

	Offer and Acceptance		State of Arizona General Services Division 1110 W. Washington St, Suite 155 Phoenix, AZ 85007
	SOLICITATION NO.: BPM000582		
	Description: Statewide Flooring Contract		

OFFER

TO THE STATE OF ARIZONA:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

Wholesale Floors LLC

Company Name

8855 N. Black Canyon

Address

Phoenix, AZ 85021

City State Zip

Josh@wholesalefloors.com

Contact Email Address



Signature of Person Authorized to Sign Offer

Joshua Sugidono

Printed Name

CEO

Title

Phone: (602) 248-7878

Fax: (602) 248-7075

By signature in the Offer section above, the Offeror certifies:

- The submission of the Offer did not involve collusion or other anticompetitive practices.
- The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465.
- The Offeror 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 shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
- The Offeror certifies that the above referenced organization IS / IS NOT a small business with less than 100 employees or has gross revenues of \$4 million or less.

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.

This Contract shall henceforth be referred to as Contract No.

CTR043526

The effective date of the Contract is April 1, 2019.

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, contact release document or written notice to proceed.

State of Arizona
Awarded this 27 day of March **20** 19


 Procurement Officer

Rocky Advani

Douglas A. Ducey
Governor



Elizabeth Thorson
Interim Director

ARIZONA DEPARTMENT OF ADMINISTRATION

STATE PROCUREMENT OFFICE

100 NORTH FIFTEENTH AVENUE • SUITE 402
PHOENIX, ARIZONA 85007

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

March 21, 2019

Sent via e-mail to: Josh@wholesalefloors.com

Re: Award of Contract for Solicitation No. BPM000582 for Statewide Flooring

Dear Joshua Sugidono,

Thank you for submitting a response to the Request for Proposal Solicitation No. BPM000582 for Statewide Flooring. I am pleased to inform you that Wholesale Floors LLC has been selected for award.

The initial contract term shall begin on 1st April 2019

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

In accordance with Special Terms and Conditions, Section 6.7 of the contract and prior to beginning work under the contract, your company is required to submit a Certificate of Insurance to the State Procurement Office if you have not already done so. The certificate of insurance shall indicate that your company is in compliance with insurance requirements contained in the contract. Please submit your certificate of insurance to me no later than March 31st 2019

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

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

Sincerely,

A handwritten signature in cursive script that reads "RAdvani".

Rocky Advani
State Procurement Manager



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155 Phoenix, AZ 85007

Notice of Request for Proposal

In accordance with A.R.S. § 41-2534, competitive sealed proposals for the materials or services specified, will be received by the State Procurement Office **online** through the State's e-Procurement system, Arizona Procurement Portal (APP) (<https://app.az.gov>) at the date and time posted in APP. Proposals received by the correct time and date will be opened and the name of each offeror will be publically available. **Proposals must be in the actual possession of the State on or prior to the time and date indicated in the Notice. Late proposals will not be considered.**

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Procurement Agency. Requests should be made as early as possible to allow time to arrange the accommodation. A person requiring special accommodations may contact the solicitation contact person responsible for this procurement as identified above.

DUE DATE AND TIME: Offers shall be received until **3:00 P.M. Mountain Standard Time, February 7, 2019**

DEADLINE FOR QUESTIONS: Inquiries regarding the solicitation are required to be submitted online through APP by **Friday, February 1, 2019 – 12:00 p.m.**


Proposers shall copy and save APP attachments to their own computer, save the information entered, and submit the completed information as a new, appropriately renamed Attachment in APP. APP will not save information entered directly on the attachments.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.

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Pricing to be added on line items in Arizona Procurement Portal (APP) per Brand name or enter alternate product name

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Instructions to Offerors

1. DEFINITIONS

- 1.1. APP terms. Arizona Procurement Portal (APP) (<https://appstate.az.gov>) is the State's online eProcurement system.
- 1.1.1. "Actual Cost" means the total value of all items and their extended quantities.
- 1.1.2. "Allow Electronic Quote" means an indicator, signifying whether or not offers may be submitted in APP.
- 1.1.3. "Alternate Id" means a data field, in which may contain additional data in order to link a solicitation to a related project, activity or program.
- 1.1.4. "Amendments" means solicitation amendments.
- 1.1.5. "Attachments" means the section, as displayed in APP, where the solicitation's electronic documents may be attached.
- 1.1.6. "Available Date" means a data field, in which may contain the date that the solicitation was published.
- 1.1.7. "Bid", depending on its use may mean solicitation or offer. For example, in the terms "Bid Solicitation" and "Bid Number", the term "Bid" means solicitation. In the terms "Bid Opening Date" and "Pre-Bid Conference", "Bid" means offer.
- 1.1.8. "Bid Method" means the type of solicitation process being conducted.
- 1.1.9. "Bid Number" means the solicitation's identification number.
- 1.1.10. "Bid Opening Date" means the date and time that offers are due.
- 1.1.11. "Bid Solicitation" means solicitation.
- 1.1.12. "Bid Type" means the extent the solicitation notices were issued, ranging from "OPEN" (notices went to vendors registered with the selected commodity codes) to "CLOSED" (notices were only sent to the specific vendors invited by the State).
- 1.1.13. "Bill-to Address" means the department address where invoices occurring under any resulting contract may be billed.
- 1.1.14. "Bulletin Description" means a data field, in which may contain additional information regarding the scope of the solicitation.
- 1.1.15. "Buyer" means procurement officer.
- 1.1.16. "Catalog ID" is an optional data field and means an identification number to signify a group of related contracts.
- 1.1.17. "Contact Instructions" means the contact information for the procurement officer.
- 1.1.18. "Control Code" is an optional field and means an identification characteristic of the contract.



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- 1.1.19. "Days ARO" means the number of days 'After Receipt of Order' in which the customer will receive the ordered materials and/or services.
- 1.1.20. "Department" means the customer for whom the solicitation is being done.
- 1.1.21. "Description" means the solicitation's title.
- 1.1.22. "Discount %" is an optional field and means the standard discount applied to all items.
- 1.1.23. "Entered Date" means the date that the contract was awarded, not necessarily the date the contract starts, e.g., Master Blanket/Contract Begin Date.
- 1.1.24. "Fiscal Year" means the State Fiscal Year in which the solicitation was initiated.
- 1.1.25. "Freight Terms" means how freight will be charged under the contract.
- 1.1.26. "Header Information" means the section of the solicitation, as displayed in APP, containing solicitation information other than the line items.
- 1.1.27. "Info Contact" means a data field, in which may contain the contact information of a person to whom inquiries are to be directed.
- 1.1.28. "Item information" means the section of the solicitation, as displayed in APP, containing the solicitation's line items.
- 1.1.29. "Location" means the specific customer, within the department, for whom the solicitation is being done.
- 1.1.30. "Master Blanket/Contract Begin Date" means the date that the contract starts.
- 1.1.31. "Master Blanket/Contract End Date" means the date that the contract ends.
- 1.1.32. "Master Blanket/Contract End Date (Maximum)" means the date that the contract may be extended through if all allowable term extensions are exercised.
- 1.1.33. "Master Blanket/Contract Vendor Distributor List" means the list of companies authorized to distribute the materials and/or services on behalf of the Contractor under the contract.
- 1.1.34. "Master Blanket Purchase Order" means the contract, indicating that the contract will be in effect over a stated period of time.
- 1.1.35. "Minor Status" is an optional data field and means a type of status indicator of the contract in APP.
- 1.1.36. "Organization" means the state agency under whose authority the solicitation is being conducted.
- 1.1.37. "Pcard Enabled" is an optional data field and means that customers are allowed to use their purchasing card (P- Card or Pcard) to order from the contract within the APP system.
- 1.1.38. "Payment Terms" means the period of time that payment is due after receipt of an accurate invoice.
- 1.1.39. "PO Acknowledgement" means the list the notifications to the Contractor and their acknowledgements of these notices.
- 1.1.40. "PO Type" means the period of time that the contract is in place, either a one-time transaction, Open Market, or for a stated period of time, Blanket.
- 1.1.41. "Pre-Bid Conference" means pre-offer conference.



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- 1.1.42. "Print Best Detail" is an optional data field and means a print format applicable to orders under the contract.
- 1.1.43. "Project No." is an optional field and means an identification characteristic of the contract.
- 1.1.44. "Print Format" means the format of the solicitation's print output.
- 1.1.45. "Purchase Order" means contract.
- 1.1.46. "Purchase Order Number" means the contract's identification number.
- 1.1.47. "Purchase Method" means the type of contract transaction contemplated, ranging from an "Open Market" (one-time) transaction to a "Blanket" (term) transaction.
- 1.1.48. "Purchaser" means procurement officer.
- 1.1.49. "Quote" means offer.
- 1.1.50. "Receipt Method" means the method by which materials and/or services under the contract are received, either by amount spent, Dollar, or by item units, Quantity.
- 1.1.51. "Release Number" means the order number of each order under the contract. The Master Blanket/Contract will always reflect a zero "0" release number.
- 1.1.52. "Release Type" means the process that orders under the contract are subject to within APP, requiring approval on an order-by-order basis, e.g., Standard Releases or not requiring approval, e.g., Direct Release.
- 1.1.53. "Required Date" means a data field, in which may contain the date that the materials, services or construction are needed by the State.
- 1.1.54. "Retainage %" is an optional field and means the amount of the contract's value that is retained.
- 1.1.55. "Shipping Method" means the method of shipping to be used under the contract.
- 1.1.56. "Shipping Terms" means the point where the Contractor will ship the materials and/or services to, and if accepted, the point when responsibility and title passes from the Contractor to the State.
- 1.1.57. "Ship-to Address" means the department address where materials, services or construction purchased under any resulting contract may be billed.
- 1.1.58. "Short Description" means the contract' title.
- 1.1.59. "Status" means the availability of the contract within APP for ordering, e.g., Sent status.
- 1.1.60. "Tax Code", if applicable, means the amount of taxes, expressed as a percentage, to be added to all items purchased under the contract. As items may be subject to differing tax rates, this field may be blank.
- 1.1.61. "Type Code" means the category of customers that may use any resulting contract(s). E.g., Single- Agency, Multi-Agency or Statewide.
- 1.1.62. "Vendor" means Contractor or Construction Contractor.


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1.2. OTHER DEFINITIONS

- 1.2.1. "Offeror" means a person who responds to a Solicitation.
- 1.2.2. "Solicitation Amendment" means a change to the Solicitation issued by the Procurement Officer.

2. INQUIRIES

- 2.1.1. All questions related to this Invitation for Bid are required to be submitted through APP using the Discussion Forum tab. Any other contact shall be directed to Richard Rask at richard.rask@azdoa.gov. Any correspondence related to a solicitation should refer to the appropriate solicitation number, page and paragraph number.
- 2.1.2. Offerors may not contact the employees of the using Agency concerning this procurement while the solicitation and evaluation are in process.
- 2.1.3. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.
- 2.1.4. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Procurement Officer.
- 2.1.5. Submission of Inquiries. All inquiries related to the Solicitation are required to be submitted in the State's eProcurement system. All responses to inquiries will be answered in the State's eProcurement system. Any inquiry related to the Solicitation should reference the appropriate solicitation page and paragraph number. Offerors are prohibited from contacting any State employee other than the Procurement Officer concerning the procurement while the solicitation and evaluation are in process.
- 2.1.6. Timeliness. Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
- 2.1.7. No Right to Rely on Verbal or Electronic Mail Responses. An Offeror shall not rely on verbal or electronic mail responses to inquiries. A verbal or electronic mail reply to an inquiry does not constitute a modification of the solicitation.
- 2.1.8. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
- 2.1.9. Pre-Offer Conference. If a pre-Offer conference has been scheduled under the Solicitation, the date, time and location shall appear in the State's eProcurement system. Offerors should raise any questions about the Solicitation at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a Solicitation Amendment.
- 2.1.10. Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer. Requests shall be made as early as possible to allow time to arrange the accommodation.

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3. PREPARATION / SUBMISSION OF OFFER

- 3.1. Solicitation Checklist. A responsive, responsible Offeror shall submit the following information as part of the submitted offer:
- Response Form I – Offer and Acceptance
 - Response Form II – Subcontractors
 - Response Form III – Confidentiality and Trade Secrets
 - Response Form IV – References
 - Vendor Qualifications
- 3.2. Electronic Documents. The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission to the State's eProcurement system. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. Offeror's electronic files shall be submitted in a format acceptable to the State. Acceptable formats include .doc and .docx (Microsoft Word), .xls and .xlsx (Microsoft Excel), .ppt and .pptx (Microsoft PowerPoint) and .pdf (Adobe Acrobat). Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.
- 3.3. APP. Offers in response to this solicitation shall be submitted within the State's online eProcurement system, APP (<https://appstate.az.gov>). Please be advised that utilizing APP requires a certain level of technical competency that should be considered when selecting staff to work in the system. The successful submission of your offer in APP is critical in order for the State to receive and evaluate your offer. Therefore, particular focus should be placed on the selection of staff given the responsibility for submitting your offer in APP. Offers shall be received before the due date and time listed in the solicitation's 'Bid Opening Date' field. Offers submitted outside the APP system, or those that are received after the due date and time stated in the 'Bid Opening Date' field, shall be rejected. Questions in this regard shall be directed to the Procurement Officer or to the APP Help Desk at 602-542-7600) prior to the solicitation due date and time.
- 3.4. **THE OFFEROR MUST RESPOND TO EACH ITEM IN THE FOLLOWING SECTIONS.** By submitting an offer, the Offeror makes a firm commitment to provide services as required and proposed. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.
1. Offer and Acceptance: The Offeror shall complete Response Form I – Offer and Acceptance.
 2. Subcontractors: The Offeror shall complete Response Form II – Subcontractors.
 3. Confidentiality: The Offeror shall complete Response Form III – Confidentiality and Trade Secrets.
 4. References: The Offeror shall complete Response Form IV – References.
- 3.5. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer in the State's eProcurement system and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as a signature, shall result in rejection of the Offer.
- 3.6. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
- 3.7. Federal Excise Tax. The State is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
- 3.8. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction



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Privilege Tax Number and/or Federal Tax Identification number as part of the Offer.

- 3.9. Employee Identification. Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this Contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
- 3.10. Identification of Taxes in Offer. The State is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the Solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.
- 3.11. Disclosure. If the person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall set forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
- 3.12. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).
- 3.13. Federal Immigration and Nationality Act. By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have five days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the Offer not being considered for contract award.
- 3.14. Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the Offer.
- 3.15. Offer Submission, Due Date and Time. Offerors responding to a Solicitation must submit the Offer electronically through the State's eProcurement system. Offers shall be received before the due date and time stated in the solicitation. Offers submitted outside of the State's eProcurement system or those that are received after the due date and time shall be rejected.
- 3.16. Offer and Acceptance. Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted in the State's eProcurement system with the Offer no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.
- 3.17. Solicitation Amendments. A Solicitation Amendment shall be acknowledged in the State's eProcurement system no later than the Offer due date and time. Failure to acknowledge a Solicitation Amendment may result in rejection of the Offer.



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- 3.18. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- 3.19. Confidential Information. If an Offeror believes that any portion of an Offer, protest, or correspondence contains a trade secret or other proprietary information, the Offeror shall clearly designate the trade secret and other proprietary information, using the term "confidential." An Offeror shall provide a statement detailing the reasons why the information should not be disclosed including the specific harm or prejudice that may arise upon disclosure. The Procurement Officer shall review all requests for confidentiality and provide a written determination. Until a written determination is made, a Procurement Officer shall not disclose information designated as confidential except to those individuals deemed to have a legitimate State interest. In the event the Procurement Officer denies the request for confidentiality, the Offeror may appeal the determination to the State Procurement Administrator within the time specified in the written determination. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information.
- 3.20. Public Record. All Offers submitted and opened are public records and must be retained by the State for six years. Offers shall be open and available to public inspection through the State's eProcurement system after Contract award, except for such Offers deemed to be confidential by the State.
- 3.21. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or other official contract form, the Offeror certifies that:
- 3.21.1. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
- 3.21.2. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with an applicable federal, state and local laws and executive orders regarding employment.

4. EVALUATION

- 4.1. In accordance with the Arizona Procurement Code § 41-2535, Procurements not exceeding a prescribed amount, award(s) shall be made to the responsible offeror(s) whose offer is determined in writing to be the most advantageous to the State based upon the evaluation factor listed below.
- Price
- 4.2. Opening. Offers received by the due date and time will be opened online. Proposals will not be subject to public inspection until after contract award.
- 4.3. Clarifications. Upon receipt and opening of proposals submitted in response to this solicitation, the State may request oral or written clarifications, including demonstrations or questions and answers, for the sole purpose of information gathering or eliminating minor informalities or correcting nonjudgmental mistakes in proposals. Clarifications shall not otherwise afford the Offerors the opportunity to alter or make a material change in its proposal.
- 4.4. Negotiations. Negotiations may take place prior to award.
- 4.5. Financial Stability. The Offeror must be financially stable and able to substantiate the financial stability of its company. If requested, current financial statements or other financial information deemed appropriate documenting past sales history must be provided within five (5) business days of request. The State reserves the right to request additional documentation from the Offeror and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Offeror who does not demonstrate financial stability sufficient for the scope of this contract award.



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- 4.6. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- 4.7. Taxes. If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the Offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.
- 4.8. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the Offer for the purpose of evaluating that price.
- 4.9. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
- 4.10. Disqualifications. An Offeror (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its Offer rejected.
- 4.11. Offer Acceptance Period. An Offeror submitting an Offer under the Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred twenty (120) days from the Best and Final Offer due date.
- 4.12. Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:
- Waive any minor informality;
 - Reject any and all Offers or portions thereof; or
 - Cancel the Solicitation.

5. AWARD

- 5.1. Contract Award. The State intends to award a contract or contracts based on the Proposals received, unless otherwise indicated, resulting from this solicitation to the responsible Offeror(s) whose proposal represents the best value after evaluation in accordance with the factors and sub factors identified in the solicitation. The State may reject any or all proposals if such action is in the State's best interest. The State may waive informalities and minor irregularities on proposals received. The Offeror's initial proposal should contain the Offeror's best terms from a price or cost and technical standpoint. The State reserves the right to conduct discussions (negotiations) if the procurement officer determines them to be necessary. If the procurement officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the procurement officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. The State reserves the right to make an award on any item for any quantity less than the quantity offered, at unit costs or prices offered, unless the Offeror specifies otherwise in the proposal. The State reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the State's best interest to do so. Any exchange with Offerors after receipt of a proposal does not constitute a rejection of counteroffer by the State.



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- 5.2. Contract Document Consolidation. At its sole option, following any contract award(s) the State may consolidate the resulting contract documents. Examples of such consolidation would include (i) reorganizing solicitation documents and those components of the Contractor's Offer not pertaining to the Contract's operations; (ii) revising the Statement of Work to incorporate the Contractor's response, (iii) revising any terms and conditions to incorporate any changes in the Contractor's Offer; (iv) excluding any components of the Contractor's Offer that were not awarded. Contract document consolidation shall not materially change the Contract.
- 5.3. Contract Implementation Meetings: Upon award, the contractor may be required to participate in meetings for the successful implementation of the contract. Meetings (if any) will be at the discretion of the State. The contractor will be notified in advance of any meeting's time, frequency for future meetings (if any), and locations to ensure all appropriate State's and Contractor's staff and representatives attend. The State reserves the right to decline conference call attendance or participation.
- 5.4. Number of Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State.
- 5.5. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- 5.6. Effective Date. The effective date of the Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract

6. Protests

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

- 6.1. The name, address, email address and telephone number of the interested party;
- 6.2. The signature of the interested party or its representative;
- 6.3. Identification of the purchasing agency and the Solicitation or Contract number;
- 6.4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- 6.5. The form of relief requested.

End of Instruction to Offerors

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SCOPE OF WORK

1. PURPOSE/BACKGROUND

Pursuant to A.R.S. 41-2501, The Arizona Department of Administration, State Procurement Office (The State) is seeking to establish statewide contract(s) for Floor Covering including all labor, equipment and materials necessary to install carpet and flooring materials in designated areas in accordance with conditions and specifications included in this solicitation. The contract shall be available for use by all State Agencies, Boards and Commissions as well as participating Cooperative Members, collectively hereinafter referred to as Eligible Agencies. The Special Terms and Conditions provide a more detailed definition of Eligible Agencies. A list of all State Agencies and Cooperative Members may be found on the State Procurement Office's Website.

The purpose of this Solicitation is to award a contract(s) to the responsible offeror(s) whose proposal is determined in writing to be the most advantageous to this state. The contracts shall be for supervision, labor, equipment, materials, tools and transportation necessary to install, repair or replace various flooring systems at Statewide locations for Eligible Agencies.

2. SCOPE OF SERVICES AND PRODUCTS

2.1 The contractor shall be responsible for replacement of, but not limited to, carpets, floor tile, VCT/LVT, sheet vinyl, stone tile, hardwood, laminated flooring, linoleum, rubber stair treads and/or other materials as required.

2.2 The contractor shall be available to schedule a time to inspect and measure the property to prepare a reasonable estimate for time and materials at Statewide locations. See installation notes Section M.

2.3 Pricing shall be based on contractors established contract price and the quotes shall be all inclusive of all materials, labor, installation, transportation and configuration to accomplish the job(s).

3. PRODUCT REQUIREMENTS

Unless specifically stated to the contrary, any manufacturer's names, trade names, brand names or catalog numbers used in the specifications of this Request for Proposal are for the purpose of describing and/or establishing the quality, design and performance required. This is not intended to restrict product offerings.

Following is a list of Materials and Supplies currently used by various Eligible Agencies. This list is illustrative and not intended to be all inclusive:

- Broadloom Carpets
- Berber Carpets
- Cut Pile
- Recycled Content Carpet
- Woven Carpet
- Saxony/Sisal/Plush Carpets
- Carpet Tile
- Hardwood Flooring



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- Resilient (hard surface) tile
- VCT/LVT
- Solid vinyl sheets
- Stone tiles
- Laminated Flooring
- Rubber Floor Flooring
- Linoleum Floor Covering
- Rubber/Vinyl/resilient Wall Base, Stair Treads, and Risers
- Cove Base/Corners, carpet strips

4. SCHEDULING REQUIREMENTS

The Contractor shall be responsible for scheduling the agreed upon work as requested by the Eligible Agency. The Contractor shall have the ability to create and manage numerous individual accounts for order placement, billing, and reporting purposes. The Contractor shall be prepared with well maintained equipment inventory/materials and satisfactory transportation for delivery at the work site to meet the customer demand and delivery requirements. Likewise, the contractor shall be responsible for keeping a neat, orderly and clean area where equipment and materials are in use. Clean-up during and after the scheduled work shall be the responsibility of the Contractor including removal of waste and unused products.

5. STAFFING REQUIREMENTS

- 5.1 The Contractor shall provide adequate supervision over the work being performed and will be accountable for the conduct and performance of its employees and others involved in the execution of the scheduled work. Staff and/or sub-contractors shall be adequately trained and qualified for the type of work to be performed to insure completion of the work in an orderly and timely manner.
- 5.2 Contractor activities shall include the ability to resolve customer disputes, manage multiple accounts, expending services and excellent customer service.
- 5.3 Contractor personnel shall carry identification and shall be insured in accordance with the contract and agency requirements. The Contractor shall be responsible for employees at the work site for the duration of the project.

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6. ENVIRONMENTAL AND RECYCLING REQUIREMENTS

- 6.1 As part of the Arizona Recycling Program, the State puts an emphasis on the post consumer content of the recycled products that are part of solicitations for Statewide Contracts. The EPA definition of post consumer material shall be used in the designating products for this purpose. The following requirements shall be performed by the Contractor relating to an Environmentally Friendly or Green Products Certification Program. The carpet distributor and manufacturer must have a carpet recycling program.
- 6.2 Submit written certification of environmental compliance describing aspects of recycling programs for carpet uplifted for replacement and for carpet to be installed, including compliance by the carpet manufacturer and carpet trade contractor. An applicable representative from the carpet manufacturer/flooring subcontractor shall meet with the contractor in the presence of a representative of the agency to review the recommended procedures, prior to occupancy of the finished spaces and detail what products are eligible for 'buy back', how coordination of pick up will occur, etc.
- 6.3 When the installation is complete, the manufacturer shall deliver a certificate of recycling, which describes the method by which the uplifted carpet was recycled; and (2) a warranty of recycling, which specifies the method by which the new carpet tile will be recycled at the end of its useful life.
- 6.4 No carpet shipments are permitted until the fiber certifications and recycling plans are approved by the agency.
- 6.5 Indoor Air Quality Test Reports - results shall not exceed the stated emission criteria of the CRI Indoor Air Quality Carpet Testing Green Label Plus.
- 6.6 In accordance with an executive order titled Air Pollution Emergency Proclamation, The State requests that all products used in the performance of any contract that results from this solicitation be of low- or no-content of reactive organic compounds, to the maximum extent possible.
- 6.7 Manufactures shall provide flooring systems using post-industrial and post-consumer waste, recycled substances and renewable resources consistent with environmental stewardship. It is the expectation that the manufacturers be able to offer everything across their product lines in formulations that perform well without proving harmful to the environment for the life of the products. Refer to the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) Program. The program provides an objective way to access the performance of a category of products such as durability, slip resistance and antimicrobial protection of rubber tile, like PVC free products.

7. MAINTENANCE PROGRAM

- 7.1 Maintenance requirements shall be provided to the Eligible Agencies to ensure the durability and longevity of flooring systems from initial purchase through the end-of-life. This shall include specifications and instructions for the Eligible Agency as well as written documentation and/or schedules for maintenance to ensure the integrity of the flooring for reasonable use as specified by the manufacturer.
- 7.2 Examples include but are not limited to noting in detail the features and benefits of topical or applied stain resistant additives. In addition, provide proof of additives life. i.e., permanent, walk off, wicked when cleaning, etc. i.e. Duracolor, Everset, Protekt, Stain RESIST as illustrative type products.



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8. CARPET CONSTRUCTION

8.1 Calcium Chloride Moisture tests and Relative Humidity 95, where applicable, are required before ordering/installation begins. All manufacturers' suggested installation methods are to be precisely followed. All warranties are to be kept in force. It is the responsibility of the contractor to perform these moisture tests according to the manufacturer's instruction and in a timely manner so the product can be installed efficiently and under warranty.

8.2 Pile height shall not exceed as follows;

CARPET TILE

Type 6, 6.160

Type 6. .130

BROADLOOM

Type 6, 6 .160

Type 6 .130

8.3 Lifetime edge ravel, zippering and delamination are required on all products. Backing shall not delaminate under any circumstance for the useful life of the carpet.

8.4 Preferred Nylon is Type 6,6 Invista (Antron) Hollow Core Filament or Solutia Ultron VIP (SD or YD); XTI, DSDNand Self-extruded Nylon Type 6 meeting the standards as outlined in the specifications section for each fiber type and style will be considered. Nylon should be solution or yarn dyed with a preference for solution dyed.

8.5 Fiber Verification:

Carpet shall be certificated from the fiber producer verifying use of the branded fiber in the submitted carpet product. Certification should include the % recycled content by weight for fibers, describing the source of this recycled content. If virgin nylon is used, the manufacturer shall include, as part of the fiber certification, the precise method that will be used to recapture the nylon at the end of the useful life of the carpet. State whether it will be returned to nylon carpet yarn production, down-cycled to an end use other than carpet yarn, used for waste-to-energy conservation, or disposed of in a specified manner.

8.6 Minimum Density as follows:

CARPET TILE

Type 6 6000

Type 6, 6 5000

BROADLOOM

Type 6 6500

Type 6, 6 5500

Minimum gauge is to be 1/10 for Type 6.

Minimum gauge is to be 1/8 for Type 6, 6



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Minimum Weight for Broadloom 20 oz (no maximum)

Minimum Weight for Carpet Tile 20 oz (no maximum)

9. PATTERN/DESIGN

9.1 Product must be available in a wide range of multi-colored patterns with a preference for darker colors and organic patterns. Colors and patterns shall be consistent with existing material color scheme and locational considerations.

9.2 High-quality color samples shall be signed by a designated representative of the end user, certifying that samples are the approved color, pattern, and texture. Samples submitted to eligible agencies are assumed to be the manufacturer's best obtainable match to the desired carpet.

10. REPAIR

10.1 Roll goods or squares shall have the capability of cookie cutting stained areas and easy lift, removal and replacement of stained cut-outs with virtually invisible seams. It is preferable for the carpet to have a permanent or "highest resistance" to staining and fading. Billing for patch and repairs are based on time and materials as required.

10.2 Carpet repairs shall be done by a fully equipped and fully trained installer within 72 hours from receipt of repair work order. All repairs are to be coordinated with the eligible agency.

11. WARRANTY

All carpet shall include the following warranties:

11.1 Surface Wear: Not more than 10 percent by weight throughout life of product.

11.2 Static: Maintain static generation at less than 3.5 KV at 70 degrees F., and 20 percent R.H. throughout life of the product.

11.3 No delamination throughout life of product.

11.4 No edge ravel throughout life of product.

11.5 Provide tuft bind consistent with industry standard.

11.6 No dimensional instability (i.e. shrinkage, curling and doming), which adversely affects ability of carpet tile to lie flat throughout the life of the product.

11.7 Environmental Warranty for Recycling: Used carpet tile will be recycled at end of its useful life.

11.8 Lifetime Commercial Limited Warranty: Warranty that owner will be completely satisfied with performance of carpet installed in accordance with manufacturer's installation instructions and when maintained in accordance with current carpet care recommendations, and when such maintenance continues throughout duration of warranty period when owned and operated by original Owner. [Also warrant that Owner will be satisfied with recycling of carpet at end of its useful life as outlined in manufacturer's environmental warranty.]



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11.9 Warranty must be at least a ten year published commercial warranty against crushing, mating, walking out, zippering, delamination, edge loss/ravel and wear of no more than 10% of the surface pile weight and should be full replacement without a pro-rated clause.

11.10 Warranty for labor must be 2 years, to respond to any failure regarding installation or performance issues.

11.11 All flooring installation must be in accordance with the manufacturer instructions using manufacturer recommended products. In the event of infractions that may void the warranty, the contractor must carry the warranty (in writing) or present documentation from the manufacturer for acceptable substitutions of products.

12. CARPET PERFORMANCE

12.1 Pile Fuzzing and Piling: Dupont TRL Method 609 "Piling Resistance of Carpets-Tumble Method." Minimum acceptable piling rating 4.2 on a scale of 1 to 5.

ASTM D418, Methods of Testing Pile Yarn Floor Covering Construction.

Tuft Bind: ASTM Method D 1335, "Tuft Bind of Pile Floor Coverings"

12.2 Perform 8 pulls at random across the width of the test carpet. Minimum tuft lock shall be 10 pounds or better for average of 8 pulls. The carpet should achieve this rating in wet and dry conditions or have a minimum of a 10 year warranty against edge ravel and zippering.

12.3 Peel Strength of Secondary Backing: Federal Test Method Standard 191. Textile method 5960. Minimum acceptable average pull strength is 8.3 pounds per square inch. ASTM E 3936


12.4 Crock fastness: AATCC Test Method 1981: Minimum stain ratings, International Gray Scale should be Wet-Dry-4

- AATCC 16-[98], Test Method for Colorfastness to Light
- AATCC 23-[99], Test Method for Colorfastness to Burnt Gas
- AATCC 165-[93], Test Method for Colorfastness to Crocking: Carpets AATCC Crockmeter Method.

12.5 Wetfastness: Run with both hard water and alkaline detergent (pH 9.5 test for 2 cycles). International Gray Scale rating for stain or color should be no less than 3 for 2 cycles. AATCC 107-[97], Test Method for Colorfastness to Water.

12.6 Static Resistance: Note: Some mainframe computer facilities may require lower kV ratings.

- AATCC 134-[96], Test Method for Electrostatic Propensity of Carpets.
- AATCC 13-1979 (Neolite) Electrostatic build-up in carpets. Static discharge is not to exceed 3.0 kV. (Note: Some mainframe computer facilities may require lower kV rating).

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12.7 Flammability: ASTM 648-22 watts/cm critical radiant flux and/.or federal, state, or local requirements if applicable.

- ASTM E648 Test Method Critical Radiant Flux of Floor-Covering Systems Using a Radiant Heat Energy Source.
- ASTM E662 Test Method for Specific Optical Density of Smoke generated by Solid Materials.

12.7 Atmospheric Fading: AATCC Test Method 129. Ozone/AATCC

- Test method 12-1975-Burnt Gas. Minimum shade rating after two cycles in each test should be no less than internal Gray Scale Rating of 4.
- AATCC109-[97], Test Method for Colorfastness to Ozone in the Atmosphere under Low Humidity.

12.8 Stain Resistance: Red dye 40 should be released by water only after exposure to 150,000+ cycles in a tetrapod walker and after sample is allowed to soak in 10:1 solution of water and ammonia. Topical stain treatments are not preferred but may be acceptable.

12.9 Appearance Retention Rating: ASTM 5252 Hexapod Test 12,000 cycles; used in tandem with CRI Grading Scale as follows:

- 3.5 And Higher – Severe Wear Rating
- 3.1-3.4 – Heavy Wear Rating
- 2.5 – 2.9 Moderate Wear Rating
- Severe Wear Rating required of all product submittals.

13. INSTALLATION REQUIREMENTS

13.1 All Contractors working at the Eligible Agencies are required to sign in with the designated representative. Upon completion of the days work, vendors are required to sign out with designated representative. A maximum of 48 hours turnaround service for all requests for quote measurements (faxed/emailed to Buyer) is required. All measurements will be from a physical site. Contact the agency for specific date, time and location directions.

13.2 Once the measurement document is received, the contractor shall schedule an on-site measurement meeting with the requesting agency. The eligible agency contact is the contractor's first line of contact for scope of the project, timelines and scheduling, coordination of resources and any scheduling changes or issues. Good communication is imperative. The contractor shall provide the eligible agency with a color coded measurement sheet for each job. It is the responsibility of the contractor to make sure all chargeable items are listed on the sheet. No cost increase will be accepted at a later date due to contractor error.



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- 13.3 The contractor shall provide documentation for the proposed lay-outs for installation approval of carpet drops and seaming diagrams as follows:
- 13.3.1 For carpeted areas, submit shop drawings showing installation of carpeting, seam diagram, pattern direction, necessary installation accessories; show the location of different patterns or styles of carpet. If mixed fiber types are used on the areas shown, the fiber type must be clearly identified to facilitate future recycling. The contractor will supply reproducible prints upon request to facilitate shop drawing preparation and show locations of any threshold conditions.
- 13.3.2 A coordinator shall be assigned to the project and be able to visit the site as required by the eligible agency. The coordinator shall be available by phone during working hours and after hours if deemed necessary. The contractor shall submit a time frame for completion of each project to the eligible agency for approval and notify the eligible agency of any changes to the time frame.
- 13.4 All flooring installation shall be in accordance with the manufacturer instructions, using manufacturer recommended products. In the event of infractions that may void the warranty, the contractor shall carry the warranty (in writing) or present documentation from the manufacturer for acceptable substitutions of product. Any and all carpet tile projects must be installed so that the tiles are easily removed/replaced. The least amount of releasable adhesive should be used, while still enforcing the warranty. If conditions exist that full spread wet installed adhesive be used, it is the responsibility of the flooring contractor to advise the representative of the Agency BEFORE installation begins. It is the responsibility of the flooring contractor to educate craftsmen and plan accordingly for provisions of dry installations.
- 13.5 All scraps will be removed upon the completion of each project. The carpet is to be vacuumed thoroughly. Refer also to the Recycling/Environment Section.
- 13.6 Carpet in excess of one square yard and overages, (left over from installation), stock, etc. must be tagged with building, room number amount of yardage and fiber type. Contractor is to take the carpet to a location designated by the eligible agency. Pre-ordered stock must be delivered to the agency before project installation.
- 13.7 Contractor should perform a walk-through with the department contact upon project completion to correct any punch items.
- 13.8 The contractor should be on call after hours and be available for carpet installation evenings, early mornings and weekends, as required. Contractor must be able to meet tight schedules and handle emergency installations. The lead installer should be available by cell phone.
- 13.9 Carpet repairs must be done by a fully equipped installer within 72 hours from receipt of work order for repair. All repairs are to be coordinated with the agency contact.
- 13.10 Contractor shall be responsible for any damage as a result of carpet installation. This includes items such as furniture, fixtures, pipelines, plumbing, electrical, elevators, telephones, glue spillage, broken glass, wall/drywall, paint, personal property and any other damage or stolen property of The State of Arizona. Any damages should be reported daily to the eligible agency.



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- 13.11 Contractor shall furnish all labor, materials, tools, equipment, transportation and any storage facility necessary to properly and satisfactorily install carpeting/floor covering per the Agency requirements. The State assumes no liability for any lost or stolen goods.
- 13.12 Installation non-performance and/or poor performance could result in termination of this contract.
- 13.13 Contractor is responsible for the proper disposal of all old carpeting and flooring materials. Contractor shall properly store, secure and dispose of any flammable or hazardous materials used on the job. See recycling section.
- 13.14 In most cases, our preference is for "provide and install" services from the contractor. When circumstances necessitate a split in these services it is incumbent upon whoever provides the floor covering material to also supply the specified adhesives and/or products necessary to maintain the integrity of the installation and the warranty.



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Special Terms and Conditions

1. DEFINITIONS

1.1. See "Instruction to Offerors"

2. Contract.

2.1 The contract between the State of Arizona and the contractor shall consist of the solicitation as amended, any requests for clarifications and/or best and final offers, the proposal submitted by the contractor, their responses to any requests for clarifications and/or their best and final offer. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the solicitation as amended shall govern. However, the State reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the solicitation as amended or the contractor's proposal. In all other matters not affected by the written clarification, if any, the solicitation shall govern.

2.2 The State's primary contact for this solicitation and resultant contracts shall be:

Richard Rask, Construction Procurement Manager
General Services Division
1110 W Washington Ave, Suite
Suite 155
Phoenix, AZ 85007
Email: richard.rask@azdoa.gov

2.3. Contract Restructure. The State may clarify any Contract following award. This clarification shall not substantially alter the contents of the Contract, but shall only edit and reformat the Contract in a manner that will facilitate ease of use, contract administration, and concurrence of the Parties.

3. **Contract Type.** Firm fixed price.

4. **Contract Term:** The term of any resultant contract will commence on the date of award and will continue for one year unless canceled, terminated or extended as otherwise provided herein.

5. **Contract Extension:** The contract shall not bind nor purport to bind the state for any contractual commitment in excess of the original contract term. By mutual written contract amendment, any resultant contract may be extended for supplemental periods with a maximum aggregate including all extensions not to exceed five (5) years.

5. **Eligible Agencies:** This contract shall be for the exclusive use of the State of Arizona Department of Administration.

6. **Appropriation of Funds.** Every payment obligation of the Agency under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the Agency



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at the end of the period for which funds are available. No liability shall accrue to the Agency or the State of Arizona in the event this provision is exercised, and neither the Agency nor the State shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. **Non-Exclusive Contract.** This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by either the agency (within an agency's delegated authority) or by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

8. **Ordering.**

8.1 Any services to be furnished under this contract shall be ordered by issuance of task orders/purchase orders/releases/P-card (Orders) by the Project Manager. Such Orders may be issued from effective date of contract award. All Orders are subject to the terms and conditions of this contract. In the event of conflict between a task order and this contract, the contract shall control. All task orders shall cite the contact number.

8.2 Any attempt to represent any material and/or service not specifically awarded, as being under contract with the State of Arizona is a violation of the contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

9. **Billing.** All billing notices or invoices shall be sent to the State whose address appears on the contract release order/purchase order as the 'bill to address' and should contain, at a minimum, the following information. Failure to include the following information will be cause for rejection of submitted invoice.

- Project Location (Site Address, or addresses in the case of multiple project locations)
- Name and Agency of Requestor
- A description of the goods or services provided;
- Quantity and delivery/service timeframe;
- Itemized (if applicable) and total invoice pricing.
- Name and address of the contractor;
- Both the contract number and contract release/purchase order number;
- The contractor's federal tax identification number;
- The contractor's remittance address;

10. **Licenses.**

10.1 Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.

10.2 All contractors performing work within the State of Arizona shall be properly licensed by the State of Arizona Registrar of Contractors for the Scope of Work for which they are contracting.

11. **INSURANCE REQUIREMENTS:**

11.1. **Indemnification:**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers,



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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.

11.3. Insurance Requirements

11.3.1. 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.

11.3.2. 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.

11.4. Minimum Scope and Limits of Insurance

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

11.4.1. 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.



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- 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.

11.4.2. 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
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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, 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.

11.4.3. 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).

11.5. **Additional Insurance Requirements**

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

11.5.1. 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).

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

11.6. **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially



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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).

11.7. **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.

11.8. **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.

11.8.1. 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.

11.8.2. 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.

11.8.3. 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.

11.9. **Subcontractors**

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.

11.10. **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.



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11.11. 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.

End of Special Terms and Conditions



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Uniform Terms and Conditions

1.0 Definition of Terms

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

1.1 Acceptance

“Acceptance” means the document headed “Offer and Acceptance Form” bearing the State contract number once Procurement Officer has signed it to signify (1) State’s formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term “acceptance” used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.

1.2 Accepted Offer

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

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

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

1.3 Arizona Procurement Code; A.R.S.; A.A.C.

“Arizona Procurement Code, “A.R.S.,” and “A.A.C.” are each defined in the Instructions to Offerors.

1.4 Arizona TPT

“Arizona TPT” means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at: <https://www.azdor.gov/business/transactionprivilegetax.aspx>.

1.5 Attachment

“Attachment” means any item that: the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO); was attached to an Offer when submitted; and was included in the Accepted Offer.

1.6 Building Work

“Building Work” means everything covered by the definitions in A.R.S. § 41-2503 [*Definitions*] of the terms “construction” (para. 4), “maintenance services” (para. 26), and “operations services” (para. 28).

1.7 Commercial Document

“Commercial Document” means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then “Commercial Document” is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.

1.8 Contract

“Contract” means, collectively, the Acceptance, the Solicitation Documents, the Accepted Offer, all acknowledged Orders, and any Contract Amendments. See paragraph 1.22. The Contract is identified as a “Purchase Order” in APP, since that is the terminology used in the software; use of that term in APP is not to be confused with the contractual term “Order” defined in paragraph 1.21.

1.9 Contract Amendment

“Contract Amendment” means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after



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execution. The term "Change Order" in APP is to be construed as being synonymous with "Contract Amendment".

1.10 Contract Terms and Conditions

"Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.

1.11 Contractor

"Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.

1.12 Contractor Indemnitor

"Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.

1.13 Co-Op Buyer

"Co-Op Buyer" means a member of the State Purchasing Cooperative that has entered into a "Cooperative Purchasing Agreement" with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, "Co-Op Buyer" is to be construed as encompassing "eligible procurement unit" under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, "non-profit organizations" are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c) (3) through 501(c) (6) of the tax code.

1.14 Day

"Day" means a calendar day unless otherwise specified in a particular context.

1.15 Eligible Agency

If the Special Terms and Conditions indicates that the Contract is a "single-agency" contract, then "Eligible Agency" means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a "statewide" contract, then "Eligible Agency" means any State of Arizona department, agency, university, commission, or board.

1.16 Gratuity

"Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.17 Indemnified Basic Claims

"Indemnified Basic Claims" means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys' fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.

1.18 Instructions to Offerors

"Instructions to Offerors" is Section 1-B of Part 1 of the Solicitation Documents.

1.19 Materials

"Materials" has the meaning given in A.R.S. § 41-2503(7) to the extent those things are included in the Work, which, for convenience of reference only, is "... all property, including equipment, supplies, printing, insurance, and leases of property [but] does not include land, a permanent interest in land or real property or leasing space." Materials includes software, except that If software is sold or provided as a service, then to the extent it consists of encoded information or computer instructions it is included in "Materials" and to the extent it is a service it is in "Services".

1.20 Offer; Initial Offer; Revised Offer;

"Offer," "Initial Offer," "Revised Offer," and "Best and Final Offer" ("BAFO") are each defined in the Instructions to Offerors.



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Best and Final Offer (BAFO)

1.21 Order

“Order” means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”:

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

1.22 Part, Section; Exhibit

“Part,” “Section,” and “Exhibit” are each defined in the Instructions to Offerors.

1.23 Person

“Person” means any corporation, business, individual, union, committee, club, or other organization or group of individuals.

1.24 Procurement Officer

“Procurement Officer” means the person, or his or her designee, who has been duly authorized by State to enter into and administer the Contract and to make written determinations with respect to the Contract. Procurement Officer is as identified on the Acceptance unless subsequently changed by Contract Amendment.

1.25 APP

“APP” means State’s official electronic procurement system.

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

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

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

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

1.26 Scope of Work

“Scope of Work” means Section 2-A of Part 2 of the Solicitation Documents.

1.27 Services

“Services” has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is “... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements.” Services includes Building Work and the service aspects of software described in paragraph 1.19.

1.28 Solicitation; Solicitation Documents

“Solicitation” and “Solicitation Documents” are defined in the Instructions to Offerors.

1.29 Special Terms and Conditions

“Special Terms and Conditions” are Section 3-A of Part 3 of the Solicitation Documents.

1.30 Specification

“Specification” has the meaning given in A.R.S. § 41-2561, which, for convenience of reference only, is “... any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.” Specifications (if any are included in the Contract), are indexed in the Scope of Work and could be bound separately from the other documents forming the Contract.



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1.31 State

With respect to the Contract generally, "State" means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, "State" means each of Eligible Agency or Co-Op Buyer who has issued the Order.

1.32 State Indemnitees

"State Indemnitees" means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.

1.33 State Fiscal Year

"State Fiscal Year" means the period beginning each July 1 and ending each June 30.

1.34 Subcontract

"Subcontract" means any contract, express or implied, between Contractor and another party or between a Subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any Materials, the performing of any Services, or the carrying out of any other aspect of the Work.

1.35 Subcontractor

"Subcontractor" has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is "... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . ."The Contract is to be construed as "a contract with a state governmental unit" for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.

1.36 Uniform Terms and Conditions

The "Uniform Terms and Conditions" are made up of this document and whichever of the Appendices are indicated in the Special Terms and Conditions as being applicable.

1.37 Work

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

2.0 Contract Interpretation

2.1 Arizona Law

The Contract is governed by and is to be interpreted in accordance with the laws of the State of Arizona, including the Arizona Procurement Code, without consideration of conflict of laws principles.

2.2 Implied Terms

Each provision of law and any terms required by law to be in the Contract are a part of the Contract as if fully stated in it.

2.3 Usage

Where the Contract:

assigns obligations to Contractor, any reference to "Contractor" is to be construed to be a reference to "Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor's and the Subcontractors' respective agents, representatives, and employees" in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;

uses the permissive "may" with respect to a party's actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to State using "State may" or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit



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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;

uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.

uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written “must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes” in every instance;

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

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.

2.4 Contract Order of Precedence

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

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

Contract Amendments;

the Solicitation Documents, in the order:

Special Terms and Conditions;

Exhibits to the Special Terms and Conditions;

Uniform Terms and Conditions;

Scope of Work;

Exhibits to the Scope of Work;

Commercial Document;

Exhibits to the Commercial Document;

Specifications; and

any other documents referenced or included in the Solicitation;



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Orders, in reverse chronological order; and
Accepted Offer.

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

2.5 Independent Contractor

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

2.6 Severability

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

2.7 Complete Integration

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

2.8 No Waiver of Rights

Either party's failure to insist on strict performance of any term or condition of the Contract is not and is not to be construed as being, nor will it be deemed to be, a waiver of that term or condition or a bar to, or diminishment of the right of, subsequent enforcement of any term or condition.

3.0 Contract Administration and Operation

3.1 Term of Contract

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

3.2 Contract Extensions

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

3.3 Notices and Correspondence

3.3.1 TO CONTRACTOR. Unless stated otherwise in the Special Terms and Conditions, State shall:
(a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding APP Vendor Profile; and
(b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.



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

(a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the APP Summary for State; and

(b) address any required notices to State to Procurement Officer identified as "Purchaser" in the APP Summary at the following mailing address:
Arizona Department of Administration
State Procurement Office
100 N 15th Ave., Suite 201
Phoenix, AZ 85007

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

3.4 Signing of Contract Amendments

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

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

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

3.5 Click-Through Terms and Conditions

Unless expressly stated otherwise in the Special Terms and Conditions, if either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

3.6 Books and Records

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

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

3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all



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reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

3.7 Contractor Licenses

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

3.8 Inspection and Testing

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

3.9 Ownership of Intellectual Property

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

"Government Purpose Rights" are:

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

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

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

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

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



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

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

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

3.10 Subcontracts

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

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

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

3.11 Non-Discrimination

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

3.12 E-Verify Requirements

As required by A.R.S. § 41-4401, Contractor and each Subcontractor warrants compliance with A.R.S. § 23-214(A) and all federal immigration laws and any regulations relating to the immigration status of their employees. Contractor and each Subcontractor acknowledge that under A.R.S. § 41-4401, State retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works under the Contract to ensure that Contractor or Subcontractor is in compliance with the



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foregoing warranty and understands that a breach of the foregoing warranty under shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract.

3.13 Offshore Performance of Certain Work Prohibited

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

3.14 Orders

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

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

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

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

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

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

3.15 Statewide Contract Provisions

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

5. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before



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selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

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

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



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Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

3.16 Multiple-Use Provisions

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

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

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

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

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

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

3.17 Other Contractors

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

3.18 Work on State Premises

3.20.1 COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are



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not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

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

3.19 Advertising, Publishing and Promotion of Contract

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

4.0 Costs and Payments

4.1 Payments

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

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

4.2 Applicable Taxes

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

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



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4.3 Availability of Funds

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

5.0 Contract Changes

5.1 Contract Amendments

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

5.2 Assignment and Delegation

5.2.1 IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

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

6.0 Risk and Liability

6.1 Risk of Loss

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

6.2 Contractor Insurance

Contractor shall provide the insurance called for in the Special Terms and Conditions.

6.3 Basic Indemnification

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



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

If Contractor is a public agency, this paragraph does not apply and subparagraph 6.3.2 below applies instead.

6.3.2 PUBLIC AGENCY. 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.

If Contractor is not a public agency, this paragraph does not apply and subparagraph 6.3.1 above applies instead.

6.4 Patent and Copyright Indemnification

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

12. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
13. 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;
14. State may elect to participate in such action at its own expense; and
15. State may approve or disapprove any settlement or compromise, provided that,
 - (i) State shall not unreasonably withhold or delay such approval or disapproval and
 - (ii) State shall cooperate in the defense and in any related settlement negotiations.

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

6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, "force majeure" means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party's fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to



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paragraph 7.8 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

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

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

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

6.6 Third Party Antitrust Violations

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

7.0 Warranties

7.1 Liens

Contractor warrants that the Materials and Services when accepted will be and will remain free of liens or other encumbrances.

7.2 Conformity to Requirements

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

7.3 Contractor

Contractor warrants that its personnel will perform their duties under the



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Personnel

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

7.4 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.

7.5 Compliance with Laws

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

7.6 Licenses and Permits

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

7.7 Operational Continuity

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

7.8 Performance in Public Health Emergency

- Contractor warrants that it will:
16. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
 17. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

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

7.9 Lobbying

7.11.1 PROHIBITION.

Contractor warrants that:

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

upon award of the Contract, it will disclose all lobbying activities to State



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to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

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

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

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

7.10 Survival of Warranties

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

8.0 State's Contractual Remedies

8.1 Right to Assurance

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

8.2 Stop Work Order

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

8.3 Non-exclusive Remedies

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

8.4 Nonconforming Tender

The Materials provided and Services performed must comply fully with the Contract, and providing Materials or performing Services or any portion thereof that do not comply fully constitutes a breach of contract, in which event State will be entitled to exercise any remedy available to it under the Contract or laws.

8.5 Right of Offset

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

9.0 Contract Termination

9.1 Termination for Conflict of Interest

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

9.2 Gratuities

State may, by written notice, terminate the Contract, in whole or in part, if



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

9.3 Suspension or Debarment

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

9.4 Termination for Convenience

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

9.5 Termination for Default

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

9.6 Continued Performance Required

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

10.0 Contract Claims

10.1 Claim Resolution

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



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10.2 Mandatory Arbitration

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

11.0 General Provisions for Materials

11.1 Applicability

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

11.2 Off-Contract Materials

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

11.3 Compensation for Late Deliveries

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

11.4 Indicate Shipping Costs on Order

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

11.5 Current Products

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

11.6 Maintain Comprehensive Selection

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

11.7 Additional Products

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



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

11.8 Discontinued Products

If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer's notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide: (a) manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones (with demonstration being as described in subparagraph 11.7).

11.9 Forced Substitutions

Forced substitutions will not be permitted; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.

11.10 Recalls

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, "recalls" hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product. Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall.

11.11 Delivery

11.11.1 PRICING. Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller's dock) Incoterms@2010, with "seller's dock" meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to "F.o.b. Origin, Contractor's Facility" under [FAR 52.247-30](#).

11.11.2 LIABILITY. Unless stated otherwise in the Commercial Document or an Order, Contractor's liability for all Materials is DDP (State-designated receiving point per Order) Incoterms@2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to "F.o.b. Destination, Within Consignee's Premises" under [FAR 52.247-35](#).

11.11.3 PAYMENT. Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller's dock) with no mark-up, which Contractor shall itemize and invoice separately.

11.12 Delivery Time

Unless stated otherwise in the Commercial Document generally or in the



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applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order.

11.13 Delivery Locations

Contractor shall offer deliveries to every location served under the scope of the Contract, specifically:

18. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
- 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;
- if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
- if the Contract is for unrestricted statewide use, then:
 - (a) Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
 - (b) if a prospective Co-Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and
 - (c) if the Commercial Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.

11.14 Conditions at Delivery Location

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions.

11.15 Materials Acceptance

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected



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Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

11.16 Correcting Defects

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials.

19. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.

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

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

11.17 Returns

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

11.18 Order Cancellation

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

20. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus 1 (one) additional business day;

reimburse Contractor for:

- (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus 1 (one) additional business day; and
- (b) the cost of any obligations it incurred as of the cancellation effective date plus 1 (one) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and

Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice plus 1 (one) business day or for any lost profits or opportunity.

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



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acknowledged the corresponding Order.

11.19 Product Safety

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

11.20 Hazardous Materials

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

12.0 General Provisions for Services

12.1 Applicability

Article 12 applies to the extent the Work is or includes Services.

12.2 Comprehensive Services Offering

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

12.3 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 if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.

12.4 Off-Contract Services

Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, "off-contract service" refers to any service not included in the scope of the Contract and for which



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no price or compensation has been established contractually, and “excluded service” refers to any service expressly excluded from the scope of the Contract.

12.5 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 them with other personnel having equivalent qualifications, experience, and capabilities.

12.6 Transitions

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

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

12.8 Requirements at Services Location

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

12.9 Services Acceptance

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



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12.10 Corrective Action Required

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

21. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).

State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.

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

13.0 Data and Information Handling

13.1 Applicability

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

13.2 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:

22. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and

Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

13.3 Personally Identifiable Information.

Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract.

For purposes of this paragraph:



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

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

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

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

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

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

13.4 Protected Health Information

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

24. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the “Privacy Rule” in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 (“ERISA”) as amended; and (c) State’s current and published PHI/ePHI privacy and security policies and procedures;

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

will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular “Business Associate Agreements” in accordance with the Privacy Rule.

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

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

14.0 Information Technology Work

14.1 Applicability

Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined in A.R.S. § 41-3501(6) 6: “. . . 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.

14.2 Background Checks

Each of Contractor’s personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S § 41-710. Contractor shall obtain



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and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.

14.3 Information Access

- 14.3.1 SYSTEM MEASURES. Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State's proprietary data or confidential information.
- 14.3.2 INDIVIDUAL MEASURES. Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.
- 14.3.3 ACCESS CONTROL. Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.

14.4 Pass-Through Indemnity

- 14.4.1 INDEMNITY FROM THIRD PARTY. For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.
- 14.4.2 NOTIFY OF CLAIMS. State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:
- (a) State reserves the right to elect to participate in the action at its own expense;
 - (b) State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
 - (c) State shall in any case cooperate in the defense and any related settlement negotiations.



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State Procurement Office**
1110 W. Washington.,
Suite 155 Phoenix, AZ
85007

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14.5 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 knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

14.6 Redress of Infringement.

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

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

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

- (a) for any software created for State under the Contract, the amount State paid to Contractor for creating it;
- (b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
- (c) for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.

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

- (a) modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
- (b) operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
- (c) combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.

14.7 First Party Liability Limitation

14.7.1 LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.

14.7.2 PROVISO. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:



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- (a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
- (b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or
- (c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.

14.7.2 PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all change orders or other forms of Contract Amendment having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.

14.7.3 NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

14.8 Information Technology Warranty

14.8.1 SPECIFIED DESIGN. Where the Scope of Work (Section 2-A of the Solicitation) for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:

- (a) modified or altered by anyone not authorized by Contractor to do so;
- (b) maintained in a way inconsistent to any applicable manufacturer recommendations; or
- (c) operated in a manner not within its intended use or environment.

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

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

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



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14.9 Specific Remedies

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

15.0 Comments Welcome

Separate and apart from this solicitation, the State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments the public may have.

The public may submit comments to:
State Procurement Administrator,
State Procurement Office, 100 North 15th Avenue, Suite 402
Phoenix, Arizona, 85007

End of Uniform Terms and Conditions



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Questionnaire

INSTRUCTIONS:

Prepare each item response in the form of a brief written narrative describing your organization's overall method of approach for providing the required services and products as stated in this solicitation, as well as, demonstrating your ability to satisfy the Scope of Work and your organization's ability to provide the various products and services sought under this solicitation. Within the response to this item, the narrative shall at the minimum describe the following.

METHOD OF APPROACH:

1. Offer shall clearly state your understanding of the Scope of Work and acceptance of all Requirements, noting any exceptions.

[Offeror Response](#)

2. Offer shall provide a description of an inter-organizational governance structure and communication process that will support a successful business relationship.

[Offeror Response](#)

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3. Offer shall provide a description of how your organization tracks problem resolution responsiveness and eligible agency satisfaction in a quantifiable manner to ensure quality customer service. Please describe your complaint resolution process. The description should include a clear, hierarchical path for complaint escalation.

[Offeror Response](#)

CAPACITY OF OFFEROR:

1. Organizational Information

Offeror shall identify themselves, including their complete (formal) name, corporate addresses (headquarters and local addresses), web site URLs, NYSE/NASDAQ symbol, and other identifying information. Describe their total organization, including any parent companies, subsidiaries, affiliates, and other related entities. Provide organizational chart(s) for their overall organization showing each entity within the organization. Provide number of employees, number of years in business and pertinent business affiliations.

[Offeror Response](#)

Offeror shall identify a single or lead contact person, who will be responsible for all communications with the State throughout the solicitation process, including all applicable contact information, e.g. phone (days, evenings, mobile), e-mail (office and mobile). Provide the names and general contact information for any other persons responsible for communicating with the State Procurement Office and their respective roles.

[Offeror Response](#)

2. Organizational Capacity

Offeror shall describe in general their organizational capacity to support the State and its Customers under any resulting contract.



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2.1. Management Structure

Offerors shall describe their management structure and corporate leadership that would support any resulting contract.

[Offeror Response](#)

2.1. Key Personnel (Attachment in APP)

Offeror shall describe their Key Personnel that would support any resulting contract. Offerors shall provide evidence of their training, experience and performance in supporting similar customers, with particular deference to other state and local government customers. Indicate which of these individual(s) would have direct responsibility and control over any resulting contract.

[Offeror Response](#)

2.2. Subcontractors (Attachment in APP)

Offeror shall provide a list of all proposed subcontractors that will be used in fulfillment of the Contract, including contact information and a detailed description of their participation

[Offeror Response](#)

2.3. Experience in Industry

Offeror shall describe their experience in the provision of products and services like those required by in this RFP.

[Offeror Response](#)

2.4. Experience with Similar Customers

Offeror shall describe their experience with similar customers, with particular deference to other state and local governments, in the provision of products and services like those required in this RFP.

[Offeror Response](#)

2.5. Organizational Profile and Referenced (Attachment in APP)

Offeror shall provide customer and related information for three (3) similar contracts within the past three (3) years –with particular deference to other state and local governments. At a minimum include the following information: Customer name; Address; Contact person; Phone number(s); E-mail addresses; Time(s) available; Size of Contract; Dates of Contract. State may contact any customers listed for the purpose of obtaining references relative to past performances and, if necessary, Offeror shall sign a release to obtain any such information.

[Offeror Response](#)

3. Financial Capacity

Offeror shall describe in general their financial capacity to support the State and its Customers under any resulting contract.



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3.1. Economic Status


Offeror shall state whether or not they, and/or their parent company if applicable, is in or in the process of filing for bankruptcy. Offeror similarly shall state whether they, and/or their parent company if applicable, have filed for bankruptcy in the past three (3) years? If so under either condition, Offeror shall describe the circumstances of the bankruptcy and how their economic status is improving (has improved since then).

[Offeror Response](#)

3.2. Legal and Regulatory Actions

Offerors shall fully disclose their involvement in any legal proceedings, lawsuits or governmental regulatory actions and any contractual demands for assurance regarding their provision of similar services, pending or occurring in the last three (3) years.

[Offeror Response](#)

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Pricing Instructions II

Offerors shall complete the Excel spreadsheet entitled “Attachment II – Pricing Schedule”, and provide all requested information according to the instructions found there. The spreadsheet is found in Attachments section of APP under the file named RFP BPM000582.

Flooring Product prices to be completed by Offeror. Other materials and services may be listed on Attachment II Pricing Schedule for consideration. This statewide solicitation does not offer price differentiation per region.

The Offeror may bid on material and services that would correlate with flooring purchases (including but not limited to design, removal, special installation, repairs, etc.).

1. Offeror shall make available a complete family or line of business of a manufacturer’s products at a fixed price per unit of measure. Discounts off list prices shall be offered in fixed prices with one or more discounts per manufacturer. Proposed manufacturers shall provide material in current production and marketed to the commercial and education/government agencies at the time the bid is submitted.
2. **Offeror shall provide products and services, as described herein, at a rate for flooring material, installation, general floor prep, glue, taxes, Per Diem, and all other expenses incurred to install the flooring. Hard Removals shall be addressed in the two line items located in the “UOM” tab and shall reflect only the cost of the machine removal.** Unit of measures include SF(square feet), SY(square yard), LF(lineal foot) and job or each. Pricing shall be listed on the Pricing Spreadsheet Attachment II of the solicitation and entered per RFP instructions.
3. Offeror shall provide services, as described herein, at a time and material rate for flooring maintenance, patch and repairs for all carpets/tiles as required by the eligible Agency. Miscellaneous charges should be entered on as a separate line item for Buyer approval.
4. Offerors are entitled to the State Travel policy for distances of travel outside of the 50 miles radius from the starting point of The Arizona State Procurement Office, 100 North 15th Avenue, Phoenix, AZ 85007. All travel related expenses under this contract shall be governed by the State of Arizona’s Travel Policy.
5. **The State of Arizona intends to award multiple contracts per Purchasing Region. There is a separate Pricing Sheet attached for each Region. You must fill out an individual sheet for each Region you are bidding. The State Regions are outlined on the map attached to these Pricing Instructions.**



END OF SOLICITATION

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