Supplement 2**.

CONFORMANCE TO THE CONTRACT TERMS AND CONDITIONS: (PART 2 OF THE SOLICITATION)

Check one of the following – if neither is checked, State will assume that as equivalent to "YES":

- ☐ YES – Offeror acknowledges that it has read and understands the Special Terms and Conditions and the Uniform Terms and Conditions, along with their respective Exhibits and Appendices, in Part 2 of the Solicitation Documents and attests that its Offer complies with both.
- ☐ NO – Offeror acknowledges that it has read and understand the Special Terms and Conditions and the Uniform Terms and Conditions, along with their respective Exhibits and Appendices in Part 2 of the Solicitation Documents and attests that its Offer complies with both EXCEPT FOR the exceptions listed in **Attachment 5-B Supplement 3**.



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ATTACHMENT 5-B Supplement No. 1:

Exceptions to Instructions

Article / Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	RFP Language (Copy and Paste from Solicitation)
Section 3-A: Instructions to Offerors		
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x

Company Name

Signature of Person Authorized to Sign



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ATTACHMENT 5-B Supplement No. 2:

Exceptions to Scope of Work and Pricing

Article / Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	RFP Language (Copy and Paste from Solicitation)
Section 2-A: Scope of Work		
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
Section 2-B: Pricing Document		
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x

Company Name

Signature of Person Authorized to Sign



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ATTACHMENT 5-B Supplement No. 3:

Exceptions to Contract Terms & Conditions

Article/ Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	RFP Language (Copy and Paste from Solicitation)
Section 2-C: Special Terms & Conditions		
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
Section 2-D: Uniform Terms & Conditions		
x	X Exception: Rationale:	x
x	X Exception: X Rationale:	x

Company Name

Signature of Person Authorized to Sign

End of Attachment 5-B



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Attachment 5-C Letter of Insurability

The Offeror shall provide a Letter of Insurability from your Insurance company as a proof that the Offeror currently possesses the required insurance as stated in the Section 6.2 of Special Terms and Conditions or the Offeror is able to obtain the required Minimum Scope and Limits of Insurance should a contract be awarded to them.

The Letter of Insurability (and any additional letters) should be clearly marked as

Attachment 5 –C Supplement Insurance

NOTE: If Awarded a Contract, The Offeror shall provide a Certificate of Insurance (e.g. ACORD forms) and associated policy endorsement(s) prior to beginning service(s) under the Contract.

End of Attachment 5-C



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Attachment 5-D

RESERVED

End of Attachment 5-D



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Attachment 5-E Offer Checklist

STATE MAY DETERMINE YOUR PROPOSAL IS NON-RESPONSIVE IF YOU DO NOT SUBMIT ALL ATTACHMENTS.

	DOCUMENT	SUBMITTED
1.	Attachment 1: Offer and Acceptance Form	☐ YES ☐ no
2.	Attachment 2-A: Experience and Capacity Questionnaire	☐ YES ☐ no
3.	Attachment 2-B: Organization Profile	☐ YES ☐ no
4.	Attachment 3-A: Method Proposal	☐ YES ☐ no
5.	Attachment 3-B: Key Personnel Proposal	☐ YES ☐ no
6.	Attachment 3-C: Proposed Subcontractors	☐ YES ☐ no
7.	Attachment 3-E: Israel Boycott Disclosure	☐ YES ☐ no
8.	Attachment 4: Pricing Sheets	☐ YES ☐ no
9.	Attachment 5-A: Confidential Information Designation	☐ YES ☐ no
10.	Attachment 5-B: Conformance Statements	☐ YES ☐ no
11.	Attachment 5-C: Letter of Insurability	☐ YES ☐ no
12.	Attachment 5-D: Reserved	☐ YES ☐ no
13.	Attachment 5-E: Offer Checklist	☐ YES ☐ no

End of Attachment 5-E

End of Part 3



Request for Proposal

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Part 1: Solicitation Summary

1.0 What the State Is Soliciting

The Arizona Department of Administration, General Services Division (the State), as authorized under A.R.S. § 41-2534 is seeking to establish multiple vendor award to satisfy the need for **HVAC Maintenance, Repair, and Emergency Services**.

The State anticipates awarding multiple Contracts to begin providing services to multiple agencies. This Contract is not Co-Op eligible.

The Special Terms and Conditions provide a more detailed definition of Eligible Agencies.

List of all state agencies is available at: <https://azdirect.az.gov/agencies>

Persons With Disabilities

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange for the accommodation.

OFFERORS SHOULD READ THE ENTIRE SOLICITATION CAREFULLY.

2.0 What's in the Solicitation

Part 1	Section 1: Solicitation Summary	<i>Part_1_BPM002434_OPEN_FIRST</i>
Part 2	Section 2-A: Scope of Work	<i>Part_2_BPM002434_RFP</i>
	Section 2-B: Pricing Document	
	Section 2-C: Special Terms and Conditions	
	Section 2-D: Uniform Terms and Conditions	
Part 3	Section 3-A: Instructions to Offerors	<i>Part_3_BPM002434Offer_Forms</i>
	Section 3-B: Offer forms	

3.0 How and When Proposals Are Due

Proposals will only be accepted **online** in “The State’s e-Procurement System” at <https://app.az.gov> until the “Bid/Offer Due Date” indicated in APP for the **Solicitation No. shown at the top of this page**. Proposals must be in the States possession online no later than the deadline indicated.



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Submit technical inquiries about navigating and/or submitting proposals in the State's e-Procurement System to the State's e-Procurement System Help Desk:

- by phone at (602) 542-7600, option2; or
- by email to app@azdoa.gov

LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in "The State's e-Procurement System".

4.0 Pre-Offer Conference

The State **WILL** conduct an online Pre-Offer Conference via Google Hangouts Meet for this Solicitation the link to the meeting will be listed in the '**Process**' field as found within "The State's e-Procurement System" (<https://app.az.gov>). Attendance is optional but encouraged. Refer to paragraph 2.7 of the Instructions to Offerors for more information.

5.0 Inquiries

Any question related to this Request for Proposal shall be submitted utilizing the State's "**Discussions with Buyer**" Tab in the e-procurement system. The Offeror shall not contact or ask questions of the department for which the requirement is being procured.

End of Section 1

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
MESA ENERGY SYSTEMS, INC. dba EMCOR SERVICES ARIZONA, INC.**

EXHIBIT B
Scope of Work

PROJECT

In accordance with the terms and conditions of the Agreement and State of Arizona Contract No. CTR049764, the City is retaining Mesa Energy Systems, Inc. dba Emcor Services Arizona, Inc. for HVAC maintenance, repair, chiller automation system services, and emergency services for citywide facilities on an as-needed basis.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
MESA ENERGY SYSTEMS, INC. dba EMCOR SERVICES ARIZONA, INC.**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

The method and amount of compensation is in accordance with Section 3 of this agreement.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$500,000 annually or \$1,500,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

The City shall pay contractor compensation in accordance with the rates as set forth in the State of Arizona Contract No. CTR049764 for HVAC maintenance, repair, and emergency services for all heating, cooling, and ventilating systems for citywide facilities on an as-needed basis.