



REQUEST FOR PROPOSAL (RFP)
SOLICITATION # AG19-0039

State of Arizona
Office of the Attorney General
2005 N Central Ave
Phoenix, AZ 85004

NOTICE

The Arizona Office of the Attorney General (hereinafter the "AGO"), in accordance with the Arizona Procurement Code, is issuing the attached Request for Proposal (hereinafter "RFP") for Outside Counsel Services for the Arizona Power Authority

OUTSIDE COUNSEL FIRMS AWARDED CONTRACTS FOR CALENDAR YEAR 2018

This RFP is to supplement the previously awarded RFP # AG18-0019. Firms awarded contracts for AG18-0019, need not respond.

REQUIREMENTS

Any law firm is invited to respond to this RFP regardless of size. Your law firm must have one or more attorneys admitted to practice law in the State of Arizona. Sole practitioners are acceptable.

OVERVIEW OF SERVICES

The purpose of this RFP is to establish contracts with additional legal counsel for the Arizona Power Authority, on an "as needed, if needed" basis. It is understood that this contract, due to the complexity of legal matters, is not intended to be a mandatory contract. Certain matters may be contracted outside this contract based upon the specific need.

INSTRUCTIONS FOR RESPONSE

The instructions to respond are included in the attached RFP. Responses are expected to comply with these instructions and contain sufficient information to justify an award.

QUESTIONS REGARDING RFP

Questions should be directed to Jerry Connolly at 602-542-8030 or emailed to Jerry.Connolly@azag.gov or Cindy Palmer at 602-542-7986 or emailed to Cindy.Palmer@azag.gov.



NOTICE OF REQUEST FOR PROPOSAL

SOLICITATION NO: **AG19-0039**

Office of the Attorney General

1275 W Washington
Phoenix, AZ
85007-2926

DESCRIPTION: AG19-0039 – SUPPLEMENTAL OUTSIDE COUNSEL SERVICES FOR ARIZONA POWER AUTHORITY

SOLICITATION DUE DATE/TIME: PROPOSALS ARE DUE BY April 12, 2019 AT 3:00PM Local AZ Time

THIS RFP IS BEING ISSUED OUTSIDE ARIZONA PROCUREMENT PORTAL (APP). DO NOT SEND YOUR RESPONSE TO APP. THE INSTRUCTIONS FOR RESPONDING ARE INCLUDED IN THIS RFP.

ELECTRONIC COPY OF RFP: An electronic copy of this Request for Proposal (RFP) with applicable Attachments, are available at <https://www.azag.gov/rfp> or you may request the RFP by sending a request to procurement@azag.gov; the solicitation number should be identified in the subject line and contact information for your firm provided with the e-mail. The Solicitation on file in the Arizona Office of the Attorney General, Procurement Office shall have precedence over any differing documents. Changes to this Request for Proposal shall be without effect unless proposed in accordance with the Uniform and Special Instruction Sections of this Solicitation and specifically accepted by the Arizona Office of the Attorney General.

OFFER DELIVERY LOCATION: Proposals shall be mailed or delivered to the Office of the Arizona Attorney General. Proposals must be in a sealed envelope or container. Proposals should be marked Solicitation #AG18-0019. **No fax or electronic copies will be accepted.** All proposals must be received by the Solicitation due date and time specified. Any response received after the Solicitation due date and time specified will not be considered.


PHYSICAL MAILING and DELIVERY ADDRESS:
Arizona Attorney General
Procurement Section
Attention: Solicitation AG18-0019
2005 North Central Avenue
Phoenix, Arizona 85004

GENERAL: In accordance with ARS §41-2538 competitive sealed proposals for the services specified will be received by Office of the Arizona Attorney General, Procurement Section at the specified locations until the time and date cited above. Offers received by the correct time and date will be opened and the name of each Offeror will be publicly read. Offers must be in the actual possession of Office of the Arizona Attorney General, Procurement Section on or prior to the Solicitation Due Date and Time and at the Offer Delivery locations indicated above. Late offers shall not be considered. Hand Delivered or Mailed offers must be submitted in a sealed package with the Solicitation number and the Offeror's name and address clearly indicated on the package. Additional instructions for preparing a proposal are provided in the Special Instructions to Offerors to Offerors contained in this RFP.

QUESTIONS REGARDING RFP:

<p>Solicitation Contact Person: Jerry Connolly, Procurement Manager Phone: (602) 542-8030 E-mail: Jerry.Connolly@azag.gov</p>	<p>Solicitation Contact Person: Cindy Palmer, Procurement Officer Phone: (602) 542-7986 E-mail: Cindy.Palmer@azag.gov</p>
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Offerors are Strongly Encouraged to Carefully Read the Entire Request for Proposal

	I. SCOPE OF WORK	Office of the Attorney General 1275 W Washington Phoenix, AZ 85007-2926
	SOLICITATION NO: AG19-0039	

1. INTRODUCTION/BACKGROUND

The Arizona Power Authority (“Authority”) is a body, corporate and politic, without taxing power, established by the Arizona Legislature on May 27, 1944 by the Power Authority Act. Under the Power Authority Act, the Authority is directed to obtain electric power developed from the mainstream of the Colorado River and sell such power to certain qualified purchasers. The Power Authority Act provides that the Authority must be a self-supporting agency and prohibits the Authority from incurring any obligation which would be binding upon the State of Arizona.

The Authority supplies capacity and energy on a wholesale basis to certain power purchasers in the State of Arizona. The Authority’s primary source of power and energy is the Hoover Power Plant at Hoover Dam, located approximately 25 miles from Las Vegas, Nevada. Hoover power is produced by the Boulder Canyon Project hydro-power plant owned by the Bureau of Reclamation. Hoover Dam is the highest and third largest concrete dam in the United States of America. Hoover Dam was dedicated in 1935 and the first generator of the Hoover Power Plant was in full operation in October 1936. The Hoover Power Plant has been in continuous operation since that time. Power and energy from the Hoover Power Plant is transmitted to load centers in Arizona, California and Nevada. The Authority first contracted for Arizona’s share of Hoover power in 1952 and has continuously provided power and energy to its customers since that time.

The Authority is governed by a commission of five members appointed by the Governor and approved by the State Senate (the “Commission”). The term of office for each member is six years and the members select a chairman and vice-chairman from among its membership for two-year terms.


2. PURPOSE

On October 1, 2017, the Authority implemented new 50-year contracts for the sale of Hoover Dam power to selected retail and wholesale customers. Legal services described below are needed to cover pertinent water and electric power issues that may arise from time to time regarding these contracts to advise and support the Authority.

3. GENERAL SPECIFICATIONS

The following provisions shall apply:

- 3.1 Counsel shall provide timely responses and be accessible. Accessibility includes the ability to be generally available to attend meetings in person on short notice and the ability to be reached promptly by telephone, cell phone, or email.
- 3.2 Attorneys must be available by phone, cell phone and e-mail.
- 3.3 Counsel shall provide an estimated time of task completion and keep the requesting party apprised of any delays or special considerations.
- 3.4 Legal counsel shall provide detailed itemized statements on a monthly basis.
- 3.5 Legal counsel shall not have an actual or potential conflict of interest that would limit representation of the Authority, including with regards to three party interactions with California and Nevada in the Lower Basin of the Colorado River. Counsel shall report any perceived conflicts, including those involving the Upper Basin. The decision as to whether the conflict is remote or disqualifying will be the decision of the Authority and the AGO.

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4. HIERARCHY

- 4.1 Legal Counsel shall report to the Authority’s Executive Director, but work for and under the direction of the Authority’s Commissioners.
- 4.2 Legal Counsel shall coordinate with the Office of the Arizona Attorney General (“AGO”) and other counsel as needed.

5. SCOPE OF WORK TASKS

Counsel shall be responsible for the following tasks and shall perform these tasks in accordance with the Method of Approach prepared by the Counsel in responding to this Request for Proposal and as accepted by the AGO.

- 5.1 On an as needed basis, provide legal advice, support, review, consultation and representation to the Authority regarding specialized legal issues affecting the operation of the Authority, including:
 - 5.1.1 The Law of the Colorado River, as well as other relevant federal and state water laws;
 - 5.1.2 Hoover Power Allocation Act of 2011, including the post-2017 allocation process and agreements negotiated in connection thereto;
 - 5.1.3 Federal and state public power laws.
- 5.2 Monitor federal regulatory activities that may impact the Authority, advise accordingly, and provide legal representation when needed to protect or advance the interests of the Authority.
 - 5.2.1 Federal regulatory activities includes proposed and/or enacted legislation; activities of relevant Congressional and Senate Committees including the House Energy & Commerce Committee, House Natural Resources Committees, Senate Energy & Natural Resources Committee; and rule-making or policy initiatives of agencies such as the U.S. Department of Energy (especially Western Area Power Administration), U.S. Department of Interior (especially Bureau of Reclamation) and the Federal Energy Regulatory Commission.
- 5.3 Monitor and advise the Authority concerning proposed and/or enacted legislation in the areas of water, energy or utility law in Arizona or relevant adjacent states.
- 5.4 Represent the Authority before federal agencies and in federal court, and handle any matters incidental to such representation.

6. REPORTING

Counsel shall prepare and submit monthly reports to the Authority summarizing activities from the previous month and detailing the hours, rates, and costs incurred. Counsel shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one tenth of one hour and shall promptly provide these records to the Authority on request. Where expenses are disbursed or are incurred by Counsel which also benefit other clients of Counsel in other, similar litigation, only the portion of such expenses fairly and properly allocable to Plaintiff(s) in the Litigation shall be claimed as reasonable expenses of prosecuting the Litigation. The report shall also include activities planned for the upcoming month and budgetary costs associated with these activities. The report shall be due by the seventh day of each month. Reports shall be prepared in a format and of a quality approved by the Authority.



II. SPECIAL TERMS AND CONDITIONS

Office of the Attorney General

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1. CONTRACT

This Contract is issued for the Authority through Arizona Attorney General's Office in accordance with A.R.S. §41-2538.

2. Parties

The parties to this Agreement are the Authority through the AGO and the firm as named in the Executed Offer and Acceptance form.

3. Contract Type

Firm fixed hourly rate.

4. Term of Contract

The term of the contract shall commence upon award and shall remain in effect for a period of three years thereafter unless terminated, canceled or extended as otherwise provided herein.

5. Contract Extension

By contract amendment, any resultant contract may be extended for supplemental period of up to a maximum of 24 months. If the Authority through the AGO exercises such rights, all terms, conditions and provisions of the original contract shall remain in effect and apply during the renewal period, with the possible exception of price.

6. Fiscal Funding

This contract may be cancelled without any further obligation by the State of Arizona or the Authority if monies are not appropriated or otherwise made available to support the continuation of this contract in a subsequent fiscal year. If this contract is cancelled under this condition Counsel may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the services delivered under the contract or which are otherwise not recoverable.

7. Changes

The Authority through the AGO reserves the right to add or delete related services and materials and make other changes within the general scope of work as may be deemed necessary to best serve the interests of the State. Changes to the Contract shall be documented by formal written amendment(s).

8. Recitals

This Agreement is made with reference to the following facts:

8.6 The Authority desires to contract for the provision of legal services by counsel not in its employ.

8.7 Independent Contractor - Counsel represents that it is fully experienced and properly qualified to perform the Services in the State where Services are to be performed, and is equipped, organized and financed to perform such Services. Counsel shall act as an independent contractor and not as an agent of Arizona, in performing the Services and duties of this Agreement.

8.8 Subcontracts - Counsel shall not subcontract any part of the Services or any of its obligations under this Agreement, unless prior written approval has been obtained from the Authority through the AGO.

8.9 Cooperation - Counsel shall, to the best of its abilities, cooperate with Arizona to enable the successful



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completion of the Services according to the terms of this Agreement including, but not limited to, commitment of additional resources, material and personnel, if requested by the Arizona Power Authority designated representative to assure that the Services are properly performed and completed in accordance with the provisions of this Agreement.

- 8.10 The State of Arizona's Uniform Instructions to Offerors (Rev 7-2013) and Uniform Terms and Conditions (V9 - Rev 7-1-2013) are incorporated into this Contract and included as Exhibit I and Exhibit II.
- 8.11 Advertising and Promotion – The name of Arizona shall not be used in any advertising or other promotional context by Counsel without prior written consent of the Office of the Attorney General designated representative.
- 8.12 Estimated Usage - Any Contract resulting from this Solicitation shall be used on an as needed, if needed basis. The State makes no guarantee as to the amount of work that may be performed under any resulting Contract.
- 8.13 Ownership of Material - All materials, documents, deliverables and/or other products of the Contract (including but not limited to e.g., work plans, reports, etc.) shall be the sole, absolute and exclusive property of the State of Arizona and the Authority, free from any claim or retention of right on the part of the Counsel, its agents, Co-Counsel, subcontractors, officers or employees.
- 8.14 Counsel understands and agrees that certain legal matters may be contracted outside this contract based upon the specific need.

9. PRICING

All hourly rates shall be on an all-inclusive basis and shall contain the labor rate, labor benefits, payroll burden, insurance, workman's compensation, all taxes, profit, overhead, general and administrative expenses and all other related charges. A price reduction adjustment may be offered at any time during the term of the Contract and shall become effective upon notice.

- 9.1 A fixed fee may be used as an alternative to hourly rates for a specific case or matter. Hourly rate of persons assigned to the matter/case will be used as the basis of any fixed fee.
- 9.2 Prompt Payment Discount – If payment is issued in full within 21 days of invoice, the State of Arizona shall apply a 5% discount on fees. The 21 days shall begin upon receipt of a correct and undisputed invoice.

10. BILLINGS AND INVOICES

Payments for legal services performed under this agreement are the responsibility of the Authority. All billings shall be submitted monthly to the Authority with copies of all billings submitted to the AGO, upon request. Billings for any fiscal year shall be submitted within 15 days of the end of the fiscal year, which begins July 1 and ends June 30. Each billing shall be in sufficient detail to clearly indicate:

- 10.1 The project or matter involved.
- 10.2 The attorney or other personnel whose time is involved on each charge.
- 10.3 The number of hours billed to the nearest 1/10 of an hour.



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- 10.4 The date and activity which generated the time billed.
- 10.5 The hourly rate for the attorney or other personnel. (A current master charge list is satisfactory.)
- 10.6 A list of expenses including receipts for air travel and lodging, deposition transcripts, service of process and expert fees. Expenses under \$200.00 are to be paid by Counsel's firm and submitted with their billing. The State of Arizona will attempt to resolve billing problems but expects COUNSEL to assist in resolving billing problems without additional cost to the State.
- 10.7 Counsel may charge an Hourly Rate and/or mileage reimbursement only when Counsel must travel over a 50 mile radius from their normal place of business. This reimbursement would begin from the time the Counsel leaves their normal business location.
- 10.8 Invoices, with receipts attached, shall be accompanied by itemization of disbursements and costs (long distance calls, photocopying, transcripts, expert witnesses, court costs, et cetera) and travel and living expenses shall be itemized separately to indicate travel, lodging, business meetings, meals, taxis, and other expenses (specifically detailed)
- 10.9 Counsel will only bill for the actual time spent performing a task, not for a unit charge (e.g., no automatic billing of one-third of an hour for a phone call that may have taken only five minutes) and that all charges will be specified and not grouped or clustered into one billing charge.

11. SPENDING LIMIT

- 11.1 Travel expenses for Counsel shall be in accordance with the Arizona Department of Administration Travel Policy (ADOA Travel Policy currently allows travel expense where travel exceed 50 miles) and shall be limited to:
 - 11.1.1 \$.445 per mile for the use of the private conveyances of Counsel;
 - 11.1.2 Coach air fare with airline ticket receipts attached to billings; and
 - 11.1.3 The actual costs of lodging and meals in accordance with Arizona Department of Administration Travel Policy. The Policy may be viewed at <http://www.gao.state.az.us>
- 11.2 Only in unusual cases can travel by more than one attorney be permitted.
- 11.3 Expenses will be reimbursed at the firm's cost, except for certain disbursements that will not be paid unless agreed to in advance by the State. Unless authorized in advance by the State, in writing, the following charges are not acceptable:
 - 11.3.1 Secretarial or word processing services (normal, temporary, or overtime);
 - 11.3.2 Incoming facsimiles at more than 5 cents per page. Charges for outgoing local facsimiles and out of area facsimiles shall not be billed at more than actual cost.
 - 11.3.3 Photocopy expenses at more than 10 cents per page;
 - 11.3.4 Any other staff service charges, such as meals, filing, proofreading, regardless of when incurred;
 - 11.3.5 Computer time;



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- 11.3.6 Charges for legal research programs such as Westlaw, Lexis Nexis, etc.
- 11.4 Photocopy costs in excess of \$2,000 for a single job should be authorized in advance and in writing by the State.
- 11.5 Expenses should not include local telephone expenses or office supplies.
- 11.6 The State does not pay charges for time spent in preparing bills.
- 11.7 In addition to the per diem limits outlined above it is expected that expenses for lodging, meals, and transportation shall be at reasonable rates and that counsel will exercise prudence in incurring such expenses.
- 11.8 The State will not reimburse the costs of first-class travel and expects that travel arrangements will take advantage of any cost-effective discounts or special rates.

12. COMPENSATION

Payment as specified above for performance of the Services shall be total compensation paid to Counsel for performance of all of Counsel's obligations under this Agreement.

13. ADVANCE PAYMENT PROHIBITED

No payment in advance or in anticipation of services or supplies under this contract shall be made by the Authority, the AGO or the State of Arizona.

14. CONTRACT TERMINATION

The parties to this agreement agree the Authority through the AGO may cancel this agreement under the following conditions:

14.1 Termination Without Cause

The Authority through the AGO may terminate this agreement without cause and without penalty upon at least thirty (30) days written notice to Counsel. Upon receipt of notice of termination, Counsel, unless the notice requires otherwise, shall discontinue performance of the Services on the date and to the extent specified in the notice, except those Services necessary to preserve and protect the work product of the Services already performed, and otherwise minimize costs to the State. Payment for Services already completed or in the process of completion shall be adjusted between Counsel and the Authority, in a fair and reasonable manner, but such payment shall exclude any allowance for unperformed Services or anticipated profits thereon. Such payment for Services already completed or in the process of completion shall be the total compensation due to Counsel for Termination Without Cause by either party.

14.2 Termination With Cause

The Authority through the AGO may terminate this agreement for cause if Counsel breaches any material terms or conditions of this agreement or fails to perform or fulfill any material obligation under this agreement or negligently pursues the litigation so as to cause harm to the State. Counsel shall be provided written notice of termination. If Counsel is terminated for cause, Counsel shall not be entitled to compensation or reimbursement of any kind under this agreement.

15. COUNSEL RESPONSIBILITIES

15.1 Counsel



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A “team arrangement” or “multiple firm arrangement” may be proposed, but must be proposed as a Counsel/Co-Counsel relationship. A firm must be designated as Counsel. Counsel shall be responsible for all contractual obligations and the management of all “Co-Counsels”. Counsel shall also be responsible for and agrees to be liable for any acts or omissions of Co-Counsel in the carrying out of its duties on behalf of the State. The Authority nor the AGO will not become part of any negotiations between Counsel and Co-Counsel or accept any invoices from Co-Counsel. Any agreement between Counsel and Co-Counsel shall include provisions indicating that the Authority, the AGO and the State of Arizona are not third-party beneficiaries of such agreement and that Co-Counsel is not a third-party beneficiary of this agreement. A Proposal that reflects a teaming arrangement designating more than one entity as a cosigner of the proposal will not be accepted.

15.2 **Key Personnel**

It is essential that the Counsel provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. Counsel must assign specific individuals to key positions. Counsel agrees and understands that this agreement is predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified and/or described in the Counsel’s proposal. Therefore, Counsel agrees that no substitution of such specified individual(s) and/or personnel qualifications shall be made without the prior written approval of the Authority through the AGO. Counsel further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the Authority approval of a substitution shall not be construed as an acceptance of the substitution’s performance potential. The Authority agrees that an approval of a substitution will not be unreasonably withheld. Counsel shall bear all transitional expenses incurred for any costs associated with removing or replacing Key Personnel who are performing work under this Contract. Counsel agrees to reveal its staffing levels by function, including resumes, upon request by the Authority or the AGO at any time during the performance of this Contract.

15.3 **Lead Counsel**

Counsel shall name an individual as the Lead Counsel for the outside counsel team. This individual shall be considered a Key Personnel as defined in this contract. The Counsel shall provide the Lead Counsel’s complete address, e-mail address and telephone and Fax numbers. The Lead Counsel shall be the company representative to whom all correspondence, official notices, and requests related to the project shall be addressed. If a firm joins together with another firm or firms, the firms shall name only one Lead Counsel.

15.4 **Other Key Personnel**

Counsel shall provide the name of any other individual who will perform duties to directly support the person offered as the Lead Counsel. The role and crucial duties this individual will perform shall be identified.

15.5 **Removal of Counsel's Employees**

The Authority may require the Counsel to remove from an assignment employees who endanger persons, property or whose continued employment under this Contract is inconsistent with the interests of the AGO.

15.6 **Availability of Counsel**

Counsel shall be available immediately upon receipt of the Notice to Proceed and remain available to the Authority throughout the period of performance as stated in the Contract.

15.7 **Submission of Electronic Deliverables**



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At the request of the Authority, the Counsel shall submit electronic deliverables. All electronic deliverables shall be in format compatible with AGO software. It is expected deliverables shall be in the MS Office 2010 or newer suite of products (e.g. docx, xlsx, and pptx) and Adobe Acrobat Pro X (e.g. pdf) software or newer, other formats may be considered. Electronic Deliverables shall be treated with confidentiality and provided through encrypted e-mail, encrypted hard drive, or encrypted flash drive.

16. OVERSIGHT AND DRAFT DOCUMENT REVIEW

16.1 Oversight

The retention of Counsel is intended to aid the AGO in representing the Authority and the State of Arizona. If litigation is recommended, the AGO will be actively involved in all stages of the matter and in deciding all major issues, including whether to file suit, when to file suit, who to file suit against, approval of the asserted claim or claims and whether and on what basis to settle or proceed to trial. Counsel shall acknowledge and defer to the Attorney General for direction and decisions. Counsel and the AGO will consult with the Authority, as the client, in accordance with the ethical rules.

16.2 Review of Services

The Attorney General reserves the right to review all and every part of the Services during performance or after completion as the Attorney General may see fit. If the Services or any part thereof have not been performed in accordance with this Agreement to the satisfaction of the Attorney General, the Attorney General may order that no further services be performed and may reject and refuse to pay for any improperly performed services and shall fully comply with all the requirements set forth in A.R.S. § 41-4803(C) and elsewhere.

16.3 Draft Document Review

Prior review of all documents is required to assure the AGO approval of the information, content and completeness. Documents for prior review shall include all pleadings, petitions, findings and any other document produced in the pursuit of this matter. All draft deliverables and other materials developed by the Counsel as part of this project shall be reviewed and approved in writing by the AGO prior to finalizing the material. Counsel shall promptly provide, in final form, the designated assistant attorney general with copies of all pleadings, discovery requests and responses, and relevant correspondence related to the Litigation.

16.4 Depositions

Notices of depositions shall not be issued by Counsel without prior written authorization from the Attorney General. Notices of depositions of State of Arizona employees filed by any party must be submitted to the Attorney General immediately upon Counsel's receipt to make necessary arrangements for their testimony. Summaries of all depositions will be supplied by the assigned Counsel on conclusion of the deposition. Ordinarily only one attorney should attend depositions, although, upon AGO prior approval, Counsel may have more than one attorney attend a deposition. The AGO may request the presence of a State of Arizona employee at one or more depositions.

16.5 Testimony

Should Counsel be required to testify at any judicial, legislative or administrative hearing concerning matters in any way related to the Services performed under this Agreement, Counsel shall immediately supply to the AGO in writing all information likely to be disclosed at said hearing as well as Counsel's position thereon. Should Counsel be required by a third party to testify at any judicial, legislative or administrative hearing not specified in this Agreement but concerning the subject matter of this Agreement, Counsel shall immediately notify the AGO to enable State of Arizona representatives to



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attend and participate.

16.6 **Privileged Communications**

All confidential communications between the Authority, AGO, any State of Arizona officer, employee or agent ("Arizona") and Counsel, whether oral or written, and all documentation, whether prepared by Counsel or supplied by Arizona, shall be considered privileged communications and shall not, except as required by law, be communicated by Counsel to any public agency, insurance company, rating organization, contractor, vendor, counsel, or any other third party or entity whether or not connected in any manner with Arizona or Counsel, without the prior written consent of the Authority and the AGO. If such communications are approved, or if such communications are required to be disclosed by law, Counsel shall immediately provide the Authority and AGO with two (2) copies of each written communication and/or two (2) copies of summaries of each oral communication. If such communication is required by law, Counsel shall immediately provide the Authority and AGO written notice as to the time, place, and manner of such disclosure as well as a written summary of any information likely to be disclosed by such disclosure, and Counsel's position thereon.

17. **RECORDS**

Pursuant to A.R.S. §§35-214, 35-215, and 41-4803, Counsel shall retain and shall contractually require each Subcontractor to retain books, records, documents and other evidence pertaining to the acquisition and performance of the Contract, hereinafter collectively called the "records," to the extent and in such detail as will properly reflect all net expenses, disbursements, charges, credits, receipts, invoices, and costs, direct or indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which payment is made under the Contract. Counsel shall agree to make available at the office of the Counsel at all reasonable times during the period, as set forth below, any of the records for inspection, audit or reproduction by any authorized representative of the State or Authority. In coordination with the Authority, Counsel shall preserve and make available the records for a period of five years from the date of final payment under the Contract and for such period, if any, as is required by applicable statute. If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

18. **PROFESSIONAL RESPONSIBILITY**

18.1 **General**

Counsel shall use Best Efforts to perform and complete the Services in accordance with the provisions of this Agreement. Best Efforts shall be considered those efforts which a skilled, competent, experienced and prudent legal professional would use to perform and complete the requirements of this Agreement in a timely manner, exercising the degree of skill, care, competence, and prudence customarily imposed on a legal professional performing similar work.

18.2 **Conflict of Interest/Litigation against the State of Arizona**

18.2.1 **Conflicts**

Counsel shall advise the Authority and AGO of any perceived conflict. Arizona recognizes the difficulties in determining conflicts for law firms involved in representing more than one client. It does not wish to unduly hamper Counsel's activity because of a remote conflict and will work with a firm in attempting to resolve conflicts. It is expected that a firm will advise the Authority and AGO of any perceived conflict and that the decision as to whether the conflict is remote or disqualifying will be the decision of the Authority and AGO. Counsel may, upon referral of a claim or lawsuit, decline to defend. Counsel may also withdraw from representation of the State of Arizona when it would be ethically improper to continue to do so and



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upon the Court granting a motion permitting withdrawal. In the event Counsel must either withdraw from a case or declines to defend, AGO shall be immediately notified in writing or by telephone if time is of the essence.

18.2.2 **Litigation against the State of Arizona**

Counsel is retained only for the purposes and to the extent set forth in this Agreement. Counsel shall be free to dispose of such portion of their entire time, energy and skill not required to be devoted to the State of Arizona in such manner as they see fit and to such persons, firms or corporations as they deem advisable, but shall not engage in private litigation against the State of Arizona at the same time counsel accepts appointments representing the State of Arizona pursuant to this Agreement unless such litigation does not present an ethical conflict of interest, and a written waiver is first obtained from the AGO. Counsel shall disclose to the State of Arizona, in the proposal, all litigation, claims and matters in which counsel represents parties adverse to the State of Arizona. If Counsel is selected to contract with the State of Arizona pursuant to the Agreement, Counsel shall have a continuing duty to disclose such information.

18.2.3 **Disclosure of Litigation Against the State of Arizona**

Pursuant to this Agreement, counsel shall have a continuing duty to disclose any and all litigation against the State of Arizona regardless of the State Entity who the Counsel was adverse to.

18.2.4 **Complaints**

Counsel will promptly notify the AGO if a business or bar complaint is filed against Counsel on any matter, if a motion for sanctions is filed against Counsel, or if sanctions are awarded against Counsel in cases assigned pursuant to this Agreement. Any sanctions ordered by the court as a result of attorney or paralegal malfeasance shall be borne by the attorney.

18.3 **Liability**

In the event that Counsel breaches its obligations under this Agreement, Counsel shall take the necessary actions to correct and cure its breach of this Agreement. If Counsel, upon notification of said breach does not promptly take steps to correct the breach, the Authority through the AGO, without waiving any other rights or remedies it may have at law or otherwise, may do so. Counsel shall reimburse the Authority, the AGO and the State for all expenses and costs incurred in performing such corrective action.

18.4 **Laws and Regulations**

Counsel and its employees shall at all times comply with all applicable federal, state and local laws, ordinances, statutes, rules and regulations. Counsel shall hold the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees harmless from loss, cost or damage by reason of any actual or alleged violation thereof arising out of Counsel's employees or Counsel's contractors failure to so comply.

19. INDEMNIFICATION

To the fullest extent permitted by law, Counsel shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Counsel or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Counsel to conform to any federal, state, or local law,



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statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Counsel from and against any and all claims. It is agreed that Counsel will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Counsel for the State of Arizona.

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

20. INSURANCE REQUIREMENTS

20.1 General Requirements

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

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

20.2 Minimum Scope and Limits of Insurance

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

20.2.1 Commercial General Liability (CGL) – Occurrence Form

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

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

20.2.2 The policy shall be endorsed, as required by this written agreement, to include the Arizona Attorney General’s Office and the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

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



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20.3 Business Automobile Liability

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

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

20.3.3 The Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

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

20.4 Worker's Compensation and Employers' Liability

20.4.1 Workers' Compensation Statutory

20.4.2 Employers' Liability

20.4.2.1 Each Accident \$ 1,000,000

20.4.2.2 Disease – Each Employee \$ 1,000,000

20.4.2.3 Disease – Policy Limit \$ 1,000,000

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

20.4.4 This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

20.5 Professional Liability (Errors and Omissions Liability)

20.5.1 Each Claim \$2,000,000

20.5.2 Annual Aggregate \$2,000,000

20.5.3 In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

20.5.4 The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

20.6 Additional Insurance Requirements



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The policies shall include, or be endorsed to include, the following provisions:

- 20.6.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 20.6.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 20.7 **Notice of Cancellation**
Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to Office of the Arizona Attorney General, Procurement Section, 2005 North Central Avenue, Phoenix, AZ 85004 or procurement@azag.gov. The notice shall be mailed, emailed, hand delivered.
- 20.8 **Acceptability of Insurers**
Counsel's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- 20.9 **Verification of Coverage**
- 20.9.1 Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. An authorized representative of the insurer shall sign the certificates.
- 20.9.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 20.9.3 All certificates required by this Contract shall be sent directly to the **Office of the Arizona Attorney General, Procurement Section, 2005 North Central Avenue, Phoenix, AZ 85004**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.
- 20.10 **Subcontractors**
Counsel's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.



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20.11 Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

20.12 Exceptions

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

21. SECTION HEADINGS AND DEFINITIONS

Section headings in this Agreement are for convenience only, and are not to be construed to define, limit, expand, interpret, or amplify the provisions of this Agreement. When initially capitalized in this Agreement or amendments hereto, the following words or phrases shall have the meanings specified:

21.1 Agreement

This document, including all referenced material that forms a contract between Arizona and proposing person or firm named on the Offer and Acceptance page of Attachment I.

21.2 Best Efforts

Those efforts which a skilled, competent, experienced and prudent legal professional would use to perform and complete the requirements of this Agreement in a timely manner, exercising the degree of skill, care, competence, and prudence customarily imposed on a legal professional performing similar work.

21.3 Counsel or Contractor

The Firm or individual whose name appears on page 1 of this agreement.

21.4 Documentation

Correspondence, evaluations, depositions, interrogatories, reports, pleadings, memoranda, briefs, information and any other similar documents or material prepared or used in connection with Services.



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1. SOLICITATION INQUIRIES

1.1 Issuing Office Solicitation Contact Person

The AGO Procurement Office Solicitation Contact Person identified on the cover page of this RFP shall be the sole point of contact for purposes of the preparation and submittal of proposals to this Solicitation.

1.2 Solicitation Clarifications

All inquiries, questions or clarification requests regarding this Solicitation should be submitted no later than seven (7) days before the Solicitation due date. The Offeror should direct such inquiries, questions or requests to the attention of the Solicitation Contact Person via e-mail (preferred) or mail. All Solicitation Inquiries will be handled in accordance with the Uniform Instructions to Offerors. If any inquiries, questions or clarifications result in a change to the Solicitation, a written Solicitation Amendment will be issued prior to the Solicitation due date.

1.3 Solicitation Amendments

The Offeror should acknowledge receipt of a Solicitation Amendment by signing and attaching a copy of the Solicitation Amendment to their proposal.

2. SOLICITATION SUBMISSION GUIDELINES

2.1 Solicitation Response

An Offeror responding to this solicitation may do so by delivering or mailing your proposal to:

Office of the Arizona Attorney General
2005 North Central Avenue
Phoenix, AZ 85004
Attention: Jerry Connolly
Solicitation #AG19-0039

If you have questions please contact Jerry Connolly at 602-542-8030 or jerry.connolly@azag.gov.

2.2 Late Proposals

All proposals must be received by the Solicitation due date and time specified. Any response received after the Solicitation due date and time specified will not be considered. Proposals are to be delivered to the Issuing Office, as indicated on the front page of this solicitation, and clearly designated as a Proposal for this specific Solicitation. Proposals delivered to any other location will not be considered "received" until they arrive at the location specified on the cover page. AGO will not waive delay in delivery resulting from need to transport a proposal from another location, or error or delay on the part of the carrier.

2.3 Mailing of Proposals

Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Issuing Office. Proposals arriving after the due date and time will not be considered.

3. FAMILIARIZATION WITH SCOPE OF WORK

The Offeror should carefully review the requirements of the Solicitation and familiarize itself with the Scope of Work, laws, regulations and other factors so to satisfy itself as to the expense and difficulties of the work to be performed. The signing of the Offer and Contract Award form will constitute a representation of compliance by



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the Offeror. There will be no subsequent financial adjustment, other than provided by the Contract, for lack of such familiarization.

4. COMPONENTS OF A COMPLETE PROPOSAL

4.1 **Offer Submittal:**

Offerors delivering or mailing proposals should submit their Offer as One (1) original unbound set; three (3) bound copies. The original copy of the proposal should be clearly labeled "ORIGINAL". The material should contain a table of contents, be in the sequence suggested in Attachment I, and be related to the Request for Proposal. The State will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP.

4.2 **Conformance to the RFP**

The Offeror should use the provided forms and formats or forms and formats substantially similar. Failure to include the requested information, providing incomplete information or adding irrelevant information may result in lower evaluation scores and may have a negative impact on the evaluation of the Offeror's proposal.

5. PROPOSAL FORMAT

The following information should be submitted with each proposal and in this order. This format provides a layout for the proposal and pricing sections. Failure to include all of the requested information may result in a proposal being rejected.

5.1 Offer and Contract Award Form

Offeror should complete the top half of the Offer and Acceptance Form (*see Offeror Response Form at Attachment I*) and should include the signature of a person authorized to bind the Offeror.

5.2 Solicitation Amendments

Offeror should acknowledge receipt of Solicitations Amendments by including signed copies of all Solicitation Amendments.

5.3 Exceptions to the RFP

An Offeror who takes exception to any portion of the Solicitation must do so pursuant to the Uniform Instructions to Offeror and must include the exceptions in a separate section in the proposal titled "Exceptions". Exceptions to the terms and conditions should provide sufficient justification to detail the reason the exception is advantageous to the State of Arizona.

5.4 Confidential Information

If an Offeror believes that information in its Offer should remain confidential, the Offeror shall designate a special section labeled "Confidential Information" and include any information the Offeror indicates as confidential along with a statement detailing the reasons that the information should not be disclosed. Such request for confidentiality shall be handled in accordance with the Uniform Instructions to Offeror.

5.5 Suspension or Debarment Status

An Offeror who has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any Federal, State or local government shall include a letter with its proposal setting forth the disclosures and explanations required by the Uniform Instructions to Offerors.

5.6 Insurance



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The Offeror should provide a Certificate of Insurance or a letter from the Offeror's Insurance Provider demonstrating the Offeror is able to provide insurance in accordance with the Special Terms and Conditions Section of this RFP.

5.7 General Firm Information

Provide requested general information requested in Attachment I.

5.8 Conflict of Interest/Adverse Cases/Malpractice

Provide the information requested in Attachment I.

5.9 Executive Summary of Firm's Qualification

The Offeror should provide an executive summary of the firm's unique qualifications for this case.

5.10 Similar Cases

The Offeror should provide a brief description of at least 3 cases, similar to a project of this nature that the firm has worked on.

5.11 References

Provide requested reference information

5.12 Key Personnel Information/Resumes

The Offeror should provide resumes of the Key Personnel who would work on this case.

5.13 Response to Scope of Work Tasks

The Offeror should provide a brief description of its proposed approach to these services and answers to the questions identified in the Offeror Response Form in Attachment I.

5.14 Cost Data

Provide hourly rates as requested in Attachment I.

6. PROPOSAL OPENING

Proposals shall be opened after the Solicitation Due Date and Time cited on the cover page of the Solicitation. The name of each Offeror shall be publicly read and recorded in the presence of at least one witness. Prices shall not be read.

7. OFFER AND ACCEPTANCE PERIOD

In order to allow for an adequate evaluation, AGO requires an Offer in response to this Solicitation to be valid and irrevocable for 120 days after the opening due date.

8. EVALUATION CRITERIA

Awards shall be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation criteria are listed in relative order of importance.

- 8.1 **Experience and expertise of the firm and of key personnel;**
- 8.2 **Response to Scope of Work Tasks;**
- 8.3 **Capacity of the firm;**
- 8.4 **Cost.**



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9. DISCUSSIONS

After the initial receipt and evaluation of proposals, the AGO may conduct discussions with Offerors whose proposals are deemed to be reasonably susceptible to award. Notwithstanding this section, proposals should be submitted initially complete and on most favorable terms. In the event discussions are conducted, the AGO shall issue a written request for Best and Final Offers.

10. BEST AND FINAL OFFER

The request for Best and Final Offer shall inform Offerors that if they do not submit a Best and Final Offer or a notice of withdrawal, their immediate previous Offer will be considered as their Best and Final Offer. The Offeror's "immediate previous Offer" will consist of the Offeror's original proposal submission and any documents submitted by the Offeror during discussions.

11. DEFINITIONS OF KEY WORDS USED IN THE RFP

11.1 **AGO, Attorney General's Office, Office of the Attorney General**

Office of the Attorney General, Attorney General's Office or AGO shall all refer to the Arizona Office of the Attorney General.

11.2 **Arizona Power Authority**

Arizona Power Authority, Authority, APA or Agency shall all refer to the Arizona Power Authority.

11.3 **Co-Counsel**

Co-Counsel shall refer to a firm or firms that separately contract with Counsel to provide services related to this agreement.

11.4 **Counsel, Contractor**

Counselor or Contractor shall refer to the firm or firms awarded a contract by the AGO through this Request for Proposal (RFP) process.

11.5 **Deliverable**

Deliverable shall refer to any report or other work product produced by the Counsel for the Office of the Attorney General.

11.6 **Documents**

Documents shall include all correspondence, evaluations, depositions, interrogatories, reports, pleadings, memoranda, briefs, information and any other similar documents or material prepared or used in connection with Services in the pursuit of this matter.

11.7 **May**

May indicates something that is not mandatory but permissible.

11.8 **Shall, Must**

Shall or must indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.

11.9 **Should, Will**

Should or will indicates something that is recommended but not mandatory.

25.8 **Subcontractor**

Subcontractor means a person or firm that separately contracts with Counsel to provide materials or



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services required for the performance of this contract.



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UNIFORM INSTRUCTIONS TO OFFERORS

A. Definition of Terms. As used in these Instructions, the terms listed below are defined as follows:

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

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

B. Inquiries

1. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.
2. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Procurement Officer.
3. Submission of Inquiries.- Any inquiry related to the Solicitation should reference the appropriate Solicitation page and paragraph number. Offerors are prohibited from contacting any State employee other than the Procurement Officer concerning the procurement while the solicitation and evaluation are in process.
4. Timeliness. Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
5. No Right to Rely on Verbal or Electronic Mail Responses. An Offeror shall not rely on verbal or electronic mail responses to inquiries. A verbal or electronic mail reply to an inquiry does not constitute a modification of the solicitation.
6. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
7. Pre-Offer Conference. If a pre-Offer conference has been scheduled under the Solicitation, the date, time and location shall appear in the State’s eProcurement system. Offerors should raise any questions about the Solicitation at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a Solicitation Amendment.
8. Persons With Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer. Requests shall be made as early as possible to allow time to arrange the accommodation.

C. Offer Preparation

1. Electronic Documents. The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission to the Office of the Arizona Attorney General. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void.
2. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror’s intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to



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be bound, such as a signature, shall result in rejection of the Offer.

3. Exceptions to Terms and Conditions. All exceptions included with the Offer shall in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
 - 3.1. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
 - 3.2. Request for Proposals. All exceptions that are contained in the Offer may negatively impact an Offeror's susceptibility for award. An offer that takes exception to any material requirement of the solicitation may be rejected.
4. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
5. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
6. Federal Excise Tax. The State is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
7. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.
 - 7.1 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. §6041A.
8. Identification of Taxes in Offer. The State is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the Solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.
9. Disclosure. If the person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall set forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or



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debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

10. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).
11. Federal Immigration and Nationality Act. By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion, require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have five days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the Offer not being considered for contract award.
12. Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the Offer.

D. Submission of Offer

1. Offer Submission, Due Date and Time. Offerors responding to a Solicitation must submit the Offer as directed on the cover page of this solicitation. Offers shall be received before the due date and time stated in the solicitation. Offers that are received after the due date and time shall be rejected.
2. Offer and Acceptance. Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted in the State's eProcurement system with the Offer no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.
3. Solicitation Amendments. A Solicitation Amendment shall be acknowledged and returned to the Contract Officer named on the front page or returned with the Offer no later than the Offer due date and time. Failure to acknowledge a Solicitation Amendment may result in rejection of the Offer.
4. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
5. Confidential Information. If an Offeror believes that any portion of an Offer, protest, or correspondence contains a trade secret or other proprietary information, the Offeror shall clearly designate the trade secret and other proprietary information, using the term "confidential." An Offeror shall provide a statement detailing the reasons why the information should not be disclosed including the specific harm or prejudice that may arise upon disclosure. The Procurement Officer shall review all requests for confidentiality and provide a written determination. Until a written determination is made, a Procurement Officer shall not disclose information designated as confidential except to those individuals



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deemed to have a legitimate State interest. In the event the Procurement Officer denies the request for confidentiality, the Offeror may appeal the determination to the State Procurement Administrator within the time specified in the written determination. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information.

6. Public Record. All Offers submitted and opened are public records and must be retained by the State for six years. Offers shall be open and available to public inspection through the State's eProcurement system after Contract award, except for such Offers deemed to be confidential by the State.
7. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or other official contract form, the Offeror certifies that:
 - 7.1. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
 - 7.2. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

E. Evaluation

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

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7.3 Cancel the Solicitation.

F. Award

1. Number of Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State.
2. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer’s signature on the offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
3. Effective Date. The effective date of the Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

G. Protests

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

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

H. Comments Welcome

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



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1. Definition of Terms

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

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



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1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

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

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

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

2.3.1. Special Terms and Conditions;

2.3.2. Uniform Terms and Conditions;

2.3.3. Statement or Scope of Work;

2.3.4. Specifications;

2.3.5. Attachments;

2.3.6. Exhibits;

2.3.7. Documents referenced or included in the Solicitation.

2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.



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3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other “records” relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor’s or any subcontractor’s books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor’s processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor’s facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or



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its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

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

4. Costs and Payments

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



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under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

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

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

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

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

4.5.2. Cancel the Contract; or

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

5. Contract Changes

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

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

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

6. Risk and Liability

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



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6.2. Indemnification

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

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

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

6.4. Force Majeure.

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

6.4.2. Force Majeure shall not include the following occurrences:

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

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

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



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maintain any required insurance, bonds, licenses or permits.

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

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

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

7. Warranties

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

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

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

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

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

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

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

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

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

7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain



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all applicable license and permit requirements.

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

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

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

8. State's Contractual Remedies

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

8.2. Stop Work Order.

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

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

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

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



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

9. Contract Termination

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



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

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

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

10. **Contract Claims**

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

11. **Arbitration**

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

12. **Comments Welcome**

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