

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
LIGHTING UNLIMITED, INCORPORATED**

This Linking Agreement (“Agreement”) is entered into as of this _____ day of _____, 2025, between the City of Glendale, an Arizona municipal corporation (“City”), and LIGHTING UNLIMITED, INCORPORATED, an Arizona corporation, authorized to do business in Arizona (“Contractor”), collectively, the “Parties.”

RECITALS

- A. On January 1, 2025, a member of the S.A.V.E Cooperative Purchasing Agreement, Arizona State Procurement Office, entered into a contract with Contractor to purchase the goods and services described in Statewide Facilities and Building Supplies Contract No. CTR074552 (“Cooperative Agreement”), which is attached hereto as **Exhibit A**. The Cooperative Agreement allows 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 wishes to contract with Contractor for supplies or services identical to those being provided to other units of government under the Cooperative Agreement. Contractor consents to the City’s cooperative use of the terms and conditions of the Cooperative Agreement, and agrees to provide the supplies and services set forth in the Statement of Work appended hereto as **Exhibit B**.

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.

- A. As provided in the Cooperative Agreement, purchases can be made by governmental entities from the date of award, which was January 1, 2025, until the date the contract terminates on December 31, 2025, unless the term is extended by mutual agreement of the parties to the Cooperative Agreement. The Cooperative Agreement, however, may not be extended beyond December 31, 2030. The initial period of this Agreement is the period from the Effective Date of this Agreement until December 31, 2025.
- B. The City may extend the term of this Agreement in increments of one (1) or more months and do so one or more times, consistent with any extensions of the Cooperative Agreement, provided that the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years. The City will give the Contractor notice

that it is exercising its option to extend this Agreement 30 days prior to the anniversary of the Effective Date, if practicable. Glendale extensions are not automatic and shall only occur if the City affirmatively exercises its right to extend this Agreement.

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) for the entire term of the Agreement (initial term plus any extensions).

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. Uyghur Forced Labor Prevention Act (UFLPA). Contractor certifies that it does not currently, and during the term of this Agreement, will not use:

- a. the forced labor of ethnic Uyghurs in the People's Republic of China;
- b. any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and

c. any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

10. 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.

11. 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 Diane Cooksey
6210 W. Myrtle Ave Ste, 111
Glendale, AZ 85301

and

LIGHTING UNLIMITED, INCORPORATED
c/o Cory Schneider
cory@lu-az.com
1550 E. Washington St
Phoenix, AZ 85034

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

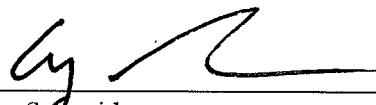
"City"

"Contractor"

City of Glendale, an Arizona
municipal corporation

LIGHTING UNLIMITED, INCORPORATED,
an Arizona corporation

By: _____
Kevin R. Phelps
City Manager

By: 
Name: Cory Schneider
Title: President of sales/Co-Owner

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
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**EXHIBIT A
STATE OF ARIZONA CONTRACT NO. CTR074552 STATEWIDE FACILITIES AND
BUILDING SUPPLIES.**

**LINKING AGREEMENT
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**EXHIBIT B
Scope of Work**

Contractor will provide electrical, and lighting supplies City-wide on an as-needed basis.



Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
 State Procurement Office
 1802 W. Jackson, #100
 Phoenix, AZ 85007

Attachment 2.1.3.1 – Offer and Acceptance Form

SUBMISSION OF OFFER: The undersigned hereby offers and agrees to provide Statewide Facilities and Building Supplies in compliance with all terms, conditions, specifications, and amendments in the Solicitation and any written exceptions in the Offer indicated by the latest dated version below

Lighting Unlimited

Offeror company name

1550 E Washington St

Address

Phoenix, AZ 85034

City, State, ZIP

06/26/2024

Signature of person authorized to sign Offer Date

Cory Schneider

Printed name and Title

Cory Schneider – President of Sales/Co-owner

Contact name and Title

cory@lu-az.com 602-230-8770 x111

Contact email address Contact phone number

Revised Offers:	Date	Signature	Date	Signature
	Best and Final Offer:	10/24/24	<i>Cory Schneider</i>	

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 Orders 2023-09, 2023-01, 2009-09 or A.R.S. §§ 41-1461 through 41-1465;
- 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. § 18-132 when offering electronics or information technology products, Services, or maintenance;
- Has submitted this Offer as a firm offer for 180 days following the Solicitation due date and time per the Instructions to Offers. Any extensions to the Offer Acceptance Period shall be made in accordance with the A.A.C. R2-7-C310;
- Did not and will not involve collusion or other anti-competitive practices; and
- Is not debarred from, or otherwise prohibited from, participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER

The offer is hereby accepted.

The Contractor is now bound to sell the Materials or Services listed by the attached Contract and based upon the Solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

The Contract shall henceforth be referred to as Contract No. CTR074552

The effective date of the Contract is 1/1/2025

The Contractor is cautioned not to commence any billable work or to provide any Material or Service under this Contract until Contractor receives purchase order or written notice to proceed.

State of Arizona Awarded this 22 day of November 2024

Joshua Knapp
 Joshua Knapp
 Statewide Procurement Manager
 Procurement officer signature



**Request for Proposal
under A.R.S. § 41-2534
Notice Page**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

Solicitation Number:

BPM006272

Description:

Statewide Facilities and Building Supplies

Solicitation Due Date and Time:

As indicated in APP

Pre-Offer Conference:

Statewide Facilities Pre-Offer Conference
Tuesday, May 14 · 1:00 – 3:30pm
Time zone: America/Phoenix
Google Meet joining info
Video call link: <https://meet.google.com/qjt-aaxv-ahh>
Or dial: (US) +1 505-738-1486 PIN: 237 373 587#
More phone numbers: <https://tel.meet/qjt-aaxv-ahh?pin=3871385365034>

Statewide Facilities Pre-Offer Conference
Monday, May 20 · 9:00am – 12:00pm
Time zone: America/Phoenix
Google Meet joining info
Video call link: <https://meet.google.com/fsd-zpyt-aox>
Or dial: (US) +1 636-707-2471 PIN: 711 555 695#
More phone numbers: <https://tel.meet/fsd-zpyt-aox?pin=3066645541874>

Proposals will only be accepted **online** in the “**State’s eProcurement System**”, **Arizona Procurement Portal (APP)**, at <https://app.az.gov> until the “**Bid/Offer Due Date**” indicated in the “**State’s eProcurement System**” for the **Solicitation No. shown at the top of this page**. Proposals must be in the State Procurement Office’s possession online no later than that deadline.

Submit technical inquiries about navigating and/or submitting proposals in the State’s eProcurement System to the State’s eProcurement System Help Desk by phone at (602) 542-7600, option 2; or by email to app@azdoa.gov.



Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
100 N 15th Avenue
Phoenix, AZ 85007

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 eProcurement System".

It is the responsibility of the Prospective Offeror to routinely check the APP website for Solicitation Amendments. Additional instructions for preparing an Offer are included in this solicitation.

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.



Table of Contents
Request for Proposal under A.R.S. § 41-2534
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

Notice Page

Table of Contents

Solicitation Summary	3
Scope of Work	5
Special Terms and Conditions	7
Addendum A to the Special Terms and Conditions	43
Addendum B to the Special Terms and Conditions	44
Uniform Terms and Conditions 10.5	49
Exhibit A	67



Solicitation Summary
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

[Solicitation Summary](#)

1. What is the State Soliciting?

The Arizona Department of Administration, State Procurement Office (the State), as authorized under A.R.S. § 41-2501 *et seq.* is seeking to establish one or more mandatory statewide Contracts on behalf of Department of Administration, and for their sole use, to provide Facilities and Building Supplies.

The State anticipates awarding contract(s) with the intent to secure service coverage statewide. Whether or not it actually enters into any contracts, how many contracts it enters into, and how the work is awarded between those contracts are all at the State's discretion. Furthermore, the State will use any awarded contracts on an as-needed basis, with no guarantee as to its actual spending under them.

The State reserves the right to accept any item or combination of items specified in the Solicitation, unless the Offeror expressly restricts an item or combination of items in its Offer, and conditions its response on receiving all items for which it provided a proposal. In the event of such restriction, the State will evaluate if an award on such a basis will result in the best value and is in the best interest for the State. The State may otherwise determine, at its sole discretion, that such restriction is non-responsive and deem the Offeror ineligible for further evaluation.

2. What is in the Solicitation?

2.1. At the time of publication, the following documents are included in the Solicitation:

2.1.1. Attachment: BPM006272 Solicitation Requirements

- 2.1.1.1. Notice / Cover Page
- 2.1.1.2. Table of Contents
- 2.1.1.3. Solicitation Summary
- 2.1.1.4. Scope of Work
- 2.1.1.5. Special Terms and Conditions
- 2.1.1.6. Addendum A to the Special Terms and Conditions
- 2.1.1.7. Addendum B to the Special Terms and Conditions
- 2.1.1.8. Uniform Terms and Conditions
- 2.1.1.9. Exhibits (if applicable)

2.1.2. Attachment: BPM006272 Solicitation Instructions

- 2.1.2.1. Special Instructions to Offerors
- 2.1.2.2. Standard Instructions to Offerors (RFP)

2.1.3. Solicitation Attachments

- 2.1.3.1. Offer and Acceptance



Solicitation Summary
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 2.1.3.2. Boycott of Israel Disclosure
 - 2.1.3.3. Forced Labor of Ethnic Uyghurs Ban
 - 2.1.3.4. Confidential Information Designation
 - Confidential Information Designation (for reference only)
 - 2.1.3.5. Conformance Statements and Exceptions Requests
 - 2.1.3.6. Key Personnel
 - 2.1.3.7. Letter of Insurability
 - 2.1.3.8. Organization Profile
 - 2.1.3.9. Proposed Subcontractors
 - 2.1.3.10. Experience and Capacity Response
 - 2.1.3.11. Method of Approach
- 2.2. The State may issue a Solicitation Amendment at any time after Solicitation publication and before the Offer due date. It is the responsibility of the Prospective Offeror to routinely check the APP website for any Solicitation Amendments and revised documents.



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

Scope of Work

1. Purpose and Background

1.1. The purpose of this Solicitation is to establish the State's Facilities and Building Supplies and related services Program for Eligible Agencies, Employees, and the State of Arizona. The State desires to establish a Contract Set to supply and service State Facility and Buildings within the following categories: concrete, cement, masonry, lumber, roofing, drywall, paints, windows, doors, fasteners, locking systems, plumbing, electrical supplies, lighting, HVAC, miscellaneous metals, tools, janitorial and sanitation, safety equipment, gardening, and material handling. Service requirements shall also include asbestos, indoor air quality, lead paint, mold, bacteria, and legionella testing, backflow testing, equipment calibration, forklift, generator machinery and pump repair, safety training and assessments, and window and door installation. The State intends to consider value-added-reseller, distributor, as well as manufacturer-direct proposals. Based on historical data and anticipated volumes, the estimated spend under the resultant contract is anticipated between \$18 million and \$20 million annually (\$13M for State Agencies and \$5M for Coops). However, no guarantee of the actual quantities is implied or expressed by this solicitation. Requirements shall be based on actual need. Contracts resulting from this solicitation will be used by multiple eligible agencies with delivery locations throughout the State.

2. Definitions

2.1. [Reserved]

3. Scope of Work

3.1. Mandatory Requirements

3.1.1. **Catalog/Product Categories.** The Contractor shall provide an established catalog/price list(s) containing comprehensive selection of products for a minimum of one Product Category. Pricing for all non-core/catalog items shall be based on a single fixed discount percent (%) from an establish list price. There is no limit to the number of commodities or equipment offered under each category nor is the Contractor required to provide all items included in the description of the category. All products offered under any category shall fall within the general category description. If there is any question as to a products inclusion in a category, the Procurement Officer shall make the final decision. The following is a general description of the product categories available under this contract



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
 State Procurement Office
 1802 W. Jackson, #100
 Phoenix, AZ 85007

along with any additional requirements of the products within each category.

Category	Description
1. Concrete, Cement & Masonry	Shall include but not limited to; Concrete Mix, Cement Block, Brick, and Repair Products and Accessories.
2. Lumber	Shall include but not limited to; Dimensional Lumber, Studs, Plywood, OSB Panels, Wood, Composite & PVC Boards, and Treated Lumber.
3. Roofing	Shall include but not limited to; Roofing Shingles, Roof Panels, Roofing Underlayment, and Coal Tar Pitch.
4. Drywall	Shall include but not limited to; Drywall panels, Drywall Joint Compound, Backer Board, Cement Board, Drywall Tape, and insulation.
5. Paints	Shall include but not limited to; Paint, Primer, Stains, Sealers, Patching, Brushes, Rollers, Paint Sprayers, Glues, Tapes, Drop Cloths, Caulking, and Sealants.
6. Windows & Doors	Shall include but not limited to; Windows, Modular Trailer Windows, Doors, Frames, Jambs, Hardware and Sashes.
7. Fasteners	Shall include but not limited to; Nails, Screws, Nuts, Bolts, Washers, Staples, Anchors, etc.
8. Locking Systems and Parts	Shall include but not limited to; Locks, Key Blanks, Tools, etc.
9. Plumbing	Shall include but not limited to; Toilets, Sinks, Tubs, Urinals, Showers, Waterless Urinal Kits, Partitions, Tapware, Clamps, Couplings, Hoses, O-Rings, Copper Pipe, ABS Pipe, PVC Pipe, Plumbers Cement, Solder, Flux, Glue, Primer, backflow assemblies, water meters, and rebuild kits.
10. Electrical	shall include but not limited to; Gang Boxes, Electrical Metallic Tube (EMT) Conduit, Wire Connectors, Clamp Connectors, Switches Electrical Boxes, Couplings, Circuit Breakers, Outlet, Wire Pulling Lubricant, Multi-purpose Ties, Wall Plates, Timers and Relays, Wire & Cable, Power Supplies, Plugs and Receptacles, Electrical Hardware and Fasteners.
11. Lighting	Shall include but not be limited to; Energy Saving Lamps (Fluorescent, High Intensity Discharge, Traffic Signal lamps, and Incandescent), Ballasts, LED Lighting, Light Sensors, Exit Signs and Emergency Lighting. All lamps and ballasts supplied under this contract shall be energy saving. It shall be recommended that all Standard A19 Incandescent Bulbs be replaced with energy efficient alternatives.



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
 State Procurement Office
 1802 W. Jackson, #100
 Phoenix, AZ 85007

12. HVAC Components	Includes but not limited to; Ductwork, Fan motors, controls, fan coils, compressors. Evaporative Coolers – Shall include but not limited to; pumps, motors, and pads Consumable HVAC Service Parts (5 ton units and smaller) – Shall include but not limited to; package units, split HVAC systems, compressors, pumps, fan motors, and refrigerants. . Excludes the purchase of complete units.
13. HVAC Filters	includes any filter or filter media used to capture air-borne particulate matter. All filters shall meet the smoke and flammability requirements of Underwriters’ Laboratories UL 900, Test Performance of Air Filter Units, Class 2 unless otherwise stated. Any metal grids and casings shall be corrosion resistant. Non Metal frame shall be high wet strength 28 pt. beverage board bonded on all four sides to prevent collapse. Filters shall be constructed with 90 degree corners. The actual filter dimensions shall not differ from the stated nominal dimensions by more than 5/8”.
14. Tools to include tools for all trades and categories listed in this RFP	Hand Tools & Small Power Tools – Includes but not limited to pneumatic tools, small gas generators, cordless drills, saws, hammers, finishing and routing tools, Drain Cleaning Equipment, snakes, etc.
15. Janitorial and Sanitation	Dilution Control, Green Products, Industrial Paper and Dispensers, Private Label, Hard Floor Care, Carpet Care, Restroom Care, Waste Receptacles, Compactors, Liners, Machines, Institutional and Industrial Laundry and Kitchen items, Packaging and Shipping supplies, and Break Room and Food Disposable Supplies
16. Safety Equipment	Including ear plugs, safety glasses, nitrile gloves, work gloves, respirators, eye wash stations, first aid, cones, reflective equipment/apparel etc
17. Gardening/Landscaping	Including irrigation supplies, hoses, mowers, etc
18. Material Handling Equipment Supplies	Including packing and shipping supplies, pallet jacks, and forklift
19. Miscellaneous Metals	Including but not limited to copper, steel, aluminum, and iron in any form
20. Related Services	Building and Roof Inspection, Asbestos, Indoor Air Quality, Lead Paint, Mold, Bacteria, and Legionella Testing, Backflow Testing, Equipment Calibration Services, Forklift, Generator, Machinery, and Pump Repair, Window and Door Installation

3.1.2. Additional Category Requirements

3.1.2.1. Electrical:

3.1.2.1.1. All electrical parts and supplies shall be provided in accordance with the appropriate Federal, State, and Local Standards and Regulations. Applicable standards and



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

regulations that shall be followed include but are not necessarily limited to

- 3.1.2.1.1.1. UL Standard 797 Electrical Metal Tubing
- 3.1.2.1.1.2. American National Standards Institute (ANSI) C80.3
- 3.1.2.1.1.3. National Electric Code (NEC)
- 3.1.2.1.1.4. NEMW, UL, CSA Standards
- 3.1.2.2. Lighting
 - 3.1.2.2.1. 2012 Federal Lighting Legislation
 - 3.1.2.2.2. Restriction of Hazardous Substances Directive (RoHS)
 - 3.1.2.2.3. All mercury containing lamps shall be clearly marked and shall have passed US EPA's Toxicity Characteristics Leaching Procedure (TCLP) and not be classified as a hazardous waste.
 - 3.1.2.2.4. Electronic ballasts shall meet the limits of FCC Title 47, Parts 15 and 18 limitations for electromagnetic interference (EMI) radio frequency interference (RFI) and shall have at least a 5 year warranty.
 - 3.1.2.2.5. It shall be indicated if the electronic ballasts has been rated by NEMA Premium Electronic Ballast Program
 - 3.1.2.2.6. ANSI C82 Ballasts Standards
 - 3.1.2.2.7. ITE publication "Standard for Traffic Signal Lamps" and the ADOT Standard Specifications for Road and Bridge Construction (1996) - Lamps to be used in vehicular traffic signal faces
 - 3.1.2.2.8. If there are existing T12 systems, they shall be recommended to be converted to T8 Systems
 - 3.1.2.2.9. Energy Policy Act (EPACT) – All Lamps
 - 3.1.2.2.10. Light Sensors shall have a standard 5 year warranty and shall be UL and CUL listed.
 - 3.1.2.2.11. Exit signs shall have an input power demand of 5 watts or less per face and NEMA Premium Exit Signs shall be recommended.
- 3.1.2.3. HVAC Filters
 - 3.1.2.3.1. Pleated Filters Minimum MERV 7 when evaluated under the guidelines of ASHRAE 52.2 .2 as revised. Filters shall be classified Class 2 per U.L. Standard 900. Filters shall have a minimum efficiency of 25%.
 - 3.1.2.3.2. Flat Panel Filters with a minimum average arrestance rating of 70% and frames composed of wood pulp products formed to hold structural rigidity during normal handling.
 - 3.1.2.3.3. Pocket Bag Filters The air filters shall be high efficiency ASHRAE extended surface pocket style filters consisting of 100% high density synthetic media, a galvanized steel



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

header, galvanized steel pocket retainers, and bonding agents to prevent air bypass and ensure leak performance. Filters shall be minimum MERV 11 and minimum efficiency rating of 65%.

3.1.2.3.4. Rigid Box Filters The air filters shall be rated a minimum of MERV 11 with a minimum efficiency rating of 60% with frames and headers constructed of corrosion resistant galvanized steel.

3.1.2.3.5. High Efficiency Particulate Air (HEPA) & Ultra Low Penetration Air (ULPA) Filters – Each filter shall be individually tested for efficiency and initial resistance at rated air flow. The test results shall be indicated on the filter label. The filters shall meet the requirements of IESRP-CC001.3. The filter efficiency shall be 99.97% DOP (Disbursed Oil Particulate Testing)

3.1.2.4. Related Services

3.1.2.4.1. Backflow Testing

3.1.2.4.1.1. Contractor will perform annual backflow certifications eligible agency assemblies to assure that each assembly is operating correctly per the manufacturer's specifications and State of Arizona requirements. All assemblies will be tested and certified a minimum of once per year to ensure they are operating as designed.

3.1.2.4.1.2. If initial testing results in a "pass" status, Contractor will submit a completed Backflow Prevention Assembly Test Report

3.1.2.4.1.3. If initial testing results in a "failed" status, Contract will inform the eligible agency point of contact with need repairs and quote. Once repairs are made, retest the assembly. If retest results in a "pass" status, contract will submit a completed Backflow Prevention Assembly Test Report.

3.1.2.4.1.4. The unit price for inspection, certification, and testing will include all materials, labor, equipment, and tools until a passing certification is obtained. Failed inspection results shall be fixed on site, and should include unit prices for repairs.

3.2. Additional Requirements:

3.2.1. The Contractor shall have certain capacities and support mechanisms in place for the successful performance of this contract on a statewide basis. These capacities and support mechanisms shall include but are not limited to the following:



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.2.1.1. Business Capacity. The Contractor shall have the ability to ensure acceptable performance under a statewide contract including the ability to create and manage numerous individual accounts for order placement, billing and reporting purposes and the ability to provide a full range of products, materials, parts, and service for each category offered in order to meet the demands of all eligible agencies. This shall include the ability to resolve customer disputes, handle multiple communications from accounts and provide excellent customer service.
- 3.2.1.2. Key Personnel. The Contractor shall have in place capable key personnel trained and responsible for providing the following services. A separate staff member is not required for each area described but each of these duties shall be specifically assigned to someone capable of performing each of these duties.
- 3.2.1.3. Arizona Statewide Contract Representative – knowledgeable on all aspects of the contract, will handle contract administration requests and resolve problems that may arise. (Main point of contact for the State Procurement Office)
- 3.2.1.4. Catalog Maintenance – maintain electronic and hard copy catalog along with resolution of State contract pricing issues.
- 3.2.1.5. Spend Management Representative – knowledgeable in various spend management techniques and experience in the successful application of those techniques.
- 3.2.1.6. Contract Data Analyst – capable of analyzing and reporting on various contract data inquiries including but not limited to contract spend data, usage trends, etc.
- 3.2.1.7. Eligible Agency Contract Customer Service Representative – appropriate number to provide agency specific customer service and contract administration including but not limited to; return policies, after hours service, post-sales support, out of stock, order tracking, quality assurance, orders.
- 3.2.2. Ordering Capabilities. The Contractor shall have the ability to handle electronic, P- card, hard copy, phone, and walk in/will call orders as described within this solicitation. This includes providing and maintaining electronic and hardcopy catalogs along with toll-free phone customer service for ordering support and also web based catalogs that are maintained for the sole purpose of the State of Arizona Contract products and services. In the absence of electronic and hardcopy catalogs for



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- ordering purposes, supplier will respond to request for quotes within 24 hours of requests.
- 3.2.3. Delivery Commitments. Contractor shall have clear policies in place for delivery completion time frames and minimum delivery commitment to any eligible agency.
- 3.2.4. Product Availability. All products offered shall be available for ordering at the time of contract award and throughout the life of the Contract. Changes to products that are available under any resultant contract cannot be made without prior written approval from the State in the form of a formal APP contract change order.
- 3.2.5. Statewide Delivery:
- 3.2.5.1. Upon request of an Eligible Agency, the Contractor shall provide inside delivery to specific locations at no extra charge. Inside delivery is defined as inside the customer's business, building or outer property grounds.
- 3.2.5.2. Delivery for in stock items shall not exceed 48 hours (within 24 hrs. is preferable)
- 3.2.5.3. Delivery of out of stock items shall not exceed 10 working days. Individual Eligible Agencies may have additional restrictions for a given circumstance.
- 3.2.5.4. Delivery of custom items should be provide at time of quote**
- 3.2.5.5. The Contractor shall have policies in place regarding late delivery such as order cancellation policy, discounts given for late deliveries, order tracking, etc.
- 3.2.5.6. Eligible agencies may have policies in place for the imposition of penalties for contractors that have continual late deliveries. These may include but are not limited to cancellation of order, future nonuse of contractor or filing of vendor performance report with the State Procurement Office.
- 3.2.6. Distribution/Warehouse Facilities. Contractor shall provide adequate warehouse facilities and distribution network dedicated to the successful performance of the awarded contract. This shall include but not limited to adequate volume stock levels, staff levels, fill rates and will call capabilities. The Contractor shall have a policy in place for damaged freight, shipping and invoicing error, defective items and other policies



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

that increase the ability to deliver customer orders in a timely and accurate manner.

3.3. Product Requirements

3.3.1. Catalogs. Catalogs and/or price lists shall be made available in both electronic and hardcopy formats upon request from an Eligible Agency. An accessible website that contains a downloadable catalog or price list or an interactive web catalog or price list shall also be available for use by Eligible Agencies. All catalogs that are made available to Eligible Agencies for use under this Contract shall only contain products included under this Contract. The Contractor shall not represent any product that is specifically excluded as a product covered under this Contract. The Contractor shall have a process in place for removing items determined to be exclude from this Contract.

3.3.2. Core List. The Contractor shall provide discounted firm fixed price for specific item or their equivalent listed within the core product list. The contractors shall provide products and pricing in a minimum of one category. The Core List reflects the most common or frequently purchased under the existing state contracts. Use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. Products substantially equivalent to the brands designated qualify for consideration. The Core List may change during the term of the Contract. Changes may be made to the Core List at the time of renewal and shall reflect the most common products purchased under the Contract to provide the best value to the Eligible Agencies. If multiple contracts are awarded, the core list shall have the ability to reflect the usage under each Contract.

3.3.2.1. Core List Item Description Prevails. In the case of discrepancy between the Description or Manufacturer Part Number and Manufacturer, the Description shall govern.

3.4. Service and Program Requirements

3.4.1. Customer Service. The Contractor shall provide customer service representatives, knowledgeable about the contract, to handle questions and resolve problems that may arise. Customer Service requirements shall at a minimum include;

3.4.1.1. Representatives available to contract users during normal business hours that have on-line access to information to provide immediate response to inquiries concerning the status of orders (shipped or pending), delivery information, back-order information, contract pricing, contract product offerings/exclusions, billing



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- questions or issues, contract compliance requirements, and general product information.
- 3.4.1.2. Shall be accessible by toll free phone number, fax, email, or internet.
 - 3.4.1.3. Emergency number for after-hours use.
 - 3.4.1.4. An escalation process that addresses unresolved issues.
- 3.4.2. Warranties. The Contractor shall describe all warranties that will be offered on all applicable equipment and products under this contract. All warranties offered shall meet or exceed the standard manufacturer warranty for the offered equipment or product.
- 3.4.3. Discounts. The Contractor(s) is encouraged to offer discounts for various groups or purchases. Such discounts may include but are not limited to the following;
- 3.4.3.1. Educational Discount – additional discount percent (%) from list price to qualifying education institutions (i.e. K-12, Colleges and Universities).
 - 3.4.3.2. Single Bulk Purchase – additional discount percent (%) from list price offered on stand-alone bulk purchases. If offered, the contractor shall clearly describe what qualifies for the discount.
 - 3.4.3.3. P-Card – additional discount percent (%) from list price offered on purchases paid on a Purchasing Card.
- 3.5. Green Requirements
- 3.5.1. Environmental and Sustainable Practices. The Contractor shall have sound environmental and sustainability practices in place. The environmental practices should be applicable to the items being offered such as;
- 3.5.1.1. Offer and recommend environmentally preferable products to customers when available and not cost prohibitive.
 - 3.5.1.2. Offer and use environmentally friendly products, materials, and suppliers where economically feasible.
 - 3.5.1.3. Offer and use equipment that may be disassembled so that components can be separated and reused or recycled easily
 - 3.5.1.4. Products that provide end of life recycling or cradle to grave processes.
 - 3.5.1.5. Reduced packaging or use environmentally friendly packaging that uses no disposable containers is made from recycled content and meets or exceeds the minimum post-consumer content level for packaging in the U.S. EPA Comprehensive Procurement Guidelines.
 - 3.5.1.6. Buy Back Programs.
 - 3.5.1.7. Green Labeling and 3rd Party Certifications.



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.5.1.8. Identification of green products within Contractors catalogs and/or website.
- 3.5.2. Green Certification. The Contractor shall have policies in place to reduce the environmental impacts associated with the manufacture, use and disposal of products they offer to the extent it is technologically and economically feasible. The State encourages the purchase of products containing recycled content as well as those that are environmentally friendly or identified as green certified products such as Green Seal Certified. The Contractor shall supply a list of the industry recognized certifications and standards obtained.
- 3.5.3. Recycled Content. The Arizona Recycling Program encourages Arizona to reduce, reuse, recycle and buy recycled products as an alternative to solid waste disposal in landfills. Contractors are encouraged to offer products containing post-consumer content. Contractors shall have policies in place detailing their commitment to offering products where economically feasible, that contain recycled content. The policy should also include goals for minimum percentage of post-consumer material contained in those items.
- 3.5.4. Packaging. Contractors are encouraged to offer packaging that is environmentally friendly and meets at least one but preferably all of the following criteria;
- 3.5.4.1. Minimizes or eliminates the use of disposable containers or wrap,
 - 3.5.4.2. Made from 100% post-consumer recycled material or at a minimum 25% post-consumer materials,
 - 3.5.4.3. Be recyclable,
 - 3.5.4.4. Reusable,
 - 3.5.4.5. Non-Toxic,
 - 3.5.4.6. Biodegradable.
- 3.5.5. Energy Efficiency. ARS 34-451 requires; "All state agencies shall procure energy efficient products that are certified by the United States Department of Energy or the United States Environmental Protection Agency as energy star or are certified under the Federal Energy Management Program (FEMP) in all categories that are available unless the products are shown not to be cost-effective on a life cycle cost basis."
- 3.5.5.1. Contractors are encouraged to offer products that meet these requirements. Information about Energy Star Products and FEMP may be found at;
- 3.5.5.1.1. <http://www.energystar.gov/products> ; and
 - 3.5.5.1.2. http://www.1eere.energy.gov/femp/procurement/eep_requirements.html



Scope of Work
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.5.6. Reporting Requirements. The following requirements shall be performed by the Contractor relating to an Environmentally Friendly or Green Products.
- 3.5.6.1. The Contractor shall submit an Environmentally Friendly or Green Product Report that identifies the environmentally friendly or green products, energy efficient products, and products containing 25% post-consumer material sold and the total dollars purchased during the reporting period.
 - 3.5.6.2. The Contractor shall furnish this report on an annual basis to the Procurement Officer of record no later than July 31st or upon request of the State.
 - 3.5.6.3. Failure on the part of the Contractor to accurately and timely submit any reports required by this contract may give rise to any contractual remedies available to the state



**Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

[Special Terms and Conditions](#)

The Special Terms and Conditions modify the Uniform Terms and Conditions. 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. Definition of Terms: As used in the Contract, the terms listed below are defined as follows:

1.1. Acceptance: The document titled “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:

1.2.1. If State did not request a Revised Offer, then “Accepted Offer” means the Initial Offer.

1.2.2. If State requested a Revised Offer but not a Best and Final Offer, then “Accepted Offer” means the latest Revised Offer.

1.2.3. If State requested a Best and Final Offer, then “Accepted Offer” means the Best and Final Offer.

1.3. “AI” means the science and engineering of making machines capable of performing tasks that are typically associated with human intelligence, such as learning and problem-solving, and includes without limitation: AI systems, classic AI, external AI, generative AI, and large language model (LLM) AI.

1.4. Arizona Procurement Code: The Arizona Procurement Code consists of Arizona Revised Statutes (A.R.S.) §§ 41-2501 *et seq.* and Arizona Administrative Code (A.A.C.) R2-7-101 *et seq.* There is additional information in the Solicitation Instructions regarding how to access these state statutes and rules.

1.5. Arizona Risk and Authorization Management Program (AZRAMP): is used by the Arizona Department of Homeland Security to evaluate Cloud services and ~~CtsywChytw&ymfy| rpf yfsxkjwauwhjxxk&w&ytwj&cyfyj&ifyf&zyxrij&k&cyfyj&fsflji&tw&ntsyw&ij&sjy| twpx,~~ and has three levels of control review:

1.5.1. AZ Mandatory Control Baseline: 35 Controls

1.5.2. NIST Low Impact Control Baseline: Public Data Classification



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 1.5.3. NIST Moderate Impact Control Baseline: Confidential Data Classification
- 1.6. Arizona Transaction Privilege Tax (TPT): For information, refer to the Arizona Department of Revenue (DOR) website at: <https://azdor.gov/transaction-privilege-tax-tpt>
- 1.7. Attachment. Any item that:
- 1.7.1. The Solicitation required Offeror to submit as part of the Offer (e.g., Initial Offer, Revised Offer, or Best and Final Offer);
 - 1.7.2. Was attached to an Offer when submitted; and
 - 1.7.3. Was included in the Accepted Offer.
- 1.8. Cloud Services: Cloud or Cloud Services means any Software as a Service (SaaS), Infrastructure as a Service (IaaS), or Platform as a Service (Paas) involving the transfer, processing, or storage of state Data outside the control of state-managed and controlled networks.
- 1.9. Contract Terms and Conditions: The Special Terms and Conditions and the Uniform Terms and Conditions taken collectively.
- 1.10. Contractor: The Person identified on the Accepted Offer who has entered into the Contract with the State.
- 1.11. Contractor Indemnitor: Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.12. Co-Op Buyer: 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 an "eligible procurement unit" under A.A.C. R2-7-101(23).
- NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, "non-profit organizations" are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the I.R.S. under Section 501(c)(3) through 501(c)(6) of the tax code.*
- 1.13. Data Breach: Data Breach is used herein as defined as stated in A.R.S. Title 18, chapter 5, article 4 (Data Security Breaches), or in any relevant state or federal standard, to indicate an unauthorized acquisition of and unauthorized access that materially



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

compromises the security or confidentiality of unencrypted and unredacted computerized personal information maintained as part of a database of personal information regarding multiple individuals.

1.14. Eligible Agency:

1.14.1. If the Special Terms and Conditions indicate that the Contract is a “single-agency” contract, then “Eligible Agency” means the particular State of Arizona agency, university, commission, or board identified therein.

1.14.2. If the Special Terms and Conditions indicate that the Contract is a mandatory statewide contract, then “Eligible Agency” means any State of Arizona department, agency, university, commission, or board.

1.14.3. If the Special Terms and Conditions indicate that the Contract is a “cooperative” contract available for use by Co-Op Buyers, then “Eligible Agency” means any State of Arizona department, agency, university, commission, board, or any Co-Op Buyer.

1.15. Federal Risk and Authorization Management Program (FedRAMP): A federal government program that provides a standardized approach to security assessment, authorization, and continuous monitoring specifically for Cloud products and services relied upon by federal entities that store, process and transmit federal information.

1.16. Instructions to Offerors: The Solicitation Instructions document of the Solicitation.

1.17. NIST: NIST is the National Institute of Standards and Technology. For more information, see <https://www.nist.gov/>.

1.17.1. NIST Low Impact: If a Contractor may process, transmit, or store Public State Data (per State Data Classification Policy P8110), metadata, and/or Data that may be released to the public that requires no additional levels of protection during its work under the Contract, or as directed by the State Chief Privacy Officer (Arizona Department of Homeland Security Governance, Risk, and Compliance team), then the Contractor **shall** comply with NIST Low Impact security controls.

1.17.2. NIST Moderate Impact: If a Contractor may process, transmit, or store Confidential State Data (per State Data Classification Policy P8110) or metadata during its work under the Contract, then the Contractor **shall** comply with NIST Moderate Impact security controls.

1.18. Order: The instrument by which the Eligible Agency or Co-Op Buyer authorizes a Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends on the scope of the Contract and how the State will use it. The



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

Special Terms and Conditions provide that information. Any of the following are construed as an "Order": "Purchase order," "task order," "service order," or "job order".

- 1.19. State's eProcurement System: The 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 eProcurement System–The Official State eProcurement System. Technical Bulletin No. 020 is available online at:

https://spo.az.gov/sites/default/files/documents/files/TB_020_APP_20181024.pdf

- 1.20. 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 Eligible Agency or Co-Op Buyer who has issued the Order.

- 1.21. State Indemnitees: Collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.

- 1.22. StateRAMP: A non-profit organization that provides a uniform approach to verifying that the cybersecurity of Cloud service providers (CSPs) meets the standards and regulations needed to do business with state and local governments.

- 1.23. Work: The totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

2. Contract Interpretations

2.1. Usage. Where the Contract:

- 2.1.1. assigns obligations to Contractor, any reference to "Contractor" is to be construed to be a reference to the 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 Subcontractor's respective agents, representatives, and employees in every instance unless the context plainly requires that it is a reference only to Contractor as apart from Subcontractors.

- 2.1.2. uses the permissive "may" with respect to a party's actions, determinations, etc., the terms is to be interpreted as in A.A.C. R2-7-101(32) [*Definitions*]. For clarity of intent, any right given to State using "State may" or a like construction



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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;

- 2.1.3. 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(44) [*Definitions*]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
- 2.1.4. uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity;
- 2.1.5. 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
- 2.1.6. 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

- 2.2.1. Complementary Documents. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant Work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.
- 2.2.2. Conflicts. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document, but not in another, is not to be considered a conflict or inconsistency.

2.2.2.1. Contract Amendments;



**Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

2.2.2.2. The final Solicitation Documents, in the following 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) Specifications; and
- (7) Any other documents referenced or included in the Solicitation;

2.2.2.3. Orders, in reverse chronological order; and

2.2.2.4. Accepted Offer.

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

3. 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 canceled, terminated, or permissibly extended.

3.2. Contract Extensions. State may at its discretion extend the initial Contract term in increments of one (1) 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 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 State's eProcurement System



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

Vendor Profile; and 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 address all Contract correspondence other than formal notices to the email address indicated in “Contact Instructions” in the State’s eProcurement System Summary for State; and address any required notices to State via email to the Procurement Officer identified as “Purchaser” in the State’s eProcurement System and via mail to the following mailing address:

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100,
Phoenix, AZ 85007

- 3.3.3. Changes. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address.

- 3.4. Signing of Contract Amendments. Contractor’s counter-signature (or “approval” in the State’s eProcurement System, in the case of an amendment) is not required to give effect if the Contract Amendment only covers either:

- 3.4.1. extension of the term of the Contract within the maximum aggregate term; or
3.4.2. 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 3.4.1 and 3.4.2 above, both parties’ signatures (or “approval” in the State’s eProcurement 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 System, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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. In addition to the audit rights detailed in the Uniform Terms and Conditions, State also requires that, pursuant to A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to any cost and pricing Data submitted in satisfaction of § 41-2543 for the period specified in the statute.

3.6.2. Usage Information. Additionally, any and all information (including, but not limited to, documentation or Data) related to Eligible Agency and Co-Op Buyer usage retained solely within the Contractor's system (for example, related to punch-out or Contractor catalog sales) shall be considered public information or information that can be shared with and distributed by the State freely and for any purpose under the State's government purpose rights detailed in Section 3 of the Uniform Terms and Conditions [Ownership of Intellectual Property]. Any modifications to this Contract notwithstanding, the State shall have free use of any and all information related to Eligible Agency or Co-Op Buyer purchasing. Upon request by the State, Contractor shall promptly provide the State with any usage information requested and shall not attempt to limit the State's use in any way.

3.6.3. Right To Audit. The retained books and records are subject to audit by State during that period. Pursuant to 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.

3.6.4. 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. Subcontract

3.7.1. Initial list. At the time of Contract execution, Contractor's candidate Subcontractors were identified in Attachment Proposed Subcontractors to the Accepted Offer [Proposed Subcontractors]. Agreeing to them being included in the Accepted Offer signified Procurement Officer's advance consent for



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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.

3.7.2. Additional names. Contractor shall not enter into a Subcontract to perform Work under the Contract, without first obtaining Procurement Officer's written consent with any prospective Subcontractor that (a) was not listed on the Attachment Proposed Subcontractors 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. Approval of additional subcontractors shall be added to the Contract by a bilateral Contract Amendment.

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

3.8. Orders

3.8.1. Order Sufficiency. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the Arizona Procurement Code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize the Contractor to provide the Materials and perform the Services covered by that Order.

3.8.2. Order Terms. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions. Any Contractor terms added to quotes or otherwise unilaterally added to Eligible Agency or Co-Op Buyer Orders are null and void.

3.8.3. Orders are Obligatory. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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.

3.8.4. 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.

3.8.5. Non-contracted Materials or Services. Any attempt to knowingly represent for sales, marketing, or related purposes that Materials or Services not specifically awarded are under a State contract is a violation of the Contract and law.

3.9. Order Cancellations. State may cancel Orders within a reasonable period after issuance and at its discretion. The same method used for ordering will be used for cancellation.

3.9.1. If State cancels an Order, then State shall:

3.9.1.1. 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; and

3.9.1.2. reimburse Contractor for actual, documented costs incurred in fulfilling the Order up to the cancellation effective date and the cost of any obligations incurred in fulfilling the Order up to the cancellation effective date 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.

3.9.2. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice; State is not liable for any Materials that were produced, shipped, or delivered, or Services that were performed before Contractor had acknowledged the corresponding Order.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.9.3. State shall also be able to cancel Orders freely and without any further obligation at any time prior to Contractor's formal acknowledgement of the Order.
- 3.10. The Contract is a mandatory statewide contract (per A.A.C. R2-7-607) for multiple purchases, projects, or assignments, and a cooperative contract (per A.R.S. § 41-2632 and A.A.C. R2-7-1002(B)) that 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 cooperative contract hereunder.
- 3.10.1. Contractor shall verify if an ordering entity is a current 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:
- 3.10.2. 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).
- 3.10.3. 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 prior to January 1, 2024, is one (1%) percent. Rates are set in accordance with SPO Technical Bulletin (TB) 007, available on the SPO website, which may be revised at the State's sole discretion as part of Arizona state procurement policy. For convenience (though note that this link may change over time) TB 007 may be found here:

<https://spo.az.gov/suppliers/usage-reporting>

<https://spo.az.gov/suppliers/usage-reporting>.

Failure to remit the administrative fees is a material breach of contract, and will entitle the State to its remedies under Contract Terms and Conditions Section 8 and its right to terminate for default under Section 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:

<https://spo.az.gov/suppliers/usage-reporting>.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.10.4. Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle the State to its remedies under Contract Terms and Conditions Section 8 and its right to terminate for default under Section 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

<https://spo.az.gov/suppliers/usage-reporting>.

- 3.10.5. Contractor shall acknowledge each Order from Eligible Agencies within one (1) business day after receipt by either: (a) "approving" the Order electronically in the State's eProcurement System, which will indicate Contractor's unqualified acceptance of the Order as-issued; or (b) "rejecting" the Order electronically in the State's eProcurement 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 the Contractor may reject or refuse an Order are those set out in subparagraph 3.8.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in the State's eProcurement 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 eProcurement System within three (3) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in the State's eProcurement System and if it does so the rejection will be void.
- 3.10.6. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each Co-Op 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.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.11. Multiple-Use Provisions. Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a Purchase Order in the State's eProcurement System. Orders issued by 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:
- 3.11.1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Contract, then preparing an Order using those prices (e.g. filling out an order form), and sending it to the Contractor;
 - 3.11.2. 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;
 - 3.11.3. As described in 3.11.2 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; or
 - 3.11.4. As described in 3.11.3 above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.
- 3.12. Work on State Premises
- 3.12.1. 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.
 - 3.12.2. 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



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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 in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 of the Uniform Terms and Conditions [Right of Offset].

3.13. Transitions

3.13.1. During commencement, Contractor shall attend transition meetings with any outgoing suppliers to coordinate and ease the transition so that the impact on State's operations is kept to a minimum. State may elect to have outgoing suppliers complete some or all of their Work or Orders in progress, even if that Work could be covered under the incoming supplier's Contract. Conversely, the State may have a continued need for the same Materials and Services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any incoming supplier and State to ensure as smooth and complete a transition transfer as is practicable.

3.13.2. Eligible Agency or Co-Op Buyers representative will coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming supplier. As with the incoming transition, State may permit Contractor, when Contractor is outgoing, to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

3.13.3. RESERVED

4. Costs and Payments

4.1. Type of Pricing. Offeror shall include only firm, fixed pricing in the Offer.

4.2. Contractor's Best Pricing. Contractor warrants that, for the term of the Contract, the prices and discounts set out in the Attachments titled Pricing, including any subsequent agreed amendment to it (the "Contract Pricing"), shall 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.

4.2.1. 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.

4.2.2. 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



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

- 4.2.3. 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 the difference occurred before it was identified, then Supplier agrees to charge 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.
- 4.3. 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.
 - 4.3.1. 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.
 - 4.3.2. Additional Charges. Any charges or fees not delineated in the Contract shall not be added, billed, or invoiced under the Contract.
- 4.4. Price Increase. 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.
 - 4.4.1. Initial Contract prices shall be honored for one year after award of Contract.
 - 4.4.2. The State needs sufficient time to make a fair and equitable determination in response to any Contractor requests for price adjustments. As a result, the State requests that the Contractor provide ninety (90) days advance notice prior to any price adjustment whenever possible, and at a minimum, sixty (60) days advance notice. Requests sent to the State with less than sixty (60) days notice will be denied, unless the Contractor provides proper documentation demonstrating the urgency of the request. The State shall determine whether the price increase is in the best interest of the State.
 - 4.4.3. 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 the State.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 4.4.4. State expects Contractors to use Lean Six Sigma principles to reduce costs in their supply chain, and not simply pass new costs on to the State. If a price increase is requested, State will ask for evidence that Lean Six Sigma principles and tools have been used by Contractor to attempt to reduce costs in advance of any request for a price increase under the Contract.
- 4.5. Price Reductions. 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. The 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 differences in pricing, begin, and end date of promotion along with the products covered.
- 4.6. Travel. Contractor shall request and receive 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 the 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/travel-information>. Eligible Agency or State shall reject any claim for travel reimbursement for which Contractor did not receive prior written approval.
- 4.7. Funding
- No particular funding considerations apart from Uniform Terms and Conditions Sections 4.5 [Availability of Funds for the Next State Fiscal Year] and 4.6 [Availability of Funds for the Current State Fiscal Year] have been identified as of the Solicitation publication date.
- 4.8. Invoicing
- 4.8.1. Invoices Go To Ordering Entity. Contractor shall submit all billing notices or invoices to the ordering Eligible Agency or Co-Op Buyer at the address indicated on the applicable Order document or by utilizing the Ordering Entity's purchasing tool/process.
- 4.8.2. Minimum Invoice Requirements. Every invoice shall include the following information:
- 4.8.2.1. Bill-to name and address;
 - 4.8.2.2. Contractor name and contact information;
 - 4.8.2.3. Remit-to address;
 - 4.8.2.4. Invoice number and date;
 - 4.8.2.5. State contract number;



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 4.8.2.6. Order number (APP PO number);
 - 4.8.2.7. Material or Service description (itemized);
 - 4.8.2.8. Date(s) Services were performed or Materials were delivered;
 - 4.8.2.9. Applicable payment terms;
 - 4.8.2.10. Quantity delivered or performed;
 - 4.8.2.11. Line item unit of measure;
 - 4.8.2.12. Item price;
 - 4.8.2.13. Extended pricing;
 - 4.8.2.14. Receipt for pass-through expenses (if applicable);
 - 4.8.2.15. Taxes (as a separate invoice line item), including the percentage used to calculate taxes;
 - 4.8.2.16. Mailing fees (if applicable); and
 - 4.8.2.17. Total invoice amount due.
- 4.8.3. No Invoice Without Authorization. Contractor shall not seek payment for any:
- 4.8.3.1. Materials or Services that have not been authorized on an acknowledged Order;
 - 4.8.3.2. Expediting, overtime, premiums, or upcharges absent State's express prior approval; or
 - 4.8.3.3. Materials or Services that are the subject of a Contract Amendment that has not been fully signed by the Procurement Officer.
- 4.8.4. Submitting Invoices. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process required by the ordering 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.
- 4.8.5. Defective Invoices. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Agency or Co-Op Buyer may, at its discretion, reject any materially defective invoice.
- 4.8.5.1. The ordering Eligible Agency or Co-Op Buyer shall notify the Contractor within five (5) business days after receipt if it determines an invoice to be materially defective.
 - 4.8.5.2. Invoices will be deemed automatically rejected upon delivery if they: are sent to an incorrect address, do not reference the correct State contract and Purchase Order number, or are payable to any Person other than the Contractor.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

4.8.5.3. The ordering Eligible Agency or Co-Op Buyer shall have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

4.9. Payments

- 4.9.1. **Payment Deadline.** State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Section of the Special Terms and Conditions above, 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 occur: (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 Contract, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in the State's eProcurement System and provided a current I.R.S. Form W-9 to State unless excused by law from providing one.
- 4.9.2. **Payments Only To Contractor.** Unless an assignment and assumption agreement has been reached between the Contractor and State pursuant to Section 5.1 of the Special Terms and Conditions [Assignment and Delegation] or the State has been otherwise compelled by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier the Contract was awarded to within the eProcurement System.
- 4.9.3. **Payment.** The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4 Costs and Payments of the Uniform Terms and Conditions.
- 4.9.4. **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.
- 4.9.5. **Recovery of Overpayment.** If applicable, Eligible Agency or Co-Op Buyer determines that an overpayment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the overpayment and may deduct the overpaid amount from amounts then or thereafter due to Contractor.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

4.9.6. 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 (also called a p-card) are the responsibility of the Contractor. Unless otherwise stated in the Contract, there will be no additional fees or increase in prices associated with this method of payment.

4.9.7. 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, the 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/publications/forms>.

4.10. Applicable Taxes

4.10.1. Contractor To Pay All Taxes. State is subject to Arizona Transaction Privilege Tax (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 will not relieve the Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless clearly stated otherwise in the Contract, 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.

4.10.2. 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 as any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

5. Contract Changes

5.1. Assignment and Delegation

5.1.1. 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



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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.

- 5.1.2. In Part. Subject to Special Terms and Conditions sections 3.7 [Subcontract] 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 state law.

6. Risk and Liability

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

6.2. General Contractor Indemnification and Insurance Requirements

- 6.2.1. Contractor Indemnification (Not Public Agency). 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



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

loss investigation, defense, and judgment 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 Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the Contractor or Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

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.

6.2.3. **Insurance Requirements. Addendum A to the Special Terms and Conditions: Contractor Insurance Requirements is incorporated herein as part of the Special Terms and Conditions.**

6.3. 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:

6.3.1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;

6.3.2. 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;

6.3.3. State may elect to participate in such action at its own expense; and

6.3.4. 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.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

If Contractor is a public agency, this section 6.3 does not apply.

7. Warranties

7.1. Warranties and Requirements Related to Information Security. Addendum B: Warranties and Requirements Related to Arizona Information Security Statewide Policies, Standards, and Procedures is incorporated herein as part of the Special Terms and Conditions.

7.2. [FOR ADDITIONAL, SOLICITATION-SPECIFIC WARRANTIES, if any]

8. State's Contractual Remedies

8.1. [RESERVED]

9. Contract Termination

9.1. [RESERVED]

10. Contract Claims

10.1. [RESERVED]

11. Arbitration

11.1. [RESERVED]

12. General Provisions for Materials

12.1. Applicability. Section 12 applies to the extent the Work is or includes Materials.

12.2. Off-Contract Materials. Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for items not included in the scope of the Contract (and for which no price or compensation has been established contractually) or specifically 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 12.17 or cancel any such Order under subparagraph 12.18, in either case being without obligation and at Contractor's expense.

12.3. 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. If late deliveries have been specifically addressed in the Contract, the Contract shall take precedence over any such Contractor policies.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 12.4. 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).
- 12.5. 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.
- 12.6. Maintain Comprehensive Selection. Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Contract for ordering by Eligible Agencies, and Co-Op Buyers, if applicable.
- 12.7. 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 pricing and make the pricing 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 shall 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 offered to a significant number of buyers compare to the prices or discounts proposed for the additional products.
- 12.8. Discontinued Products. If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within five (5) business days after receiving the manufacturer's notification. State, at its discretion, may allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract. The resulting change to the Contract will be formalized by Contract Amendment. Contractor shall then update all applicable pricing and make the pricing 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



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of any 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.

- 12.9. Forced Substitutes. The Contractor shall not provide forced substitutions under the Contract; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.
- 12.10. Recalls. In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, "recalls" hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product. Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684, with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State's part, other than to permit removal of installed products, retrieve stored products, and take any other reasonably necessary actions, to implement the recall.
- 12.11. Delivery Time. Unless stated otherwise in the Purchase Order, Contractor shall make delivery within two (2) business days after receiving each Order.
- 12.12. Delivery Locations. Contractor shall offer deliveries to every location served under the scope of the Contract, specifically
 - 12.12.1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
 - 12.12.2. 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;
 - 12.12.3. if the Contract is for cooperative 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
 - 12.12.4. if the Contract is for unrestricted mandatory statewide and cooperative use, then:
 - 12.12.4.1. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 12.12.4.2. 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,
- 12.12.4.3. if the Purchase Order indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.
- 12.13. Conditions at Delivery Location. Contractor shall verify receiving hours and conditions (e.g. height/weight restrictions, access control, etc.) with the relevant Eligible Agency or Co-Op Buyer for the receiving site before scheduling or making a delivery. 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 shall not pay extra charges for wait time, comebacks, or the like, nor excuse late deliveries if Contractor has failed to comply with this section.
- 12.14. Materials Acceptance. State has the right to accept Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may require acceptance criteria, including, but not limited to, conformity to the Contract, workmanship, and quality under the Contract or for a specific Order. Contractor shall remove any rejected Materials from the delivery location, or from any area to which it might have been reasonably necessary to move it, and subsequently deliver an equal quantity of conforming items within a timeframe set by the Eligible Agency or Co-Op Buyer. State shall 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.
- 12.15. Correcting Defects. Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials.
- 12.15.1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.

- 12.15.2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under the Contract, including but not limited to, paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.
- 12.15.3. 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.
- 12.16. Returns. State may, at its discretion, return for full credit and with no restocking charges, any delivered Materials unused in the original packaging within thirty (30) days after receipt, regardless of acceptance. If State elects to return delivered Materials, then State shall pay delivery costs to return the products to the place from which Contractor shipped them. However, 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 any costs associated with returning the Materials and may, at its discretion, either have those billed directly to Contractor, offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions, or take any other appropriate actions under the Contract.
- 12.17. Product Safety. Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance. Contractor shall only deliver Materials that are already safe and compliant with the warranties in the Contract Terms and Conditions.
- 12.18. Hazardous Materials. Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the United States Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with (to the extent 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



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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.

13. General Provisions for Services

- 13.1. Applicability. Article 13 applies to the extent the Work is or includes Services.
- 13.2. Comprehensive Services. Contractor shall provide the comprehensive range of Services for which a price is established in the Contract for ordering by Eligible Agencies and Co-Op Buyers.
- 13.3. Additional Services. 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. Once the Contract Amendment is fully executed, Contractor shall then update all applicable pricing 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 shall include documentation demonstrating that the proposed price for the additional Services is both fair and reasonable and comparable to the original prices.
- 13.4. Off-Contract Services. Contractor shall ensure that the ordering process for the Services prevents Orders for Services not included in the scope of the Contract (and for which no price or compensation has been established in the Contract) or Services explicitly excluded from the Contract. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded ordering of Services, 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.
- 13.5. Removal of Personnel. 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 removed personnel with other personnel that have equivalent qualifications, experience, and capabilities.
- 13.6. Accuracy of Work. Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

on its part without additional compensation. Acceptance by State shall not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.

13.7. Requirements at Location of Services

13.7.1. Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order. Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes.

13.7.2. If performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities (including but not limited to prisons) where prior clearances are required, Contractor shall contact the facility directly in advance of performing the Services to confirm its current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State shall not pay any additional fees (including but not limited to service charges) or excuse late performance, if Contractor has failed to comply with these requirements.

13.8. Acceptance of Services. State has the right to accept Services subject to acceptance criteria. State may apply acceptance criteria to the Contract or a specific Order, which may include, but are not limited to, accuracy, completeness, conformance to requirements, or quality. State shall not pay Contractor for unaccepted Services, and State may, at its discretion, withhold or make partial payment for any rejected Services, while Contractor is in the process of re-performing or otherwise curing the grounds for State's rejection.

13.9. Corrective Action Required. Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, and in addition to any other rights and remedies available under the Contract, if Contractor fails to perform any material portion of the Services including, but not limited to, failure to complete any contractual deliverable or failure 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.

13.9.1. Contractor shall provide 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).

13.9.2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any and all reasonable corrections State instructs and adopt State's recommendations, including any measures State determines to be necessary for employee or public safety, or the protection of property or the environment.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

13.9.3. Contractor shall take the necessary action(s) to avoid any like failures in the future.

14. Data and Information Handling

14.1. Applicability. Article 14 applies to the extent the Work includes handling of any (1) State's proprietary and sensitive Data or (2) confidential or access-restricted information obtained from State or from others at State's behest.

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

14.2.1. Contractor shall provide the State and Eligible Agencies with a copy of its Disaster Recovery plan upon request. The Disaster Recovery plan shall outline the Contractor's actions, with timelines, in the event of a natural disaster, cyber-attack or loss of ability to operate and perform services under this contract.

14.2.2. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external Data Breach, internal Data Breach, system failure, or procedural lapse within twenty-four (24) hours of a Data Breach, by sending an email to the Arizona Department of Homeland Security at AZSOC@azdohs.gov and GRC@azdohs.gov, reporting the incident that occurred; (b) cooperate with State to identify the source or cause 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

14.2.3. 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.

14.3. Personally Identifiable Information. Without limiting the generality of paragraph 14.2, Contractor warrants that it will employ protections for any personally identifiable information ("PII") belonging to State's employees or other contractors or members of the



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

general public that it receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph:

- 14.3.1. PII has the meaning given in Arizona Revised Statute (A.R.S.) § 18-551; and
- 14.3.2. “protections” has the meaning given in the National Institute of Standards and Technology (NIST) *Special Publication 800-160, Revision 2, Volume 1*.

NOTE (1): For convenience of reference only, Arizona Revised Statute (A.R.S.) § 18-551 is available at:

<https://www.azleg.gov/ars/18/00551.htm>

NOTE (2): For convenience of reference only, NIST SP 800-160, Revision 2, Volume 1 is available at:

<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-160v2r1.pdf>

14.4. Protected Health Information. Contractor warrants that, to the extent performance under 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:

- 14.4.1. 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 CFR45-160(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;
- 14.4.2. 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
- 14.4.3. 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>

14.5. Artificial Intelligence (AI) Prohibitions. Consistent with State policy, if Contractor supplies AI Services or Materials (either directly or through Subcontractors or the sale of licenses),



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

such as research, development, training, implementation, deployment, maintenance, provision, or sale of AI systems, then Contractor is prohibited from using State of Arizona Materials or Data in generative AI queries or for building or training proprietary generative AI programs unless explicitly approved in advance by the State in writing.

- 14.5.1. Contractor shall also disclose the utilization of generative AI before producing works owned by the State and/or integrating generative AI into Materials or Services used by the State.
- 14.5.2. Contractor shall perform due diligence to ensure proper licensure of model training data for all generative AI services.

15. Information Technology Work

15.1. Applicability. Article 15 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined In A.R.S. §18-101(6) "...all computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects," if and to the extent that the Work is or includes Information Technology.

15.2. Background Checks. Each 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, Eligible Agency, or Co-Op Buyer. 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 identity and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and Data security

15.3. Information Access

15.3.1. 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.

15.3.2. 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 identifications (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 provided the minimum only such level of access necessary to perform their duties. Contractor shall, on request, provide a current register of the access



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

IDs and passwords and corresponding access levels currently assigned to its personnel.

15.3.3. 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 of Contractor personnel, or instruct Contractor to restrict their access, if in its determination the requirements of this subparagraph are not being met.

15.4. Pass-Through Indemnity

15.4.1. 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.

15.4.2. Notification 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:

15.4.2.1. State reserves the right to elect to participate in the action at its own expense;

15.4.2.2. State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and

15.4.2.3. State shall in any case cooperate in the defense and any related settlement negotiations.

15.5. Systems and Controls. 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



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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.

15.6. Redress of Infringement

15.6.1. 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:

15.6.1.1. replace any infringing items with non-infringing ones;

15.6.1.2. obtain for State the right to continue using the infringing items; or

15.6.1.3. modify the infringing items so that they become non-infringing, so long as they continue to function as specified following the modification.

15.6.2. Cancellation Option. In every case under 15.6.1, 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:

15.6.2.1. for any software created for State under the Contract, the amount State paid to Contractor for creating it;

15.6.2.2. for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and

15.6.2.3. for Services, the amount paid by State or an amount equal to twelve (12) months of charges, whichever is less.

15.6.3. Exceptions. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:

15.6.3.1. modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;

15.6.3.2. operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or

15.6.3.3. combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.

15.7. First Party Liability Limitation



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 15.7.1. 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 three (3) times the purchase price of the specific Materials or Services giving rise to the claim.
- 15.7.2. Provisos. This paragraph 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 does not limit liability arising from any:
- 15.7.2.1. Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.2;
 - 15.7.2.2. claim against which Contractor has indemnified State Indemnitees under paragraph 6.3; or
 - 15.7.2.3. provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.
- 15.7.3. 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 15.7.1 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.
- 15.7.4. 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.
- 15.8. Information Technology Warranty
- 15.8.1. 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:
- 15.8.1.1. modified or altered by anyone not authorized by Contractor to do so;



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 15.8.1.2. maintained in a way inconsistent to any applicable manufacturer recommendations; or
- 15.8.1.3. operated in a manner not within its intended use or environment.
- 15.8.2. COTS Software. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:
 - 15.8.2.1. to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
 - 15.8.2.2. 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
 - 15.8.2.3. it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.
- 15.8.3. Payment has no Effect. The warranties in this paragraph are not affected by State's inspection, testing, or payment.
- 15.9. Specific Remedies. Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty under paragraph 15.8 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 that was first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 15.7. 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.
- 15.10. Section 508 Compliance. Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. §18-131 and §18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology (IT) that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.
- 15.11. Cloud Applications. The following are required for Contractor of any Offer that includes the hosting of State Data outside of the State's network, or transmission and/or receipt of State Data.



Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 15.11.1. Contractor shall submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet in the .xls format provided as found at: [myux?4f;itm3lt{4xyjx4ijkfzq4kojx4fwqtsfdgxfjgsjdxjhzwy-dhtsywqxd756<d{7d5d53}q](#), 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 to include NIST-based System Security Plans (SSP), Written Information Security Programs (WISP), and/or written IT policies in the manner requested.
- 15.11.2. 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.
- 15.11.3. Contractor must submit a copy of system logs from the Cloud system to the State of Arizona security team if or when requested, and in the format requested, to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).
- 15.11.4. Contractor must employ a government-rated Cloud compartment to better protect sensitive or regulated State Data.



**Addendum A to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

[Addendum A to the Special Terms and Conditions](#)

Contractor Insurance Requirements

Insurance Requirements

The requirements included in this section pertain to standard commodity purchase contracts (e.g. stationery, office supplies, etc.). For most commodity purchases it is not necessary, or practical, to require the vendor to include the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as an additional insured under the liability coverages. The exposures presented as a result of purchasing such commodities are minimal; however, following are a few exceptions:

- Purchase of products that will be resold or distributed directly to the public. In this situation, the State of Arizona has a substantial product liability exposure and, therefore, the Indemnification Language and Insurance Requirements will be somewhat different. Contact State Risk for assistance in developing the appropriate insurance language for this type of commodity purchase contract.
- Purchase and installation of large equipment. When the State of Arizona purchases highly valued equipment, e.g. compressors, generators or other machinery, the scope of services will generally include the installation of the equipment. This is no longer just a "commodity" purchase. The vendor's installation of the equipment makes this more of a "service contract" and, therefore, special insurance requirements should be included to address the exposures that are inherent to the operations being performed. When purchasing large equipment and machinery that will be installed in State of Arizona facilities, refer to Purchase and Install Equipment in this manual for information about the appropriate Indemnification Language and Insurance Requirements to use.
- Purchase of aircraft or aircraft parts. When the State of Arizona purchases any type of product / equipment relating to aircraft, the limit of liability for Products/Completed Operations coverage should be increased to \$10,000,000 each occurrence / \$20,000,000 aggregate. Contact State Risk for more information on developing the appropriate language.
- Purchase of hazardous materials, such as chlorine and other water treatment chemicals, fertilizers, herbicides, and pesticides require special insurance as well as higher limits. Refer to Master Environmental Services in this manual for more information, or contact State Risk for assistance.



**Addendum A to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

Please contact your State Risk Insurance Analyst to discuss the purchase of any hazardous commodity/material if such purchase is to be handled via Purchase Order without the use of a supporting master contract.

Automobile Liability should be required only if the commodity is being delivered to the State of Arizona by the vendor. If the commodity is being shipped by common carrier, Automobile Liability will not be required.

1.1 Indemnification Clause

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 judgment 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 Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

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.

1.2 Insurance Requirements

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



**Addendum A to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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

1.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

1.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, 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.

1.3.2 Business Automobile Liability

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

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

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions,



**Addendum A to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

1.3.3 Workers' Compensation and Employers' Liability

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

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

1.4 Additional Insurance Requirements

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

- 1.4.1 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).
- 1.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

1.5 Notice of Cancellation



**Addendum A to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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 Representative's Name, Address & Fax Number).

1.6 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.

1.7 Verification of Coverage

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

1.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

1.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

1.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

1.8 Subcontractors



**Addendum A to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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

1.9 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.

1.10 Exceptions

In the event the Contractor or subcontractor(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 subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply

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



**Addendum B to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

[Addendum B to the Special Terms and Conditions](#)

**Warranties and Requirements Related to
Arizona Information Security Statewide Policies, Standards, and Procedures**

1. Security Standards

- 1.1. Security of the State's systems and Data are of **utmost** importance to the State. In order to assure security from a personnel and operations perspective, Contractor shall comply with all requirements, in their entirety, as described in the statewide enterprise architecture; statewide Information Technology security policies, standards, and procedures; and any applicable agency-specific Information Technology security policies, standards, and procedures.
- 1.2. Contractor shall follow the correct, current version of these policies, standards, and procedures established by the Arizona Department of Homeland Security (AZDOHS) pursuant to their authority under A.R.S. Title 41, Chapter 41. The current website for these policies, standards, and procedures is: [Information Technology Policies, Standards and Procedures](#). Note that this link is provided for convenience only.
- 1.3. For security reasons, some state facilities require non-state personnel to have escorts. If required by the state facility, Contractor personnel shall only be allowed inside of a State facility if accompanied by an escort designated by the State. This is applicable in Correctional facilities, Public Safety facilities, State Lottery, and other facilities as designated by the State.

2. Security Framework

- 2.1. The State of Arizona information security policies and standards follow the National Institute of Standards and Technology (NIST) SP 800-53 Rev. 5 Security and Privacy Guidelines may currently be located at: <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf>.
- 2.2. The State has established a process to assess risk associated with storing, processing and/or transmitting State of Arizona Data with external, non-State of Arizona entities. The Arizona Risk and Authorization Management Program (AZRamp) was developed to ensure State and contractors meet these requirements. All contractors responding to State solicitations must successfully complete the AZRamp risk assessment based upon the Data classification involved as determined by the Data owner and AZDOHS Cyber Command. Failure to successfully complete AZRamp assessment will be deemed as breach of contract.
- 2.3. In the State's sole discretion, the State may also accept current FedRamp and StateRamp certifications as evidence that the Contractor has met the State's risk assessment requirements.



**Addendum B to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 2.4. Other forms of Cybersecurity Frameworks (CSF), Trust Documents, Self-Attestations, including, but not limited to, ISO/IEC, SOC 2 & 3, PCI, or HIPAA reports of compliance, may be reviewed as part of the State's risk assessment, but are not exclusive or conclusive evidence that the Contractor has met the State's risk assessment requirements.

3. Additional Security Requirements
 - 3.1. Contractor shall comply with all security requirements requested by the State.
 - 3.2. If an Arizona Risk and Authorization Management Program (AZRamp) is required, it will generally follow these steps, each of which shall be completed by the Contractor upon request by the State:
 - 3.2.1. Contractor shall submit a completed Arizona Baseline Infrastructure Security Controls Prerequisite assessment spreadsheet with its Offer. The Arizona Baseline Infrastructure Security Controls Prerequisite assessment spreadsheet as found at: https://azdohs.gov/sites/default/files/arizona_baseline_security_controls_prerequisite_0_0.xls, and mitigate gaps or install compensating controls for any issues of concern identified by State.
 - 3.2.2. Contractor shall provide Information Security documentation for the AZRamp assessment to include System Security Plan (SSP), Written Information Security Programs (WISP), or supporting written IT policies for review of the assessment.
 - 3.2.3. Note regarding the confidential treatment of Contractor information:
 - 3.2.3.1. The State of Arizona seeks a partnership with our supporting vendors, therefore, Non-Disclosure Agreements (NDA) for release to review submitted SSPs, WISPs, or written IT policies will not be considered.
 - 3.2.3.2. Submitted SSPs, WISPs, or written IT policies are deleted and not retained after AZRamp Authorization is granted.
 - 3.2.3.3. Procedures for submission of documents considered confidential or proprietary are identified within this RFP.
 - 3.2.3.4. Special secure transfer of documents related to this AZRamp review process may be made by contacting: GRC@AZDOHS.gov to make special arrangements for the transfer of these documents.
 - 3.2.4. If applicable to this Solicitation, Contractor shall complete and submit with the Offer an unedited and signed State of Arizona Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum (BAA).



**Addendum B to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.2.5. All contract awards are contingent on the successful completion of the AZRamp 125 Low Impact (public information) or the AZRamp 325 Moderate (Confidential, PII, or PHI) Impact Control spreadsheet titled "Arizona Infrastructure Security Controls 2017 (Excel)," to be determined by the Enterprise Security, Privacy & Risk Compliance team. Low (Column E) and Moderate (Column F) Impact controls spreadsheet can be located here: https://azdohs.gov/sites/default/files/arizona_baseline_security_controls_2017_v2_0_0.xls.
- 3.3. The State reserves the right to conduct risk assessments, vulnerability assessments, black-box penetration tests or hire a third party to conduct risk assessments, vulnerability assessments, and black-box penetration tests of the Contractor's environment. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all flaws deemed serious by the State when discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control(s).
- 3.4. Upon request, Contractor shall submit copies of system logs from Contractor's environment to the State of AZ security team in the format requested to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).
- 3.5. Contractor shall comply with all applicable State and Federal laws and regulations, including, but not limited to, the following (please note that the links are provided for convenience only and may change):
- 3.5.1. State of Arizona statewide policies, standards and procedures: <https://azdohs.gov/information-technology-it-policies-standards-and-procedures>;
- 3.5.2. Federal Information Security Modernization Act of 2014 (FISMA): <https://csrc.nist.gov/topics/laws-and-regulations/laws/fisma>;
- 3.5.3. OMB Circular A-130: <https://www.federalregister.gov/documents/2016/07/28/2016-17872/revision-of-omb-circular-no-a-130-managing-information-as-a-strategic-resource>;
- 3.5.4. National Cyber Strategy of the United States of America: <https://www.cisa.gov/executive-order-strengthening-cybersecurity-federal-networks-and-critical-infrastructure>;
- 3.5.5. Health Insurance Portability and Accountability Act (HIPAA) including Business Associate Agreement/ Health Information Technology for Economic and Clinical Health Act (HITECH): <https://www.hhs.gov/hipaa/index.html>;



**Addendum B to the
Special Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.5.6. Tax Information Security Guidelines For Federal, State and Local Agencies: Safeguards for Protecting Federal Tax Returns and Return Information (I.R.S. Publication 1075): <https://www.irs.gov/pub/irs-pdf/p1075.pdf>;
- 3.5.7. Criminal Justice Information Services Security Policy (CJIS): <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>;
- 3.5.8. Centers for Medicare & Medicaid Services (CMS), Minimum Acceptable Risk Standards for Exchanges (MARS-E): <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2-MARS-E-v2-0-Minimum-Acceptable-Risk-Standards-for-Exchanges-11102015.pdf>;
- 3.5.9. A.R.S. §18-104 - Arizona Department of Administration, Arizona Strategic Enterprise Technology (ADOA-ASET), Powers and duties of the agency: <https://www.azleg.gov/arsDetail/?title=18>;
- 3.5.10. A.R.S. §41-4282 - Statewide Information Security and Privacy Office (SISPO): <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/04282.htm>
- 3.5.11. A.R.S. §18-551 - Definitions Information Security Including PII: <https://www.azleg.gov/ars/18/00551.htm>;
- 3.5.12. A.R.S. §18-552 - Notification of security system breaches; requirements; enforcement; civil penalty; preemption; exceptions: <https://www.azleg.gov/ars/18/00552.htm>;
- 3.5.13. Arizona Executive Order 2008-10 – Mitigating Cyber Security Threats: <https://aset.az.gov/node/428>;
- 3.5.14. SIPC Memorandum of Understanding (MOU): <https://www.sipc.org/about-sipc/>;
- 3.5.15. State Environmental policies: <https://azdeq.gov/LawsAndRules>;
- 3.5.16. Family Education Rights Privacy Act (FERPA): <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn>;
- 3.5.17. Driver's Privacy Protection Act (DPPA): <https://azdot.gov/motor-vehicles/driver-services/driver-license-information/motor-vehicle-records>;
- 3.5.18. Incident Response Reporting program and system: https://azdohs.gov/sites/default/files/p8240-incident-response-planning_0.pdf;
- 3.5.19. State of Arizona Library, Archives and Public Records, Records Management Division, General Retention Schedules <https://azlibrary.gov/branches/archives-records-management>; and
- 3.5.20. Payment Card Industry (PCI) Security Standards including but not limited to Supplemental Documents, Information Supplements and Validation Requirements: <https://www.pcisecuritystandards.org>.



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

[Uniform Terms and Conditions 10.5](#)

1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
 - 1.1. “AI” means the science and engineering of making machines capable of performing tasks that are typically associated with human intelligence, such as learning and problem-solving, and includes without limitation: AI systems, classic AI, external AI, generative AI, and large language model (LLM) AI.
 - 1.2. “Attachment” means any item the Solicitation which requires the Offeror to submit as part of the Offer.
 - 1.3. “Contract” means the combination of the Solicitation, including the Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.4. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.5. “Contractor” means any person who has a Contract with the State.
 - 1.6. “Data” means recorded information, regardless of form or the media on which it may be recorded. The term may include technical Data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
 - 1.7. “Days” means calendar days unless otherwise specified.
 - 1.8. “Exhibit” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation generally containing maps, schematics, examples of reports, or other documents that will be used to perform the requirements of the Scope of Work after contract award.
 - 1.9. “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.
 - 1.10. “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.



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 1.11. "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.
- 1.12. "Services" means the furnishing of labor, time or effort by a Contractor or Subcontractor 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.
- 1.13. "State" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona that executes the Contract.
- 1.14. "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.15. "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 Materials or any Services required for the performance of the Contract.
- 1.16. "Subcontractor" means a person who contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the State.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract 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; then



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

2.3.7. Any other documents referenced or included in the Solicitation including, but not limited to, any Bid or Offer documents provided by the Contractor that do not fall into one of the above categories.

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 Parol 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. 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 any and all Data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) 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 Nos. 2023-09, 2023-01, 2009-09, and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit. Pursuant to A.R.S. § 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 as required under A.R.S. § 41-2547. 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



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

Contractor's facilities nor Materials testing shall constitute final acceptance of the Materials or Services. If the State determines non-compliance of the Materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation, stated in the Contract, or listed on the State's eProcurement system. 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. Continuous Improvement. Contractor shall recommend continuous improvements on an ongoing basis in relation to any Materials and Services offered under the Contract, with a view to reducing State costs and improving the quality and efficiency of the provision of Materials or Services. State may require Contractor to engage in continuous improvements throughout the term of the Contract.
- 3.8. Other Contractors. State may undertake on its own or award other contracts to the same or other suppliers for additional or related work. In such cases, the Contractor shall cooperate fully with State employees and such other suppliers 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, Materials, Services, or records to State or the other suppliers. Contractor shall not commit or permit any act that interferes with the State's or other suppliers' performance of their work, provided that, State shall enforce the foregoing section equitably among all its suppliers so as not impose an unreasonable burden on any one of them.
- 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



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

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

3.9.2. "Government Purpose Rights" are:

3.9.2.1. 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;

3.9.2.2. the right to release or disclose that work product to third parties for any State government purpose; and

3.9.2.3. 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.

3.9.3. "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.

3.9.4. Joint Developments. The Contractor and State 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.

3.9.5. 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:

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

3.9.5.2. any elements of derivative work of such pre-existing Materials that was not created pursuant to the Contract are not part of that work product; and

3.9.5.3. except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing Materials.



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.9.6. Developments Outside Of Contract. Unless expressly stated otherwise in the Contract, this Section 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. Property of the State. If there are any materials that are not covered by Section 3.9 above created under this Contract, including but not limited to, reports and other deliverables, these materials 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.
- 3.11. Federal Immigration and Nationality Act. 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, 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 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 or debarment of the contractor.
- 3.12. 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.
- 3.13. Offshore Performance of Work involving Data is 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 Data shall be performed within the defined territories of the United States.
- 3.14. Protection of State Cybersecurity Interests. The Contractor shall comply with State Executive Order No. 2023-10, which includes, but is not limited to, a prohibition against (a) downloading and installing of TikTok on all State-owned and State-leased information technology; and (b) accessing TikTok through State information technology.
- 3.15. Artificial Intelligence (AI) Prohibitions. Consistent with State policy, if Contractor supplies AI Services or Materials (either directly or through Subcontractors or the sale of licenses), such as research, development, training, implementation, deployment, maintenance, provision, or sale of AI systems, then Contractor is prohibited from using State of Arizona Materials or Data in generative AI queries or for building or training proprietary generative AI programs unless explicitly approved in advance by the State in writing.



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 3.15.1. Contractor shall also disclose the utilization of generative AI before producing works owned by the State and/or integrating generative AI into Materials or Services used by the State.
- 3.15.2. Contractor shall perform due diligence to ensure proper licensure of model training data for all generative AI services.

3.16. Certifications Required by State Law.

- 3.16.1. If Contractor is a Company as defined in A.R.S. § 35-393, Contractor certifies that it is not currently engaged in a boycott of Israel as described in A.R.S. §§ 35-393 *et seq.* and will refrain from any such boycott for the duration of this Contract.
- 3.16.2. Contractor further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.

4. 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 Materials or Services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, per A.R.S. § 47-2319, all prices shall be F.O.B. ("free on board") Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Firm, Fixed Price. Unless stated otherwise in the Special Terms and Conditions of the Contract, all prices shall be firm-fixed-prices.
- 4.4. Applicable Taxes
 - 4.4.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
 - 4.4.2. 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.
 - 4.4.3. 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



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.4.4. I.R.S. 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.

4.5. 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.

4.6. 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 Materials or Services are not funded, the State may take any of the following actions:

- 4.6.1. Accept a decrease in price offered by the Contractor;
- 4.6.2. Cancel the Contract; or
- 4.6.3. Cancel the Contract and re-solicit the requirements.

5. 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 Services or Materials, the revision of payment terms, or the substitution of Services 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 as described in Arizona State Procurement Office Standard Procedure 002. 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. Risk and Liability



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

6.1. Risk of Loss. The Contractor shall bear all loss of conforming Materials 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). 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 judgment 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 Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the Contractor or Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.2.2. Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnatee') 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 indemnatee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 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 paragraph shall not apply.
- 6.4. Force Majeure.
- 6.4.1. Except for payment of sums due, neither the Contractor nor State 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, 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, Materials, or Services 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 the Contractor or State 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



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern Materials or Services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. 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 the Special Terms and Conditions, the Contractor warrants that, for one (1) 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. Conformity to Requirements.

7.3.1. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for one (1) year after acceptance and in each instance:

7.3.1.1. Conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any and all Contractor affirmations included as part of the Contract;

7.3.1.2. Be free from defects of material and workmanship;

7.3.1.3. Conform to or perform in a manner consistent with current industry standards; and



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 7.3.1.4. Be fit for the intended purpose or use described in the Contract.
- 7.3.2. Mere delivery or performance does not substitute for express acceptance by the State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation or invoicing, the forgoing warranty will not begin until State's explicit acceptance of the Materials or Services.
- 7.4. Inspection/Testing. The warranties set forth in this Section 7 [Warranties] are not affected by inspection or testing of or payment for the Materials or Services by the State.
- 7.5. 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 and all certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.
- 7.6. Compliance With Applicable Laws. The Materials and Services supplied under this Contract shall comply with all applicable federal, state, and local laws and policies (including, but not limited to, information technology policies, standards, and procedures available on the State's website and/or the website of any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona). Federal requirements may be incorporated into this Contract, if required, pursuant to A.R.S. § 41-2637. Contractor shall maintain any and all applicable license and permit requirements. This requirement includes, but is not limited to, any and all Arizona state statutes that impact state contracts, regardless of whether those statutory references have been removed during the course of contract negotiations; this is notice to Contractors that the State does not have the authority to modify Arizona state law by contract.
- 7.7. 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.
- 7.8. Licenses and Permits. Contractor warrants that it will maintain all licenses required to fully perform its duties under the Contract and all required permits valid and in force.
- 7.9. 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.



**Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

7.10. Performance in Public Health Emergency. Contractor warrants that it will:

7.10.1. 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:

7.10.1.1. Identification of response personnel by name;

7.10.1.2. Key succession and performance responses in the event of sudden and significant decrease in workforce; and

7.10.1.3. Alternative avenues to keep sufficient product on hand or in the supply chain.

7.10.2. Provide a copy of its current plan to State within three (3) business days after State's written request. If Contractor claims relief under paragraph 6.4 [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.

7.10.3. A request from the State related to this paragraph 7.10 does not necessarily indicate that there has been an occurrence of force majeure, and the Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a plan.

7.10.4. Failure to have or implement an appropriate plan will be a material breach of contract.

7.11. Lobbying

7.11.1. Prohibition. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (CFR) part 34 and A.R.S. § 41-1231, *et seq.*, using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. Contractor shall implement and maintain adequate controls to assure compliance with above. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

- 7.11.2. Exception. This paragraph 7.11 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.
- 7.12. Covered Telecommunications or Services. Contractor warrants that the Materials and Services rendered under this Agreement will not require Contractor to use for the State, or provide to the State to use, "covered telecommunications equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.204-25.
- 7.13. Debarment, Suspension, U.S. Government Restricted Party Lists. Contractor warrants that it is not, and its Subcontractors are not, on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither the Contractor nor any Subcontractors are presently debarred, suspended, proposed for debarment or otherwise declared ineligible for award of federal contracts or participation in federal assistance programs or activities.
- 7.14. False Statements. Contractor represents and warrants that all statements and information Contractor prepared and submitted in response to the Solicitation or as part of the Contract documents are current, complete, true, and accurate. If the Procurement Officer determines that Contractor submitted an Offer or Bid with a false statement, or makes material misrepresentations during the performance of the Contract, the Procurement Officer may determine that Contractor has materially breached the Contract and may void the submitted Offer or Bid and any resulting Contract.
- 7.15. Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.15.1. Survival of Warranty. All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.
- 7.15.2. 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.
- 7.15.3. 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.



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or Services supplied under this Contract shall fully comply with the Contract. The delivery of Materials or Services or a portion of the Materials or Services that do not fully comply constitutes a breach of contract. On delivery of nonconforming Materials or Services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.



Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies

Arizona Department of Administration
State Procurement Office
1802 W. Jackson, #100
Phoenix, AZ 85007

9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. 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 with 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 (3) 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 or Services accepted before the effective date of the termination. The cost principles and procedures provided in A.R.S. § 41-2543 and A.A.C. Title 2, Chapter 7, Article 7, shall apply.
- 9.5. Termination for Default.



**Uniform Terms and Conditions
Request for Proposal
Solicitation No. BPM006272
Statewide Facilities and Building Supplies**

Arizona Department of Administration
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Phoenix, AZ 85007

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, Materials, documents, Data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, Materials or Services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring Materials or Services in substitution for those due from the Contractor.

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

10. 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. 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 (A.R.S. Title 41).

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
LIGHTING UNLIMITED, INCORPORATED**

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 Statement of Work must not exceed \$500,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

City shall pay contractor in accordance with the rates as set forth in the Arizona State Procurement Office Contract No. CTR074552 for electrical and lighting supplies City-wide on an as-needed basis.