

**COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
SIERRA AUCTION MANAGEMENT, INC.**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of November 16, 2018, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Sierra Auction Management, Inc., an Arizona corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the State of Arizona (the "State") entered into Contract No. ADSP017-174072, dated June 23, 2017 (the "State Contract"), for the Contractor to provide auctioneering services. A copy of the State Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to make purchases under the State Contract, at its discretion and with the agreement of the awarded Contractor, and the State Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the State Contract and this Agreement, and (ii) establishing the terms and conditions by which the Contractor may provide the Town with auctioneering services, as more particularly set forth in Section 2 below on an "as-required" basis (the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 22, 2019 (the "Initial Term"), unless terminated as otherwise provided in this Agreement or the State Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a "Renewal Term") if: (i) it is deemed in the best interests of the Town, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the State Contract has not expired or has been extended, (iii) at least 30 days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term and (iv) the Town approves the additional one-year term in writing (including any price adjustments approved as part of the State Contract), as evidenced by the Town Manager's

signature thereon, which approval may be withheld by the Town for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. Contractor shall provide to the Town the Services under the terms and conditions of the State Contract and as may be agreed upon by the parties.

3. Compensation. The Town shall pay Contractor a commission based on the percentage of gross sales, less any commissions and fees, as set forth in the Pricing Sheet included as part of the State Contract and that appears in Exhibit A.

4. Payments. The Contractor shall submit a copy of the reconciliation and payment to the Town, less any commissions and fees, within 30 calendar days following the sale of Town property. All payments shall reference this Agreement and State Contract

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

7. Israel. Contractor certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

8. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

10. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town’s then current fiscal year. The Town’s obligations under this Agreement are current expenses subject to the “budget law” and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town’s obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the State Contract, and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the State Contract (collectively, the “Unauthorized Conditions”), other than the Town’s project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town of any work order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the State Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. Rights and Privileges. To the extent provided under the State Contract, the Town shall be afforded all of the rights and privileges afforded to the State and shall be the “State” (as defined in the State Contract) for the purposes of the portions of the State Contract that are incorporated herein by reference.

13. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 12 above, the Town shall be afforded all of the insurance coverage and

indemnifications afforded to the State to the extent provided under the State Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

14. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:           Town of Fountain Hills  
16705 E. Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Attn: Grady E. Miller, Town Manager

With copy to:           Pierce Coleman PLLC  
4711 E. Falcon Dr., Ste. 111  
Mesa, Arizona 85215  
Attn: Aaron D. Arnson, Town Attorney

If to Contractor:       Sierra Auction Management, Inc.  
3570 W. Grand Ave.  
Phoenix, AZ 85019  
Attn: Mark Feuerer

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received: (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

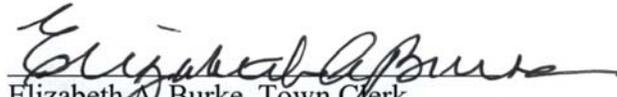
“Town”

TOWN OF FOUNTAIN HILLS,  
an Arizona Municipal Corporation

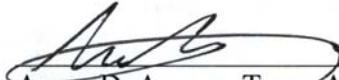
CR  
11/19/18

  
Grady E. Miller, Town Manager

ATTEST:

  
Elizabeth A. Burke, Town Clerk

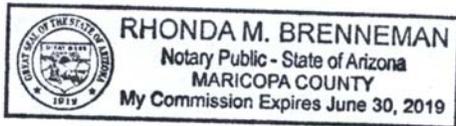
APPROVED AS TO FORM:

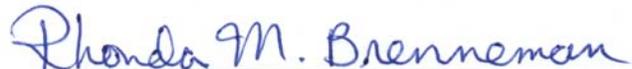
  
Aaron D. Arnson, Town Attorney

(ACKNOWLEDGEMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On November 20, 2018, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



  
Rhonda M. Brenneman  
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]







EXHIBIT A  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
SIERRA AUCTION MANAGEMENT, INC.

[State Contract]

See following pages.



### Request for Proposals

Solicitation No.  
ADSP017-00007213

Description:  
Auctioneering Services

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

## Attachment 1 Offer and Acceptance Form

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

Initial Offer:	1. 04/18/2017 date	Initial				
Revised Offers:	2. date #1	Initial	3. date #1	Initial	4. date #1	Initial
	5. date #4	Initial	6. date #5	Initial	7. date #6	Initial
Best and Final Offer:	8. 6-23-17 date	Initial				

**Sierra Auction Management, Inc.**

Offeror company name

3570 NW Grand Avenue

Address

Phoenix, Arizona 85019

City | State | ZIP

86-0561187

Federal tax identifier (EIN or SSN)

*[Signature]*

Signature of person authorized to sign Offer

*[Initials]*

Initials

Mark Feuerer, President

Printed name and title

Mark Feuerer, President

Contact name and title

mark.feuerer@sierraauction.com 602-242-7121 x109

Contact Email Address

Contact phone number

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

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2006-9 or A.R.S. §§ 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

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

State's Contract No. is: ADSP017-00007213

The effective date of the Contract is: date

Contract awarded date

174072

6/23/2017

6/23/2017

Procurement Officer signature

name

Procurement Officer printed name

Kim Kwong

PART 4 of the Solicitation Documents:  
Offer Forms (Attachments)

Date: 4/17/2017  
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# Contract Amendment

AZ DEPT. OF ADMINISTRATION  
STATE PROCUREMENT OFFICE  
100 N. 15<sup>TH</sup> AVE., STE. 402  
Phoenix, AZ 85007

CONTRACT NO.: ADSP017-174072

PAGE  
1

AMENDMENT NO.: 002

OF  
1

**CONTRACTOR:**  
SIERRA AUCTION MANAGEMENT INC  
3570 W Grand Avenue  
Phoenix, AZ 85019

**CONTACT:** Mark Feuerer  
**PHONE:** (602)242-7121  
**EMAIL:** mark.feuerer@sierraauction.com

**STATE AGENCY:**  
AZ Department of Administration (ADOA)  
State Procurement Office  
100 N. 15th Ave. Suite 402  
Phoenix, AZ 85007

**CONTACT:** Stephen Nettles  
**PHONE:** 602-542-9145  
**EMAIL:** steve.nettles@azdoa.gov

## Statewide Auctioneering Services

1. In accordance with the Uniform Terms and Conditions, 3.2 Contract Extension, the above referenced contract shall be extended from 06/24/2018 to 06/22/2019.

**All other terms, conditions and provisions remain unchanged.**

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

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



## Request for Proposals

Solicitation No.  
**ADSP017-00007213**

Description:  
**Auctioneering Services**

Arizona Department of Administration

### State Procurement Office

100 N 15th Ave., Suite 201  
Phoenix, AZ 85007

## Section 1-A: Solicitation Summary

Date: 4/4/2017

### 1.0 What State Is Soliciting:

The Arizona Department of Administration, State Procurement Office division (the State), as authorized under A.R.S. § 41-2501 is seeking to establish one or more "statewide" contracts to satisfy the needs for all state agencies, boards, and commissions, as well as participating purchasing cooperative members (collectively, the Eligible Agencies) to provide **Auctioneering Services**, which in general terms includes providing live auctioneering services for the disposition of excess property.

The Special Terms and Conditions provide a more detailed definition of Eligible Agencies, and a list of all state agencies and purchasing cooperative members is available on the State Procurement Office website at:

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

### 2.0 How State Anticipates Contracting:

The State anticipates awarding multiple contracts. Whether or not it actually enters into any contracts, how many contracts it enters into, and how work is awarded among those contracts are all at the State's discretion. Further, the State will use any assigned contracts on an as-needed basis; it makes no guarantee as to its actual spending under them.



## Request for Proposals

Solicitation No.  
**ADSP017-00007213**

Description:  
**Auctioneering Services**

Arizona Department of  
Administration

**State Procurement Office**

100 N 15th Ave., Suite 201  
Phoenix, AZ 85007

### 3.0 What's in the Solicitation:

<b>1</b>	<b>ProcureAZ file #1: ADSP017-00007213 RFP Solicitation Documents Auctioneering Services</b>	
	<b>Part 1: Summary and Instructions</b>	Section 1-A: <b>Solicitation Summary</b> Section 1-B: <b>Standard Instructions to Offerors</b>
<b>2</b>	<b>ProcureAZ file #1: ADSP017-00007213 RFP Solicitation Documents Auctioneering Services)</b>	
	<b>Part 2: Scope and Pricing Documents</b>	Section 2-A: <b>Scope Document (Scope of Work)</b> Section 2-B: <b>Pricing Document</b>
<b>3</b>	<b>ProcureAZ file #1: ADSP017-00007213 RFP Solicitation Documents Auctioneering Services</b>	
	<b>Part 3: Contract Terms and Conditions</b>	Section 3-A: <b>Special Terms and Conditions</b>
		Exhibit 3-A.1: <b>Contractor Insurance Requirements</b>
		Exhibit 3-A.4: <b>Supplemental Provisions for Privacy Protection</b>
		Exhibit 3-A.5: <b>Supplemental Provisions for Services Disentanglement</b>
		Section 3-B: <b>Uniform Terms and Conditions</b>
<b>4</b>	<b>ProcureAZ file #1: ADSP017-00007213 RFP Solicitation Documents Auctioneering Services</b>	
	<b>Part 4: Offer Forms (Attachments)</b>	

### 4.0 How and When Proposals Are Due:

Proposals will only be accepted online in the "ProcureAZ" system at <https://procure.az.gov> until the "Bid Opening Date" indicated in ProcureAZ for the Solicitation No. shown at the top of this page. Proposals must be in the State Procurement Office's possession online no later than that deadline.

LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in ProcureAZ.

**OFFERORS SHOULD READ THE ENTIRE SOLICITATION CAREFULLY.**

### 5.0 Pre-Offer Conference

State **will not** conduct an **optional** Pre-Offer Conference for this Solicitation. Refer to paragraph 2.8 of the [Instructions to Offerors](#) for more information.

### 6.0 Offer Validity Period

You must hold the Offer open for **120 (one hundred twenty) days** after the "Bid Opening Date" indicated in the ProcureAZ. Refer to paragraph 6.1 of the [Instructions to Offerors](#) for more information.

PART 1 of the Solicitation Documents:  
Summary and Instructions

SECTION 1-A: **Solicitation Summary**

Date 4/4/2017

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1



**Request for Proposals**

Solicitation No.  
**ADSP017-00007213**

Description:  
**Auctioneering Services**

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

**7.0 Required Attachments (Part 4 of the Solicitation Documents: Offer Forms)**

To be Responsive, your Initial Offer must contain all of the following Attachments:  
Refer to paragraph 4.2 of the Instructions to Offerors for more information.

No.	Title	Offeror Action Required	Form Provided
<b>Attachment 1</b>	<b>Offer and Acceptance Form</b>	Refer to paragraph 3.4 Evidence of Intent and 4.9 Offeror Certification of the <u>Instructions to Offerors</u> .	✓
<b>Attachment 2-A with Appendices and Supplements</b>	<b>Experience and Capacity Questionnaire</b>	Provide all required information and answer all questions with respect to your company's ability to <b>do the work of this Solicitation</b> : experience with similar scope and clients, staff having the relevant experience, manufacturing/ distribution capacity, etc.	✓
<b>Attachment 2-B with Appendices and Supplements</b>	<b>Organization Profile</b>	Provide the required information and answer the questions with respect to your <b>company in general</b> : organization and structure; financial health; licenses, certifications, etc.	✓
<b>Attachment 3-A with Appendices and Supplements</b>	<b>Method Proposal (Method of Approach)</b>	Provide your proposal <b>specific to this Solicitation</b> as to the means and methods you will apply to carrying out the Work.	✓
<b>Attachment 3-B</b>	<b>Key Personnel Proposal</b>	List the proposed key personnel and assignments; provide resumes as Attachment Supplements.	✓
<b>Attachment 3-C with Supplements</b>	<b>Proposed Subcontractors</b>	List the proposed Subcontractors and scope to be delegated to each.	✓
<b>Attachment 3-D with Appendices</b>	<b>Performance Guarantee</b>	Provide industry and company standard performance guarantees, standards, and remedies	✓
<b>Attachment 3-E with Appendices</b>	<b>Israel Boycott Form</b>	Provide the required information and answer the question.	✓
<b>Attachment 4 with Appendices</b>	<b>State Pricing Document</b>	Enter prices, rates, mark-ups, discounts, and other pricing data on every item for which Offer is being made. Refer to Article 4 below.  NOTE: The completed Attachment 4 from the Accepted Offer will become <u>Exhibit 1 to the Commercial Document</u> (Section 2-B of the Solicitation) in the Contract.	✓
<b>Supplements to Attachment 4</b>	<b>Contractor Price Lists/ Catalogs</b>	Not Used/Reserved	×
<b>Attachment 5-A with Supplements</b>	<b>Designation of Confidential Information</b>	Indicate what, if any, information in Offer is confidential, trade secret or proprietary (see paragraph 4.7 of the Instructions to Offerors).	✓



### Request for Proposals

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Administration

**State Procurement Office**

100 N 15th Ave., Suite 201  
Phoenix, AZ 85007

No.	Title	Offeror Action Required	Form Provided				
Attachment 5-B	Conformance Statements	Attest that Offer conforms to the Solicitation (see paragraph 3.5 of the Instructions to Offerors)	✓				
Attachment 5-C with Supplements	Insurance and Bonding Evidence	Provide the following as indicated by the "●" mark; if neither one is marked, then no Attachment 5-C is required: <table border="1" style="margin-top: 10px;"> <tr> <td><input checked="" type="radio"/></td> <td>Satisfactory evidence that the required insurance called for in <u>Exhibit 1</u> to the <u>Special Terms and Conditions</u> is already in place by current certificate of insurance or that Contractor can obtain it by broker's letter.</td> </tr> <tr> <td><input type="radio"/></td> <td>Satisfactory surety letters as evidence that Contractor can obtain the required bonds or other security called for in <u>Exhibit 1</u> to the <u>Special Terms and Conditions</u>.</td> </tr> </table>	<input checked="" type="radio"/>	Satisfactory evidence that the required insurance called for in <u>Exhibit 1</u> to the <u>Special Terms and Conditions</u> is already in place by current certificate of insurance or that Contractor can obtain it by broker's letter.	<input type="radio"/>	Satisfactory surety letters as evidence that Contractor can obtain the required bonds or other security called for in <u>Exhibit 1</u> to the <u>Special Terms and Conditions</u> .	×
<input checked="" type="radio"/>	Satisfactory evidence that the required insurance called for in <u>Exhibit 1</u> to the <u>Special Terms and Conditions</u> is already in place by current certificate of insurance or that Contractor can obtain it by broker's letter.						
<input type="radio"/>	Satisfactory surety letters as evidence that Contractor can obtain the required bonds or other security called for in <u>Exhibit 1</u> to the <u>Special Terms and Conditions</u> .						
Attachment 5-D	Offer Checklist	Attest that each item on the checklist has been provided with or as part of Offer.	✓				
Attachment 6	Additional Attachments	Any other documentation required by the Solicitation to be submitted with or as part of Offer.	×				

## 8.0 Required Pricing

### 8.1 Pricing for Service

#### 8.1.1

Please reference Section 2-B: Pricing Document and Part 4 - Offer Forms Attachment 4.

Offeror to enter proposed Pricing in the Items Tab in Procure AZ for the following item: Firm, fixed price for all services and deliverables, as stated in the Scope of Work.

**Note that the availability of State funds is tight and limited, and Offerors are expected to provide their very Best Offers from the onset. Arizona State Contractors are expected to maintain a strong fiduciary duty for saving tax dollars and will be evaluated on the lowest total cost to the State while maintaining the highest standards in Quality, Availability, and Service.**

#### 8.1.2

Offeror to agree that the rates charged for Services, Products, and Deliverables shall be the same or lower than rates charged to other similarly situated customers of similar condition and size, with similar dollar



## Request for Proposals

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Arizona Department of  
Administration

### State Procurement Office

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Phoenix, AZ 85007

volume of business, and substantially similar services and staffing levels mix who purchase comparable services in the same configuration and quantities.

#### 8.1.3

In the event the State exercises its option to renew the contract for additional periods as stated under sub heading **EXTENSIONS** of this document, the offeror should provide the maximum percentages of increase or minimum percentage of decrease for each renewal period in the spaces below. The offeror is cautioned that the percentages shall be computed against the **ORIGINAL** contract price for each renewal period. Be advised that the State of Arizona does not automatically grant increases at the time of renewing the contract and that if an increase is requested proper documentation must be provided at the time of renewal.

## 9.0 Evaluation Criteria

In accordance with A.A.C. R2-7-C316, each Offer will be evaluated on the following criteria, listed in their relative order of importance from most important to least:

1. **OFFEROR'S COST PROPOSAL**, as provided in Offeror's response to Attachment 4.
2. **OFFEROR'S PROPOSED APPROACH**, as set out in Offeror's response to Attachment 3-A, taken together with Offeror's responses to Attachments 3-B, 3-C, 3-D, 5-B, and 5-C, and any other aspect of the Offer that Procurement Officer determines is appropriate.
3. **OFFEROR'S EXPERIENCE AND CAPACITY**, as demonstrated in Offeror's response to Attachment 2-A, taken together with Offeror's responses to Attachment 2-B and any other aspect of the Offer that Procurement Officer determines is appropriate.

**Please Note: OFFEROR'S ADHERENCE TO THE STANDARD AND UNIFORM TERMS AND CONDITIONS will also be evaluated.**

## 10.0 Special Instructions

Please note that Offeror may be required to complete the Arizona Baseline Infrastructure Security Controls Questionnaire as part of the evaluation for further negotiations. Failure to pass the Arizona Baseline Infrastructure Security Controls will result in insusceptibility and Offeror will not be awarded contract per A.P.C. R2-7-C311 (Determination of Not Susceptible for Award). Information regarding this is provided under the Special Terms & Conditions.

**End of Section 1-A**



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**ADSP017-00007213**  
 Description:  
**Auctioneering Services**

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

Section 2-A:  
**Scope Document**  
 (Scope of Work)

Date: **4/12/2017**

**1. Purpose**

This document constitutes a Request for Proposal ("RFP") via competitive proposals from qualified organizations to provide the requirements of the Scope of Work herein.

- 1.1. The State of Arizona, its agencies, boards and commissions (State) as well as participating members of the Arizona State Purchasing Cooperative (Cooperative), have an ongoing requirement for various Auctioneering Services as described herein. The purpose of the Solicitation is to conduct a competitive process, in accordance with Arizona Revised Statutes (ARS) 41-2501 et seq., to create a contract or contracts from which the State and its Cooperative members may acquire these services.

**2. Objective and Background**

- 2.1. The State of Arizona desires to establish a contract set for Auctioneering Services to include disposal of excess/surplus property no longer required by the State. The primary method of the disposal of excess/surplus property is identified through public sales or auctions. There shall be two parts of the auctioneering services required: Auctioneering at the State or Political Subdivision Facility and Auctioneering Services Provided at Contractor's Sale Site.
- 2.2. Any resulting contract(s) resulting from this solicitation are intended to provide The State of Arizona; its agencies, boards and commissions (State), as well as participating members of the Arizona State Purchasing Cooperative with regularly scheduled live auctioneering services for the disposition of excess property.
- 2.3. Estimated Number of Auctions (in a 12 month period):

**Auctioneering Services**

Using Agency (each)	Number of Auctions (per year)	Estimated Amount
ADOA Surplus	3-5 or as needed	\$400,000.00

**Please Note: There is no expressed guarantee of minimum number of auctions or predetermined amount of property to be auctioned. Auctions are to be held Saturdays only and date to be determined at the discretion of the Surplus Administrator.**

PART 2 of the Solicitation Documents:  
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**SECTION 2-A: Scope Document (Scope of Work)**

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**Full Service Auctioneering Services at Contractors Location**

Using agency shall have the digression to sell the items on-site or at the contractors site.

2.5 Estimated Types of Property:

**Day of Sale Auctioneering Services Only**

Using Agency:

ADOA Surplus                      70% Motor Vehicles, 30% Miscellaneous

**Please Note: There is no expressed guarantee of ratios or percentages.**

### 3. Contractor Qualifications

- 3.1. Contractor shall have a minimum of three (3) years of experience in conducting large scale auctions. The auction experience shall be appropriate with the type of property auctioned by the State and Cooperative members and equivalent in gross proceeds. References, credit history, Better Business Bureau, and Attorney General's Consumer Fraud Division records may be used to supplement and validate Contractor's status.

### 4. General Contractor Requirements

**4.1. Presale Setup (At the discretion and approval by the Using Agency)**

- 4.1.1. Contractor shall arrange / setup / lot the property to be sold.
- 4.1.2. Contractor shall assign lot numbers and prepare a lot list for the sale, The lot list shall include at minimum: a lot number for each lot being sold; basic description of the items in the lot; any known defects in the lot; sold; mileage and odometer "box" information if known for vehicles; a disclaimer that all items are being sold "as is – where is" with no warranty or guarantee provided; a list of terms and conditions which the Using Agency has approved including terms for payment and removal. The contractor may include photographs of the property being sold within a printed lot list or on the Contractors web presence.
- 4.1.3. Contractor shall provide the Using Agency with a lot list showing the Using Agencies lots a minimum of five days prior to sale.
- 4.1.4. Contractor shall ensure titles to any titled equipment are correct and have been properly annotated / signed.
- 4.1.5. Contractor shall hold a public presale inspection for a minimum of three (3) days in the five (5) days prior to the sale. Contractor shall staff the presale inspection.

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**4.2. Advertising**

- 4.2.1. Contractor shall advertise the sale in accordance with the Arizona Administrative Code R2-15-303 as well as in any promotional advertising the contractor may employ in the normal course of its business.
- 4.2.2. Contractor shall advertise the sale on the Contractor's web presence at least three (3) weeks prior to the sale date.
- 4.2.3. Contractor shall post the lot list on the Contractor's web presence at least five (5) days prior to the sale.
- 4.2.4. Contractor shall devote the time and effort necessary with using agencies to generate maximum profits from the lots consigned including featuring the consigners property in advertising for the sale.

**4.3. Date and Time of Auctions**

- 4.3.1. Using Agency shall notify the Contractor in a timely manner the date and time when an auction is to be held. Thirty (30) days minimum notice shall be provided prior to each auction unless mutually agreed upon. A cancellation shall result in a \$500.00 fee reciprocal to either party.

**4.4. Day of Sale Activities**

- 4.4.1. Contractor shall provide all services including but not limited to: auctioneering, clerking, cashiering, load out of property to ensure a successful sale of the consigners property.
- 4.4.2. Contractor shall open the sale site for presale inspection at least one (1) hour prior to the scheduled auction start time.
- 4.4.3. Contractor shall have some method of tracking individual buyers via a registration system.
- 4.4.4. At the beginning of each auction, the Contractor shall announce the terms and conditions of the auction and other information specifically provided by the Using Agency.
- 4.4.5. All items or lots shall be sold to the highest bidder. The Using Agency reserves the right to set a minimum bid on items consigned to the auction. The Using Agency shall notify the Contractor of any minimum bids at the time the property is consigned to the Contractor for sale.
- 4.4.6. Contractor shall collect the monies generated by the sale including any taxes (if applicable) and issue a numbered receipt to the successful buyer. The receipt shall contain at minimum: receipt number, Buyers name and address, lots purchased, purchase price, sales tax collected or resale number if no tax collected (if applicable) as well as a statement which stipulates all property is purchased, "As is – where is with no warranty or guarantee stated or implied."

**4.5. Post-Sale Reconciliation Activities**

- 4.5.1. Contractor shall provide a complete list of all successful sales for the Using Agency including the winning bidder information, lot selling price, proceeds collected, amount charged to sell each lot, and tax collected (if applicable) no later than ten (10) business days after the completion of sale.
- 4.5.2. **Auctioneering Services Provided at the Contractor Sale Site Only** - Contractor shall remit the gross proceeds of the property sold for the Using Agency (auction) less the Contractor's percentage to the Using Agency in the form of a bank cashier's check made payable to the Using Agency no later than ten (10) business days after completion of the sale.
- 4.5.3. In the event a bidder defaults on a purchase, it is the Contractor's responsibility to collect the money or property with no assistance from or cost to the Using Agency. Further, the Contactor shall notify the

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Using Agency of any defaulted or otherwise unsold lots within ten (10) business days after completion of the sale. The Contractor will at the Using Agency sole option either consign the property to the Contractor's sale or deliver the property back to the Using Agency's location. The Contractor shall in no event charge the Using Agency any fees, percentages or other charges relating to any defaulted / unsold lot.

- 4.5.4. **Auctioneering at State or Political Subdivision Facility Only** - Payment to the Using Agency shall be made no later than five (5) business days after auction close. The funds returned to the Using Agency shall be the gross proceeds less sales tax amount of the auction. The Contractor shall invoice the Agency thirty (30) days after auction close.

## 5. Auctioneering at State or Political Subdivision Facility

### 5.1. Contractor's Responsibilities:

5.1.1. The Contractor shall furnish all necessary qualified personnel, services, supplies, equipment and transportation to conduct auctions in a professional manner with the following minimum requirements as listed below:

- 5.1.1.1. Contractor shall provide a minimum of two (2) Premium Auctioneers, two (2) Pit Men (one auctioneer rotating may substitute as a Pit Man), one (1) clerk and at least one (1) person to register prospective bidders.
- 5.1.1.2. Contractor shall set up and maintain a presence at the location of auction as necessary to comply with the terms of this scope and at the discretion of the Surplus Property Administrator.
- 5.1.1.3. Contractor shall issue a registration number to all interested buyers at each auction. Contractor shall supply sufficient infrastructure to register interested buyers electronically and timely before start of auction. Contractors shall supply electronic bidder registration information to the agency after auction.
- 5.1.1.4. Bidder registration shall begin no later than 24 hours prior to auction. Contractor shall supply necessary staff for bidder registration and auction viewing at least one (1) day prior to the start of the auction.
- 5.1.1.5. Contractor shall furnish the mobile units, public address systems, recording mechanisms and all other necessary equipment and supplies.
- 5.1.1.6. At the beginning of each auction, the Contractor shall announce the terms and conditions of the auction and other information as may be provided by the Using Agency.
- 5.1.1.7. Contractor shall devote the time and effort necessary to generate maximum profits from the auction including promotions of the auction at other auctioneering activities.
- 5.1.1.8. Contractor is responsible for paper and electronic advertising and auction dates shall be published no less than thirty (30) days prior to the auction.
- 5.1.1.9. All items or lots shall be sold to the highest bidder. The Using Agency reserves the right to reject any and all bids at the auction. Any bid item that is rejected shall not be included in the gross sales calculation.

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- 5.1.1.10. Contractor shall furnish the Using Agency with an accurate written sales record including the lot number, sale price, and the number of the successful bidder.
- 5.1.1.11. Contractor shall at the request of the Using Agency furnish the Using Agency with a recording of the entire auction proceedings on a medium requested by the Using Agency (i.e.: Cassette tapes, Compact Disc, Digital Files).
- 5.1.1.12. Contractor shall remove all auctioneering equipment on the day of the auction or at the discretion of the Using Agency.
- 5.1.1.13. **At the discretion and approval of the Using Agency**, Contractor shall make all items available through online bidding regardless of the location of the auction. Bidding must open five (5) days prior to any live auction event.
- 5.1.1.14. The contractor shall inventory and catalog items to be listed in the auction and provide the list to the Using Agency. And, provide all information related to gavel amount, fees, or other pertinent auction data as requested by the Using Agency.

**5.2. Pricing – Auctioneering Services at a State or Political Subdivision Facility**

- 5.2.1. The Contractor shall be compensated for all sales in the auction paid at the rate of compensation (%) upon signed agreement on Exhibit 1 of Section 2-B: Pricing.
- 5.2.2. Charging a "Buyer's Premium" shall not be allowed under any resulting contract for this service. The lotting and pricing strategies are at the discretion of the Using Agency.
- 5.2.3. The contractor shall provide lotting services or other price related services to the Using Agency at the request of the Using Agency.

**5.3. Location of Sales**

- 5.3.1. Auctions generally will be held within a 35-mile radius of Metropolitan Phoenix on State of Arizona property. Auctions may be held at other locations as required by the Using Agency.

**5.4. Using Agency Responsibilities**

- 5.4.1. Using Agency shall advertise the auction in accordance with the Arizona Administrative Code including media advertisement and mailing brochures.
- 5.4.2. Using Agency shall include the following statement in all brochures:

*"Equipment irrespective of its location shall be sold on an "as is" basis. Neither the State of Arizona nor any of its departments or institutions, nor the auctioneer make any guarantee or warranty of any kind, express or implied, as to the condition of the article offered for sale."*

**5.4.3. Using Agency shall provide the Contractor with a listing of all items to be auctioned.**

- 5.4.4. Using Agency shall have the items to be auctioned set up in appropriate configured and numbered lots. The lot composition is at the discretion of the using agency. The Using Agency may consider all proposals from the Contractor relating to safety, pricing, efficiency, or other factor that may influence the outcome of the auction
- 5.4.5. Using Agency may provide the appropriate personnel to assist in loading property.
- 5.4.6. Using Agency may provide adequate security.

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- 5.4.7. Using Agency may furnish clerical personnel to prepare the appropriate transfer forms and handle the process.
- 5.4.8. Using Agency may provide the necessary staff to manage the auction process to ensure the integrity of the auction process.

## 6. Auctioneering Services Provided at Contractor's Sale Site

### 6.1. Contractor's Responsibilities

- 6.1.1. The Contractor shall have and maintain a Public Consignment Auction Dealer license as defined by ARS 28-4301.
- 6.1.2. The Contractor shall furnish all necessary qualified personnel, services, supplies, and equipment to conduct auctions in a professional manner with the following minimum requirements:
- 6.1.3. Contractor shall be responsible for all work necessary to sell consigned property a live auction sale at the Contractors location. For the purposes of this contract an auction broadcast online satisfies the requirement of live auction sale if it occurs at the contractors site.
- 6.1.4. Contractors shall secure all property consigned to it for sale by the Using Agency in a manner which prevents damage or theft.
- 6.1.5. Contractor shall store and display all property consigned to it for sale by the Using Agency in such a way as to maximize the selling price of the property.
- 6.1.6. Contractor shall use a system of marking or coding to uniquely identify the property (owner code) for all property consigned to it by the Using Agency for sale. The Using Agency may request the use of more than one owner code to identify property consigned to the Contractor for sale and the contractor shall comply. Note: some Using Agencies may request multiple owner codes.
- 6.1.7. Contractor shall not mix or comingle property consigned to it for sale by the Using Agency with other property consigned to it by others within the samelot.
- 6.1.8. Contractor shall not mix or comingle property consigned by the Using Agency for sale with different owner codes within the same lot.
- 6.1.9. Contractor shall provide restroom facilities for use by auction attendees.
- 6.1.10. Contractor shall provide all necessary information relating to sale of the items within thirty (30) days of the auction.
- 6.1.11. Contractor shall provide food concessions on a fee for service basis and / or water stations for use by auction attendees.
- 6.1.12. Contractor shall provide vehicle parking for auction attendees at no cost to the attendee.
- 6.1.13. Contractor shall provide auction lot lists at no cost to the attendee.
- 6.1.14. Contractor shall provide loading services to the successful bidders at no cost to the bidder except where the Using Agency has agreed in advance of the sale the buyer must load specific lots.
- 6.1.15. Contractor shall not charge pre-sale or post sale storage fees to the Using Agency.

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6.1.16. Contractor shall not accept consignments for sale from the Using Agency for the following items: live animals, firearms, vehicles with altered or illegal VIN numbers, explosive devices for the purposes of this contract.

**6.2. Pricing - Auctioneering Services Provided at Contractors Sale Site**

6.2.1. The Contractor shall be compensated for all sales in the auction paid at the rate(s) of compensation upon signed agreement on Exhibit 1 of Section 2-B: Pricing.

6.2.2. Any bid item that is rejected or not paid for shall not be subject to the gross sales amount for calculating Contractor's fee for services.

6.2.3. The Contractor may offer two pricing proposals for this service:

6.2.3.1. Pricing proposal that does not include a "Buyer's Premium."

6.2.3.2. Pricing proposal that does include a "Buyer's Premium." If the Contractor elects to provide a pricing proposal that includes a "Buyer's premium", the Contractor shall include the amount (percentage or flat) on the ProcureAZ line item.

**Note: Including a "Buyers premium" pricing proposal, the amount of the "Buyers premium" will be included in the price calculation as part of the evaluation.**

6.2.4. Contractor shall fully disclose the expected rate of compensation for the general categories of items as listed below on ProcureAZ:

- Heavy Equipment including equipment typically associated with road construction, building construction or road maintenance included but not limited to road graders, front end loaders, bull dozers, road rollers, rock crushing and processing equipment, cranes (all types), forklifts (all types), scrapers, backhoes, grade tractors, man lifts, and excavators (tracked or wheeled), generators over 20KW rating.
- Class 6-8 Trucks and trailers with a GVWR of over 10,000 pounds
- Class 1-5 Trucks and passenger motor vehicles (including but not limited to: Trucks, Sedans, Vans, SUV's, Crossovers, and Hybrids)
- Miscellaneous Property: IT hardware, office furniture, commercial kitchen equipment, fabrication equipment, automotive repair equipment, vehicle parts, and other items not called out in specific categories.
- Aircraft
- Jewelry, Coins, Precious and Semiprecious Stones and Metals.

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**6.3. Location of Sales**

6.3.1. Contractor shall sell all property from Sales Sites physically located within the State of Arizona.

**6.4. Using Agency Responsibilities**

6.4.1. Using Agency shall deliver the property to be included in the Contractor's sale to the Contractor's Sale Site in accordance with the Contractor's schedule for sale.

6.4.2. Using Agency shall ensure titles to Motor Vehicles and other titled equipment are appropriately annotated accompanied by a lien release if applicable and delivered timely to the Contractor.

6.4.3. Using Agency shall notify the Contractor of any known deficiencies in the equipment or materials to be sold.

6.4.4. Using Agency shall notify at the time of delivery to the Contractor or within five (5) working days after delivery of any reserve or minimum bid price.

## 7. Compensation

7.1. The only compensation permitted under this section of the solicitation is stipulated on the ProcureAZ line items. No other fees, percentage charges, charges for ancillary or preparatory work; including but not limited to: detailing, repair or refurbishment, or other charges shall be permitted.

## 8. Contract Administration and Deliverables

**8.1. Standards for the Contractor**

8.1.1. The Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

8.1.2. Contractor shall only assign personnel who, regardless of position, role, or duties, are appropriately alert, fit, qualified, trained, and equipped for their assignments. Contractor shall:

8.1.2.1. Provide adequate numbers of appropriately qualified and authorized personnel as necessary to successfully fulfill contract requirements;

8.1.2.2. Assign, at minimum, the key personnel identified in the Accepted Offer/Contract to the positions, roles, and/or duties indicated therein; and,

8.1.2.3. Not remove or reassign any key person without the State's prior consent, which the State may deny at its discretion.

**8.2. Data Protection**

8.2.1. The Contractor must comply with the Arizona Baseline Infrastructure Security Controls. The Contractor shall complete a Baseline Security Controls Questionnaire as required by the State. Failure to pass the Arizona Baseline Infrastructure Security Controls will result in insusceptibility and Offeror will not be awarded contract per A.P.C. R2-7-C311 (Determination of Not Susceptible for Award). Information regarding this is provided under the Special Terms & Conditions of this Solicitation.

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**8.3. Confidentiality**

- 8.3.1. The Contractor shall limit property and information access to only those individuals who need access in order to render services pursuant to the Contract.
- 8.3.2. The Contractor shall maintain all records and confidential materials in a secure manner during the term of the Contract and for a minimum period of three (3) years following the expiration or termination of the Contract.
- 8.3.3. The Contractor shall immediately notify the State Agency in writing in the event the Contractor determines, or has reason to suspect, a breach of confidentiality.

**8.4. Reporting Requirements**

- 8.4.1. At the request of the Arizona Department of Administration State Procurement Office ("SPO"), Contractor shall submit to ADOA SPO an annual spends report by the State and any state agencies and/or Co-Ops at no additional costs.
- 8.4.2. At the request of the Arizona Department of Administration State Procurement Office ("SPO"), Contractor shall provide monthly billing for the previous month within thirty (30) days of the end of each month in the required format, which includes the dollar amount charged to the Agency, date serviced, service rendered, quantity, unit of measure, price per unit, and total monthly amount due, with Line Item.
- 8.4.3. At the request of the Arizona Department of Administration State Procurement Office ("SPO"), Contractor shall submit to the SPO copies of Contractor's balance sheet, income statement and cash flow statement, prepared in accordance with Generally Accepted Accounting Principles (GAAP) within three (3) months of the period closing date specified by the SPO. If GAAP is applicable to the Contractor, these financial statements must include either an independent auditors' opinion or a signed management letter that states that the financial statements provided to the State conform to GAAP.
- 8.4.4. Contractor shall provide ad-hoc reports requested by the Arizona Department of Administration State Procurement Office ("SPO"), and/or to the State at no additional charge.
- 8.4.5. The Contractor shall submit corrected reports to replace reports containing errors or inaccurate information within five (5) business days from the date of notification.

**8.5. Performance Standards**

- 8.5.1. Contractor shall provide quality services, meeting or exceeding the State-approved industry standards. Should the State identify any deficiency in the Contractor's performance of the Contract, Contractor shall take immediate corrective action and provide a written corrective action plan within fourteen (14) days, as requested by the State, with any such corrective action plan including at least the following:
  - 8.5.1.1. Reference to specific error or finding;
  - 8.5.1.2. Root cause analysis;
  - 8.5.1.3. Name and title of the person accountable for implementing and overseeing the action plan;

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- 8.5.1.4. Corrective action items, including specific deliverables and anticipated completion date(s), or the reason corrective action is not necessary;
- 8.5.1.5. Disclosure of the metrics used to measure the success of each deliverable;
- 8.5.1.6. Member notification process if applicable; and
- 8.5.1.7. Notification upon completion of issue resolution.

## 9. Exhibits to the Scope of Work

- Exhibit 1 - Reserved

### Section 2-A

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	<b>Solicitation Amendment</b>	Arizona Department of Administration State Procurement Office 100 N. 15 <sup>th</sup> Avenue, Suite 201 Phoenix, AZ 85007
	<b>ADSP017-00007213 Auctioneering Services</b>	
	<b>Amendment 1</b>	

### Auctioneering Services

In accordance with A.P.C. R2-7-C303, Solicitation Amendment, the following corrections have been made to the Section 2-A: Scope Document (Scope of Work) dated 4/4/2017:

1) Section 4 General Contractor Requirements

4.1 Presale Setup (**At the discretion and approval by the Using Agency**) – language in red was added.

4.5 Post-Sale Reconciliation Activities - language in red was added for 4.5.2 and 4.5.4:

**4.5.2 Auctioneering Services Provided at the Contractor Sale Site Only** - Contractor shall remit the gross proceeds of the property sold for the Using Agency (auction) less the Contractor's percentage to the Using Agency in the form of a bank cashier's check made payable to the Using Agency no later than ten (10) business days after completion of the sale.

**4.5.4 Auctioneering at State or Political Subdivision Facility Only** - Payment to the Using Agency shall be made no later than five (5) business days after auction close. The funds returned to the Using Agency shall be the gross proceeds less sales tax amount of the auction. The Contractor shall invoice the Agency thirty (30) days after auction close.

2) Section 5 Auctioneering at State or Political Subdivision Facility

5.1 Contractor's Responsibilities – language in red was added for 5.1.1.13

5.1.1.13 **At the discretion and approval of the Using Agency**, Contractor shall make all items available through online bidding regardless of the location of the auction. Bidding must open five (5) days prior to any live auction event.

5.4 Using Agency Responsibilities – Numbering Sequence was corrected after 5.4.2 to Section 6

5.4.3-5.4.8 replaced 3.5.3 -3.5.8 (see Amended Scope)

# Pricing Sheet

## INSTRUCTIONS:

As part of your ProcureAZ proposal response, the attachment shall be completed and saved as a singular file; in Adobe Acrobat (PDF) format, titled: "Pricing Sheet – Offeror Name"

There are three pricing methods acceptable for the two auctioneering services categories:

- Rate of Compensation (%) for Day of Sale Auctioneering Services at a State or Political Subdivision Facility (No Buyers Premium allowed).
- Rate of Compensation (%) for Auctioneering Services at a Contractors Location (Excluding a Buyer's Premium).
- Rate of Compensation (%) for Auctioneering Services at a Contractors Location (Including include a Buyer's Premium).

**For consistency in proposal responses, potential Offerors shall use the following numerical representations of percentages proposed. For example: Six percent shall be denoted as 6%; Six-tenths of one percent shall be denoted as 0.6%; Six-one-hundredth of one percent shall be denoted as 0.06%; Six-one-thousandth of one percent shall be denoted as 0.006%.**

---

### Day of Sale Auctioneering Services at a State or Political Subdivision Facility

1. Rate of compensation (R.O.C.) for providing Day of Sale Auctioneering Services at a State or Political Subdivision Facility (No Buyers Premium allowed).

Total R.O.C. 10 %

---

### Auctioneering Services at a Contractors Location

2. Rate of compensation (R.O.C.) in providing auctioneering services EXCLUDING a "Buyer's Premium" (B.P.) for specific items: Heavy Equipment - Equipment typically associated with road construction, building construction or road maintenance included but not limited to road graders, front end loaders, bull dozers, road rollers, rock crushing and processing equipment, cranes (all types), forklifts (all types), scrapers, backhoes, grade tractors, man lifts, and excavators (tracked or wheeled), generators over 20KW rating.

Total R.O.C. 13.9 %

3. Rate of compensation (R.O.C.) in providing auctioneering services EXCLUDING a "Buyers Premium" (B.P.) for specific items: Class 6-8 Trucks and trailers with a GVWR over 10,000 pounds.

Total R.O.C. 13.9 %

4. Rate of compensation (R.O.C.) in providing auctioneering services EXCLUDING a "Buyers Premium" (B.P.) for specific items: Class 1-5 Trucks and passenger motor vehicles (including but not limited to: Trucks, Sedans, Vans, SUV's, Crossovers, and Hybrids).

Total R.O.C. 13.9 %

5. Rate of compensation (R.O.C.) in providing auctioneering services EXCLUDING a "Buyers Premium" (B.P.) for Miscellaneous Property: IT hardware, office furniture, commercial kitchen equipment, fabrication equipment, automotive repair equipment, vehicle parts, and other items not called out in specific categories.

Total R.O.C. 18.9 %

6. Rate of compensation (R.O.C.) in providing auctioneering services EXCLUDING a "Buyers Premium" (B.P.) for Aircraft.

Total R.O.C. 13.9 %

7. Rate of compensation (R.O.C.) in providing auctioneering services EXCLUDING a "Buyers Premium" (B.P.) for specific items: gold and silver bearing jewelry and watches, coins, precious and semi precious stones; gold, silver and/or other precious metals in bullion or other form.

Total R.O.C. 18.9 %

- 
8. Rate of compensation (R.O.C.) in providing auctioneering services INCLUDING a "Buyer's Premium" (B.P.) for specific items: Heavy Equipment - Equipment typically associated with road construction, building construction or road maintenance included but not limited to road graders, front end loaders, bull dozers, road rollers, rock crushing and processing equipment, cranes (all types), forklifts (all types), scrapers, backhoes, grade tractors, man lifts, and excavators (tracked or wheeled), generators over 20KW rating.

R.O.C. 1.9 % + B.P. 12 % = Total R.O.C. 13.9 %

9. Rate of compensation (R.O.C.) in providing auctioneering services INCLUDING a "Buyers Premium" (B.P.) for specific items: Class 6-8 Trucks and trailers with a GVWR over 10,000 pounds.

R.O.C. 1.9 % + B.P. 12 % = Total R.O.C. 13.9 %

10. Rate of compensation (R.O.C.) in providing auctioneering services INCLUDING a "Buyers Premium" (B.P.) for specific items: Class 1-5 Trucks and passenger motor vehicles (including but not limited to: Trucks, Sedans, Vans, SUV's, Crossovers, and Hybrids).

R.O.C. 1.9 % + B.P. 12 % = Total R.O.C. 13.9 %

11. Rate of compensation (R.O.C.) in providing auctioneering services INCLUDING a "Buyers Premium" (B.P.) for Miscellaneous Property: IT hardware, office furniture, commercial kitchen equipment, fabrication equipment, automotive repair equipment, vehicle parts, and other items not called out in specific categories.

R.O.C. 6.9 % + B.P. 12 % = Total R.O.C. 18.9 %

12. Rate of compensation (R.O.C.) in providing auctioneering services INCLUDING a "Buyers Premium" (B.P.) for Aircraft.

R.O.C. 1.9 % + B.P. 12 % = Total R.O.C. 13.9 %

13. Rate of compensation (R.O.C.) in providing auctioneering services INCLUDING a "Buyers Premium" (B.P.) for specific items: gold and silver bearing jewelry and watches, coins, precious and semi precious stones; gold, silver and/or other precious metals in bullion or other form.

R.O.C. 6.9 % + B.P. 12 % = Total R.O.C. 18.9 %

(note: Sierra has a vehicle dealer buying program that allows dealers to pay 10% BP on vehicles over \$3000 and 8% on vehicles over \$10,000. This means the BP is a variable rate and this should be considered for the evaluation.)

**End of Section 2-B**

**End of Part 2**



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**SECTION 3-B:  
Uniform Terms and Conditions**

Version: 11.3 (7/21/2016)

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## Uniform Terms and Conditions

### 1.0 Definition of Terms

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

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



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- 1.11 Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.12 Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.13 Co-Op Buyer** "Co-Op Buyer" means a member of the State Purchasing Cooperative that has entered into a "Cooperative Purchasing Agreement" with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, "Co-Op Buyer" is to be construed as encompassing "eligible procurement unit" under A.A.C. R2-7-101(23).  
  
NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, "non-profit organizations" are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.
- 1.14 Day** "Day" means a calendar day unless otherwise specified in a particular context.
- 1.15 Eligible Agency** If the Special Terms and Conditions indicates that the Contract is a "single-agency" contract, then "Eligible Agency" means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a "statewide" contract, then "Eligible Agency" means any State of Arizona department, agency, university, commission, or board.
- 1.16 Gratuity** "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.17 Indemnified Basic Claims** "Indemnified Basic Claims" means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys' fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.
- 1.18 Instructions to Offerors** "Instructions to Offerors" is Section 1-B of Part 1 of the Solicitation Documents.
- 1.19 Materials** "Materials" has the meaning given in A.R.S. § 41-2503(7) to the extent those things are included in the Work, which, for convenience of reference only, is "... all property, including equipment, supplies, printing, insurance, and leases of property [but] does not include land, a permanent interest in land or real property or leasing space." Materials includes software, except that If software is sold or provided as a service, then to the extent it consists of encoded information or computer instructions it is included in "Materials" and to the extent it is a service it is in "Services".
- 1.20 Offer; Initial Offer; Revised Offer; Best and Final Offer (BAFO)** "Offer," "Initial Offer," "Revised Offer," and "Best and Final Offer" ("BAFO") are each defined in the Instructions to Offerors.
- 1.21 Order** "Order" means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an "Order":  
  1. "Release" or "Release Purchase Order" in ProcureAZ;
  2. "task order", "service order," or "job order" when a Release Purchase Order for Services has already been committed in ProcureAZ; or
  3. "purchase order" for buying by Co-Op Buyers, if co-op buying applies.



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- 1.22 **Part, Section; Exhibit** "Part," "Section," and "Exhibit" are each defined in the Instructions to Offerors.
- 1.23 **Person** "Person" means any corporation, business, individual, union, committee, club, or other organization or group of individuals.
- 1.24 **Procurement Officer** "Procurement Officer" means the person, or his or her designee, who has been duly authorized by State to enter into and administer the Contract and to make written determinations with respect to the Contract. Procurement Officer is as identified on the Acceptance unless subsequently changed by Contract Amendment.
- 1.25 **ProcureAZ** "ProcureAZ" means State's official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, ProcureAZ – The Official State eProcurement System*.  
NOTE (1): Technical Bulletin No. 020 is available online at:  
<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>  
NOTE (2): The URL for ProcureAZ itself is:  
<https://procure.az.gov/>
- 1.26 **Scope of Work** "Scope of Work" means Section 2-A of Part 2 of the Solicitation Documents.
- 1.27 **Services** "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.19.
- 1.28 **Solicitation; Solicitation Documents** "Solicitation" and "Solicitation Documents" are defined in the Instructions to Offerors.
- 1.29 **Special Terms and Conditions** "Special Terms and Conditions" are Section 3-A of Part 3 of the Solicitation Documents.
- 1.30 **Specification** "Specification" has the meaning given in A.R.S. § 41-2561, which, for convenience of reference only, is "... any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery." Specifications (if any are included in the Contract), are indexed in the Scope of Work and could be bound separately from the other documents forming the Contract.
- 1.31 **State** With respect to the Contract generally, "State" means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, "State" means each of Eligible Agency or Co-Op Buyer who has issued the Order.
- 1.32 **State Indemnitees** "State Indemnitees" means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.33 **State Fiscal Year** "State Fiscal Year" means the period beginning each July 1 and ending each June 30.
- 1.34 **Subcontract** "Subcontract" means any contract, express or implied, between Contractor and another party or between a Subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any Materials, the performing of any Services, or the carrying out of any other aspect of the Work.



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

## 2.0 Contract Interpretation

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



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6. uses the term "will" or the phrases "is to be" or "are to be" with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that "shall" is either unnecessary or irrelevant in that instance.
- 2.4 Contract Order of Precedence**
- 2.4.1 COMPLEMENTARY DOCUMENTS.** All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.
- 2.4.2 CONFLICTS.** In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.
- (a) Contract Amendments;
  - (b) the Solicitation Documents, in the order:
    - (1) Special Terms and Conditions;
    - (2) Exhibits to the Special Terms and Conditions;
    - (3) Uniform Terms and Conditions;
    - (4) Scope of Work;
    - (5) Exhibits to the Scope of Work;
    - (6) Commercial Document;
    - (7) Exhibits to the Commercial Document;
    - (8) Specifications; and
    - (9) any other documents referenced or included in the Solicitation;
  - (c) Orders, in reverse chronological order; and
  - (d) Accepted Offer.
- 2.4.3 ATTACHMENTS AND EXHIBITS.** For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.
- 2.5 Independent Contractor** Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.
- 2.6 Severability** Any term or condition deemed or adjudged illegal or invalid is thereby stricken from the Contract and will not affect any other term or condition of the Contract.
- 2.7 Complete Integration** The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.



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**2.8 No Waiver  
of Rights**

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

### 3.0 Contract Administration and Operation

**3.1 Term of Contract**

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

**3.2 Contract  
Extensions**

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

**3.3 Notices and  
Correspondence**

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

(a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding ProcureAZ Vendor Profile; and

(b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

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

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

(b) address any required notices to State to Procurement Officer identified as "Purchaser" in the ProcureAZ Summary at the following mailing address:

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State Procurement Office  
100 N 15th Ave., Suite 201  
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3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

**3.4 Signing of Contract  
Amendments**

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

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

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

**3.5 Click-Through  
Terms and  
Conditions**

Unless expressly stated otherwise in the Special Terms and Conditions, if either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of



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

**3.6 Books and Records**

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

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

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

**3.7 Contractor Licenses**

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

**3.8 Inspection and Testing**

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

**3.9 Ownership of Intellectual Property**

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

(a) "Government Purpose Rights" are:

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



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- ii. the right to release or disclose that work product to third parties for any State government purpose; and
  - iii. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.
- (b) "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

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

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

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

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

**3.10 Subcontracts**

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

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

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



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- 3.11 Non-Discrimination** Contractor shall comply with [Arizona] State Executive Order No. 2009-09 and all other applicable federal and state laws, rules, and regulations regarding non-discrimination and equal opportunity, including the Americans with Disabilities Act.
- 3.12 E-Verify Requirements** As required by A.R.S. § 41-4401, Contractor and each Subcontractor warrants compliance with A.R.S. § 23-214(A) and all federal immigration laws and any regulations relating to the immigration status of their employees. Contractor and each Subcontractor acknowledge that under A.R.S. § 41-4401, State retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works under the Contract to ensure that Contractor or Subcontractor is in compliance with the foregoing warranty and understands that a breach of the foregoing warranty under shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract.
- 3.13 Offshore Performance of Certain Work Prohibited** Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Specifications or the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.
- 3.14 Orders**
- 3.14.1 **ORDER SUFFICIENCY.** The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued as set forth in the Special Terms and Conditions that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.
- 3.14.2 **ORDER TERMS.** All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.
- 3.14.3 **ORDERS ARE OBLIGATORY.** Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.
- 3.14.4 **SPECIAL CASE.** In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract in the Special Terms and Conditions and (b) the Contract was created in ProcureAZ as something other than a "Master/ Blanket" type.
- 3.14.5 **NO MINIMUMS OR COMMITMENTS.** Unless expressly stated otherwise in the Special Terms and Conditions: (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.
- 3.14.6 **NON-CONTRACTED MATERIALS OR SERVICES.** Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.



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**3.15 Statewide Contract Provisions**

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

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

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

2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).
3. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is specified in the Special Terms and Conditions. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

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

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

5. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either: (a) "approving" the Order electronically in ProcureAZ, which will indicate Contractor's unqualified acceptance of the Order as-issued; or (b) "rejecting" the Order electronically in ProcureAZ, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in ProcureAZ, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically in ProcureAZ within 3 (three) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in ProcureAZ and if it does so the rejection will be void.
6. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though



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they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

**3.16 Multiple-Use Provisions**

If the Special Terms and Conditions indicate that the Contract is for statewide use, then Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in ProcureAZ. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Commercial Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
3. As described in (2) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.
4. As described in (3) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

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

**3.17 Other Contractors**

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

**3.18 Work on State Premises**

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

**3.20.3 PROTECTION OF GROUNDS AND FACILITIES.** Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the



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necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*].

**3.19 Advertising,  
Publishing and  
Promotion of  
Contract**

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

## 4.0 Costs and Payments

**4.1 Payments**

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

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

**4.2 Applicable  
Taxes**

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

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

**4.3 Availability  
of Funds**

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

## 5.0 Contract Changes

**5.1 Contract  
Amendments**

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



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**5.2 Assignment and Delegation**

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

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

**6.0 Risk and Liability**

**6.1 Risk of Loss**

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

**6.2 Contractor Insurance**

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

**6.3 Basic Indemnification**

6.3.1 CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless State Indemnitees from Indemnified Basic Claims that: (a) are caused or alleged to be caused in whole or in part by the negligent or willful acts or omissions of a Contractor Indemnitor; (b) arise out of or are recovered under worker compensation laws; and/or (c) arise out of a Contractor Indemnitor's failure to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. The parties specifically intend that the Contractor Indemnitors shall indemnify the relevant State Indemnitees from and against Indemnified Basic Claims in all instances except where the Indemnified Basic Claim arises solely from those State Indemnitees' own negligent or willful acts or omissions. Wherever the indemnification under this subparagraph applies, Contractor is responsible for primary loss investigation, defense, and judgment costs for an on behalf of the other Contractor Indemnitors with respect to State Indemnitees, and accordingly Contractor is also responsible for any cooperation, contribution, or subordination between or amongst the Contractor Indemnitors. In consideration of the award of the Contract by a State Indemnitee, Contractor hereby waives all rights of subrogation against State Indemnitees for losses arising from the Work.

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

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

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



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**6.4 Patent and  
Copyright  
Indemnification**

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

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

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

**6.5 Force Majeure**

6.5.1 DEFINITION. For this paragraph, "force majeure" means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party's fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.8 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

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

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

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



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

## 7.0 Warranties

- 7.1 Liens** Contractor warrants that the Materials and Services when accepted will be and will remain free of liens or other encumbrances.
- 7.2 Conformity to Requirements** Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.
- 7.3 Contractor Personnel** Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.
- 7.4 Intellectual Property** Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.5 Compliance with Laws** Contractor warrants that the Materials and Services do and will continue to comply with all applicable federal, state, and local laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the non-compliance.
- 7.6 Licenses and Permits** Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.
- 7.7 Operational Continuity** Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.2 [*Assignment and Delegation*] that expressly recognizes the event.
- 7.8 Performance in Public Health Emergency** Contractor warrants that it will:
1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
  2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan



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implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

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

**7.9 Lobbying**

**7.11.1 PROHIBITION.**

(a) Contractor warrants that:

- i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and
- ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

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

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

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

**7.10 Survival of Warranties**

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

**8.0 State's Contractual Remedies**

**8.1 Right to Assurance**

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

**8.2 Stop Work Order**

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

**8.3 Non-exclusive Remedies**

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

**8.4 Nonconforming Tender**

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

**8.5 Right of Offset**

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



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## 9.0 Contract Termination

- 9.1 Termination for Conflict of Interest** By A.R.S. § 38-511, State may terminate the Contract within 3 (three) years after the effective date without penalty or further obligation if any Person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of State is or becomes an employee or agent of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. Any such termination will be effective when Contractor receives State's written notice of the termination unless the notice specifies a later date.
- 9.2 Gratuities** State may, by written notice, terminate the Contract, in whole or in part, if State determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of State for the purpose of influencing the outcome of the procurement or the administration of the Contract or any favorable treatment concerning the Contract or performance of the Contract. State, in addition to any other rights or remedies available to it, will be entitled to recover exemplary damages in the amount of 3 (three) times the value of the Gratuity offered by Contractor.
- 9.3 Suspension or Debarment** State may, by written notice to Contractor, terminate the Contract immediately if State discovers that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. State has taken Contractor's submittal of the Accepted Offer and will take its performance under the Contract as Contractor's attestation that it is not currently suspended or debarred. If Contractor subsequently becomes suspended or debarred, it shall notify Procurement Officer immediately.
- 9.4 Termination for Convenience** State may terminate the Contract when in the best interest of State, in whole or in part, at any time, and without penalty or recourse on Contractor's part other than as expressly stated in the Contract. Upon receipt of State's written termination notice, Contractor shall stop work as directed in the notice, notify all Subcontractors of the termination and its effective date, and minimize any further costs that might be chargeable to State. In the event of termination under this paragraph, all documents, data, and reports prepared by Contractor under the Contract will become State's property and Contractor shall deliver it all promptly on demand. Contractor will be entitled to receive just and equitable compensation for necessary and attributable unfinished materials on hand, work in progress, work completed, and work accepted before the effective date of the termination, provided that, the cost principles and procedures in A.A.C. R2-7-701 are to be applied.
- 9.5 Termination for Default** In addition to the rights reserved to it under the Contract, State may terminate the Contract in whole or in part due to Contractor's failure to: (a) comply with any term or condition of the Contract; (b) obtain and maintain all required insurance policies, bonds, licenses, and permits; or (c) make satisfactory progress in carrying out the Work. Procurement Officer shall give written notice of the termination and the reasons for it. Upon termination under this paragraph, all documents, data and reports prepared by Contractor under the Contract and all necessary and attributable unfinished materials on hand, work in progress, work completed, and work accepted will become State's property, and Contractor shall deliver all of it immediately on demand. State may, following termination of the Contract under this paragraph, procure on terms and in the manner it determines to be appropriate materials or services to replace those that were to have been provided or performed by Contractor, and Contractor will be liable to State for any excess cost State incurs in procuring such substitutes.
- 9.6 Continued Performance Required** Contractor shall continue to perform in accordance with the requirements of the Contract up to the effective date of any termination, as directed by State in the notice.



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## 10.0 Contract Claims

- 10.1 Claim Resolution** Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.
- 10.2 Mandatory Arbitration** In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

## 11.0 General Provisions for Materials

- 11.1 Applicability** Article 11 applies to the extent the Work is or includes Materials.
- 11.2 Off-Contract Materials** Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders; State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.
- 11.3 Compensation for Late Deliveries** Contractor shall have clear, published policies in place regarding late delivery, order cancelation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them.
- 11.4 Indicate Shipping Costs on Order** Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one).
- 11.5 Current Products** Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract.
- 11.6 Maintain Comprehensive Selection** Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co-Op Buyers if applicable.
- 11.7 Additional Products** State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of



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

**11.8 Discontinued Products**

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

**11.9 Forced Substitutions**

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

**11.10 Recalls**

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

**11.11 Delivery**

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

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

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

**11.12 Delivery Time**

Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order.



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



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2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.
3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.

**11.17 Returns**

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

**11.18 Order Cancellation**

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

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

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

**11.19 Product Safety**

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

**11.20 Hazardous Materials**

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of



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and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or (2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup.

## 12.0 General Provisions for Services

- 12.1 Applicability** Article 12 applies to the extent the Work is or includes Services.
- 12.2 Comprehensive Services Offering** Contractor shall provide the comprehensive range of services for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.
- 12.3 Additional Services** State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.
- 12.4 Off-Contract Services** Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, "off-contract service" refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded service" refers to any service expressly excluded from the scope of the Contract.
- 12.5 Removal of Personnel** Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State's facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.
- 12.6 Transitions** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing)



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

- 12.7 Accuracy of Work** Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.
- 12.8 Requirements at Services Location** Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.
- 12.9 Services Acceptance** State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.
- 12.10 Corrective Action Required** Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.
1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
  2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that, State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
  3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

## 13.0 Data and Information Handling

- 13.1 Applicability** Article 13 applies to the extent the Work includes handling of any (1) State's proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State's behest.
- 13.2 Data Protection and Confidentiality of Information** Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or



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disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant:

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

**13.3 Personally Identifiable Information.**

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

For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information*; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

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

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

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

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

**13.4 Protected Health Information**

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

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



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NOTE: For convenience of reference only, the Privacy Rule is available at:  
<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

## 14.0 Information Technology Work

- 14.1 Applicability** Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined In A.R.S. § 41-3501(6) 6: "... computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects" if and to the extent that the Work is or includes Information Technology.
- 14.2 Background Checks** Each of Contractor's personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S § 41-710. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.
- 14.3 Information Access**
- 14.3.1 **SYSTEM MEASURES.** Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State's proprietary data or confidential information.
- 14.3.2 **INDIVIDUAL MEASURES.** Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.
- 14.3.3 **ACCESS CONTROL.** Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.
- 14.4 Pass-Through Indemnity**
- 14.4.1 **INDEMNITY FROM THIRD PARTY.** For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.



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

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

**14.5 Systems and Controls**

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

**14.6 Redress of Infringement.**

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

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

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

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

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

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

**14.7 First Party Liability Limitation**

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



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- 14.7.2 PROVISOS. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:
- (a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
  - (b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or
  - (c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.
- 14.7.2 PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all change orders or other forms of Contract Amendment having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.
- 14.7.3 NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.
- 14.8 Information Technology Warranty**
- 14.8.1 SPECIFIED DESIGN. Where the Scope of Work (Section 2-A of the Solicitation) for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:
- (a) modified or altered by anyone not authorized by Contractor to do so;
  - (b) maintained in a way inconsistent to any applicable manufacturer recommendations; or
  - (c) operated in a manner not within its intended use or environment.
- 14.8.2 COTS SOFTWARE. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:
- (a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
  - (b) the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and
  - (c) it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.
- 14.8.3 PAYMENT HAS NO EFFECT. The warranties in this paragraph are not affected by State's inspection, testing, or payment.
- 14.9 Specific Remedies**
- Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty under paragraph 14.8 includes, at State's discretion, re-performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor's payment of State's additional, documented, and reasonable



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costs to procure materials or services equivalent in function, capability, and performance at that first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 14.7. If none of the foregoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.

## 15.0 Comments Welcome

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

The public may submit comments to:

State Procurement Administrator,  
State Procurement Office, 100 North 15th Avenue, Suite 201  
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**End of Section 3-B**

**End of Part 3**

**End of Solicitation Documents**

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DEPARTMENT OF CHEMISTRY  
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