



# OFFER AND ACCEPTANCE

## OFFER

TO THE STATE OF ARIZONA:

The undersigned hereby offers and agrees to perform in compliance with all terms, conditions, specifications and amendments of this solicitation and any written exceptions in the offer. Signature also acknowledges receipt of all pages indicated in the Table of Contents.

|                                      |       |     |
|--------------------------------------|-------|-----|
| Offeror (Company) Name               |       |     |
| Skyline Builders & Restoration, Inc. |       |     |
| Address                              |       |     |
| 2401 North 24 <sup>th</sup> Avenue   |       |     |
| City                                 | State | Zip |
| Phoenix, AZ                          | 85009 |     |
| Email Address                        |       |     |
| mike@azsbr.com                       |       |     |
| Company Email Address                |       |     |
| info@azsbr.com                       |       |     |

|  |          |
|--|----------|
| Signature of Person Authorized to Sign Offer |          |
| Printed Name                                 | Date     |
| Michael N. Lee                               | 2/3/2020 |
| Title  |          |
| President                                    |          |
| Phone Number                                 |          |
| (602) 404-0842                               |          |
| Fax Number                                   |          |
| (602) 404-0843                               |          |

By signature in the Offer section above, the Offeror certifies that the submission of the Offer did not involve collusion or other anticompetitive practices.

## ACCEPTANCE OF OFFER (FOR DEPARTMENT USE ONLY)

The Contractor is now bound to perform based upon Contract Number CTR048911 including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the state.

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until contractor receives a purchase order document.

State of Arizona

Effective this 16 day of March 2020

DocuSigned by: Valarie Erwin 3/16/2020

Procurement Officer Valarie Erwin Awarded Date

## Solicitation Amendment Summary

|   |                         |
|---|-------------------------|
| <b>SOLICITATION NO.: BPM002151</b>              | <b>AMENDMENT NO.: 1</b> |
| <b>DESCRIPTION: Painting Services – On Call</b> |                         |

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. Items tab line number 1 – Patching Services, quantity has changed to 100 and unit of measure to Hour.
2. Items tab line number 2 – Caulking Service, quantity has changed to 100 and unit of measure to Hour.
3. Items tab line number 48 – Standardized Office Door, quantity added as 100 with unit of measure of Each.
4. All other terms, conditions and provisions of this solicitation remain unchanged.



STATE OF ARIZONA  
ARIZONA DEPARTMENT OF TRANSPORTATION  
1739 W. Jackson St., Ste. A  
Phoenix, AZ 85007

## INVITATION FOR BID

**SOLICITATION NUMBER:** BPM002151

**DESCRIPTION:** Painting Services – On Call

**QUESTIONS:** Inquiries regarding the solicitation are to be submitted online through the State's e-Procurement system, Arizona Procurement Portal (APP) (<https://app.az.gov/>) using the Discussion Forum tab.

**OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.**

Brett Jones  
Procurement Officer  
Phone: 602-712-4321  
Email: [bjones@azdot.gov](mailto:bjones@azdot.gov)

This solicitation is issued in accordance with A.R.S. §41-2533 and A.A.C. R2-7-B301 et seq., Competitive Sealed Bidding.

“An Equal Opportunity Agency”

*The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Americans with Disabilities Act (ADA), hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration for an award.*

*Persons that require a reasonable accommodation based on language or disability should contact ADOT's Procurement Office by phone (602) 712-2089. Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.*

*Las personas que requieran asistencia (dentro de lo razonable) ya sea por el idioma o discapacidad deben ponerse en contacto con ADOT (602) 712-2089.*

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## 1. Statement of Need

- 1.1. Pursuant to the Arizona Procurement Code, A.R.S. §41-2501 et seq., the State of Arizona Department of Transportation (Department), has a requirement to establish term contract(s) for commercial painting services, throughout the State of Arizona in accordance with the specifications contained herein.
- 1.2. The Contractor shall furnish all necessary labor, paint, tools, equipment, supplies and materials to effectively perform the required services.

## 2. Introduction and Background

- 2.1. The Department currently utilizes contractors to paint various buildings and facilities throughout the state, and will be used by Facilities Management and Right of Way Property Management.

## 3. General Requirements

- 3.1. The service area consists of the Department facilities throughout the State of Arizona. Refer to **Exhibit 3, Work Location Map**
- 3.2. The following definitions apply to the Specific Requirements portion of the contract:

|                                  |  |
|----------------------------------|--|
| Department                       | Arizona Department of Transportation (ADOT)  |
| Contract Administrator           | Procurement Officer  |
| Project Manager                  | Facilities Group   |
| Project Manager’s Representative | Person delegated responsibility for administration of portions of, or the entire contract by Project Manager   |
| Contractor                       | Firm and/or individual that will perform the work requested in this solicitation   |
| On-Site Supervisor               | Contractor’s employee authorized to direct or oversee work operations and having authority to make day to day decisions concerning the work operations |
| EPA                              | Environmental Protection Agency  |

## 4. Specific Requirements

- 4.1. The majority of the work will be interior surface, occasionally concrete block or wood or lathe and plaster. Exterior surfaces could be wood, metal, stucco, concrete, or pre-cast fiberglass. For purposes of the bid, all paint will be latex or enamel, interior or exterior, applied by brush or roller as most appropriate for the surface and application. In practice, should another type of paint or application be required, i.e., oil base or epoxy, it will be specified for that particular project and pricing adjusted accordingly to compensate the Contractor.

- 4.1.1. Small repairs will be requested from the painting Contractor. All major drywall or reconstruction will be contracted out separately.
- 4.1.2. The Contractor shall be responsible for the performance of any and all painting tasks. The Department may permit the use of subcontractors to perform related repairs such as replacement of rotted wood. The Contractor is responsible for all surface preparation to include scraping, sanding, caulking, etc., and the application of paint, stain, etc., so that the finished product has the appearance expected from a professional painting company.
- 4.1.3. The Contractor shall have sufficient resources to be able to work multiple jobs at the same times. Contractor shall work on the current project(s) to completion for full eight (8) hour day(s) unless the work being performed requires a drying time interval before the next phase begins.
- 4.1.4. The Contractor shall be able to complete all of the painting tasks normally encountered in commercial and residential buildings on both interior and exterior surfaces within the time specified in the Scope of Work of a Task Order or within thirty (30) calendar days of the date of the Purchase Order or Notice to Proceed is issued to the Contractor.
- 4.1.5. The Contractor coating must exceed Federal specifications and stringent performance requirements of high level industry standards with ability to attain excellent coverage, durability, and longevity.
- 4.1.6. All work shall be scheduled with the Department Project Manager or Project Manager's Representative at least seventy-two (72) hours before the work begins. Once scheduled, the Contractor must adhere to the schedule unless authorization is given by the Department's representative reschedule.

## 4.2. Call Out Notification – Task Order

- 4.2.1. The Department shall notify the Contractor by phone, email, or fax when service is needed and issue a **Task Order, Exhibit 4**, advising the Contractor of work location and other pertinent information.
- 4.2.2. A Task Order shall be submitted for each project. The **Task Order, Exhibit 4** shall be filled out completely with the total hours to complete project. The Contractor shall estimate any additional cost associated with the project on the Task Order. Contractor shall submit receipt for reimbursement of those costs.

## 4.3. Response Times

- 4.3.1. The Contractor must provide a method whereby they can be readily contacted during normal business hours as well as a contact number for after hour and weekend response. The Contractor must return calls within twenty-four (24) hours.

4.3.2. The Contractor has five (5) calendar days to respond to the Task Order and provide the Department with a quote reflecting the number of hours, equipment required, and cost to perform the service.

4.3.3. No work shall begin until the quote is approved by the Department. Deviation from the amount reflected on the quote which results in an increased cost to the Department must be approved in writing prior to the commencement of work.

4.3.4. Any work that is done by the Contractor without proper authorization will not be eligible for payment.

#### 4.4. Commencement of Work

4.4.1. Prior to issuance of a purchase order the Project Manager or the Project Manager's Representative and Contractor shall mutually agree upon a completion date. Repeated failure to meet estimated start and/or completion dates may result in termination of the Contract.

#### 4.5. Painting Requirements

4.5.1. Paint and application materials

4.5.2. The Contractor shall:

4.5.3. Furnish all labor, materials, equipment, and all incidentals to paint or finish all surfaces in a professional manner

4.5.4. Be available for any and all interior and exterior painting jobs required by the Department during the Contract period.

4.5.5. Surface preparation and application:

All surface preparation and application of paint, stain, etc., shall be done in accordance with manufacturers' recommendations or industry standards, whichever is higher, and provide the desired coverage and surface appearance. If a second coat is required, it shall be applied in accordance with the manufacturers' recommended drying time between coats.

#### 4.6. Materials

4.6.1. The Department reserves the right to specify precisely the types of materials to be utilized. Substitutions shall have approval of the Contract Representative or their designee. Materials are included in the cost of the Sq. Ft. submitted in Contractor's Offer. No additional mark-up is allowed.

4.6.2. Contractor shall only use materials compatible with existing materials that will ensure proper bonding and longevity of surfaces.

4.6.3. All finishes and colors shall match existing finishes and colors unless otherwise directed by the Contract Administrator or their authorized representative.

4.6.4. All tools, equipment, and incidentals used in the performance of the work (i.e. brushes, rollers, sanders, drop clothes, sandpaper, hand tools, etc.) shall be provided by the Contractor.

4.6.5. All products to be low VOC (Volatile Organic Compound), and provide MSDS (Material Safety Data Sheet) and TDS (Technical Data Sheets) documents.

#### 4.7. Paint Samples

4.7.1. Paint samples shall be provided to the Department's Contract Representative or their authorized representative for each different color used to include manufacturers name and code designation.

#### 4.8. Touch-Up Paint

4.8.1. At the completion of each job, the Contractor shall supply the Contract Representative or their authorized representative one (1) gallon of unopened paint for each color used. The gallon shall be clearly labeled with the job name, manufacturer, and color code. This requirement may be waived by the Contract Representative for small jobs.

#### 4.9. Protection of Other Work

4.9.1. Contractor shall protect with tape, paper, and/or drop cloths all finished floors, glass, cabinets, tops, appliances, ceramic tile, bathroom fixtures, brick, concrete, rugs, carpeting, hardware, wallpaper, furniture, and naturally finished surfaces not to receive paint. Contractor shall clean or cause to have cleaned at their own expense any paint applied to such surfaces and/or fixtures.

4.9.2. The Project Manager or Project Manager's representative is responsible for notifying Department personnel twenty-four (24) hours before any work proceeds in Department facilities. Contractor shall post warning signs and/or barriers where necessary.

4.9.3. Contractor is responsible to insure all surfaces, floors, and Department property not to be painted shall be completely protected at all times. Furniture, floors, surfaces, and other Department property must be protected by covering with drop cloths or other type of covering, moving, masking, or employing detailed application methods. Any dropped paint shall be removed.

4.9.4. The Contractor shall be responsible and use utmost care in the protection of the occupant's property; including all screens, windows, walkways, shrubbery, parked vehicles, and any other property in the area, from paint and/or other damage.



4.9.5. Extreme care shall be taken to safeguard all existing facilities, site amenities, building structures, windows, and vehicles on or around the job site. Damage to public and/or private property shall be the responsibility of the Contractor and Contractor shall be responsible to repair and/or replace damaged item(s) within fifteen (15) business days after notification of damage, at no additional cost to the Department. If damage poses a security/safety hazard, contractor shall have repairs made immediately. In the event emergency repairs are needed and contractor is unable to perform them, the Department would perform repairs and shall be reimbursed by contractor.

4.9.6. While performing painting services for the Department on this contract, contractor shall protect Department property and adjacent property, buildings, etc. Contractor shall be held responsible for any damages caused by Contractor's employees and/or sub-contractors to Department property or any adjacent property, buildings, etc.

4.9.7. Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Department's satisfaction at the Contractor's expense.

4.9.8. It shall be the responsibility of the Contractor to report to the Contract Representative or their designee any damage found prior to any work at job sites.

4.9.9. The Contractor shall be entirely responsible for any loss or damage to its own materials, supplies and equipment, and to the personal property of its employees while they are maintained on the work sites.

4.9.10. The work site may be occupied during the times work is performed. Contractor and Contractor's personnel shall exercise a particularly high level of discipline, safety, and cooperation at all times while on the job site. The Contractor shall be responsible for controlling the employee conduct, for assuring that its employees are not boisterous or rude, and assuring they are not engaging in any destruction or criminal activity. The Contractor is also responsible for ensuring that its employees do not disturb papers, desks, cabinets, or use Department phones, equipment, facilities and the like, except as authorized.

**4.10. Weather Protection**

4.10.1. Contractor is required to follow manufacturer's application guidelines for temperature and humidity protection.

**4.11. Work Area**

4.11.1. All work is to be completed at the convenience and safety of the occupants. If there are complaints from occupants about fumes, smells, etc., the Contractor shall be required to immediately cease work and ventilate the area until the problem is corrected. The Contractor will be required to reschedule the work at a time suitable to the occupants or devise a ventilation method that eliminates the problem. Any remedy used by the Contractor will be at no additional cost to the Department.

4.11.2. When using solvents for cleaning brushes, or using other chemicals, the Contractor is required to capture or save the used chemicals for disposal of hazardous waste. The cost of disposal is entirely the responsibility of the Contractor. At no time shall the Contractor improperly dispose of solvents or chemicals by dumping them into the sewer system or on the ground.

#### 4.12. **Furniture Moving Services**

4.12.1. The Contractor shall be responsible for moving and relocating all furniture (desks, cabinets, standalone bookshelves, chairs, plant stands, etc.), for the purpose of painting applicable surfaces behind the furniture. In addition, items hung on the walls shall be removed and replaced by the Contractor.

4.12.2. The Contractor shall avoid disconnecting electronic equipment such as computers, fax machines, telecommunication equipment, and appliances such as refrigerators in which special contents may be stored. The Project Manager or Project Manager's Representative shall be responsible for disconnections and coordinating disconnections necessary.

#### 4.13. **Worker Skill Level**

4.13.1. The Contractor shall provide workers who are fully trained to the skill level necessary to complete the job in manner deemed satisfactory by the Project Manager or Project Manager's Representative. Should the Department determine that a worker is not competent to complete a job; the Project Manager or Project Manager's representative may either insist on a substitute worker with appropriate skills or cancel the purchase order without penalty to the Department. The substitution of a worker will be done at no additional cost to the Department. The Department's Project Manager is the sole judge of worker competence.

#### 4.14. **Supervision**

4.14.1. The Contractor(s) may be required to have a job site supervisor present at all times that work is being performed. When providing a statement of work to the Contractor(s), the Project Manager or Project Manager's Representative will state whether or not a full time site supervisor is required. Otherwise, the Contractor is required to have a supervisor on site at the start of each job for a minimum of one (1) hour and available to be on site whenever there is a problem that requires supervision. Contractor Supervisor will confirm with the Project Manager or Project Manager's Representative seventy-two (72) hours in advance what locations will be worked on.

4.14.2. The Contractor's supervisor shall be literate and fluent in the English language because of the necessity to read chemical labels, job instructions and signs, as well as the need for conversing with Department staff. The Department's Project Manager or Project Manager's Representative shall be the sole judge of the communication level.

4.15. **Parts**

4.15.1. In the event the Contractor is required to supply and install necessary parts for the completion of a project, the Contractor shall submit the original itemized invoice. The Department will not pay any mark-up on any parts that are supplied.

4.16. **Worker/Vehicle Identification**

4.16.1. The Department requires that all job site workers wear clean work clothes with either a prominently displayed identification badge or company identification affixed to the clothing. Job site vehicles must prominently display company identification and only parked in areas designated by Department representative.

4.17. **Convenience of the Department**

4.17.1. All work shall be scheduled at the convenience of the Department's Contract Representative. The Contractor shall confirm scheduling with the Contract Representative or their representative at least seventy-two (72) hours prior to the commencement of work. A Contractor who violates this requirement may be denied access or ordered to stop work and resume only after scheduling a new start date. Should this occur, any additional cost is the Contractor's responsibility.

4.18. **Work schedule**

4.18.1. All work shall be scheduled at the convenience of the Department's Project Manager or Project Manager's representative so as not to interfere with the Department's ability to conduct business.

4.19. **Staffing**

4.19.1. The Contractor minimum staffing for this contract shall be such that the assigned work will be completed within the time allocated on the **Task Order, Exhibit 4**.

4.20. **Safety, Sanitary, and Health Conditions**

4.20.1. Contractor must read all precautionary information printed on the labels of each coating container to understand the nature of the coating itself and the health and safety requirements of the material.

4.20.2. Use of protective clothing, eye goggles, breathing apparatus, gloves, and other necessary safety wear shall be Contractors responsibility utilizing all procedures under O.S.H.A.'s employee Right to Know laws, to its employees and the State employees in and around the area being painted.

4.20.3. Contractor must take all precautionary measures for the health and safety of State Employees when painting is being performed during normal business hours.

4.20.4. Contractor must have at each job site the O.S.H.A. required MSDS sheets for all paint coatings, solvents, cleaners, or any other hazardous materials that are being utilized for the job. Failure to comply with this requirement will result in Contractor directed to stop work, acquire necessary MSDS sheets, and to resume after compliance. Time lost due to correction of this matter will be at no cost to the State.

4.20.5. The Contractor shall provide and maintain in neat and sanitary condition such accommodations for the use of the contractor's employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health Services or other authorities having jurisdiction therein.

4.20.6. Attention is directed to Federal, State, and local laws, rules, and regulations concerning construction safety and health standards. The Contractor shall not require any workers to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to their health and safety.

#### 4.21. **Suspension of Work**

4.21.1. The Contractor shall suspend operations if weather condition is such that or work conditions are such that work operations cannot be carried out in a safe and effective manner, or will pose environmental hazard. This includes seasonal conditions and/or conditions beyond the Department's control. If such suspension occurs, the Contractor shall immediately notify the Project Manager or their designated representative.

4.21.2. The Project Manager or their representative may suspend work operations at any time, when in their judgement, present or impending weather conditions are such that the work cannot be carried out in a safe and effective manner.

4.21.3. The Project Manager or Project Manager's representative shall immediately suspend operations when work performance is observed in violation of safety rules, regulations, or practices.

4.21.4. Violation of safety rules, regulations, or practices may be considered ground for termination of the contract.

#### 4.22. **Brand Name or Equal**

4.22.1. There are currently a number of products that have been determined, through evaluation and/or testing, to be equivalent to the requirements of these specifications. The listing of these brands is not intended to limit or restrict competition. Rather, it is to set the standard quality, design, performance, and characteristics of the products herein specified. Any bid which proposes products that are of equal quality, type of material, design, and performance will be considered if sufficient evidence and information is given to establish it as an equal, and the Department determines the product to be an equal to the named brand and these specifications.

4.22.2. The Department has approved the following paint coating for interior and exterior painting for this contract. Additional products may be approved upon request and evaluation by the Department.

4.22.2.1. Dunn-Edwards – W600 series, ENNO10 Series, Bloc-Rust and Ultra Grip

4.22.2.2. Frazee – Versa Tex and UltraTech Series

4.22.2.3. Glidden – Ultrahide Series

4.22.2.4. ICI – Delux Pro Series

4.22.2.5. Devoe – Devflex Series

4.22.2.6. PPG – Spec Pro and Speedhide Series

4.22.2.7. Sherwin Williams – Pro Mar Series

4.22.3. The Department Project Manager will be the sole judge of the acceptability of alternate brands.

## **5. Contractor’s Responsibilities**

5.1. All persons engaged in performance of work under this contract shall be, unless otherwise approved by the Department, direct bona fide employees of the Contractor. The Department may require verification of the nature of the employment of the employees.

5.2. In the event the work performance of the contract is not satisfactory, the Contractor will be notified and given Three (3) days to correct the work. Labor for all rework will be at no cost to the Department.

## **6. Department’s Responsibilities**

6.1. The Department shall perform periodic inspections to ensure compliance with contract requirements.

6.2. The Department shall review the quality and acceptability of any work performed under the contract.

6.3. The Department shall notify the Contractor, verbally and in writing, of any deficiencies found with the contract limits. If deficiencies are noted, a copy of the completed deficiency report will be furnished to the Contractor and to the Procurement Officer.

- 
- 6.4. The Department shall immediately suspend the Contractor's operations when work performance is observed in violation of safety rules, regulations or practices. Violation of safety rules, regulations or practices may be considered grounds for termination of the contract.

### 1. CONTRACT TERM

The term of any resultant contract shall commence on the effective date of award and shall continue for a period of twelve (12) months thereafter, unless terminated, cancelled or extended as otherwise provided herein.

### 2. CONTRACT EXTENSION

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

### 3. ELIGIBLE AGENCIES

This contract shall be for the exclusive use of the Arizona Department of Transportation.

### 4. NON-EXCLUSIVE CONTRACT

This contract shall be for the sole convenience of the Department. The Department reserves the right to obtain like goods or services from another source when necessary. The Off-Contract Purchase Authorization and subsequent procurement shall be consistent with the Arizona Procurement Code.

### 5. ORDERING PROCESS

The Department shall issue a purchase order to the Contractor. Each purchase order must cite the contract number. This purchase order shall be the only document required for the Department to order and the Contractor to deliver the material and/or service.

Any attempts to represent any material and/or service not specifically awarded as being under contract is a breach of the contract and a violation of 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.

### 6. INVOICING REQUIREMENTS

Separate invoices are required for each delivery of service and shall include at a minimum:

- Department Location's Name and Address
- Vendor Name, Remit to Address and Contact Information
- Contract Number
- Purchase Order Number
- Invoice Number and Date
- Date the items were shipped to the Department
- Contract Line Item Number
- Line Item Description or Item or Service

- Quantity Purchased
- Line Item Unit of Measure
- Price per Unit and Total per Unit
- Catalog or Other Discount (if applicable)
- Net Unit Price and Total per Unit (if applicable)
- Applicable taxes
- Applicable Shipping/Freight Charges
- Total Invoice Amount Due

Invoices not sent to the proper address, or not containing the necessary and required information may delay payment. A Contractor whose payments are delayed due to improper invoicing shall make no claim against the Department or the State for late or finance charges.

The Department will make every effort to process payment within thirty (30) calendar days after acceptance of services. Delivery of the service to the Department does not constitute acceptance.

The date the Department accepts delivery of services shall be the valid date for starting the thirty (30) calendar day payment period.

Payment due dates, including discount periods, will be computed from the date of acceptance or date of correct invoice (whichever is later) to the date the Department's warrant is mailed.

### 7. ESTIMATED USAGE

The Department anticipates considerable usage under this contract. The Department reserves the right to increase or decrease actual quantities ordered as circumstances may require. No guarantees are made concerning actual purchases under this contract.

### 8. PRICE REDUCTION

A price reduction adjustment may be offered at any time during the term of the contract and shall become effective upon notice through a written contract amendment.

### 9. PRICE INCREASE

The Department will review **fully documented** requests for price increases for any contract which will or has been in effect for twelve (12) months. The request shall be submitted no less than 60 days prior to the contract renewal date. The Contractor shall provide fully documented information which supports the price increase request. Fully documented means that the request shall present detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. All assumptions regarding cost factors that have an impact on the requested increase shall also be clearly identified and justified. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. Any price increase adjustment request prior to the time of contract extension will be a factor in the extension review process. The



Department will determine whether the requested price increase or an alternate option, is in the best interest of the State.

**10. CONTRACT ADMINISTRATION**

The contractor shall contact the Procurement Officer for guidance or direction in matters of contract interpretation or questions regarding the terms, conditions or scope of the contract.

**11. NOTICES**

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provisions collectively called "Notices"), shall be in writing and shall be sent by certified United States mail, return receipt requested, or by any other method that provides evidence of receipt, addressed to the party or parties to receive such notice as follows:

- a. If intended for the State, to:

Arizona Department of Transportation, Procurement Group  
1739 W. Jackson Street, MD 100P  
Phoenix, Arizona 85007-3276

- b. If intended for the Contractor, to the address as identified in the Contractor's electronic vendor profile.

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt. Furthermore, such notice may be given by delivering personally such notice, if intended for the State, to the Arizona Department of Transportation, Procurement Officer and, if intended for the Contractor, to the person named on the Offer & Contract Award of this contract, or to such other person as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so delivered shall be deemed to have been given as of the date such notice is personally delivered to the other party.

**12. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY**

This Contract may be cancelled if the Contractor or any subcontractors or others in the employ or under the supervision of the Contractor or subcontractors is found to be in possession of weapons.

Possession of weapons (firearms, explosive devices, knives or blades of more than three (3) inches, or any other instrument designed for lethal or disabling use) is prohibited on ADOT property.

Further, if the Contractor or any subcontractors or others in the employ of under the supervision of the Contractors or subcontractors, are asked by an ADOT official to leave the ADOT property, they are advised that failure to comply with such a request shall result in cancellation of the Contract and

anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. §13-1502, “Criminal trespass in the third degree: classification.

### **13. REVIEW OF CONTRACTOR’S WORK**

Work performed by the Contractor shall be subject to periodic reviews and partial acceptance at various stages. The Department reserves the right to make such reviews and pass upon the acceptability of the Contractor’s work. Partial acceptance shall not relieve the Contractor’s obligation to correct, without charge, any errors in the work performed under this contract.

### **14. ACCURACY OF WORK**

The Contractor shall be responsible for the accuracy of the work and shall promptly make all the necessary revisions or corrections resulting from errors and omissions on the part of the Contractor without additional compensation. Acceptance of the work by the Department shall not relieve the Contractor of the responsibility for subsequent correction of any such errors and clarification of ambiguities

### **15. INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as “Indemnitee”) 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 Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, 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.

**16. INSURANCE**

The Contractor shall furnish Certificate(s) of Insurance inclusive of the following requirements to the Department. Certificate(s) shall be received within 5 calendar days of notification of contract award by the Procurement Officer.

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

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

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

**1. Commercial General Liability – Occurrence Form**

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

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$ 50,000
- Each Occurrence \$1,000,000

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

**2. Business Automobile Liability**

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

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the

Contractor.

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

**3. Worker's Compensation and Employers' Liability**

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

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to 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).

**B. ADDITIONAL INSURANCE REQUIREMENTS:**

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

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

**C. NOTICE OF CANCELLATION:**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and

shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

**D. 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.

**E. VERIFICATION OF COVERAGE:**

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

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

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

All 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.

**F. 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.

**G. 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.

**H. 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.

### **17. USAGE REPORT**

The Contractor shall furnish the Department a quarterly report showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to **Exhibit 5**. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

### **18. KEY PERSONNEL**

It is essential that the Contractor provides adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.

The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the Procurement Officer. The Contractor shall immediately notify the Procurement Officer of key personnel changes. Replacement personnel shall be of substantially equal ability and qualifications. All key personnel changes are subject to the written concurrence of the Procurement Officer prior to any billable work being performed.

### **19. SUBCONTRACTORS**

It is essential that the Contractor provides adequate experienced subcontractors, capable of and devoted to the successful accomplishment of work to be performed under this contract.

The Contractor agrees that, once assigned to work under this contract, subcontractors shall not be removed or replaced without written notice to the Procurement Officer. The Contractor shall immediately notify the Procurement Officer of subcontractor changes. Replacement subcontractors shall have substantially similar qualifications and experience. All subcontractor changes are subject to the written concurrence of the Procurement Officer prior to any billable work being performed.

### **20. REMOVAL OF CONTRACTOR'S EMPLOYEES**

The Contractor agrees to utilize only experienced, responsible and capable personnel in the performance of the work. The Department may require that the Contractor remove from the job covered by this contract, employees who endanger persons or property or whose continued employment under the contract is inconsistent with the interest of the Department.

### **21. PROJECT ADMINISTRATION**

The Project Manager shall be designated at the time of project assignment. The Project Manager will provide general direction as necessary and be responsible for decisions pertaining to work under this Contract.

### **22. TRAVEL**

Travel expenses authorized in advance and incurred at off-site assignments will be reimbursed at cost, in accordance with the State of Arizona Travel Policy and the ADOT Travel Authorization Policy and Procedure hereby incorporated herein. State travel policy includes the travel reimbursement schedules. Actual receipt for travel must be submitted for reimbursement of allowable direct costs (lodging, automobile, meals, etc.). The travel policies may be accessed via the internet at the State of Arizona, General Accounting Office's website (<http://www.gao.az.gov/travel/>) and State of Arizona, Department of Transportation's website (<http://www.azdot.gov/business/Procurement>).

### **23. CONTRACTOR SELECTION FROM MULTIPLE CONTRACTS**

The Department makes no guarantee as to the amount of work to be assigned to any Contractor and may exercise its option not to utilize the services requested herein. Selection will be at the sole discretion of the Department. The Department is under no financial obligation to any selected Contractor unless the Department issues a Purchase Order for a specific requirement.

### **24. LICENSES, PERMITS, CERTIFICATIONS**

Contractor, at their expense, shall maintain in current status without any violations, complaints, or suspensions during the term of this contract all Federal, State and Local licenses, permits and certifications required for the operation of a business conducted by the contractor.

### **25. CONTRACT ORDER OF PRECEDENCE**

In the event of a conflict in the provisions of the Contract, as accepted by the Department and as they may be amended, the following shall prevail in the order set forth below:

- Federal Terms and Conditions;
- Special Terms and Conditions;
- Uniform Terms and Conditions;
- Statement or Scope of Work;
- Specifications;
- Attachments;

- Exhibits

### **26. POST AWARD MEETING**

At the discretion of the Department, the Contractor, at their expense, shall attend and participate in post award meetings as scheduled by the Procurement Officer.



EXHIBIT 1  
Title VI/Non-Discrimination Assurances  
Appendix A

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During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

**1. Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the *Federal Highway Administration*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**2. Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

**3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

**4. Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *Federal Highway Administration* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *Federal Highway Administration*, as appropriate, and will set forth what efforts it has made to obtain the information.

**5. Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration* may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.

**6. Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient or the *Federal Highway Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## EXHIBIT 2

### Title VI/Non-Discrimination Assurances

#### Appendix E

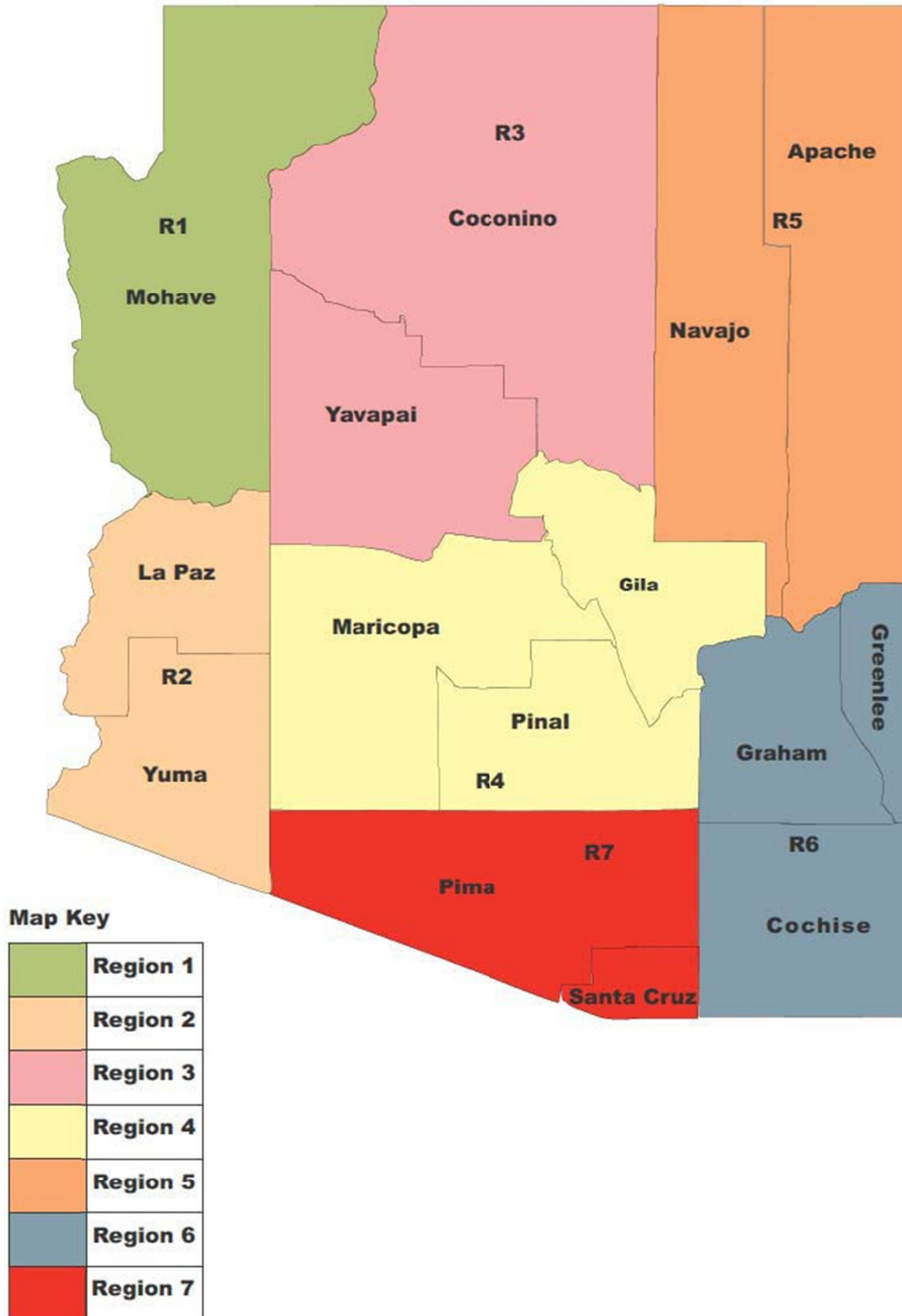
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During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 *et. seq.*)

**EXHIBIT 3**  
**Work Location Map**



Date/Time of Request: \_\_\_\_\_ Task Order No. \_\_\_\_\_

User Name: \_\_\_\_\_ Phone No: \_\_\_\_\_

Location Name: \_\_\_\_\_

Location address \_\_\_\_\_

Project No: \_\_\_\_\_

Painting Requirement Needed \_\_\_\_\_

Instructions: \_\_\_\_\_

**CONTRACTOR TO COMPLETE THE FOLLOWING:**

Total Units/Hours for Completion include all personnel: \_\_\_\_\_ Promised

Completion Date: \_\_\_\_\_

Number of Personnel required performing service: \_\_\_\_\_.

Contractor Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Phone No: \_\_\_\_\_

Job Supervisor: \_\_\_\_\_

Purposed Start Date: \_\_\_\_\_

Additional Costs (Provide detailed listing of any additional costs)

Costs: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total Cost for Task Order: \$ \_\_\_\_\_ Taxes: \$ \_\_\_\_\_

CONTRACTOR SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**(This form shall NOT replace an official ADOT Purchase Order) Should any work proceed without such a document (Purchase Order), ADOT will not be held liable for payment. This document is used for specific project information only.**

## EXHIBIT 5 Quarterly Contract Usage Report

This is a **SAMPLE** template of content for the Quarterly Usage Report the Department reserves the right to make additions, deletions and changes as deemed necessary.

| ADOT Contract Number:           |                                     |           | Reporting Period: |                |                |
|---------------------------------|-------------------------------------|-----------|-------------------|----------------|----------------|
| Contractor Name:                |                                     |           | Address:          |                |                |
| Contact Name:                   |                                     |           | Contact Phone:    |                |                |
| Alternate Contact Name & Phone: |                                     |           |                   |                |                |
| Quantity                        | Line Item Description               | Purchaser | Type of Purchase  | Contract Price | Total Invoiced |
|                                 |                                     |           |                   |                |                |
|                                 |                                     |           |                   |                |                |
|                                 |                                     |           |                   |                |                |
|                                 |                                     |           |                   |                |                |
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|                                 |                                     |           |                   |                |                |
|                                 |                                     |           |                   |                |                |
|                                 |                                     |           |                   |                |                |
| Quantity                        | List Supplies / Paper Products Used |           |                   |                |                |
|                                 |                                     |           |                   |                |                |
|                                 |                                     |           |                   |                |                |
|                                 |                                     |           |                   |                |                |
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|                                 |                                     |           |                   |                |                |

Quarterly Reports shall be submitted in Excel format.

**UNIFORM TERMS AND CONDITIONS**  
**Version 9**

**1. Definition of Terms**

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

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

## **2. Contract Interpretation**

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

## **3. Contract Administration and Operation**

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the



State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11 Offshore Performance of Work Prohibited.  
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### **4. Costs and Payments**

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and

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

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

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

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

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements.

## 5. **Contract Changes**

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

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

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

## 6. **Risk and Liability**

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

6.2. Indemnification

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

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

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

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or

maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

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

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

## **7. Warranties**

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

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

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

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

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

7.5. Compliance With Applicable Laws. The materials and services supplied under this

Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

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

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

**8. State's Contractual Remedies**

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

8.2. Stop Work Order.

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

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

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

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On

delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

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

## 9. **Contract Termination**

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

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

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

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

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

10. **Contract Claims**

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

11. **Arbitration**

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

12. **Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15<sup>th</sup> Avenue, Suite 201, Phoenix, Arizona, 85007.

### 1. Inquiries

- 1.1. All questions related to this solicitation must be submitted through the State's e-Procurement system, Arizona Procurement Portal (APP) (<https://app.az.gov/>) using the Discussion Forum tab. All inquiries must be marked as Q&A and addressed to the Procurement Officer identified as the solicitation's owner. Any other contact shall be directed to the Procurement Officer as listed in APP. Questions should reference the applicable page and paragraph number.
- 1.2. Pre-Offer Conference
  - 1.2.1. A Pre-Offer Conference will be held at the time and place indicated in the solicitation's Process field as found within APP. Attendance is not mandatory but is highly recommended.
  - 1.2.2. The purpose of the conference is to clarify the contents of the solicitation in order to prevent any misunderstanding of ADOT's position. Any doubt as to the requirements of the solicitation or any apparent omission or discrepancy should be presented to ADOT at the conference. ADOT will then determine any appropriate action necessary. If required, a written amendment to the solicitation will be issued. Oral statements or instructions will not constitute an amendment to the solicitation. Only official solicitation amendments issued by the ADOT Procurement Office through APP shall constitute a change to the solicitation.

### 2. Submitting Offers in APP

- 2.1. APP Support: To assist in the submission of an offer, Offerors are encouraged to attend the courses offered by the State Procurement Office and utilize the Quick Reference Guides available. This information can be found at <https://spo.az.gov/app/supplier/training>. Additional assistance is available through the APP Help Desk. The Help Desk can be contacted via email at [appsuppliers@azdoa.gov](mailto:appsuppliers@azdoa.gov) or via telephone support at (602) 542-7600. Offerors are encouraged to submit any requests for assistance in a timely manner in order to meet the bid due date and time identified in APP.
- 2.2. Downloading and Uploading Attachments: APP will not save information entered directly on an Attachment. For all attachments found in the Questionnaire, offerors must download, save, complete and re-attach the modified Attachments to APP.
- 2.3. Solicitation Amendments: Solicitation amendments will be issued via APP as a new round. Offerors must acknowledge receipt of the amendment. If an offer was submitted prior to the issuance of the amendment, offeror must re-submit their offer in APP. Any offer submitted in a previous round, prior to the amendment being issued, shall not be accepted.
- 2.4. APP Questionnaire and Item Tab: All required information found in the Questionnaire and Item tabs must be completed before an offer can be submitted.

### 3. Evaluation Process

- 3.1. Responsibility and Responsiveness: In accordance with A.R.S. 41-2533, and A.A.C. R2-7-B312, A.A.C. R2-7-B313, the State shall consider at a minimum, the following factors in determining Offerors' responsibility and responsiveness for Contract award.



- 3.1.1. Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
- 3.1.2. Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints and/or negative references;
- 3.1.3. Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including subcontractors;
  - 3.1.3.1. Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
- 3.1.4. Whether the Offeror promptly supplied all requested information concerning its responsibility;
- 3.1.5. Whether the Offer conforms with the requirements contained in the Specifications, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference. Failure to conform in any material respect may result in Offer being determined nonresponsive;
- 3.1.6. Whether the Offer limits the rights of the State;
- 3.1.7. Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the State necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;
- 3.1.8. Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Specifications, Terms and Conditions, or Instructions; and,
- 3.1.9. Whether the Offeror provides misleading or inaccurate information.
- 3.2. **Contract Award:** In accordance with the A.R.S. §41-2533, Competitive Sealed Bids, award(s) shall be made to the lowest responsible and responsive offeror(s) whose offer conforms in all material respects to the requirements set forth in this solicitation.

#### 4. Definition of Key Words

- 4.1. **Shall, Must:** Indicates a mandatory requirement.
- 4.2. **Should:** Indicates something that is recommended but not mandatory. If the offeror fails to provide recommended information, the State may, at its sole option, ask the offeror to provide the information or evaluate the proposal without the information.
- 4.3. **May:** Indicates something that is not mandatory but permissible

## UNIFORM INSTRUCTIONS TO OFFERORS

### A. Definition of Terms

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

1. “*Attachment*” means any item the Solicitation requires an Offeror to submit as part of the Offer.
2. “*Best and Final Offer*” means a revision to an Offer submitted after negotiations are completed that contains the Offeror’s most favorable terms for price, service, and products to be delivered. Sometimes referred to as a Final Proposal Revision.
3. “*Contract*” means the combination of the Solicitation, including the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer, any Clarifications, and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
4. “*Contract Amendment*” means a written document signed by the Procurement Officer issued for the purpose of making changes in the Contract.
5. “*Contractor*” means any person who has a Contract with a state governmental unit.
6. “*Day*” means calendar days unless otherwise specified.
7. “*eProcurement (Electronic Procurement)*” means conducting all or some of the procurement function over the Internet. Point, click, buy and ship Internet technology is replacing paper-based procurement and supply management business processes. Elements of eProcurement also include Invitation for Bids, Request for Proposals, and Request for Quotations.
8. “*Exhibit*” means any document or object labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
9. “*Offer*” means a response to a solicitation.
10. “*Offeror*” means a person who responds to a Solicitation.
11. “*Person*” means any corporation, business, individual, union, committee, club, or other organization or group of individuals.
12. “*Procurement Officer*” means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
13. “*Solicitation*” means an Invitation for Bids (“IFB”), a Request for Technical Offers, a Request for Proposals (“RFP”), a Request for Quotations (“RFQ”), or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
14. “*Solicitation Amendment*” means a change to the Solicitation issued by the Procurement Officer.
15. “*Subcontract*” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

16. “State” means the State of Arizona and Department or Agency of the State that executes the Contract.

## **B. Inquiries**

1. 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. 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.
3. 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.
4. 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.
5. 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.
6. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
7. 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.
8. 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.

## **C. Offer Preparation**

1. 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.
2. 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. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in the State's eProcurement system in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
  - 3.1. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
  - 3.2. Request for Proposals. All exceptions that are contained in the Offer may negatively impact an Offeror's susceptibility for award. An Offer that takes exception to any material requirement of the solicitation may be rejected.
4. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
5. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
6. Federal Excise Tax. The State is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
7. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number as part of the Offer.
  - 7.1 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.
8. 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.
9. 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.
10. 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).

11. 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.
12. 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.

**D. Submission of Offer**

1. 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.
2. 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. 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.
4. 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.
5. 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.
6. 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.
7. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or

other official contract form, the Offeror certifies that:

- 7.1. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
- 7.2. 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.

## **E. Evaluation**

1. 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.
2. 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.
3. 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. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
5. 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.
6. 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.
7. Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:
  - 7.1 Waive any minor informality;
  - 7.2. Reject any and all Offers or portions thereof; or
  - 7.3 Cancel the Solicitation.

## **F. Award**

1. 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.
2. 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.
3. 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.

**G. 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:

1. The name, address, email address and telephone number of the interested party;
2. The signature of the interested party or its representative;
3. Identification of the purchasing agency and the Solicitation or Contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

**H. Comments Welcome**

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.