

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
KONE, INC.**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this _____ day of _____, 20____, between the City of Glendale, an Arizona municipal corporation (the "City"), and Kone, Inc., a Delaware corporation authorized to do business in Arizona, ("Contractor"), collectively, the "Parties."

RECITALS

- A. On January 31, 2017, under the Arizona State Procurement Cooperative Purchasing Agreement, the State of Arizona entered into a contract with Contractor to purchase the goods and services described in the Elevator, Escalator, Dumbwaiter, and Moving Walkway Repair and Maintenance, Contract No. ADSP017-160330 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. **Term of Agreement.** The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was January 31, 2017, until the date the contract expires on January 30, 2018, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond January 30, 2022. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until January 30, 2018. The City Manager or designee, however, may renew the term of this Agreement for four (4) one-year periods until the Cooperative Purchasing Agreement expires on January 30, 2022.

Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed two hundred four thousand four hundred eighty dollars (\$204,480) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Vern Baker
6210 W. Myrtle Avenue, Suite 111
Glendale, Arizona 85301
623-930-2679

and

Kone, Inc.
c/o Sammy D. Goe
4639 S. 36th Street
Phoenix, Arizona 85040
623-434-3599

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

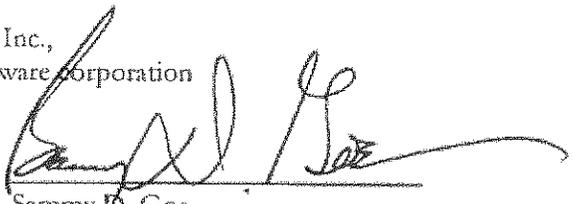
"City"

City of Glendale, an Arizona
municipal corporation

By: _____
Kevin R. Phelps
City Manager

"Contractor"

Kone, Inc.,
a Delaware corporation

By: 
Name: Sammy D. Goe
Title: Arizona Manager

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
KONE INC.**

EXHIBIT A
STATE OF ARIZONA CONTRACT NO. ADSP017-160330



Master Blanket Purchase Order ADSP017-160330

Header Information

Purchase Order Number:	ADSP017-160330	Release Number:	0	Short Description:	Elevator, Escalator, Chairlift, and Moving Walkway Repair and Maintenance
Status:	3PS - Sent	Purchaser:	Michael Fleming	Receipt Method:	Quantity
Fiscal Year:	2017	PO Type:	Blanket	Minor Status:	
Organization:	State of Arizona				
Department:	ADSP0 - State Procurement Office	Location:	SPO - State Procurement Office	Type Code:	
Alternate ID:		Entered Date:	01/31/2017 03:04:27 PM	Control Code:	
Days ARO:	0	Retainage %:	0.00%	Discount %:	0.00%
Print Dest Detail:	If Different				
Catalog ID:		Release Type:	Direct Release	Pcard Enabled:	No
Contact Instructions:		Tax Rate:		Actual Cost:	\$0.00

Master Blanket/Contract End Date (Maximum): 01/31/2022 11:59:59 PM

Project No.:

Building Code:

Cost Code:

Special Purchase Types:

PIJ NUMBER:

Coop Spend To Date:

Commodity Reference Id:

None

PO External Doc Type:

Agency Attachments: [PO Terms & Conditions Exhibit 6.pdf](#) [EXHIBIT 7 to the Special Terms and Conditions~1.pdf](#) [SPO Disentanglement.pdf](#) [SPO InstructionsAttachments.pdf](#) [SPO RFP Insurance Requirements~1.pdf](#) [SPO RFP Notice~1.pdf](#) [ADSP017-00006906 Amendment 1.pdf](#) [Final Procurement File~3.zip](#) [SPO RFP Section 3 Special Terms and Conditions 1_26_17.pdf](#) [Elevator_SOW_01_26_17_doc.\(003\)\(1\).pdf](#) [TC.pdf](#) [BOFA Attachment 4A Price List - KONE Inc - BAFO 1_27_2017.xlsx](#) [KONECONTRACTDoc.pdf](#) [Exhibit II Arizona Regions~1.pdf](#)

Vendor Attachments: [KONE Care Online Portal](#) [KONE Technical Service Center - PDF](#) [KONE Required Attachments 1, 2-A, 2-B, 3-A, 3-B, 3-C, 5-A, 5-B, 7 Attachment 4-A KONE Prequalification Package Solicitation Amendment Sammy Goe Resume](#) [KONE BAFO PRICING ATTACHMENT 4-A KONE BAFO SOW](#) [KONE BAFO 1_27_2017 KONE BAFO T&CS](#)

Agency Attachment Forms:

Vendor Attachment Forms:

Primary Vendor Information & PO Terms

Vendor:	000006900 - KONE INC Mackenzie Corley 4639 S. 36th Street Phoenix, AZ 85040 US Email: mackenzie.corley@kone.com Phone: (623)434-3599 FAX: (602)437-0300	Payment Terms:	Net 30	Shipping Method:	Best Way
		Shipping Terms:	As Specified	Freight Terms:	Freight Allowed

PO Acknowledgements:	Alt Order #	Notifications	Acknowledged Date/Time
Purchase Order	20001	Emailed to mackenzie.corley@kone.com at 01/31/2017 04:24:38 PM	02/06/2017 08:18:50 AM

Master Blanket/Contract Vendor Distributor List

Vendor ID	Alternative ID	Vendor Name	Preferred Delivery Method	Vendor Distributor Status
000006900	PZ000006900	KONE INC	Email	Active

Master Blanket/Contract Controls

Master Blanket/Contract Begin Date: 01/31/2017 **Master Blanket/Contract End Date:** 01/31/2018
Cooperative Purchasing Allowed: Yes

Organization	Department	Dollar Limit	Dollars Spent to Date	Minimum Order Amount
ALL ORG - Organization Umbrella Master Control	AGY - Agency Umbrella Master Control	\$0.00	\$101,854.27	\$0.00

Item Information

Print Sequence # 1.0, Item # 1: Line item will be added							3PS - Sent	
NIGP Code: <u>910-13</u> Elevator Installation, Maintenance and Repair								
Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
Quantity	1.0	\$0.00	EA - Each	0.00	\$0.00		\$0.00	\$0.00
Manufacturer:			Brand:		Model:			
Make:			Packaging:					
Project No.:								

Building Code:
Cost Code:
Property Number:

Exit

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Request for Proposals
 Solicitation No.
 ADSP017-00006906
 Description:
 Elevator, Escalator, Dumbwaiter, and Moving
 Walkway Repair and Maintenance

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

Section 1-C, Att. 1
Offer and Acceptance Form

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide Elevator, Escalator, Dumbwaiter, and Moving Walkway Repair and Maintenance in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Original Offer: 12/14/2016 SG
 date initial

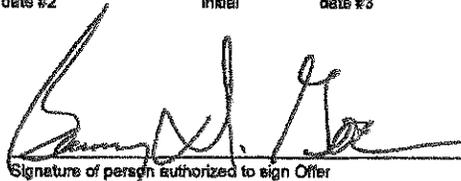
Revised Offer: _____
 date #1 initial

Best and Final Offer: 1/27/2017 SG
 date initial

date #2 initial date #3 initial

KONE INC

Company name


 Signature of person authorized to sign Offer


 Initials

4639 S. 36TH STREET

Address

Sammy D. Goe, KONE Arizona Manager

Printed name and title

PHOENIX, AZ 85040

City | State | ZIP

Mackenzie Corley, KONE Business Development

Contact name and title

WWW.KONE.US

Company website

Mackenzie.Corley@kone.com **480-340-4488**

Contact Email Address

Contact phone number

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

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER: State hereby accepts the Offer. Offeror is now bound (as Contractor) to sell the Materials and perform the Services under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable purchase order, release document, or written notice to proceed.

State's Contract No. is **ADSP017-160330**
 (for all correspondence and invoices)

The effective date of the Contract is: _____

Contract awarded this 31 day of 01 2017


 Procurement Officer Signature
Michael Fleming
 Procurement Officer printed name





Invitations for Bids
 Requests for Proposals
 Requests for Quotations
 Requests for Qualifications
 under A.R.S. §41-2558

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

SECTION 3-B:
 Uniform Terms and Conditions

Version: 11.3 (7/21/2016)

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Invitations for Bids
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under A.R.S. §41-2558

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

Uniform Terms and Conditions

1.0 Definition of Terms

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

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



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- 1.11 **Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.12 **Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.13 **Co-Op Buyer** "Co-Op Buyer" means a member of the State Purchasing Cooperative that has entered into a "Cooperative Purchasing Agreement" with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, "Co-Op Buyer" is to be construed as encompassing "eligible procurement unit" under A.A.C. R2-7-101(23).

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



Invitations for Bids
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Requests for Qualifications
under A.R.S. §41-2558

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

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



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

2.0 Contract Interpretation

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



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6. uses the term "will" or the phrases "is to be" or "are to be" with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that "shall" is either unnecessary or irrelevant in that instance.

2.4 Contract Order of Precedence

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

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

- (a) Contract Amendments;
- (b) the Solicitation Documents, in the order:
 - (1) Special Terms and Conditions;
 - (2) Exhibits to the Special Terms and Conditions;
 - (3) Uniform Terms and Conditions;
 - (4) Scope of Work;
 - (5) Exhibits to the Scope of Work;
 - (6) Commercial Document;
 - (7) Exhibits to the Commercial Document;
 - (8) Specifications; and
 - (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

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

2.5 Independent Contractor

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

2.6 Severability

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

2.7 Complete Integration

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



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2.8 No Waiver of Rights

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

3.0 Contract Administration and Operation



3.1 Term of Contract

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



3.2 Contract Extensions

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

3.3 Notices and Correspondence

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

- (a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding ProcureAZ Vendor Profile; and
- (b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

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

- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the ProcureAZ Summary for State; and
- (b) address any required notices to State to Procurement Officer identified as "Purchaser" in the ProcureAZ Summary at the following mailing address:

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

3.4 Signing of Contract Amendments

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

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

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

3.5 Click-Through Terms and Conditions

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



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

3.6 Books and Records

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

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

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

3.7 Contractor Licenses

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

3.8 Inspection and Testing

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

3.9 Ownership of Intellectual Property

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

(a) "Government Purpose Rights" are:

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



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

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

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

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

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

3.10 Subcontracts

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

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

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



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



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3.15 Statewide Contract Provisions

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

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

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

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

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

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

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

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



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

3.16 Multiple-Use Provisions

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

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

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

3.17 Other Contractors

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

3.18 Work on State Premises

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

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



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

3.19 Advertising, Publishing and Promotion of Contract

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

4.0 Costs and Payments

4.1 Payments

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

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

4.2 Applicable Taxes

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

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

4.3 Availability of Funds

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

5.0 Contract Changes

5.1 Contract Amendments

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



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5.2 Assignment and Delegation

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

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

6.0 Risk and Liability

6.1 Risk of Loss

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

6.2 Contractor Insurance

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

6.3 Basic Indemnification

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

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

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

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



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6.4 Patent and
Copyright
Indemnification

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

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

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

6.5 Force Majeure

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

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

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

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



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6.6 Third Party
Antitrust
Violations

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

7.0 Warranties

7.1 Liens

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

7.2 Conformity to
Requirements

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

7.3 Contractor
Personnel

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

7.4 Intellectual
Property

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

7.5 Compliance
with Laws

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

7.6 Licenses and
Permits

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

7.7 Operational
Continuity

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

7.8 Performance in
Public Health
Emergency

Contractor warrants that it will:

1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan



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

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

7.9 Lobbying

7.11.1 PROHIBITION.

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

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

7.10 Survival of Warranties

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

8.0 State's Contractual Remedies

- 8.1 Right to Assurance** If State in good faith has reason to believe that Contractor does not intend to, or is unable to, perform or continue performing under the Contract, Procurement Officer may demand that Contractor promptly provide written assurance of intent to perform. Failure by Contractor to provide the assurance within the time specified may be the basis for terminating the Contract or for State to exercise any other remedy available to it under the Contract or laws.
- 8.2 Stop Work Order** The State may at any time require Contractor to stop all or any part of the Work by written order. Upon receipt of a stop order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring of further costs during the period of stoppage that might be chargeable to State associated with the portions of the Work covered by the order. If Contractor incurs losses, it may make a claim under Article 10.
- 8.3 Non-exclusive Remedies** State's rights and remedies under the Contract are not exclusive.
- 8.4 Nonconforming Tender** The Materials provided and Services performed must comply fully with the Contract, and providing Materials or performing Services or any portion thereof that do not comply fully constitutes a breach of contract, in which event State will be entitled to exercise any remedy available to it under the Contract or laws.
- 8.5 Right of Offset** State is entitled to offset against any sums due Contractor any expenses or costs State incurs or damages it has assessed against it concerning Contractor's non-conforming performance or failure to carry out the Work, including any expenses, costs, and damages to which it is entitled by the Contract or laws.



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9.0 Contract Termination

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



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10.0 Contract Claims

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

11.0 General Provisions for Materials

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



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

11.8 Discontinued Products

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

11.9 Forced Substitutions

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

11.10 Recalls

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

11.11 Delivery

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

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

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

11.12 Delivery Time

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



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



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

11.17 Returns

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

11.18 Order Cancellation

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

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

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

11.19 Product Safety

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

11.20 Hazardous Materials

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



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

12.0 General Provisions for Services

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



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

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

13.0 Data and Information Handling

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



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

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

13.3 Personally Identifiable Information.

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

For purposes of this paragraph:

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

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

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

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

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

13.4 Protected Health Information

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

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



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

14.0 Information Technology Work

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



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- 14.4.2 **NOTIFY OF CLAIMS.** State shall notify Contractor promptly of any claim to which a Pass-Through indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:
- (a) State reserves the right to elect to participate in the action at its own expense;
 - (b) State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
 - (c) State shall in any case cooperate in the defense and any related settlement negotiations.
- 14.5 **Systems and Controls** In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.
- 14.6 **Redress of Infringement.**
- 14.6.1 **REPLACE, LICENSE, OR MODIFY.** If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Contractor shall at its sole cost and expense and in consultation with State either:
- (a) replace any infringing items with non-infringing ones;
 - (b) obtain for State the right to continue using the infringing items; or
 - (c) modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.
- 14.6.2 **CANCELLATION OPTION.** In every case under 14.6.1, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:
- (a) for any software created for State under the Contract, the amount State paid to Contractor for creating it;
 - (b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
 - (c) for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.
- 14.6.3 **EXCEPTIONS.** Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:
- (a) modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
 - (b) operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
 - (c) combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.
- 14.7 **First Party Liability Limitation**
- 14.7.1 **LIMIT.** Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.



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



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

15.0 Comments Welcome

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

The public may submit comments to:

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End of Section 3-B

End of Part 3

End of Solicitation Documents



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Uniform Terms and Conditions

1.0 Definition of Terms

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

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



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



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



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

2.0 Contract Interpretation

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



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6. uses the term "will" or the phrases "is to be" or "are to be" with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that "shall" is either unnecessary or irrelevant in that instance.

2.4 Contract Order of Precedence

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

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

- (a) Contract Amendments;
- (b) the Solicitation Documents, in the order:
 - (1) Special Terms and Conditions;
 - (2) Exhibits to the Special Terms and Conditions;
 - (3) Uniform Terms and Conditions;
 - (4) Scope of Work;
 - (5) Exhibits to the Scope of Work;
 - (6) Commercial Document;
 - (7) Exhibits to the Commercial Document;
 - (8) Specifications; and
 - (9) any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

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

2.5 Independent Contractor

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

2.6 Severability

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

2.7 Complete Integration

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



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2.8 No Waiver
of Rights

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

3.0 Contract Administration and Operation

3.1 Term of Contract

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

3.2 Contract
Extensions

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

3.3 Notices and
Correspondence

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

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

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

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

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

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

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

3.4 Signing of Contract
Amendments

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

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

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

3.5 Click-Through
Terms and
Conditions

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



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

3.6 Books and Records

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

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

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

3.7 Contractor Licenses

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

3.8 Inspection and Testing

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

3.9 Ownership of Intellectual Property

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

(a) "Government Purpose Rights" are:

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



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

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

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

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

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

3.10 Subcontracts

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

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

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



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



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3.15 Statewide Contract Provisions

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

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

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

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

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

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

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

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



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

3.16 Multiple-Use Provisions

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

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

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

3.17 Other Contractors

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

3.18 Work on State Premises

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

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



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- 3.19 Advertising, Publishing and Promotion of Contract
- necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset].
- Contractor shall not advertise, promote, or otherwise use information concerning the Contract for commercial benefit without the prior written approval of Procurement Officer, which approval Procurement Officer may withhold at his or her discretion.

4.0 Costs and Payments

4.1 Payments

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

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

4.2 Applicable Taxes

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

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

4.3 Availability of Funds

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

5.0 Contract Changes

5.1 Contract Amendments

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



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5.2 Assignment and Delegation

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

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

6.0 Risk and Liability

6.1 Risk of Loss

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

6.2 Contractor Insurance

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

6.3 Basic Indemnification

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

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

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

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



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6.4 Patent and
Copyright
Indemnification

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

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

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

6.5 Force Majeure

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

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

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

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



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6.6 Third Party
Antitrust
Violations

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

7.0 Warranties

7.1 Liens

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

7.2 Conformity to
Requirements

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

7.3 Contractor
Personnel

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

7.4 Intellectual
Property

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

7.5 Compliance
with Laws

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

7.6 Licenses and
Permits

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

7.7 Operational
Continuity

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

7.8 Performance in
Public Health
Emergency

Contractor warrants that it will:

1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan



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

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

7.9 Lobbying

7.11.1 PROHIBITION.

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

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

7.10 Survival of Warranties

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

8.0 State's Contractual Remedies

8.1 Right to Assurance

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

8.2 Stop Work Order

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

8.3 Non-exclusive Remedies

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

8.4 Nonconforming Tender

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

8.5 Right of Offset

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



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9.0 Contract Termination

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



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10.0 Contract Claims

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

11.0 General Provisions for Materials

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



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

11.8 Discontinued Products

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

11.9 Forced Substitutions

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

11.10 Recalls

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

11.11 Delivery

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

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

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

11.12 Delivery Time

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



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11.13 Delivery Locations

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

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

11.14 Conditions at Delivery Location

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

11.15 Materials Acceptance

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

11.16 Correcting Defects

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

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



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

11.17 Returns

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

11.18 Order Cancellation

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

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

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

11.19 Product Safety

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

11.20 Hazardous Materials

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



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

12.0 General Provisions for Services

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



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

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

13.0 Data and Information Handling

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



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

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

13.3 Personally Identifiable Information.

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

For purposes of this paragraph:

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

NOTE (1): For convenience of reference only, the OMB memorandum is available at: <https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

NOTE (2): For convenience of reference only, the GSA directive is available at: <http://www.gsa.gov/portal/directive/d0/content/658222>

13.4 Protected Health Information

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

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



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

14.0 Information Technology Work

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



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- 14.4.2 NOTIFY OF CLAIMS. State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:
- (a) State reserves the right to elect to participate in the action at its own expense;
 - (b) State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
 - (c) State shall in any case cooperate in the defense and any related settlement negotiations.
- 14.5 **Systems and Controls** In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.
- 14.6 **Redress of Infringement.**
- 14.6.1 REPLACE, LICENSE, OR MODIFY. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Contractor shall at its sole cost and expense and in consultation with State either:
- (a) replace any infringing items with non-infringing ones;
 - (b) obtain for State the right to continue using the infringing items; or
 - (c) modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.
- 14.6.2 CANCELLATION OPTION. In every case under 14.6.1, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:
- (a) for any software created for State under the Contract, the amount State paid to Contractor for creating it;
 - (b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
 - (c) for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.
- 14.6.3. EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:
- (a) modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
 - (b) operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
 - (c) combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.
- 14.7 **First Party Liability Limitation**
- 14.7.1 LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.



**Invitations for Bids
Requests for Proposals
Requests for Quotations
Requests for Qualifications
under A.R.S. §41-2558**

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- 14.7.2 **PROVISOS.** This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:
- (a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
 - (b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or
 - (c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.
- 14.7.2 **PURCHASE PRICE DETERMINATION.** If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all change orders or other forms of Contract Amendment having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.
- 14.7.3 **NO EFFECT ON INSURANCE.** This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

**14.8 Information
Technology
Warranty**

- 14.8.1 **SPECIFIED DESIGN.** Where the Scope of Work (Section 2-A of the Solicitation) for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:
- (a) modified or altered by anyone not authorized by Contractor to do so;
 - (b) maintained in a way inconsistent to any applicable manufacturer recommendations; or
 - (c) operated in a manner not within its intended use or environment.
- 14.8.2 **COTS SOFTWARE.** With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:
- (a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
 - (b) the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and
 - (c) it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.
- 14.8.3 **PAYMENT HAS NO EFFECT.** The warranties in this paragraph are not affected by State's inspection, testing, or payment.

14.9 Specific Remedies

Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty under paragraph 14.8 includes, at State's discretion, re-performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor's payment of State's additional, documented, and reasonable



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

15.0 Comments Welcome

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

The public may submit comments to:

State Procurement Administrator,
State Procurement Office, 100 North 15th Avenue, Suite 201
Phoenix, Arizona, 85007

End of Section 3-B

End of Part 3

End of Solicitation Documents



Request for Proposals
 Solicitation No.
ADSP017-00006906
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**Elevator, Escalator, Chairlift, and Moving
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**PART 2 of the SOLICITATION:
 Technical and Commercial**

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Section 2-A: Scope of Work

Date: 11/25/2016

1.0 Purpose

- 1.1 The purpose of this solicitation is to contract with qualified firm(s) or individual(s) to perform labor, testing, preventative maintenance, repairs and inspections as required for any vertical transportation system(s) and moving walkway(s) at various locations within the State of Arizona. Refer to Exhibit 1 for a list of Arizona Department of Administration Elevators. Exhibit 1 is not all inclusive and each Eligible Agency will provide an Exhibit 1 equipment list to the awarded Contractor.
- 1.2 Contractor shall establish mutually agreeable Exhibit 1 pricing for each Eligible Agency preventative maintenance program specific equipment in accordance with contract taking into account the age and condition of the equipment.

2.0 Overview

Scope Summary

- 2.1 The Contractor shall provide labor for scheduled testing, preventative maintenance, repair, and inspection services for all Eligible Agency vertical transportation systems.
- 2.2 Any new vertical transportation system or moving walkways and/or modernization of existing systems currently under an existing warranty will initially be excluded from the resultant contract until such time as the current warranty expires. As existing maintenance/warranty agreements expire, equipment may be added in accordance with contract terms and conditions. If modernization of existing system is conducted the equipment maintenance shall be suspended during the modernization period.
- 2.3 An Eligible Agency may prepare a formal solicitation in accordance with the jurisdiction procurement code for any repair as determined in the best interest of the individual agency.
- 2.4 Contractor(s) shall ensure all equipment covered under this contract receive the services necessary to meet industry safety and operating standards.
- 2.5 Preventative maintenance program requirements not specifically detailed within the scope of work shall be detailed by the Eligible Agency and performed by the Contractor in accordance with all applicable codes, laws, and industry specifications.
- 2.6 Maintenance coverage includes: Contractor Maintenance Control Program, preventative services and adjustments, routine examinations, standard and non-standard time callback services, emergency services, inspection and testing, minor components.

Contract Awards

- 2.7 See section 1B, 7.0 Award of Contract in the Instructions and Attachments document.

The state may award multiple contracts by region as outlined in Exhibit 2 Arizona Regions to the least number of suppliers deemed necessary by the state to meet requirements. The newly awarded Contractor shall work with the Eligible Agency to transition from any existing contract.



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Projected Usage

- 2.8 The State anticipates considerable activity resulting from any awarded Contract as a result of this solicitation; however, no commitment of any kind is expressed or implied as to quantities actually acquired during any resultant contract term.

Payment Considerations

- 2.9 Each Eligible Agency shall be responsible for any payment(s) for services requested from any awarded Contractor(s).

3.0 Definitions

- 3.1 **Vertical Transportation System:** Various means of travel between building floors.
- 3.2 **Mechanic/Apprentice/Helper:** Employee(s) of the Contractor providing any services as outlined in the solicitation. The minimum requirements level of credentials for types of mechanic(s) is addressed under "Employee Work Credential."
- 3.3 **Hours of Operations (MST):** Hourly Rate for Contractor employee to perform services, shall only be charged to Eligible Agency when the scope of service from an approved work order is not covered under preventative maintenance, repair or inspection services: **(SEE ATTACHMENT 4-A (PRICING DOCUMENT))**
- 3.3.1 Standard Hours of Operation (Monday through Friday 7: a.m. - 5:00 p.m.)
- 3.3.2 Non-Standard Hours of Operation, Overtime (Monday through Friday 5:01 p.m. – 6:59 a.m.)
- 3.3.3 Weekend Services (Saturday through Sunday) (Saturday 12:01 a.m. to 6:59 a.m. Monday)
- 3.3.4 State Holiday
- 3.4 **Facilities Maintenance Coordinator (FMC):** The individual responsible for the department surveillance of the work in accordance with the contract. The FMC communicates with the Contractor on needed preventative maintenance services and repairs. The FMC shall also be responsible for approving all scheduled maintenance, trouble/service calls, both call back and emergency call back, and test/inspections completed by the Contractor.
- 3.5 **Mechanic (Journeyman Level):** The primary worker responding to and performing the scope of the service request meeting the experience level as required by the contract.
- 3.6 **Apprentice/Helper:** An Apprentice/Helper is defined as an additional experienced worker that is necessary to assist the Mechanic in responding to and performing the scope of the service request. Helpers have separate line items for their labor rates.
- 3.7 **Original Equipment Manufacturer (OEM):** The manufacturer of the complete production equipment whether assembled from parts of its own manufacturer or from parts or components furnished by other manufacturers or a combination of both.
- 3.8 **Preventive Maintenance (PM):** That service performed by the Contractor on a scheduled basis, which is designed to keep the equipment/systems in proper operating condition. It includes a verification of proper tolerances (tightness, fluid levels, voltages, etc.), and adjustments or other actions as necessary and appropriate in accordance with the manufacturer's maintenance specifications and as authorized in the work order.
- 3.9 **Eligible Agency:** Refers to a State agency or Cooperative agency.



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- 3.10 **Correction Order:** A Correction Order is the collection of required repair/maintenance tasks, per the request of a certified State Elevator Inspector, needing to be completed by the Contractor at no additional costs to the eligible agency.
- 3.11 **Service/Trouble Calls:** When the FMC requests the Contractor to fix a problem identified On-Site for an existing elevator during standard hours of operation 7:00 a.m. to 5:00 p.m. (Mountain Standard Time), additional cost shall not be charged to the Eligible Agency for any Service/Trouble Calls during standard hours of operation.
- 3.12 **Repair Work:** If work requested from a Service/Trouble Call is greater than (2) hours of work and/or requires a second person to fix identified issue(s), the work shall be considered as "Repair Work."
- 3.13 **Emergency Call Back:** An "emergency call back" is a request from the Eligible Agency, or Capital Police Services for the Contractor to provide elevator service within one (1) hour **NOT** during standard hours of operation.

4.0 Vertical Transportation Maintenance and Repair

- 4.1 Contractor shall use personnel trained and qualified in the proper maintenance of the appropriate vertical transportation system. The personnel shall be qualified to keep the equipment properly adjusted, and shall use all reasonable care to maintain in proper and safe operating condition.
- 4.2 All scheduled periodic inspections and maintenance services shall be in accordance with OEM and Industry Standards, and as required by the Eligible Agency Inspector. The Contractor shall provide all testing required to maintain the annual licensing by the Eligible Agency Inspector. All work shall be in accordance with the current ASME Code A17.1 Safety Code for Elevators and Escalators, ASME Code A Section 17.2 Guide for Inspection of Elevators, Escalators, and Moving Walks and ASME A18.1 Safety Standard for Platform Lifts and Stairway Chairlifts.
- 4.3 The Contractor shall regularly and systematically examine each elevator and/or escalator at a minimum frequency cycle as determined for ADOA equipment by ADOA or as otherwise directed by the Eligible Agency. The Contractor shall cooperate with the Facilities Maintenance Coordinator (FMC) to provide a schedule of maintenance services to be performed for the elevator/escalator systems. The agreed upon schedule shall not be altered without prior written approval from the FMC. The Contractor shall at a minimum perform the following as part of the maintenance of each elevator/escalator.
- 4.4 If a Service/Trouble Call is made on any elevator/escalator during standard hours of operation from 7:00 a.m. to 5:00 p.m. (Mountain Standard Time) and on arrival the elevator/escalator is found to be running (ROA), there shall be no additional charge to the Eligible Agency. The call response shall be treated as any other Service/Trouble Call to determine if the elevator is operating properly. The Eligible Agency shall make every attempt to verify that the elevator/escalator is in fact out of service, before the Service/Trouble call service request is made.

Pre-inspection of equipment

- 4.5 The Contractor shall within thirty (30) days from the contract award, perform an equipment condition survey and assess all elevator equipment and within (90) days escalator equipment covered under this SOW (Appendix B) to establish a condition baseline. The equipment condition survey shall include observations of deficiencies in equipment condition, operation and/or performance and shall provide a documented baseline report of deficiencies and serve as a "starting point" for contractor to provide ongoing maintenance. The Contractor shall be responsible for providing any additional resources necessary to complete this task as part of the base services portion of the contract.
- 4.6 The equipment condition survey report shall identify and validate all equipment deficiencies, any missing blueprints and schematics that the Contractor claims exist, together with a detailed



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breakdown of the estimated cost to repair each deficiency and a recommended priority to correct each. A draft copy of the equipment condition survey report shall be submitted to the FMC within five (5) business days of the inspection completion date and final report to be submitted to the FMC within five (5) business days from the draft report approval date. The Eligible Agency will determine how and when each reported item will be addressed. Eligible Agency will immediately remove the unit from service if severity of the problem requires such action will not return to operational mode until repairs are performed. Correction of these deficiencies will be accomplished by either Contractor providing a cost proposal to correct the prior service provider violations or deficiencies as a supplemental service in accordance with pricing under this SOW, or by competitive procurement as determined by the Eligible Agency.

Inspections and Testing

- 4.7 The following schedule of inspection and maintenance operations shall be followed in carrying out the performance of this contract. This schedule constitutes the minimum of operations and frequency of performance required. The Contractor must recognize that additional services may be required in order to comply with performance evaluation requirements.
- 4.7.1 Services shall include, but not be limited to, the cleaning, lubrication, adjustment, repair and replacement of worn parts necessary to maintain the unit within the guidelines specified in ASME 17.1 and in this agreement.
- 4.7.2 No elevator equipment room door locks will be added or changed without approval from the FMC for each building.
- 4.8 The Contractor(s) shall provide assistance to the State Elevator Inspector if requested by the FMC or the State Elevator Inspector. The Contractor shall make, or cause to have made, repairs and/or testing identified by the State Elevator Inspector in the form of Correction Orders that has been included in the scope of work identified in this contract, at no additional cost to the Eligible Agency.
- 4.9 All elevator systems covered shall be completely inspected and serviced per the maintenance schedule as requested by the Eligible Agency. The Contractor shall obey the Arizona Elevator Act (Title 23, Chapter 2, Article 12) and the most updated ASME A17.1 Safety Code for Elevators and Escalators.
- 4.10 In addition, extra service personnel shall be required to respond to service/trouble calls, to ensure preventative maintenance schedules are not interrupted.

Perform Periodic Safety Tests and Inspections

- 4.11 The Contractor shall perform periodic safety tests of the elevator components. The periodic safety tests shall be conducted according to the latest edition of the ASME A17.1 Code. Test results shall be recorded on forms according to code. Certified copies of the completed test result forms shall be submitted to the applicable Eligible Agency after a safety test has been completed.
- 4.12 Periodic inspections, as performed by city, county, state, federal government, and/or insurance agencies, or their representatives, shall be included as part of this contract, and the Contractor shall be responsible for all repairs and/or testing identified by these inspections in the form of Correction Orders at no additional cost to the Eligible Agency.

Emergency Elevator Telephone Testing

- 4.13 The Contractor shall perform telephone testing during the Eligible Agency standard hours of operation. This maintenance shall be performed with each elevator's maintenance schedule as determined by the eligible agency. A monthly report shall be sent to the FMC indicating whether telephone is in service or not and the date tested. Failure to provide pricing for telephone monthly testing may result in your proposal being determined non susceptible for award.



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Housekeeping

- 4.14 The Contractor shall clean all elevator equipment. Cleaning shall occur at regular scheduled maintenance intervals sufficient to maintain a professional appearance and preserve the life of the equipment. The cleaning shall include at a minimum all elevator guide rails, overhead sheaves, beams and counterweight rails, car tops, bottom of platforms, pits, car door seals, and machine room floors on a monthly basis at a minimum. Cleaning of interiors of cars and exteriors of hoist-way doors and frames shall be excluded.

Lubricate

- 4.15 The Contractor shall lubricate machinery and equipment at intervals recommended by the original equipment manufacturer (OEM) or as directed by industry standards. All lubricants shall meet or exceed the minimum requirements specified by the manufacturer of the equipment and shall be furnished by the Contractor. The Contractor shall remove all "Drained Oils" from the site and dispose of at the Contractor's expense in accordance with CFR-40 and CFR-49.

Adjust

- 4.16 The Contractor shall use qualified individuals and proper diagnostic tools to make all necessary adjustments. When operation of the equipment varies from its normal or originally designed performance standards due to normal wear and use, and at regular intervals frequent enough to maintain a smooth quiet ride and optimum operating condition.

Replace

- 4.17 The Contractor shall replace all worn or defective parts covered under the contract as required. Replacement of the items shall occur during the course of scheduled preventative maintenance, at a frequency sufficient to prevent an unscheduled elevator shutdown and/or ensure the continued normal operation of the elevator. Parts redesigned by and recommended as replacement parts by the OEM shall be used.

Blueprints

- 4.18 The Contractor shall keep current all blueprints for each site. A copy of such blueprints shall be kept at all times in the main equipment room for each elevator/escalator. The Eligible Agency shall be responsible for the cost of supplying required blueprints.

Signage

- 4.19 When an elevator/escalator is out of service the Contractor shall provide a professional quality (8-1/2)" x (11)" minimum magnetic sign and a barricade must be placed in plain sight on each floor the elevator/escalator services noting, "Out of Service".

Semi-Monthly (Traction Elevators) and Monthly Services (Hydraulic Elevators)

- 4.20 Contractor personnel will be provided sufficient time and access to equipment to ensure the below operations may be performed during inspection. The Eligible Agency may request service on alternate weeks as required (part of the operations one week, and the remainder the following week) continuing on this basis throughout the contract period.

- 4.20.1 Ride each car; check operation of car and hatch doors; also acceleration, deceleration, floor stops and brake action. Make corrections as necessary.
- 4.20.2 Inspect and wipe clean all motors, machines, and generators and hydraulic components.
- 4.20.3 Inspect controllers, selectors, selector drives, and governors.
- 4.20.4 Clean and adjust all controller and selector contacts and renew worn contacts and/or shunts where necessary. Check sequence operation.



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- 4.20.5 Wipe clean all motor, communicators, clean and check brushes, and brush holders. Renew or reseal brushes if necessary.
- 4.20.6 Clean and lubricate direction and accelerating switches.
- 4.20.7 Inspect brake operation. Check shoe to brake pulley clearance and adjust as required to proper operation. Clean pulley if necessary.
- 4.20.8 Check and record operation of in car emergency phone, emergency cab lighting and phase I fire service recall.

Quarterly Services (Elevators)

- 4.21 Clean hoist-way pits and inspect equipment in them. Make repairs and replacements as necessary.
- 4.22 Inspect working parts of all governors for free operation, clean and lubricate as necessary. Check contacts, shaft, bushings, and rubbing surfaces for cleanliness and wear.
- 4.23 Inspect all door operating equipment, including motor brushes, commutator, belts or chains, contacts, drive vanes and blocks. Clean, lubricate, adjust or replace as necessary.
- 4.24 Check retiring cam operation and make necessary adjustments or corrections.
- 4.25 Examine all wire ropes and fastenings, check and adjust rope tension.
- 4.26 Examine traveling cables for wear and position.
- 4.27 Examine counterweight.
- 4.28 Inspect door monitoring equipment and safety edge units. Clean, lubricate, adjust, repair or replace as necessary.
- 4.29 Lubricate selector drive screw and guides and clean contacts if necessary.
- 4.30 Clean and lubricate automatic slow-down and stopping switches on top of cars.
- 4.31 Clean car position indicators, re-lamp, and adjust if necessary.
- 4.32 Inspect, clean, and lubricate car guides (unless roller guides are used).
- 4.33 Inspect hydraulic valves, belts, motors, pumps, and associated equipment. Make repairs or replacements as necessary.

Semi-Annual Services (Elevators)

- 4.34 Check bearings for proper operation and wear.
- 4.35 Examine machine gear teeth for cutting or noise.
- 4.36 While riding on top of cars, physically check condition and operation of door locking equipment.
- 4.37 Perform electrical test of door interlock circuits.
- 4.38 Examine door locks and door closer equipment. Clean door channels.
- 4.39 Examine car and counterweight guide shoe and fastening.
- 4.40 Renew gibs or rollers when necessary. Lubricate switches and buttons.
- 4.41 Remove car station cover, position indicator cover, and indicator fixture covers, blow out; clean or lubricate switches and buttons and re-lamp.



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Annual Services (Elevators)

- 4.42 Examine, clean with proper solution, and repair as necessary, communicator, brushes, and brush holders of all small control motors and regulators.
- 4.43 Thoroughly examine and clean starter and control panels. Check each contactor and relay by hand for wear, cleanliness, and proper adjustment. Clean, readjust, repair or replace as necessary.
- 4.44 Check, clean and adjust operation of slow down and limit switches.
- 4.45 Examine all moving parts of governor and safety for free operation. Clean and adjust. Perform actual test of safety at slowest operating speed, with no load.
- 4.46 Examine, clean and add oil to buffers. If necessary, perform "hand test" of plunger return.
- 4.47 Blow out and vacuum clean controller motors and motor generator sets.
- 4.48 Drain machine gear oil; seal any oil leaks; examine gear teeth, refill with fresh oil.
- 4.49 Overhaul machine brake, including disassembly, cleaning, replacement of worn components, reassembly and readjustment.
- 4.50 Clean and lubricate hatch door hangers, track and door arms.
- 4.51 Examine car and counterweight wire hoist ropes and governor ropes for wear and condition; re-rope, if necessary.
- 4.52 Clean rails, hatch walls, car top, pit, overhead sheaves and beams. Check brackets and bolts for tightness.
- 4.53 Schedule, coordinate and complete statutory and other equipment tests including but not limited to: Annual no load slow speed test of car and counterweight safeties, governors, and buffers, one (1) year annual tests, five (5)-year full load safety test, full speed test of car and counterweight safeties, governors and buffers.
 - 4.53.1 If an Eligible Agency requests the five (5) year full load safety test be performed outside of normal business hours, the Contractor shall only charge the difference between the normal hourly rate and the overtime rate for the test time.

Information Technology

- 4.54 Software installations and retrofits shall be paid by Eligible Agency.

5.0 Escalator and Moving Walks Maintenance

- 5.1 Contractor shall maintain escalators in accordance with ASME A17.
- 5.2 The Contractor shall examine, clean, lubricate, adjust, and when conditions warrant, repair or replace components including, but not limited to, the following:
 - 5.2.1 Machines, drive motors, drive belts and timing belts, reducers, bearings and thrusts, brake coils, contacts, relays, step chains, axles, worms and gears, drive chains, step assemblies, belts, handrails, handrail drives, controller components, sprockets, step tracks and handrail tracks, tension devices, combs and comb plates, landing plates, lubricators, under step and demarcation lighting, safety switches and devices, signal and control devices, all equipment which is normally installed as part of the escalator/walkway equipment, and any solid-state devices.



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- 5.2.2 The Contractor shall keep the escalator operation smooth and quiet and shall clean and vacuum the interior of the escalator trusses a minimum of twice per year; including but not limited to, pans, rollers, tracks, drives, lubricators, switches, sprockets, and pit area.
- 5.2.3 The Contractor shall perform a complete and thorough annual clean down of each escalator/walkway unit to coincide with the annual state inspections. The clean down is to include the removal of a minimum of 50% of the escalator steps. The Contractor shall clean the underside of all steps, pans, rollers, tracks, drives, switches, sprockets, and pit area to remove oily residue, dirt and other debris (this requirement is to supplement the procedures listed in item 2 above. All truss support bolts and track shall be tightened and checked for alignment. Support members for inner and outer decks, skirts and balustrade shall be tightened and provide a smooth outer surface throughout the entire length of the unit.
- 5.2.4 The Contractor shall maintain the cleanliness of car tops and pits that are visible to the public.
- 5.2.5 The interior of the units, pits, pans, machinery, balustrade interiors, shall be cleaned annually, or more often if required by inspections.
- 5.2.6 Clean-downs are considered preventive maintenance work. The Authority expects the Contractor to bring in a helper to work with mechanic for clean-downs. The contractor's representative shall be responsible to properly escorting the helper.

6.0 Wheelchair Lifts, Sidewalk Freights and Dumbwaiters

6.1 Semi-Annual

- 6.1.1 Check operation of car and hatch doors; also acceleration, deceleration, floor stops and brake action. Make corrections as necessary.
- 6.1.2 Inspect and wipe clean all motors, machines, and hydraulic components.
- 6.1.3 Inspect controllers, selectors, selector drives, and over speed devices.
- 6.1.4 Clean and adjust all controller and selector contacts and renew worn contacts where necessary. Check sequence operation.
- 6.1.5 Wipe clean all motors.
- 6.1.6 Clean and lubricate directional switches.
- 6.1.7 Inspect braking operation.
- 6.1.8 Check and record operation of in car emergency phone, emergency cab lighting and phase I fire service recall, where applicable.
- 6.1.9 Clean hoist-way pits and inspect equipment in them. Make repairs and replacements as necessary.
- 6.1.10 Inspect working parts of all governors for free operation, clean and lubricate as necessary. Check contacts, shaft, bushings, and rubbing surfaces for cleanliness and wear.
- 6.1.11 Inspect all door operating equipment, belts or chains, contacts, drive vanes and blocks. Clean, lubricate, adjust or replace as necessary.
- 6.1.12 Check retiring cam operation and make necessary adjustments or corrections.



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- 6.1.13 Examine all wire ropes and fastenings, check and adjust rope tension.
- 6.1.14 Examine traveling cables for wear and position.
- 6.1.15 Examine counterweight.
- 6.1.16 Inspect door monitoring equipment and safety edge units (where applicable). Clean, lubricate, adjust, repair or replace as necessary.
- 6.1.17 Lubricate selector drive screw and guides and clean contacts if necessary.
- 6.1.18 Clean and lubricate automatic slow-down and stopping switches.
- 6.1.19 Clean car position indicators, re-lamp, and adjust if necessary.
- 6.1.20 Inspect, clean, and lubricate car guides (unless roller guides are used).
- 6.1.21 Inspect hydraulic valves, belts, motors, pumps, and associated equipment. Make repairs or replacements as necessary.
- 6.1.22 Check bearings for proper operation and wear.
- 6.1.23 Perform electrical test of door interlock circuits.
- 6.1.24 Examine door locks and door closer equipment. Clean door channels.
- 6.1.25 Examine car and counterweight guide shoe and fastening.
- 6.1.26 Renew gibs or rollers when necessary. Lubricate switches and buttons.
- 6.1.27 Remove car station cover, position indicator cover, and indicator fixture covers, blow out; clean or lubricate switches and buttons and re-lamp.

6.2 Annual Services

- 6.2.1 Thoroughly examine and clean starter and control panels. Check each contactor and relay by hand for wear, cleanliness, and proper adjustment. Clean, readjust, repair or replace as necessary.
- 6.2.2 Check, clean and adjust operation of slow down and limit switches.
- 6.2.3 Examine all moving parts of governor and safety for free operation (Where applicable). Clean and adjust. Perform actual test of safety at slowest operating speed, with no load.
- 6.2.4 Examine and adjust buffers.
- 6.2.5 Drain machine gear oil; seal any oil leaks; examine gear teeth, refill with fresh oil.
- 6.2.6 Overhaul machine brake, including disassembly, cleaning, replacement of worn components, reassembly and readjustment.
- 6.2.7 Clean and lubricate hatch door hangers, track and door arms.
- 6.2.8 Examine car and counterweight wire hoist ropes and governor ropes for wear and condition; re-rope, if necessary.
- 6.2.9 Clean rails, car top, pit, overhead sheaves and beams. Check brackets and bolts for tightness.
- 6.2.10 Schedule, coordinate and complete statutory and other equipment tests including but not limited to: Annual no load slow speed test of car and counterweight safeties and governors, one (1) year annual tests.



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7.0 Response Time Requirements

Service/Trouble Call (All Elevators)

7.1 The Contractor shall go to a specific elevator to correct any problem and/or condition per the request of an FMC before the Contractor's next scheduled preventative maintenance visit. This Trouble/Service Call, is work that can ordinarily be performed by one person working alone at the job site for a period of time not exceeding two (2) hours.

7.1.1 Work required in excess of the basic two (2) hours and/or which requires a second person, shall be considered "Repair work."

- (a) Prior to any repairs being made by the Contractor, the Contractor shall submit a written proposal with a detailed list of pricing for formal approval to proceed from the Eligible Agency.

Emergency Call Back Services

7.2 The Contractor shall provide the FMC with a list of emergency phone numbers. The Contractor shall provide emergency services on a twenty-four hour, seven days a week schedule (24-7). **In the event the FMC cannot make contact with the primary Contractor, or the primary Contractor does not respond to a call for service, the FMC may, at its sole discretion, have the necessary repairs completed by an alternate source and all costs incurred will be the responsibility of the primary Contractor.** The FMC shall provide to the primary Contractor an itemized cost list of the necessary labor and materials provided by the alternate source.

7.3 **The following is a prioritized list of emergency situations:**

7.3.1 Entrapments shall be identified as Priority One

7.3.2 Single elevators in a building are critical.

7.3.3 Two elevators in a building, both down, shall be considered critical.

7.4 Multiple elevators in a building, one operational, shall not be classified as an emergency and may be attended to the following business day.

7.5 All labor and material costs shall be at no cost to the Eligible Agency for any "emergency call back" services required due to negligence, or lack of performance, by the Contractor.

7.6 If "emergency call back" services are required by verifiable accident or by an act of vandalism, charges for materials and contracted hourly rates shall be billed to the Eligible Agency.

Elevator Phone Monitoring Services

7.7 Contractor shall provide twenty four (24) hour seven (7) day a week telephone monitoring service as requested by Eligible Agency. Service shall also include full maintenance and repair of the telephone unit. Contractor will notify the FMC immediately if at any time the telephone is not capable of being monitored.

7.7.1 A monthly Elevator Telephone Monitoring Service rate shall be provided to the Eligible Agency in accordance with the ATTACHMENT 4-A PRICING DOCUMENT. Failure to provide pricing for telephone monitoring may result in the offeror's proposal being determined non susceptible for award.

7.8 In the event the telephone system requires conversion from analog to digital, the Contractor will provide a cost proposal to the Eligible Agency for any equipment changes which may be required. Eligible Agency shall be responsible for coordinating, repairing, and maintaining the telephone link with their telecommunication supplier.



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Hours of Service

- 7.9 The Contractor shall perform all work during standard hours of operation from 7:00 a.m. to 5:00 p.m. (Mountain Standard Time).
- 7.9.1 Should an Eligible Agency request examination, Service/Trouble Call service, emergency call back service, cleaning, lubrication, adjustments, repairs or replacements of elevator equipment outside of standard hours of operation, the Eligible Agency shall compensate the Contractor with the appropriate hourly rate (**SEE ATTACHMENT 4-A PRICING DOCUMENT**).
- 7.10 The contractor shall also adhere to the State's published paid holiday schedule and not the contractor's schedule. The State shall not be charged for holiday hourly rates for the contractor's paid holiday schedule, if a Contractor paid holiday resides on a day other than a State holiday.

Response Time

- 7.11 As a requirement of the contract, the Contractor shall provide a response time as described below:
- 7.11.1 **Standard Hours of Operation** -- The Contractor's normal working hours shall be defined as Monday through Friday, excluding state holidays, from 7:00 a.m. to 5:00 p.m.
- (a) Contractor shall respond to **Service/Trouble Calls/Emergency Call Back** within twenty (20) minutes response time for all ADOA buildings in the Capitol Mall.
- (b) The Contractor's representative assigned to an Eligible Agency shall respond to Service/Trouble Calls/Emergency Call Back within a minimum of twenty (20) minutes response time if agency is located within fifteen miles of the Contractor's facility or location of the closest station technician; or as mutually agreed upon by the Eligible Agency and Contractor.
- 7.11.2 **Overtime, Weekend, State Holiday Hours** -- For service calls during times other than normal working hours 7:00 a.m. to 5:00 p.m. (Monday -- Friday), **the response time shall be no longer than one (1) hour.**

Response Time Penalty

- 7.12 During the term of this Agreement, if the Contractor fails to arrive at the previously agreed upon location within the required response time for service/trouble calls/emergency call back (excluding entrapment) (or a deviated time as may be mutually agreed upon between the Eligible Agency and Contractor), or without a full complement of staff and equipment required to complete the work, the Eligible Agency may impose a penalty against the Contractor equaling 10% of the total labor and repair cost of the work per incident. The Eligible Agency may discount the invoice in the amount of the 10% upon payment to the Contractor for the incident failure.

24 Hour Callback

- 7.13 The Contractor shall provide 24 hours per day, 7 days per week, 365 days per year, a dispatch desk with a single point for ALL 24-hour call back requests for service. A PERSON, not a voice mail shall answer calls placed to the dispatch desk.
- 7.14 The Contractor shall respond to all requests for service and corrective action The Contractor shall respond to all requests for service and corrective action 24 hours a day, 365 days of the year.
- 7.15 No repair shall be postponed or any unit placed out of service due to lack of Contractor resources.



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Running on Arrival (ROA)

- 7.16 If a Service/Trouble Call is made on any elevator during standard hours of operation from 7:00 a.m. to 5:00 p.m. (Mountain Standard Time) and on arrival the elevator is found to be running (ROA), there shall be no additional charge to the Eligible Agency. The call shall be treated as a Service/Trouble Call by the Contractor to determine if the elevator is operating properly.
- 7.17 The Eligible Agency shall make every attempt to verify that the elevator is out of service before the Service/Trouble call service request is made.

8.0 General Requirements

Employee Work Credentials

- 8.1 Journeyman level mechanics performing work under this contract shall possess the following minimum qualifications:
- 8.1.1 Seven (7) years' experience as a certified journeyman mechanic installing, troubleshooting, maintaining and/or adjusting elevator, escalator and moving walk equipment.
 - 8.1.2 Five (5) years of the required seven (7) years' experience shall be hands-on experience maintaining, troubleshooting and repairing elevators, escalators and moving walks similar to the equipment covered under this contract.
 - 8.1.3 Apprentice level mechanics shall have two (2) years full-time job experience as an apprentice/helper.

Attire

- 8.2 All Contractor employees, including subcontractors of the Contractor shall at all times, while on the job site in an official capacity be attired in a distinctive company uniform. The uniform shall have the Contractor's name easily identifiable, affixed thereon in a permanent or semi-permanent manner such as a badge or monogram. Any color combination (EXCEPT ORANGE) as appropriate, may be used for the uniforms.

Staffing

- 8.3 The Contractor shall provide staffing adequate to cover all applicable locations during the standard hours of operation to perform preventative maintenance, emergency service and response to trouble calls for all elevators.
- 8.4 The on-site mechanics will not be called off the on-site location during normal business hours, from 7:00 A.M. to 5:00 p.m. without prior knowledge and consent of the FMC.
- 8.5 The Contractor personnel shall not be assigned to major elevator upgrades and/or the remodeling (modernization) of any State elevator systems, which may be awarded under a separate contract.

Fingerprint and Background Checks

- 8.6 Contractor shall submit a full set of fingerprints and or background check information to the Eligible Agency of each person or employee who may provide such service under the contract upon request of the Eligible Agency. Additionally, contractor shall comply with the governing body fingerprinting or background check policies of each Eligible Agency.



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Entry Access

- 8.7 The Contractor shall secure and safeguard all keys, key cards, and any other entry devices and codes provided by the Eligible Agency. The FMC shall provide the Contractor with full and free access to the equipment to render services

Contract Transition

- 8.8 In the event the Contractor's service is terminated by the Eligible Agency, the Contractor shall continue to perform service upon request of the Eligible Agency until the new Contractor is transitioned.
- 8.9 Upon end of contract term, the current Contractor acknowledges its responsibility to cooperate fully with the newly awarded Contractor and Eligible Agency to ensure a smooth and timely transition to the newly awarded Contractor. Such transitional period should be completed no later than fifteen (15) days prior to the expiration date of the current contract. The current Contractor will invoice the Eligible Agency for services the current Contractor continues to perform during the transitional period at the current rate in effect.

Contractor's Phase-In New Contract Award

- 8.10 In order to accomplish a smooth and successful transition of operations and maintenance services, the newly awarded Contractor will provide Phase-In services at the request of the Eligible Agency up to sixty (60) days prior to the current contract term expiration. Newly awarded contractor and the current contractor are not required to work in tandem but must fully cooperate with one and another for access to the equipment for the newly award contractor to perform inspections of the equipment and to provide continuity for the transition of the contract.
- 8.11 The newly awarded Contractor will become responsible for operating or maintaining the equipment as equipment is transitioned during the Phase-In period and throughout the term of the contract.
- 8.12 Contractor's Phase-In period will begin upon receipt of a purchase order to "Start Phase-In Services" from the Eligible Agency.
- 8.13 The current Contractor shall perform the duties and services listed in its contract during the Contractor's Phase-In period until successfully transitioned to the newly awarded Contractor, and shall be available during the Phase-In period to answer questions and resolve issues or any misunderstandings.
- 8.14 During Phase-In period the newly awarded Contractor shall provide all required deliverables including but not limited to:
- 8.14.1 Review and verify equipment lists within the first fifteen (15) days of Phase-In.
 - 8.14.2 Arrange to have supervisory, technical, and other related personnel on site at the Eligible Agency to observe the operations and maintenance of the elevator, escalator, chairlift, and/or moving walkway.
 - 8.14.3 Recruit, transfer, train personnel and arrange for security badges with Eligible Agency.
 - 8.14.4 Ensure adequate parts, tools and equipment in place for systems maintenance.
 - 8.14.5 Develop and implement a schedules with the Eligible Agency.
 - 8.14.6 Provide Contractor contact telephone numbers.
 - 8.14.7 Provide Eligible Agency with an equipment deficiency list within thirty (30) days of the Phase-In.



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8.14.8 The Contractor shall be prepared to perform fully all work services upon receipt of purchase order from the Eligible Agency.

Contractor's Phase-Out

- 8.15 Sixty (60) days prior to Contract expiration, the Contractor/Incumbent shall submit a comprehensive close-out plan which will include a complete list of current activities and status, projected activities scheduled and impacts, staffing requirements, summary of the last twelve (12) months of monthly reports, and list of equipment to the Authority.
- 8.16 In order to accomplish a smooth and successful transition of operations and maintenance services and at no charge to the Eligible Agency, the Contractor/Incumbent shall provide Phase-out services for up to thirty (30) calendar days following the successor's receipt of "Start-Phase-In Notice" from the Authority and continue until successor's receipt of "official Notice to Proceed".
- 8.17 Contractor/Incumbent shall be totally responsible for providing the services under this Contract during its Phase-out period.
- 8.18 Contractor/Incumbent shall provide all required deliverables including, but not limited to:
- 8.18.1 Contact List FMC's for each eligible agency identified in the most updated equipment list file.
 - 8.18.2 Process for returning Agencies Identification Badges, keys, etc.
 - 8.18.3 Reporting requirements.
 - 8.18.4 Inventory of supplies, materials, tools, and equipment.
 - 8.18.5 Permits, licenses, and certification.
 - 8.18.6 Detailed transition plan.
- 8.19 The Contractor/Incumbent and the successor contractor shall jointly prepare a mutually agreeable detailed plan for approval by the Manager, Facilities Division for the phase-out of the Contractor/Incumbent and the phase-in of the successor contractor.

Materials Used

- 8.20 All lubricants, parts, cleaning supplies and tools necessary to perform the work, shall be furnished by the Contractor.
- 8.21 All lubricants and wiping or cleaning rags kept on the site must be stored so as to not create a takeout Safety or Fire Hazard and OSHA and NFPA Regulations shall be followed. All lubricants used shall be those recommended by the equipment manufacturer or of equal quality and grade. Copies of all Material Safety Data Sheets (MSDS) will be made available and on site.
- 8.22 The Contractor shall keep an adequate supply of tools, test equipment, contacts, switch parts, coils, conductors, cables, springs, holders, supports, resistors, relays, lamps, condensers, tubes, transformers, car and hall buttons, fuses, PC boards, regulators, power supplies, control modules, and other parts as deemed necessary by the applicable FMC, for prompt elevator repairs. An adequate supply of lubricants and wiping rags will also be on site. All replacement parts shall be new and specifically designed for the elevators on which they are used.

Invoicing Parts, Materials and Equipment

- 8.23 Parts, equipment and material prices: Shall be invoiced at actual wholesale plus markup. Copies of the Contractor's own purchase invoices reflecting the actual costs shall accompany each invoice.



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Materials and Equipment Specifications

- 8.24 Where equipment, materials, or articles are referred to in the specification as "equal" or "equal to" any particular standard, the applicable FMC shall decide all questions of quality. Where any standard published specifications are referred to, the last edition or revision, including all amendments shall be used.
- 8.25 Material of a general description shall be the best of their kind or type, free from defects, and adapted to the use for which they are intended. The physical characteristics of all materials not particularly specified, shall conform to the latest standards published by the American Society for Testing and Materials (ASTM), where applicable. All material shall be new and of the specified quality and equal to the approved samples, if samples have been submitted. All welding and fabrication shall meet minimum standards set for by ASTM.

Substitution of Material or Equipment

- 8.26 Where materials or equipment are designated in these specifications by a trade or manufacturer's name, it is so designated primarily to establish standards of quality, finish appearance, and performance. It is not the intent of the State to limit the choice of materials and equipment to the specific product designated.
- 8.27 Substitutions for materials or equipment specifically designated in the manufacturer's specification shall be submitted to the applicable FMC and such requests shall be accompanied by complete data on which the State can make determination on the merits of the proposed substitutions. The substitution request shall be submitted with detailed written information stating how the product proposed compares with, or differs from, the designated product in composition, size, performance, reliability, cost advantages, etc.
- 8.28 All items approved for substitution shall be subject to all applicable provisions of the original specification. All specific requirements of the original specifications must be adhered to. All necessary modifications shall be made in the article specified by trade name type or model of manufacturer's equipment to make it conform to the original requirements of the specifications and the actual conditions under which the product is required to be used. All substituted items and or changes shall comply with the latest adopted version of ANSI/ASME A17.1.

Plans

- 8.29 The Eligible Agency will provide the Contractor all available information relating to the covered equipment for as long as this contract remains in effect. All plans, manuals, and copies thereof are the property of the State. Plans shall not be used on other work, and they shall be retained in good condition in the elevator machine/equipment room, whichever is most convenient for the FMC. Any circuit modifications or additions shall be made on the drawings in a neat and comprehensive manner.
- 8.30 For equipment where the Eligible Agency does not possess wiring diagrams, the Contractor shall supply wiring diagrams sufficient for the Eligible Agency to perform the required maintenance on all elevator equipment.

Proprietary Equipment and Modifications

- 8.31 All modifications including the material, parts, manuals, and tooling for diagnostics and repairs shall be made available to the Eligible Agency (including proprietary parts and materials manufactured and or used, if approved by the Eligible Agency).
- 8.31.1 If the Contractor or manufacturer will not make proprietary parts and material manufactured available to the Eligible Agency, no proprietary equipment or modifications will be allowed. All proprietary equipment shall be owned by the Eligible Agency and



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maintained by the Contractor. If repairs or replacement of proprietary equipment is required, the Contractor shall provide at the expense of the Eligible agency.

Risk of Loss

- 8.32 The Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials such as spare parts, tools, etc., stored at the site provided during the maintenance contract. Such loss, injury, or destruction shall not release the Contractor from any obligation herein.

Third Party Inspection

- 8.33 The Eligible Agency reserves the right to hire and pay for a qualified third party of their choice inspect the maintenance work performed by the Contractor.
- 8.34 The third party inspection (if used by the Eligible Agency) would generate a punch list of items requiring correction by the Contractor. Safety or code violations will be corrected immediately by the Contractor. Contractor shall complete other punch list items within thirty (30) days, at no additional cost to the Eligible Agency.
- 8.35 The third party inspector's decision regarding compliance shall be considered final

Cleanup

- 8.36 Contractor shall clean up and remove all debris and rubbish resulting from their work and disposed of off-site when directed by the Eligible Agency. Contractor shall leave the premises in good repair and an orderly, neat, clean and safe condition.

Safety

- 8.37 Each Contractor is responsible for their safety program and compliance in accordance with applicable provisions of the Occupational Safety and Health Act (OSHA).
- 8.38 Each Contractor shall be responsible for payment of all fines and/or claims for damages levied against the Eligible Agency, for environmental health and safety deficiencies related to any conduct of the Contractors work.
- 8.39 Contractor shall erect and properly maintain all necessary safeguards for protection of their workers, the general public, and existing structures from injury or damage.
- 8.40 Every Contractor shall comply with all applicable local, state, federal, and Eligible Agency rules and regulations.

Contractor's Personnel

- 8.41 Regardless of position, role, or duties, Contractor shall only assign personnel who are appropriately alert, fit, qualified, trained, and equipped for their assignments. Unless a particular Order specifies certain numbers of personnel, Contractor shall:

- a) provide adequate numbers of appropriately qualified and authorized personnel as necessary to carry out the Services successfully;
- b) assign, at minimum, the key personnel identified in the Accepted Offer to the positions, roles, and/or duties indicated therein; and
- c) not remove or reassign any of those key personnel without State's prior consent, which State may withhold at its discretion.

- 8.42 Registered sex offender restrictions

- 8.42.1 For work to be performed at any Eligible Agency school(s), the Contractor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered



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sex offender will perform work at any time when students are or are reasonably expected to be present. Contract agrees a violation of this condition shall be considered a material breach and may result in cancellation of the purchase order and services by the Eligible Agency school(s).

9.0 Performance Requirements

Non Billable Repairs During Standard Hours of Operation

- 9.1 The Contractor shall be responsible for **all necessary repairs to elevator components due to wear and use of the elevator system**. The Contractor shall determine the nature and extent of parts and labor required to restore machinery and equipment satisfactory performance condition. The Contractor shall absorb all cost after any pre-inspection deficiencies have been corrected after award for labor, materials, expenses, and supplies, which occur as a result of the stated repair, including blueprints, schematics, obsolete parts and special tooling. Any missing blueprints or schematics will be charged to the current departing contractor.
- 9.2 The Contractor shall furnish and install or repair when and as necessary: all motors; motor generators or solid state drives including P.C. Boards; controllers including valves; controller relays, contacts, coils, timers; wiring; operating circuit components; hoist cables and shackles; selectors, worms; gears; thrusts; bearings; brake plunger assembly; brake magnet coils; brake shoes; magnet frames; brushes; cams; car door and corridor hangers; tracks and door operating devices and guides, interlocks and door closures; contacts; car gates safety devices, governors, push buttons, enunciators, shell lanterns and indicators, system replacement lamps and other elevator signal equipment including emergency lighting units and communication devices; rotating elements; all windings; Resistors and transformers; Firemen's service equipment; Buffers; all door gibs and car fans; telephones; guide shoe gibs and rollers; drive belts; sheaves and sheave assemblies; printers, CRT equipment, and modems.
- 9.3 All other repairs shall be made upon authorization by the FMC. The Contractor shall supply all labor, materials, and supplies at contracted rates. Upon completion of all repair work, the Contractor shall submit an invoice detailing the nature of the work performed and related charges to the Eligible Agency.
- 9.4 Prior to any repairs being made by the Contractor, the Contractor shall submit a written proposal with a detailed listing of cost of parts for formal approval to proceed from the Eligible Agency.

Elevator Performance

- 9.5 The elevators shall be adjusted and shall maintain the following performance standards:
- 9.6 The Contractor agrees to maintain the original contract speed in feet per minute as follows: Hydraulic $\pm 10\%$, open loop traction $\pm 5\%$ and closed loop traction $\pm 3\%$ of the original performance times, including acceleration and retardation as originally designed and installed, and to perform the necessary adjustments as required to maintain the original ride quality and door opening and closing time, within limits of applicable codes or as specified by the Eligible Agency.
- 9.7 Floor to floor time shall be as determined from the equipment manufacturers' specifications or Hydraulic 100 to 150 fpm, Traction 200 fpm. Floor to floor time is measured from start of door(s) close until elevator is stopped at next typical successive floor, in either direction of travel, and door(s) is Three-Forth ($\frac{3}{4}$) open.
- 9.8 Door times shall be in accordance with the following criteria. Door opening shall be between Two (2) to Three (3) feet per second. Door closing shall be One (1) foot per second.



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- 9.9 Leveling accuracy for Traction Elevators under all load conditions shall be plus or minus One-Forth ($\frac{1}{4}$) inch. Leveling accuracy for Hydraulic Elevators under all load conditions shall be plus or minus Three-Eight ($\frac{3}{8}$) inch.
- 9.10 Elevators starting, acceleration, leveling, and stopping shall be smooth and free from jars and bumps. Full speed riding shall be without swaying or vibration. Elevator and door operation shall be quiet. Stops made upon operation of the emergency stop switch shall be more rapid than a routine stop, but not violent. Door pressure shall be maintained below Thirty (30) pounds in closing.
- 9.11 When applicable, the Contractor shall check the group dispatching systems and make necessary tests to ensure that all circuits and time settings are properly adjusted, and that the system performs as originally designed and installed.

Performance Guarantees

- 9.12 **Contractor's failure to comply with an emergency callback for a priority one entrapment response time contained in Section 6.10 will result in the callback being provided at no cost to the Eligible Agency. This applies to all entrapment callbacks regardless of their billability under the terms of the Contract.**
- 9.13 The Eligible Agency may have the Contractor's work and system performance checked by a Consultant to ensure the Contractor is performing in accordance with this Contract. If the Eligible Agency or the Consultant determines that the contractual requirements are not being maintained, the Eligible Agency may retain the monthly payment to the Contractor until the FMC or the Consultant verifies that the work performance is back to standard. The Contractor shall pay re-inspection costs incurred by the Eligible Agency for a Consultant by deduction from the monthly maintenance fees. If two (2) consecutive inspections by the Eligible Agency or the Consultant (Two [2] consecutive inspections within one [1] year but more than sixty [60] days apart) indicate that the contractual requirements are not being maintained, the Eligible Agency has the right to immediately cancel the Contract with the Contractor or to pursue any other available remedy.
- 9.14 The Contractor shall correct any system or individual malfunction that requires the removal of a unit from normal operating service within forty-eight (48) hours (48 hours in this Paragraph means within two (2) full Regular Working Days of the elevator trade) of the failure.
- 9.14.1 If the unit is not returned to service within the specified time allotment, the Contractor shall adjust the subsequent monthly maintenance charge, as monetary damages, for the unit based on an amount equal to twenty-five percent (25%) of the total monthly unit price for each twenty-four (24) hour period, or portion of such period, that the unit is out of service from the original date of system malfunction.
- 9.14.2 If any system or individual malfunction results in multiple units, in the same bank of elevators, being removed from normal operation for twenty-four (24) hours or more, the above referenced damages will start at the end of the first twenty-four hour (24) period and be assessed at an amount equal to twenty-five percent (25%) of the total monthly unit price, for each unit, for each twenty-four hour period or portion of such period, that multiple units are out of service from the original date of system malfunction.
- 9.14.3 Contractor shall not be assessed damages for pre-approved and scheduled maintenance repairs, tests or other conditions necessitating unscheduled major work



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procedures, resulting from a cause excluded by any other provision of this Agreement, or repairs to items not covered under this Agreement.

- 9.14.4 The Owner has the right to immediately cancel this Contract if the Contractor fails to meet the provisions of this Section three (3) times during any three-year period. Failure to meet the provisions of this Section are understood to have occurred if the Contractor was obligated to reduce the monthly maintenance fee regardless if that reduction actually occurred.
- 9.15 Only one (1) elevator is allowed to be out of service for routine maintenance at any time in any bank of units. If an elevator is out service for routine maintenance and another elevator malfunctions, the elevator that is out for routine service shall be restored to normal operation, as long as the other unit remains out of service, at no additional cost to the Owner.
- 9.16 Contractor shall be responsible for the securing of elevator key. Contractor shall not duplicate key and shall be responsible for the replacement of lost, stolen, or damaged keys

10.0 Reporting Requirements

Required Records and Reporting

- 10.1 Upon completion of services and inspections on elevators, the Contractor shall furnish a written report to the applicable FMC.
- 10.2 Regarding all Service/Trouble Calls, the report should include the following:
- 10.2.1 Building Number
 - 10.2.2 the state elevator number
 - 10.2.3 who called
 - 10.2.4 the date and time of the called
 - 10.2.5 the reported problem
 - 10.2.6 the reason for equipment failure and corrective action(s) taken
 - 10.2.7 who performed the repair (mechanic(s))
 - 10.2.8 A list of material and parts used in the repairs, and adjustments made
- 10.3 For routine services and inspection stops, the Contractor may, at his/her discretion, use a pre-printed checklist indicating the service or inspection performed. In all cases, the Contractor is to inform each FMC of any equipment shutdown, the reasons for that shutdown, and an estimate of time until the equipment will be restored to normal operation.
- 10.4 The Contractor shall keep an approved copy of all work schedules on display in the respective elevator machine/equipment room. The schedules will be maintained throughout the year and used as a guide and checklist by the mechanic. The mechanic will initial all work performed on the checklist.
- 10.5 The Contractor shall maintain an accurate and complete log of all work performed in addition to routine inspections. The log shall include emergency callback service requests and a description and the nature of all complaints and their resolution. The log shall be kept at the applicable elevator machine/equipment room and shall be kept current by the Contractor daily.



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- 10.6 The FMC shall make final decisions, solutions and/or resolutions to all questions which may arise pertaining to the duration of downtime, emergency callback, quality, and acceptability of materials furnished and work performed in the repair, maintenance, and service of all the elevators. The applicable FMC shall be notified on any and all work performed on elevators, in advance, that would hinder the operation of the elevator for an extended period of time (longer than one hour), other than for inspections and minor repairs. All work will be performed in an orderly and timely manner eliminating needless down time. Written permission must be obtained from the FMC before performing any work other than those specified in this contract.
- 10.7 The Contractor shall furnish a quarterly usage report of all elevators that were maintenance to the ADOA.
- 10.8 The Contractor shall keep and maintain oil usage and oil loss records on all elevators. Monthly reports will be sent to the FMC. Abnormal loss shall be reported to the FMC as soon as possible.
- 10.9 All assigned Contractor maintenance personnel, shall sign-in and out each day and call the appointed the FMC. If the FMC does not answer the phone call left from the Contractor, a message shall be left stating if the Contractor has arrived on site or is to be leaving the site.
- 10.10 The Contractor will comply with Code of Federal Regulations CFR-29 1910.1200. The OSHA Hazard Communications Act. Copies of all MSDS will be on site. A copy of the Contractor's safety program and procedures for workers safety will also be maintained on site.

Record Keeping / Log Books

- 10.11 The Contractor shall provide a copy of the Contractor's service schedule to the appropriate Eligible Agency for which services are performed.
- 10.11.1 The Contractor's preventative maintenance service schedule shall contain at a minimum: building name, elevator/escalator manufacturer, (Arizona State) elevator/escalator serial numbers, model number (s), examination frequency, examination hours.
- 10.12 An elevator log book shall be completed by the Contractor for elevator/escalator monthly preventative maintenance schedules and shall be placed in each elevator/escalator equipment room. In addition, the Contractor shall keep a computerized log of all maintenance, callbacks, and repair work.
- 10.12.1 The computerized log report shall be made available electronically to the applicable Eligible Agency. The Contractor shall electronically send the computerized report on a monthly basis to the Eligible Agency and/or provide the Eligible Agency a login access to the Contractor's secure website to login to obtain the report. The method of delivery of the reporting requirements shall be at the discretion of the Eligible Agency. This report shall contain at a minimum: building number, elevator (state) ID number, name of mechanic, brief description of the problem, the date and time work was performed, problem reported by, expected returned to service time and date and/or indicate elevator is in service.

Accident Reporting

- 10.13 In the event of accidents of any kind, the Contractor and/or Eligible Agency shall contact the other party immediately and furnish the other party with copies of all accident reports. The reports shall be sent without delay and at the same time that they are forwarded to any other parties. The Contractor shall assist the Eligible Agency in proper reporting to the prevailing Code Authority in the same frame mandated by prevailing codes. The Contractor shall provide technical personnel in any investigative process needed to determine the cause of the accident.
- 10.14 If the Contractor discovers an accident, the FMC shall be notified immediately.
- 10.15 The Contractor shall assist in securing the equipment to permit the investigation of the accident.



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10.16 When the Contractor discovers a condition that could result in an accident or injury, the Contractor shall immediately notify the FMC for authorization for EMERGENCY REPAIR.

10.16.1 If the Contractor is unable to make the repair, the unit is to be taken out of service. The Contractor is responsible for providing safe and dependable vertical transportation service.

11.0 Exhibits to the Scope of Work

- **Exhibit 1 Arizona Department of Administration Elevators 08-01-2016**
- **Exhibit 2 Arizona Regions 08-01-2016**

End of Section 2-A



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**Section 2-B:
 Compensation Document**
 7/7/2016

1.0 Compensation

Compensation Method.

1.1 Contractor will be compensated for the satisfactorily carrying out its obligations under the Contract by the method indicated by the "●" mark below:

<input type="checkbox"/>	Firm-Fixed-Price (refer to paragraph 1.2 below)
<input checked="" type="checkbox"/>	Unit Prices (refer to paragraph 1.3 below)
<input checked="" type="checkbox"/>	Contracted Labor Rates (refer to paragraph 1.4 below)
<input type="checkbox"/>	Cost Reimbursable (refer to paragraph 1.5 below)
<input checked="" type="checkbox"/>	Discount Off List or Catalog (refer to paragraph 1.6 below)

1.2 **FIXED-PRICE.** The firm-fixed price (interchangeably referred to as lump sum or stipulated sum) is the amount or amounts shown or scheduled as such in the Pricing Document (Exhibit 1 to this Commercial Document), each of which (a) will be Contractor's complete and total compensation for carrying out the relevant portion of the Work that it covers and (b) will not be subject to any adjustment on the basis of Contractor's cost experience in performing under the Contract.

1.2.1 Except as expressly stated otherwise in the Solicitation, Contractor is, on the basis in subparagraph 1.2.2, deemed to have allowed in each firm-fixed price correct and sufficient amounts to cover all its obligations under or arising from the Contract, at law, or otherwise, and to have allowed the necessary resources to enable it to carry out the relevant portion of the Work that it covers within any time for performance specified in the Scope of Work.

1.2.2 Contractor acknowledges that it has had the opportunity to visit those physical locations where the priced work is to be carried out and to understand and account for local conditions that might affect the Work, and has reviewed, verified, and interpreted for itself the necessary documents and information relevant to access, communications, climactic conditions, likelihood or risk of damage to adjacent property and occupants, possibility of interference by Persons other than State, and any necessary interfaces with others.

1.3 **UNIT PRICES.** The unit prices are the amounts scheduled in the Pricing Document (Exhibit 1 to this Commercial Document) for complete, delivered, discrete items, including installation if applicable and so stated. The provisions of paragraph 1.2 applies to each item covered by each unit price, but only at the item level. NOTE: An "item" as contemplated in this paragraph could be a single, functional, and usable thing as sold, or a component of an assembly yet to be built, or a complete assembly.

1.4 **CONTRACTED LABOR RATES.** The contracted labor rates are the fully-burdened and marked-up billing rates for Contractor's labor scheduled in the Pricing Document (Exhibit 1 to this Commercial



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Document), which rates are deemed to be inclusive of the actual gross wages plus: (1) all applicable payroll taxes, non-payroll employer burden, workers' compensation contributions and health and welfare benefit contributions; (2) retirement or other pension contributions, vacation, sick time or other paid leave allowances and the like; (3) all required home office support, corporate or subordinate licenses or registrations, corporate insurance, professional association fees, advertising, time and travel by any of Contractor's personnel other than billable personnel and any bonuses or other incentives for all personnel (including billable Personnel); (4) all insurance coverages to be provided by Contractor under the Contract; and (5) profit.

- 1.5 COST-REIMBURSEMENT. Under cost reimbursement compensation, State will pay Contractor for allowable incurred costs as identified in Attachment 4-A pricing. If reimbursable cost amounts or rates are scheduled in the Pricing Document (Exhibit 1 to this Commercial Document), then those will be Contractor's allowable costs for each item.

1.5.1 Reimbursable items consist of three components:

- (a) *Site Services, Logistics, and Utilities.* State and Contractor shall each provide those items of site services, logistics and utilities that are assigned to them in Exhibit 1 Eligible Agency Elevator List and Exhibit 4-A Pricing Document. Excluding only those item expressly indicated as being provided by State, provided by others, or a reimbursable item, Contractor shall provide all services, equipment, tools, and logistics necessary for its personnel and otherwise as required to carry out the Work and compensation for all those is deemed to be included in the contractual fee mark-up.
- i. For items indicated to be paid on a "unit rate" basis, Contractor shall submit a worksheet with each application for payment showing the actual amount of payment requested for these items, which amount shall not exceed the unit rate multiplied by the total quantity (i.e., Contractor is "at risk" for costs it incurs that are in excess of the extended value unless State has issued a Change Order for the excess.
 - ii. For items indicated to be paid on a "cost" basis, Contractor shall request reimbursement for the actual cost of such items at least monthly and shall provide the necessary back-up documentation, including receipts or invoices and timesheets (if applicable).
 - iii. For items indicated to be paid on a "lump sum" basis, Contractor shall request payment for the completed proportion of such items at least monthly.
- (b) *Personnel-Related Expenses.* State will only reimburse for those items of personnel-related expense expressly indicated in Exhibit 4-A as a reimbursable item, and it is agreed that the costs of all other such expenses applicable to its personnel and otherwise as required to carry out the Work are adequately compensated in the contractual fee mark-up.
- i. For items to be paid on a "unit rate" basis, Contractor shall submit a worksheet with each application for payment showing the actual amount of payment requested for these items, which amount shall not exceed the unit rate multiplied by the total quantity (i.e., Contractor is "at risk" for costs it incurs that are in excess of the extended value unless State has issued a Change Order for the excess.
 - ii. For items to be paid on a "cost" basis, Contractor shall request reimbursement for the actual cost of such items at least monthly and shall provide the necessary back-up documentation, including receipts or invoices (if applicable). All



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reimbursements shall be strictly subject to State's travel policy, which is available at <https://gao.az.gov/travel>.

- iii. Contractor must obtain State's written approval prior to booking or going on any reimbursable travel.
 - iv. Contractor will be reimbursed at the current Travel Policy rates.
 - v. Contractor shall itemize all per diem and lodging charges.
 - vi. For items to be paid on a "lump sum" basis, Contractor shall request payment for the applicable proportion of such items at least monthly.
- 1.6 DISCOUNT OFF LIST OR CATALOG. A discount off list or catalog means a percentage discount to be applied to a base price for from one or more contractually-established price lists against published catalogs. The applicable discounts are scheduled in the Pricing Document (Exhibit 1 to this Commercial Document).
- 1.6.1 Unless specified otherwise in the Pricing Document, base price is the price that is most widely offered to general customers at the time of the Order.
 - 1.6.2 The catalogs used to establish base price are specified otherwise in the Pricing Document. If nothing is so specified, then the commercially available catalogs published by Contractor or Subcontractor to a dealer or reseller network for the covered materials or services are to be used.
 - 1.6.3 Each catalog must:
 - (a) bear the applicable State contract number;
 - (b) list all materials or services Contractor is authorized to sell under the Contract;
 - (c) not contain any items that are excluded from the Contract;
 - (d) provide ordering information and contact information for customer support.
 - 1.6.4 Each catalog and its accompanying price list must include for each item:
 - (a) a part or model number, if applicable;
 - (b) a complete and accurate description of the item;
 - (c) the manufacturer's suggested retail price (MSRP) or Contractor's list price;
 - (d) a stock keeping unit (SKU) number (SKU) , if applicable;
 - (e) the item's unit of measure (UOM), if applicable; and
 - (f) the quantity in the unit of measure (QUOM), if applicable.
 - 1.6.5 Contractor shall provide and maintain concurrent and identical electronic and hardcopy versions of all contracted price lists and catalogs.
 - (a) The electronic versions are to be provided as URL.
 - i. State, at its discretion, may host Contractor's electronic price lists and catalogs directly, or may link through ProcureAZ as a punch-out.
 - ii. Regardless of the number and types of links to Contractor's electronic price lists and catalogs, Contractor shall ensure that all Eligible Agencies and Co-Op Buyers are only able to access one unified set of data.



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- (b) Contractor shall supply sufficient, current hardcopy catalogs and price lists price lists to applicable Eligible Agencies at Contract commencement, and provide prompt hardcopy notice of any changes to list/catalog holders as they occur. Contractor shall not change State or any Eligible Agency (or any Co-Op Buyer, if applicable) for lists/catalogs or updates.

2.0 Pricing

- 2.1 **CONTRACTOR'S BEST PRICING.** Supplier warrants that, for the term of the Contract, the prices and discounts set out in the Pricing Document, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which it sells equivalent items of equipment and materials. That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances. If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing. For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would
- 2.2 **NO ADJUSTMENT.** All prices and rates in the Pricing Document (Exhibit 1 to this Commercial Document), or Orders if and to the extent they differ from those in the exhibit, will be valid for the entire term of the Contract, and will not be subject to revision for inflation or any changes to wages, taxes or other costs that Contractor may be obliged to incur that may be higher than those which it contemplated when proposing the relevant price or rate.

3.0 Invoicing

- 3.1 **INVOICES GO TO BUYING ENTITY.** Contractor shall submit all billing notices or invoices to the ordering Eligible Agency or Co-Op Buyer at the address indicated on the Order document.
- 3.2 **MINIMUM INVOICE REQUIREMENTS.** Every invoice must include the following information:

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically ProcureAZ PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●
Applicable payment terms	●
Contract line item number	●
Contract line item description	●
Quantity delivered or performed	●



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Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●
Taxes <i>(as a separate invoice line item)</i>	●
Upcharge shipping/freight, etc. <i>(as a separate invoice line item)</i>	Materials only
Total invoice amount due	●

- 3.3 **NO INVOICE WITHOUT AUTHORIZATION.** Contractor shall not seek payment for: (a) any Materials or Services that have not been authorized on an acknowledged Order; (b) any expediting, overtime, premiums, or upcharges absent State's express prior approval; or (c) any Materials or Services that are the subject of a Contract Amendment or Change Order that has not been signed.
- 3.4 **PRE-INVOICE REVIEW.** During the week before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.
- 3.5 **SUBMITTING INVOICES.** Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer on the last business day of each calendar month using any form provided or required by the ordering Eligible Agency or Co-Op Buyer. Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and laws.
- 3.6 **DEFECTIVE INVOICES.** Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Agency or Co-Op Buyer may, at its discretion, reject any materially defective invoice.
- 3.6.1 The ordering Eligible Agency or Co-Op Buyer shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
- 3.6.2 Invoices will be deemed automatically rejected upon delivery if they:
- (a) are sent to an incorrect address;
 - (b) do not reference the correct State contract number; or
 - (c) are payable to any Person other than the Contractor.
- 3.6.3 The ordering Eligible Agency or Co-Op Buyer will have no obligation to pay against a defective invoice until Contractor has re-submitted it free of defects.
- 3.7 **INVOICING FOR TASK ORDERS.** Invoices must include the following information as applicable to the task order being invoiced against:
- a) substantiation of hours worked by a detailed daily timesheet, itemized to the task level and broken down by service area (if the Contract covers more than one area) and Contract Amendment (if any apply);
 - b) authorizations and receipts for all allowable reimbursable items being invoiced; and
 - c) Contractor's certification that the invoice has been examined and to the best of Contractor's knowledge and belief the invoiced amounts are entitled, correct, and accurate as can be demonstrated by the contractually-required books and records.



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4.0 Payments

- 4.1 **PAYMENT.** State shall pay undisputed amounts due to Contractor within the time period specified in Article 4 of the Uniform Terms and Conditions.
- 4.2 **JOINT CHECKS OR DIRECT PAY.** State may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 4.3 **RECOVERY OF OVER-PAYMENT.** If State determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 4.4 **PAYMENTS TO SUBCONTRACTORS.** Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from State applicable to their services.
- 4.5 **PURCHASING CARD.** State may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a State Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 4.6 **AUTOMATED CLEARING.** State may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract, which form is available online at:
<https://qao.az.gov/afis/vendor-information>

5.0 Exhibits to the Compensation Document

End of Section 2-B

End of Part 2



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FOR USE IN ANY INVITATION FOR BIDS, REQUEST FOR PROPOSALS, OR REQUEST FOR QUOTATIONS,
 AS WELL AS REQUEST FOR QUALIFICATIONS UNDER A.R.S. § 41-2558

**EXHIBIT 6 to the Special Terms and Conditions
 Supplemental Provisions for Federal Work**

Date: November 25, 2016

1.0 Applicable FAR sections.

Contractor covenants and agrees to comply with the following Federal Acquisition Regulation (FAR) sections in carrying out any portions of the Work called out in the Special Terms and Conditions as being federally funded or subject to federal contracting requirements for a reason other than funding. If the Special Terms and Conditions do not identify any portion of the Work, then the whole of the Work is subject to the listed FAR sections. The listed FAR sections, as they were current on the date of the Solicitation unless a later version is expressly specified in the Special Terms and Conditions, are incorporated into the Contract by this reference.

FAR CIT.	TITLE
52.202-1	Definitions
52.202-3	Gratuities
52.203-5	Covenant Against Contingent Fees
52.203-6	Restrictions on Subcontractor Sales to Government (over \$100,000, except for commercial terms)
52.203-7	Anti-Kickback Procedures (over \$100,000, except for commercial items)
52.203.12	Limitation on Payments to Influence Certain Federal Transactions
52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards
52.209-6	Protecting Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment
52.209-10	Prohibition on Contracting with Inverted Domestic Corporations
52.211.15	Defense Priority and Allocation Requirements
52.212-13	Stop Work Order, Alternate I
52.214-27	Price Reduction for Defective Cost or Pricing Data
52.215-1	Examination of Records by Comptroller General
52.215-2	Audit-Negotiation and Records Negotiation
52.215-12	Subcontractor Cost or Pricing Data (over \$650,000, except for commercial items)
52.215.13	Subcontractor Cost or Pricing Data - Modifications



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FAR CIT.	TITLE
52.215-14	Integrity of Unit Prices (over \$100,000 except for construction and commercial items)
52.217-1	Limitation of Price and Contractors Obligations
52.219-8	Utilization of Small Business Concerns
52.219-9	Small Business Subcontracting Plan (over \$550,000)
52.222-1	Notice to the Government of Labor Disputes
52.222-3	Convict Labor
52.222-4	Contract Work Hours and Safety Standards Act Overtime Compensation
52.222.6	Davis-Beacon Act
52.222-19	Child Labor—Cooperation with Authorities and Remedies
52.222-20	Walsh Healey Public Contracts Act
52.222-21	Prohibition of Segregated Facilities
52.222-25	Affirmative Action Compliance
52.222-26	Equal Opportunity
52.222-35	Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era and other Eligible Veterans (over \$25,000)
52.222-36	Affirmative Action for Workers with Disabilities (over \$10,000)
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era and other Eligible Veterans (over \$25,000)
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees (over \$100,000)
52.222-40	Notification of Employee Rights Under the National Labor Relations Act
52.222.41	Service Contract Act of 1965, as Amended
52.222-50	Combating Trafficking in Persons (services only)
52.222-54	Employment Eligibility Verification
52.223-3	Hazardous Material Identification and Material Safety Data
52.223-6	Drug-Free Workplace
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving
52.225-1	Buy American Act - Supplies
52.225-5	Trade Agreements
52.225-13	Restrictions on Certain Foreign Purchases
52.225-21	Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute
52.227-1	Authorization and Consent (Alt I in all R&D) (over \$100,000)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (over \$100,000)
52.227-3	Patent Indemnity

PART 3 of the Solicitation Documents:
Contract Terms and Conditions

Exhibit 3-A.6: **Federal Work Provisions**

Date: 11/25/16

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Request for Proposals
Solicitation No.
ADSP017-00006906
Description:
Elevator, Escalator, Chairlift, and Moving
Walkway Repair and Maintenance

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

FAR CIT.	TITLE
52.227-11	Patent Rights – Retention by the Contractor (Short Form) (except for Commercial Items)
52.227-12	Patent Rights – Retention by the Contractor (Long Form) (except for Commercial Items)
52.227-13	Patent Rights - Acquisition by Government (except for Commercial Items)
52.227-14	Rights in Data – General
52.233-1	Disputes
52.242-1	Notice of Intent to Disallow Costs
52.242-15	Stop-work order
52.243-1	Changes - Fixed Price (43.205 (a)(1) alts may apply)
52.243-2	Changes - Cost Reimbursement (43.205 (b)(1) alts may apply)
52.244-2	Subcontracts
52.244-5	Competition in Subcontracting
52.244-6	Subcontracts for Commercial Items
52.245-2	Government Property – FFP
52.245-5	Government Property – Cost (alt I for non profit)
52.246-15	Certificate of Conformance
52.247-63	Preference for U.S. Flag Air Carriers
52.247-64	Preference for U.S. Flag Commercial Vessels
52.249-2	Termination for Convenience of Government (Fixed Price)
52.249-5	Termination for Convenience of Government (Educational and Other Nonprofit Institutions)
52.249-14	Excusable Delays
52.252-2	Clauses Incorporated by Reference
252.203-7001	Prohibition on Persons convicted of Fraud or Other Defense Contracted-Related Felonies
252.222-7000	Restrictions on Employment of Personnel
252.225-7000	Buy American Act and Balance of Payments program
252.227-7013	Rights in Technical Data and Computer Software
252.227-7016	Rights in Bid or Proposal Information
252.227-7018	Rights in Noncommercial Technical Data and Computer Software
252.227-7019	Validation of Asserted Restrictions – Computer Software
252.227-7037	Validation Technical Data
252.243-7001	Pricing of Contract Modifications
252.244-7000	Subcontracts for Commercial Items and Commercial Components

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Exhibit 3-A.6: **Federal Work Provisions**

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	<p align="center">Request for Proposals Solicitation No. ADSP017-00006906 Description: Elevator, Escalator, Chairlift, and Moving Walkway Repair and Maintenance</p>	<p align="right">Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 201 Phoenix, AZ 85007</p>
---	---	---

2.0 Fair Labor Standards Act (FLSA)

Contractor covenants and agrees to comply with the following Fair Labor Standards Act (FLSA), including the US Department of Labor's so-called "Overtime Final Rule" when it becomes effective on 12/01/2016, in carrying out any portions of the Work called out in the Special Terms and Conditions as being federally funded or subject to federal contracting requirements for a reason other than funding. If the Special Terms and Conditions do not identify any portion of the Work, then the whole of the Work is subject to the FLSA and the Overtime Final Rule. The FLSA is incorporated into the Contract by this reference, and the Overtime Final Rule will be deemed to have been incorporated upon becoming effective.

End of Exhibit



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

FOR USE IN ANY INVITATION FOR BIDS, REQUEST FOR PROPOSALS, OR REQUEST FOR QUOTATIONS,
AS WELL AS REQUEST FOR QUALIFICATIONS UNDER A.R.S. § 41-2558

**EXHIBIT 7 to the Special Terms and Conditions:
Supplemental Provisions for Services Disentanglement**

Date: **November 25, 2016**

1. General

- 1.1 Further to the "transitions" described generally elsewhere in Special Terms and Conditions, the term "disentanglement" is used in this subparagraph to describe a complete transition of some or all of the Services to or from Contractor to another vendor in the event of expiration or earlier termination of the Contract. Contractor shall, for its part, make every effort to ensure that any necessary disentanglement is carried out with the minimum of adverse effect on State's operations or those elements of the public for whose benefit the Services are being performed.
- 1.2 If either State, Contractor, or the other vendor (whether incoming or outgoing) becomes of the considered opinion that the specified transition period duration is insufficient to ensure the necessary, effective, and efficient hand-over, then it shall so notify the other two parties immediately and provide the detailed basis for its opinion. If and to the extent that actions or inactions of either State or the other vendor form the reasons for the specified duration not being sufficient, then State shall reimburse Contractor for its actual and documented incremental, additional costs incurred to the extent attributable to the extended duration.
- 1.2.1 If and to the extent that Contractor's actions or inactions form the reasons for the specified duration not being sufficient, then State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions to recover its own and the other vendor's incremental, additional costs incurred to the extent attributable to the extended duration.
- 1.2.2 If and to the extent that none of the three parties' actions or inactions are plainly the cause of the extended duration, then each will bear its own costs separately and without recourse to the others.

2. Contractor as Incoming Vendor

- 2.1 When Contractor is the incoming vendor, Contractor's personnel shall perform in tandem with and overlapping the assignments of the outgoing vendor's personnel during the agreed transition period.
- 2.1.1 Unless expressly specified otherwise in the Scope of Work or the Commercial Document, the transition duration will be **60 (sixty) days** starting **60 (sixty) days** before the scheduled expiration of the Contract or **60 (sixty) days** after earlier termination of the Contract starting on the termination notification date; and



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- 2.1.2 Contractor's costs of salary and expense for personnel while engaged in the transition are accounted for and included in the prices or rates set forth in the Commercial Document, and Contractor shall not bill State for those separately.
- 2.2 When Contractor is the incoming vendor, Contractor shall, if State so directs:
- a) receive the program--related, project--related, or scope-related records from the outgoing vendor directly; and
 - b) receive the appropriate indexing, cataloging, and user assistance so that Contractor can make immediate use of the records as efficiently as possible.
3. Contractor as Outgoing Vendor
- 3.1 When Contractor is outgoing vendor, Contractor's personnel shall perform in tandem with and overlapping the assignments of the incoming vendor's personnel during the agreed transition period.
- 3.2 When Contractor is outgoing vendor, Contractor shall, so long as they remain in its employ, make its personnel who were key personnel or who filled subject matter expert roles under the Contract available by telephone or email to answer project-related or scope-related questions for a reasonable period after the formal transition is complete. Unless expressly specified otherwise in the Scope of Work or the Commercial Document, Contractor's costs of salary and expense for personnel while providing that assistance are accounted for and included in the prices or rates set forth in the Commercial Document, and Contractor shall not bill State for those separately.
- 3.3 When Contractor is outgoing vendor, Contractor shall, if State so directs:
- a) hand-off its program-, project- or scope-related records to the incoming vendor directly; and
 - b) provide appropriate indexing, cataloging, and user assistance to the incoming vendor's personnel so that they can make immediate use of the records as efficiently as possible.
- 3.4 Unless expressly specified otherwise in the Scope of Work or the Commercial Document, Contractor's costs of providing the aids and assistance under paragraph 3.3 are accounted for and included in the prices or rates set forth in the Commercial Document, and Contractor shall not bill State for those separately.
4. Systems
- 4.1 If the Services include development or deployment of any systems, then unless expressly specified otherwise in the Scope of Work, Contractor shall provide State as part of the transition:
- a) uninterrupted access to and maintenance and support for any functionalities that are in deployment or production state at the time;
 - b) a timetable or schedule for migrating front-end, back-end, and data from Contractor to State or the incoming vendor; and
 - c) a pro-rata adjustment of any maintenance fees for any commercial-off-the-shelf software that are to be transitioned.

Supplemental Provisions for Services Disentanglement

Date date: **November 25, 2016**

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- 4.2 If the Services include development or deployment of any systems and if indicated in the Scope of Work that State will take on operation or support of the system with its own forces, then unless expressly specified otherwise in the Scope of Work, Contractor shall provide State with a take-over plan that sets out:
- a) the training and experience requirements and requisite skills for the transition technical planning and support sub-team, application development sub-team, production support sub-team, and any other sub-teams necessary to effect a successful take-over;
 - b) the estimated staffing by role State will require to adequately operate or support the system long-term;
 - c) the mandatory and recommended training by role (e.g., database administrator, business analyst, system developer) covering the business processes, system specific processes, and applicable toolsets, and
 - d) How assigned State staff will be paired with Contractor key personnel during system development, implementation, and transition.

End of Exhibit

Supplemental Provisions for Services Disentanglement

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Arizona Department of Administration

State Procurement Office

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FOR USE IN ANY INVITATION FOR BIDS, REQUEST FOR PROPOSALS, OR REQUEST FOR QUOTATIONS,
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EXHIBIT 7 to the Special Terms and Conditions: Supplemental Provisions for Services Disentanglement

Date: 11-25-16

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- 1.2 If either State, Contractor, or the other vendor (whether incoming or outgoing) becomes of the considered opinion that the specified transition period duration is insufficient to ensure the necessary, effective, and efficient hand-over, then it shall so notify the other two parties immediately and provide the detailed basis for its opinion. If and to the extent that actions or inactions of either State or the other vendor form the reasons for the specified duration not being sufficient, then State shall reimburse Contractor for its actual and documented incremental, additional costs incurred to the extent attributable to the extended duration.
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2.1.2 Contractor's costs of salary and expense for personnel while engaged in the transition are accounted for and included in the prices or rates set forth in the Commercial Document, and Contractor shall not bill State for those separately.

2.2 When Contractor is the incoming vendor, Contractor shall, if State so directs:

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 - b) the estimated staffing by role State will require to adequately operate or support the system long-term;
 - c) the mandatory and recommended training by role (e.g., database administrator, business analyst, system developer) covering the business processes, system specific processes, and applicable toolsets, and
 - d) How assigned State staff will be paired with Contractor key personnel during system development, implementation, and transition.

End of Exhibit

Supplemental Provisions for Services Disentanglement

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Moving Walkway Repair and Maintenance**

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**PART 1 OF THE SOLICITATION:
Instructions and Attachments**

PART CONTENTS:

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Solicitation Details**

Date: **November, 25, 2016**

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

Solicitation Details

1.0 Pre-Offer Conference

State will not conduct an optional Pre-Offer Conference for this Solicitation.

2.0 Offer Validity Period

You must hold the Offer open for **one hundred twenty (120) days** after the "Bid Opening Date" indicated in the ProcureAZ.

3.0 Required Attachments

To be Responsive, your Offer must contain all of the following Attachments:
(refer to paragraph 4.2 of the Instructions to Offerors for "Form Provided" explanation)

No.	Title	Offeror Action Required	Form Provided
Attachment 1	Offer and Acceptance Form	Refer to paragraph 3.4 of the <u>Instructions to Offerors</u> .	✓
Attachment 2-A	Experience and Capacity Questionnaire	Provide all required information and answer all questions with respect to the company's ability to DO THE WORK OF THIS SOLICITATION: experience with similar scope and clients, staff having the relevant experience, manufacturing/ distribution capacity, etc.	✓
Attachment 2-B	Organization Profile	Provide the required information and answer the questions with respect to the COMPANY IN GENERAL: structure; officers; financial health; licenses, certifications, etc.	✓
Attachment 3-A	Method Proposal (Method of Approach)	Provide a proposal SPECIFIC TO THIS SOLICITATION as to how the Work will be carried out.	✓
Attachment 3-B	Key Personnel Proposal	List the proposed key personnel and assignments; provide resumes as Attachment Supplements.	✓
Attachment 3-C	Proposed Subcontractors	List the proposed Subcontractors and scope to be assigned to each.	✓
Attachment 4-A	Eligible Agency Pricing Document	Enter prices, rates, mark-ups, discounts, and other pricing data on every item for which Offer is being made. NOTE: The completed Attachment 4-A from Accepted Offer will become Exhibit 1 to the Commercial Document in the Contract.	✓



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No.	Title	Offeror Action Required	Form Provided
Attachment 4-B	Contractor Price Lists/ Catalogs	Create or copy custom or standard price lists and/or catalogs; upload as part of Offer as Attachments Supplements and label each clearly. NOTE: The completed Attachment 4-B from Accepted Offer will become the Annexes to Exhibit 1 to the Commercial Document in the Contract.	X
Attachment 5-A	Designation of Confidential Information	Indicate what, if any, information in Offer is confidential, trade secret or proprietary (see paragraph 4.7 of the Instructions to Offerors)	✓
Attachment 5-B	Conformance Statements	Attest that Offer conforms to the Solicitation (see paragraph 3.5 of the Instructions to Offerors)	✓
Attachment 5-C	Insurance and Bonding Evidence	Provide the following as indicated by the "●" mark; if none are marked, then no Attachment 5-C is required: <input type="checkbox"/> Satisfactory evidence that the required insurance called for in <u>Exhibit 1 to the Special Terms and Conditions</u> is in place (by certificates of insurance) or can be obtained (by broker's letters). <input type="checkbox"/> Satisfactory evidence that the required bonds or other security called for in <u>Exhibit 1 to the Special Terms and Conditions</u> can be obtained (by surety letters).	X
Attachment 6	Additional Attachments	Any other documentation required by the Solicitation to be submitted with or as part of Offer.	X
Attachment 7	Offer Checklist	Attest that each item on the checklist has been provided with or as part of Offer.	✓

4.0 Required Pricing

4.1 Attachment 4-A

4.1.1 Contractor shall submit pricing on the Excel spreadsheet Attachment 4-A for each Region the Contractor is offering pricing under this contract.

5.0 Evaluation Criteria

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

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



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6.0 Exhibits to the Solicitation

Not Required

End of Section 1-A



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**SECTION 1-B:
Instructions to Offerors**

Version 1.1 (6/6/2016)

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Instructions to Offerors

1.0 Definition of Terms

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

<p>1.1 Arizona Procurement Code; A.R.S.; A.A.C.</p>	<p>"Arizona Procurement Code" means, collectively, statutes 41-2501 <i>et. sequitur</i> in the Arizona Revised Statutes (abbreviated "A.R.S.") and administrative rules R2-7-101 <i>et. sequitur</i> in the Arizona Administrative Code (abbreviated "A.A.C.").</p> <p>NOTE: There are frequent references to the Arizona Procurement Code throughout the Solicitation, therefore, you will need to be familiar with its provisions to be able to understand the Solicitation fully. Links for obtaining are given below.</p> <p>The Arizona Department of Administration State Procurement Office provides a reference compilation of the Arizona Procurement Code on its website: https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations</p> <p>The Arizona State Legislature provides the official A.R.S. online at: http://www.azleg.gov/ArizonaRevisedStatutes.asp</p> <p>The Office of the Arizona Secretary of State provides the official A.A.C. online at: http://www.azsos.gov/rules/arizona-administrative-code</p>
<p>1.2 Attachment</p>	<p>"Attachment" means any item in <u>Section 1-C of the Solicitation</u> that the Solicitation requires Offeror to submit as part of the Offer.</p>
<p>1.3 Clarifications</p>	<p>"Clarifications" means, per A.A.C. R2-7-C313, communications between the Procurement Officer and Offeror for the purpose of providing a greater mutual understanding of the Offer. Clarifications may include demonstrations, questions and answers, or elaborations on previously-submitted information.</p>
<p>1.4 Contract</p>	<p>"Contract" is defined in the <u>Uniform Terms and Conditions</u>.</p>
<p>1.5 Contract Amendment</p>	<p>"Contract Amendment" is defined in the <u>Uniform Terms and Conditions</u>.</p>
<p>1.6 Contractor</p>	<p>"Contractor" is defined in the <u>Uniform Terms and Conditions</u>.</p>
<p>1.7 Evaluation</p>	<p>"Evaluation" means, per A.A.C. R2-7-316, the process whereby the Procurement Officer will determine which Responsive offers, revised offers, and best and final offers are the most advantageous to State taking into consideration the evaluation factors set forth in the Solicitation.</p>
<p>1.8 Exhibit</p>	<p>"Exhibit" is defined in the <u>Uniform Terms and Conditions</u>.</p>
<p>1.9 Negotiations</p>	<p>"Negotiations" means, per A.A.C. R2-7-101.32, an exchange or series of exchanges between State and an offeror for the purposes set forth in A.A.C. R2-7-C314.</p>
<p>1.1 Not Susceptible for Award</p>	<p>"Not Susceptible for Award" means, per A.A.C. R2-7-C311, that the relevant offer has been determined by the Procurement Officer to be fail one or more of the tests and comparisons set forth in that A.A.C. R2-7-C311; a determination of Not Susceptible for Award and a determination of Responsive are mutually exclusive.</p>





Request for Proposals

Solicitation No.
ADSP017-00006906

Description:
Elevator, Escalator, Dumbwaiter, and Moving
Walkway Repair and Maintenance

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

<p>1.2 Offer: Revised Offer; Best and Final Offer</p>	<p>"Offer" means, per A.A.C. R2-7-101.33, Offeror's proposal submitted to State in response to the Solicitation, as that proposal was initially submitted.</p> <p>"Revised Offer" means any revised versions of the Offer that Offeror has submitted to State at State's request as permitted under A.A.C. R2-7-C314 and -C315.</p> <p>"Best and Final Offer" means, per A.A.C. R2-7-101.8, the revised Offer submitted after negotiations have been completed that contain Offeror's most favorable terms for price, service, and products to be delivered.</p>
<p>1.3 Offeror</p>	<p>"Offeror" is the Person submitting the Offer; instructions addressed to "you" and references to "your" items are to be construed as being synonymous with "Offeror" and "Offeror's" throughout these Instructions to Offerors.</p>
<p>1.4 Person</p>	<p>"Person" is defined in the <u>Uniform Terms and Conditions</u>.</p>
<p>1.5 ProcureAZ</p>	<p>"ProcureAZ" is defined in the <u>Uniform Terms and Conditions</u>.</p>
<p>1.6 Procurement Officer</p>	<p>"Procurement Officer" is defined in the <u>Uniform Terms and Conditions</u>.</p>
<p>1.7 Responsible; Not Responsible</p>	<p>"Responsible" [offeror] means, per A.R.S. § 41-2531.14, that the relevant offeror has been determined by the Procurement Officer to have the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance; "Not Responsible" means that it does not (i.e., the Procurement Officer has made a negative determination).</p>
<p>1.8 Responsive</p>	<p>"Responsive" [offer] means, per A.R.S. § 41-2531.15, that the relevant offer has been determined by the Procurement Officer to conform in all material respects to the Solicitation.</p>
<p>1.9 Solicitation</p>	<p>"Solicitation" means this request for proposals, which State is issuing under A.R.S. § 41-2534.</p>
<p>1.10 Solicitation Amendment</p>	<p>"Solicitation Amendment" means, per A.A.C. R2-7-303, a change to the Solicitation that has been issued by the Procurement Officer.</p>
<p>1.11 Solicitation Details</p>	<p>"Solicitation Details" means <u>Section 1-A of the Solicitation</u>.</p>
<p>1.12 Subcontract</p>	<p>"Subcontract" is defined in the <u>Uniform Terms and Conditions</u>.</p>
<p>1.13 State</p>	<p>"State" is defined in the <u>Uniform Terms and Conditions</u>.</p>
<p>2.0 Inquiries</p>	
<p>2.1 Duty to Examine</p>	<p>Examine the entire Solicitation, obtain clarification in writing for any questions or concerns by submitting inquiries, then examine the Offer thoroughly and carefully for completeness and accuracy before submitting it. Lack of care in preparing the Offer is not grounds for modifying or withdrawing the Offer after the due date and time.</p>
<p>2.2 Solicitation Contact Person</p>	<p>Direct all inquiries related to the Solicitation to the Procurement Officer, including requests for or inquiries regarding standards referenced in the Solicitation. Do not contact any State personnel other than the Procurement Officer concerning the Solicitation while it is in progress, through and including award.</p>



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<p>2.3 Submission of Inquiries</p>	<p>Submit all inquiries related to the Solicitation in ProcureAZ; the Procurement Officer will not respond to inquiries received in any other manner.</p> <ol style="list-style-type: none"> 1. Submit technical inquiries about submitting proposals in ProcureAZ to the ProcureAZ Help Desk by phone at (602) 542-7600, option 1, or by email to procure@azdoa.gov. 2. Submit all other inquiries about the Solicitation using the online form under the "Q&A" tab in ProcureAZ; always refer to the appropriate Solicitation document by page and paragraph number. State is not responsible for responding to any inquiries other than technical inquiries about submitting proposals submitted less than 3 (three) business days before the Offer due date and time. 3. Submit any exception to the Solicitation or the Solicitation documents for the Procurement Officer's review and determination no less than 5 (five) business days before the Offer due date and time.
<p>2.4 Verbal or Email Responses</p>	<p>Do not rely on verbal or email responses to inquiries – those do not constitute a modification of the Solicitation.</p>
<p>2.5 Solicitation Amendments</p>	<p>Only a Solicitation Amendment issued in ProcureAZ can change the Solicitation.</p>
<p>2.6 Pre-Offer Conference</p>	<p>If the <u>Solicitation Details</u> indicates that State will hold a Pre-Offer Conference, then the conference date, time and location are provided in ProcureAZ. The Solicitation Details also indicates whether or not attendance at the conference is a mandatory. If it is mandatory, then attendance at the conference is a prerequisite for the Offer to be Responsive. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer sufficiently in advance to make the necessary arrangements.</p>
<p>3.0 Offer Preparation</p>	
<p>3.1 Online Documents</p>	<p>The Solicitation documents are only provided online in ProcureAZ; State will not provide any printed copies or other formats.</p>
<p>3.2 Electronic Submissions</p>	<p>When submitting your Offer, only include files that are Microsoft Word documents, Excel workbooks, PowerPoint presentations, and Adobe Acrobat documents. Obtain advance approval before submitting files in any other format.</p>
<p>3.3 Deviations in Offer</p>	<p>When submitting your Offer, clearly flag any deviations from the Specifications or other Solicitation technical requirements documents. Any un-flagged deviation will be deemed void upon submission. NOTE: Deviations are technical exceptions of a significant but not material nature, typically having to do with part/model numbers, details of attachments, mountings, clearances, internal configurations, etc., and are not to be confused with the material exceptions covered in <u>Attachment 5-B [Conformance Statements]</u>.</p>
<p>3.4 Evidence of Intent</p>	<p>Your Offer must contain an <u>Attachment 1 [Offer and Acceptance Form]</u> that has been signed by your duly authorized officer, executive, principal, or agent. The signature will be deemed to signify your intent to be bound by your Offer and the terms of the Solicitation and your representation that the information you have provided in your Offer is true and accurate.</p>



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3.5 Exceptions to Solicitation Documents	If your Offer is being submitted conditioned on any exceptions to the Solicitation documents, indicate "NO" on <u>Attachment 5-C [Conformance Statement]</u> and indicate that exceptions are being taken in the "Terms & Conditions" tab in ProcureAZ. Any exceptions taken elsewhere in the Offer or any of your preprinted or standard terms will be void in the Offer and without force or effect in any resulting contract.
3.6 Insurance and Bonds	Provide any evidence of insurance availability, evidence of insurance, evidence of bonding capacity, or bonds or other security called for in the <u>Solicitation Details</u> .
3.7 Identification of Taxes in Offer	State is subject to Arizona Transaction Privilege Tax as well as certain local sales/use taxes, as set forth in the <u>Contract Terms and Conditions</u> . Identify taxes as separate items by amount or by rate, as applicable, in <u>Attachment 4 [Pricing Document]</u> .
3.8 Excise Tax	State is exempt from certain federal excise tax on manufactured goods; State will provide the necessary exemption certificates as evidence.
3.9 Employee Identification	You must provide an employee identification number or social security number to State for the purposes of reporting monies paid under the Contract to appropriate taxing authorities; the submission is mandatory under 26 U.S.C. § 6041A. If the identifier is a social security number, State agrees that it will only use it for tax reporting purposes and only share it with appropriate state and federal officials.
3.10 Disclosure	If you are submitting the Offer despite having 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, then you must provide with your Offer the name and address of the governmental unit, the effective date, duration, and circumstances of the suspension, debarment, or other preclusion, and your justification for State to consider your Offer despite the suspension, debarment, or other preclusion. Include any suspension, debarment, or other preclusion that is pending, but indicate that it is pending.
3.11 Federal Immigration Laws	By signing the Offer, you will be deemed to have represented that both you and all your proposed Subcontractors are in compliance with federal immigration laws and regulations relating to the immigration status of their personnel. State may, at its discretion, demand evidence of compliance during Offer evaluation, which you must provide promptly; not providing the evidence will entitle the Procurement Officer to deem the Offer Not Susceptible for Award.
3.12 Offshore Performance of Sensitive Work	Refer to paragraph 3.11 of the <u>Uniform Terms and Conditions</u> .
3.13 Cost of Offer Preparation	State will not reimburse any offeror any costs associated with responding to the Solicitation.
4.0 Submission of Offer	
4.1 Offer Content	Submit all of the Offer content called for in the <u>Solicitation Details</u> .
4.2 Provided Forms	If the Article 1.0 of <u>Section 1-A [Solicitation Details]</u> indicates that a "Form" is being provided for an Attachment, then the Solicitation includes the required form and format for submitting the Attachment with or as part of the Offer; no other form or format will be accepted and the offer will be Not Susceptible for Award.



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	<p>If, however, the provided Attachment Form indicates that Offeror is allowed (or required, as the case may be) to attach additional documents regarding a particular question or line item, then doing so will be acceptable so long as the filled-out Attachment clearly states "See Attachment X Supplement (#1 of 2)", etc., and the additional document is clearly marked as "Attachment X Supplement (#1 of 2)". Upload each such "additional" document as an individual file and name the file to match the document title. NOTE: Attachment Forms cannot be filled-in directly in ProcureAZ; they must be downloaded, edited, and then uploaded as part of the Offer.</p> <p>Do not include non-specific marketing materials in the Offer; if something is not specifically called for, then including it with the Offer will not be helpful during evaluation and might in fact be grounds for down-grading if it does not address Offeror's experience and capacity to carry out <u>this</u> work.</p>
<p>4.3 Pricing</p>	<p>If there are specific "Items" (line items) for the Solicitation in ProcureAZ, then submit pricing for the Offer directly in ProcureAZ for each Item. Unless Article 4.0 of <u>Section 1-A [Solicitation Details]</u> indicates otherwise, the Offer must include a price, rate, multiplier, or discount for every Item in order to be determined responsive.</p> <p>If a Pricing Document has been provided as an Attachment Form, then submit pricing for the Offer in the indicated blanks in that Attachment. Article 3 of <u>Section 1-A [Solicitation Details]</u> indicates otherwise, the Offer must include a price, rate, multiplier, or discount for every blank field in order to be determined responsive.</p> <p>If no specific pricing input or form has been provided with the Solicitation, then submit pricing for the Offer in the form and format specified in <u>Attachment 4</u>. If nothing is specified or if no Attachment 4 is included in the Solicitation documents, then submit pricing for the Offer in a form and format of Offeror's choosing that coherently and comprehensively presents the pricing being offered. Unless Article 3 of <u>Section 1-A [Solicitation Details]</u> explicitly indicates otherwise, the Offer must include a price, rate, multiplier, or discount for every item or service covered by the scope of the Solicitation (or for an entire category of item or service, if pricing applies in that way) in order to be determined responsive.</p>
<p>4.4 Submission</p>	<p>Submit your proposal online in ProcureAZ at https://procure.az.gov before the "Bid Opening Date" indicated therein for the "Solicitation No." at the top of these Instructions to Offerors. State will not consider a proposal submitted by any other method other than ProcureAZ, and it will be deemed void upon submission.</p> <p>By A.A.C. R2-7-C307, State will not consider later offers. State will give no extension or grace period for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in ProcureAZ. If your proposal is not submitted correctly, completely, and in conformance to these Instructions and the <u>Solicitation Details</u>, the Procurement Officer may deem it Not Susceptible for Award.</p> <p>NOTE: Using ProcureAZ requires a certain level of technical competency; select your staff to submit proposals and handle other Solicitation administration matters in ProcureAZ carefully, since the ProcureAZ Help Desk cannot do any of the required actions for you.</p>
<p>4.5 Solicitation Amendments</p>	<p>Acknowledge each Solicitation Amendment in ProcureAZ. By A.A.C. R2-7-C303(C), you must acknowledge every Solicitation Amendment issued as of the due date and time for your proposal to be Responsive. If you have submitted your proposal early, you must be alert for subsequent Solicitation Amendments – if one is issued after your submission but before offer due date and time, then the Procurement Officer may determine it to be Not Responsive if you have not acknowledged it.</p>



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<p>4.6 Offer Amendment or Withdrawal</p>	<p>You cannot amend or withdraw a submitted proposal after the Offer due date and time unless expressly permitted under applicable law.</p>
<p>4.7 Confidential Information</p>	<p>If you believe that a portion of your proposal (or a protest or other correspondence) contains a trade secret or other manner of your proprietary information, you must (1) indicate on <u>Attachment 5-A</u> that your proposal contains such claimed confidential information and (2) designate clearly throughout the proposal each instance of that trade secret or other proprietary information in the other portions of your proposal using the term "confidential." Simply indicating that the proposal contains confidential information is not sufficient to claim the protections under A.A.C. R2-7-C317 – Attachment 5-A must be accompanied by a detailed explanation as to why each item or category of items in the proposal should be designated confidential information. The Procurement Officer shall review the claim of confidentiality and provide a written determination; until a written determination has been made, the Procurement Officer shall not disclose the claimed information to anyone who does not have a legitimate State interest. If the Procurement Officer denies the claim of confidentiality, you may appeal the determination to the State Procurement Administrator within the time specified in the determination. NOTE: Contract terms and conditions, pricing, and information generally available to the public are not and will not be designated confidential information.</p>
<p>4.8 Public Record</p>	<p>Once submitted and opened by the Procurement Officer, the Offer is a public record and must be retained by State for 6 (six) years. All offers will be available for public inspection in ProcureAZ after the Contract has been awarded, except for any portions that were determined to be confidential information.</p> <p>The Procurement Officer shall make the names of Persons who submitted proposals available in ProcureAZ promptly after the opening date.</p>
<p>4.9 Offeror Certification</p>	<p>By signing the Offer and Acceptance Form (or other official contract form specified by the Procurement Officer), you will be deemed to have certified that (1) you did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of your Offer and (2) you does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with an applicable federal, state, and local laws and executive orders regarding employment.</p>
<p>5.0 Responsible; Not Susceptible for Award</p>	
<p>5.1 Responsible</p>	<p>When determining if Offeror is Responsible under A.A.C. R2-7-C312, the Procurement Officer may, further to the factors set forth therein, consider whether Offeror has:</p> <ol style="list-style-type: none"> 1. had a contract within the last 5 (five) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract; or 2. a record of performance that includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract, with factual evidence consisting of documented vendor performance reports, customer complaints and/or negative references.



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<p>5.2 Not Susceptible for Award</p>	<p>When determining if the Offer is Not Susceptible for Award under A.A.C. R2-7-C311, the Procurement Officer may, further to the factors set forth in that sub-section, consider whether the Offer:</p> <ol style="list-style-type: none"> 1. Is sufficient for Evaluation; 2. attempts to materially changes the contents of the Solicitation; 3. would limit State's rights or remedies if accepted; 4. is subject to or includes unreasonable conditions, including conditions upon State necessary for its successful performance, with the Procurement Officer being the sole determiner as to the reasonableness of a condition; or 5. provides any misleading or inaccurate information.
<p>5.3 Omitted or Incomplete Attachments</p>	<p>If the Offer does not include all required Attachments, or if any Attachment has not been completed in conformance to the specific instructions on the Attachment form, then the Procurement Officer may:</p> <ol style="list-style-type: none"> 1. instruct Offeror to provide the omitted documentation as a Clarification if the omission or incompleteness is of the nature of an inadvertent clerical mistake or reasonable and excusable misinterpretation of the relevant requirements as they were stated; 2. further consider the Offer, but down-grade it as appropriate in Evaluation if the omission is significant but not material; or 3. determine that the Offer is Not Susceptible for Award if the omission or incompleteness is material.
<p>5.4 Eligibility for Evaluations and Negotiations</p>	<p>If the Procurement Officer determines that Offeror is Not Responsible, then he or she is not permitted by A.A.C. R2-7-C314 to give further consideration to its offer or include it in any Negotiations or make any Evaluation of its offer. If, however, the Procurement Officer determines that the Offer is Responsive (i.e., there is no applicable determination of Not Susceptible for Award), then he or she is obliged by A.A.C. R2-7-C314 to make an Evaluation of it and include Offeror in the immediate round of Negotiations. If the Procurement Officer determines subsequently that a Revised Offer is Not Susceptible for Award by virtue of comparison to other revised offers per A.A.C. R2-7-C314(A)(3), then he or she will not include Offeror in any further Negotiations. For clarity of intent, the foregoing means that the Procurement Officer may reduce the number of offers that are "susceptible for award" with each successive round of Negotiations, since the purpose of Negotiations is to achieve best value for State.</p>
<p>6.0 Evaluation</p>	
<p>6.1 Offer Validity Period</p>	<p>By submitting the Offer, you agree to hold your Offer open for the validity period specified in Article 2.0 of the <u>Solicitation Details</u>; if no validity period is specified therein, then you shall hold your Offer open for 180 (one hundred eighty) days. The specified or default validity period (whichever applies) re-starts upon submission of each Revised Offer or a Best and Final Offer.</p>
<p>6.2 Clarifications</p>	<p>The Procurement Officer may request oral or written Clarifications from offerors as necessary when making determinations under Article 5.0, making Evaluations, conducting Negotiations, and determining award under A.A.C. R2-7-C317.</p>
<p>6.3 Evaluation</p>	<p>The Procurement Officer shall conduct Evaluations of those offers determined to be eligible under paragraph 5.4.</p>





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6.4 Negotiations	The Procurement Officer may conduct Negotiations with offerors whose offers have been determined to be eligible under paragraph 5.4. The Procurement Officer will request a Best and Final Offer from any offerors with whom negotiations have been conducted, provided that, State may make award made without any Negotiations and therefore every offeror is forewarned to always submit its offer complete and on the most favorable terms initially, and not to assume any opportunity for Negotiations.
6.5 Financial Stability	You must be able to substantiate your financial stability to State's satisfaction as a precondition of any contract award. The Procurement Officer may demand documentation such as current financial statements directly from you or may obtain reports from independent financial rating services. Not providing the evidence will entitle the Procurement Officer to deem your Offer Not Susceptible for Award.
6.6 Consideration of Exceptions	The Procurement Officer may determine that your Offer is Not Susceptible for Award if it is conditioned on an exception to a material aspect of the Solicitation. Even if the Procurement Officer determines that an exception is one that does not merit such peremptory rejection, he or she may down-grade your Offer in Evaluations if the exception is significant.
6.7 Consideration of Deviations	The Procurement Officer may down-grade your Offer in Evaluations if it contains deviations that, in the Procurement Officer's determination, materially reduce the value to State of affected Materials or Services across the life-cycle thereof.
6.8 Consideration of Prompt Payment Discount	Procurement Officer shall credit prompt payment discounts for the purpose of evaluating offer prices.
6.9 Consideration of Taxes	Procurement Officer shall not include Arizona Transaction Privilege Tax and other sales/use taxes for the purpose of evaluating offer prices.
6.10 Consideration of Cost	Regardless of the relative order assigned to cost in Article 5.0 of the <u>Solicitation Details</u> , cost is an essential consideration in every award State makes; State's intent is always to obtain the best pricing available and it strives to make its evaluations be a straightforward comparison of best value between the responsible and responsive proposals as far as possible to the extent permissible under applicable laws.
6.11 Unit Price Prevails	In the case of discrepancy in the Offer between a unit price or rate and an extension of that unit price or rate, the unit price or rate will prevail.
6.12 Waiver and Rejection	Notwithstanding any other provision of the Solicitation, State reserves the right to: <ol style="list-style-type: none"> 1. waive any minor informality; 2. reject any or all offers or portions thereof; or 3. cancel the Solicitation.
7.0 Award	
7.1 Best Advantage to State	Under A.A.C. R2-7-C317, contracts will be awarded to the responsible offeror whose offer is determined to be most advantageous to the State based on the stated evaluation criteria.
7.2 Number of Types of Awards	State reserves the right to make multiple awards or to award contracts by individual line items or alternates, by group of line items or alternates, or to make an aggregate award, or regional awards, whichever is determined to be most advantageous to the State.



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7.3 Contract Inception

The Offer does not constitute a contract nor does it confer any right on Offeror to the award of a contract. A contract is not created until the Offer has been accepted for State by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of intent to award will not constitute State's acceptance of the Offer.

7.4 Contract Document Consolidation

State may, at its option, consolidate the resulting contract documents after contract award. Examples of such consolidation are reorganizing Solicitation documents and those components of the Accepted Offer not pertaining to the contract's operation and excluding any components of the Accepted Offer that were not awarded. Contract document consolidation will not, however, include or be construed to include any materially change the Solicitation or the Contract.

8.0 Protests

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

1. the name, address, email address and telephone number of the interested party;
2. 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 being requested.

9.0 Comments Welcome

SEPARATELY AND APART FROM THIS SOLICITATION, The State Procurement Office periodically reviews these Instructions to Offerors and welcomes any comments the public may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

End of Section 1-B





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**SECTION 1-C:
Attachments**

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ADSP017-00006906

Description:
Elevator, Escalator, Dumbwaiter, and Moving
Walkway Repair and Maintenance

Arizona Department of Administration

State Procurement Office

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

**Section 1-C, Att. 1
Offer and Acceptance Form**

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide Elevator, Escalator, Dumbwaiter, and Moving Walkway Repair and Maintenance in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Original Offer: _____
date initial

Revised Offer: _____
date #1 initial date #2 initial date #3 initial

Best and Final Offer: _____
date initial

X

 Company name Signature of person authorized to sign Offer Initials

X

 Address Printed name and title

X

 City | State | ZIP Contact name and title

X
 _____ X
 Company website Contact Email Address Contact phone number

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

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER: State hereby accepts the Offer. Offeror is now bound (as Contractor) to sell the Materials and perform the Services under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable purchase order, release document, or written notice to proceed.

State's Contract No. is **ADSP017-**
(for all correspondence and invoices)

The effective date of the Contract is: _____

Contract awarded this ____ day of _____ 20__

Procurement Officer Signature

Procurement Officer printed name





Request for Proposals

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SECTION 1-C, Att. 2-A: Experience and Capacity Questionnaire

STATE MAY DETERMINE YOUR PROPOSAL IS NON-RESPONSIVE IF YOU DO NOT ANSWER ALL QUESTIONS FULLY.

EXPERIENCE AND CAPACITY QUESTIONS:

Offerors are required to provide a reply to each question listed below. Your replies will aid the evaluation committee as part of the overall qualitative evaluation criteria of this Request for Proposal. Your responses should contain sufficient information about your company so evaluators have a clear understanding of your company's background and capabilities. Failure to respond to any of these questions may result in your proposal to be rejected as non-responsive.

Question 1: A staffing plan is required which describes the Offeror's proposed staff distribution to implement and manage this contract throughout the term of the contract. The staffing plan should indicate a chart that partitions the time commitment of each professional staff member across the proposed tasks and a timeline of each member's involvement throughout the contract. It is mandatory that this section identify the key personnel who are to be engaged in this contract and amount of time to be devoted to the contract.

Offeror Response:

[Click here to enter your response.](#)

Question 2: Describe how your company will provide parts and service for elevators, escalators, walkways, and wheelchair lifts not manufactured by your company. Include a listing of all brands you are authorized to service and describe any limitations that you may have in servicing these brands. Describe your familiarity and experience with and capability to maintain and repair elevators manufactured by the following companies, including but not limited to:

- KONE
- Dover
- ThyssenKrupp
- Otis
- Schindler
- Other

Offeror Response:

[Click here to enter your response.](#)

Question 3: Provide a description of current workload and availability of resources to complete the work and support the proposed work. Provide the total number and location of service technicians employed by your company for each Region (1 through 7) the Offeror is submitting pricing.

Offeror Response:

[Click here to enter your response.](#)

SECTION 1-B: Instructions to Offerors
Version: Version 1.1 (6/6/2016)

Elevator, Escalator, **Dumbwaiter, and
Moving Walkway
Repair and
Maintenance**
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Question 4: Describe the capacity of your company to provide all reporting as mandated by the solicitation.

Offeror Response:

[Click here to enter your response.](#)

Question 5: Describe your company's internal management system for processing orders from point of customer contact through delivery and billing.

Offeror Response:

[Click here to enter your response.](#)

Question 6: Describe your company's material pricing program.

Offeror Response:

[Click here to enter your response.](#)

Question 7: Describe your company's process on how you will assure the Eligible Agencies that you will succeed at following scenarios / criteria's.

- A. 20 Minute emergency call back for all ADOA buildings in the Capitol Mall (during normal hours)
- B. 45 Minute emergency call back for all other Eligible Agencies (during normal hours)
- C. 60 Minute emergency call back for all Eligible Agencies including ADOA buildings. (after hours and weekends)
- D. Elevator entrapments (during normal hours and after hours)

Offeror Response:

[Click here to enter your response.](#)

Question 8: Describe your company's billing process on how you will assure the Eligible Agencies that your billing will be accurate?

Offeror Response:

[Click here to enter your response.](#)





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EXPERIENCE REFERENCES:

1	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
Phone Number		Email Address		
	x	x		
Materials/goods/equipment provided similar to those described in Solicitation				
	x			
Services performed similar to those described in Solicitation				
	x			

2	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
Phone Number		Email Address		
	x	x		
Materials/goods/equipment provided similar to those described in Solicitation				
	x			
Services performed similar to those described in Solicitation				
	x			



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3	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
	Phone Number	Email Address		
	x	x		
Materials/goods/equipment provided similar to those described in Solicitation				
x				
Services performed similar to those described in Solicitation				

ATTACHMENT SUPPLEMENTS:

(Offeror to insert as required and list here or type "None" on first line)

	Title	Document Date	No. of pages	Purpose in Offer
1.	Enter or type "None"			
2.	Enter or delete row if not needed			
3.	Enter or delete row if not needed			
4.	Enter or delete row if not needed			
5.	Enter or delete row if not needed			
6.	Enter or delete row if not needed			
7.	Enter or delete row if not needed			

End of Attachment [1-C] 2-A



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**SECTION 1-C, Att. 2-B:
Organization Profile**

STATE MAY DETERMINE YOUR PROPOSAL IS NON-RESPONSIVE IF YOU DO NOT ANSWER ALL QUESTIONS FULLY.

ORGANIZATION PROFILE

Firm Name	<input checked="" type="checkbox"/>	Year established	<input checked="" type="checkbox"/>
Principal address (street, city, state)	<input checked="" type="checkbox"/>		
Entity type:	<input checked="" type="checkbox"/>	Structure:	<input checked="" type="checkbox"/>
Branch or Division:	<input checked="" type="checkbox"/>	Parent:	<input checked="" type="checkbox"/>
Years' experience providing goods similar in type and quantity as required by this Solicitation.			<input checked="" type="checkbox"/>
Years' experience performing services similar in size and scope as required by this Solicitation.			<input checked="" type="checkbox"/>
Years the organization has conducted business in the State of Arizona.			<input checked="" type="checkbox"/>
CONTRACT REPRESENTATIVES TO CONTACT			
	Name	Title	E-Mail Address
1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
LICENSES/CERTIFICATIONS			
	Description	Issuer	Expiration
1			
2			
3			
4			
5			
6			
7			
FINANCIAL INFORMATION			
	Rating/Issuer	Score/Rank	Date
1			
2			
3			





Request for Proposals

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CAPACITY

	Location	Work Performed	Number Staff	Capacity
1				
2				
3				
4				
5				

End of Attachment [1-C] 2-B



Request for Proposals

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**SECTION 1-C, Att. 3-A:
Method Proposal**

(Method of Approach)

- Describe how your company will meet the requirements of the contract to best suit the needs of the Eligible Agency's. Offeror shall include, but is not limited to, methodology, work plan, technology, and scheduling for providing the required services of this contract and support services in the form of response time and resources proposed to meet the initial and on-going needs of an uninterrupted operation of the service for the Eligible Agency's from award through delivery. Include the Offeror's anticipated schedule from proposal award through delivery and on-site testing and training if applicable.
- Provide any suggested improvements and alternatives for doing business with your company that will make this arrangement more cost effective for your company and Eligible Agencies.

Offeror Response:

Click here to enter your response.

ATTACHMENT SUPPLEMENTS:

(Offeror to insert as required and list here or type "None" on first line)

	Title	Document Date	No. of pages	Purpose in Offer
1.	Enter or type "None"			
2.	Enter or delete row if not needed			
3.	Enter or delete row if not needed			
4.	Enter or delete row if not needed			
5.	Enter or delete row if not needed			
6.	Enter or delete row if not needed			
7.	Enter or delete row if not needed			

End of Attachment [1-C] 3-A



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**SECTION 1-C, Att. 3-B:
Key Personnel Proposal**

Answer all questions thoroughly in the spaces provided. **Complete this form in full for each one of the key personnel proposed to be involved in carrying out the Work.** Insert or attach a separate resume if desired, but any attached resumes are supplemental to this form and do not substitute for this form.

1	Name:	x	How long with company?	x years
	Current position:	x	How long in position?	x years
	Position for the Contract:	x	How much of person's time will be dedicated to Contract?	x %
	What primary Services functions will be assigned to this person?	x		
	Describe person's experience in performing services like those assigned:	x		
	List the personnel's job related training and education:	x		
Resume:	filename			



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2	Name:	<input checked="" type="checkbox"/>	How long with company?	<input checked="" type="checkbox"/> years
	Current position:	<input checked="" type="checkbox"/>	How long in position?	<input checked="" type="checkbox"/> years
	Position for the Contract:	<input checked="" type="checkbox"/>	How much of person's time will be dedicated to Contract?	<input checked="" type="checkbox"/> %
	What primary Services functions will be assigned to this person?	<input checked="" type="checkbox"/>		
	Describe person's experience in performing services like those assigned:	<input checked="" type="checkbox"/>		
	List the personnel's job related training and education:	<input checked="" type="checkbox"/>		
Resume:	filename			



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3	Name:	x	How long with company?	x years
	Current position:	x	How long in position?	x years
	Position for the Contract:	x	How much of person's time will be dedicated to Contract?	x %
	What primary Services functions will be assigned to this person?	x		
	Describe person's experience in performing services like those assigned:	x		
	List the personnel's job related training and education:	x		
	Resume:	filename		



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4	Name:	x	How long with company?	x years
	Current position:	x	How long in position?	x years
	Position for the Contract:	x	How much of person's time will be dedicated to Contract?	x %
	What primary Services functions will be assigned to this person?	x		
	Describe person's experience in performing services like those assigned:	x		
	List the personnel's job related training and education:	x		
	Resume:	filename		



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5	Name:	<input checked="" type="checkbox"/>	How long with company?	<input type="checkbox"/> x years
	Current position:	<input checked="" type="checkbox"/>	How long in position?	<input type="checkbox"/> x years
	Position for the Contract:	<input checked="" type="checkbox"/>	How much of person's time will be dedicated to Contract?	<input type="checkbox"/> x %
	What primary Services functions will be assigned to this person?	<input checked="" type="checkbox"/>		
	Describe person's experience in performing services like those assigned:	<input checked="" type="checkbox"/>		
	List the personnel's job related training and education:	<input checked="" type="checkbox"/>		
Resume:	filename			



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6	Name:	<input checked="" type="checkbox"/>	How long with company?	<input type="checkbox"/> years
	Current position:	<input checked="" type="checkbox"/>	How long in position?	<input type="checkbox"/> years
	Position for the Contract:	<input checked="" type="checkbox"/>	How much of person's time will be dedicated to Contract?	<input type="checkbox"/> %
	What primary Services functions will be assigned to this person?	<input checked="" type="checkbox"/>		
Describe person's experience in performing services like those assigned:	<input checked="" type="checkbox"/>			
List the personnel's job related training and education:	<input checked="" type="checkbox"/>			
Resume:	filename			





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7	Name:	x	How long with company?	x years
	Current position:	x	How long in position?	x years
	Position for the Contract:	x	How much of person's time will be dedicated to Contract?	x %
	What primary Services functions will be assigned to this person?	x		
	Describe person's experience in performing services like those assigned:	x		
	List the personnel's job related training and education:	x		
	Resume:	filename		

End of Attachment [1-C] 3-B





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SECTION 1-C, Att. 3-C: Proposed Subcontractors

Check "NO" if you will not subcontract any portion of the Work and will therefore be performing all of the Work with your own personnel.

NO, the Offeror will not subcontract any portion of the Work.

If you will subcontract any portion of the Work, check "YES" below and list name of persons or companies you propose to use as Subcontractors.

- Fill in the information for every significant Subcontractor – indicate the type of work the Subcontractor will perform under this Contract, and the approximate percentage of the total Contract work (i.e., your self-performed work plus all subcontracted work) that the Subcontractor will perform.
- Provide copies of relevant certifications each one possesses in the Attachment Supplements section.
- Provide description of quality assurance methods and quality control measures that will be used to ensure that Subcontractor's portions of the Work meet the Contract requirements.
- State reserves the right to request additional information about any proposed Subcontractors.

YES, the Offeror will use the Subcontractors listed below:

	Name and contact information	Small Business	Work to be performed	%
1.	Name	select		
2.	Name	select		
3.	Name	select		
4.	Name	select		
5.	Name	select		
6.	Name	select		
7.	Name	select		
8.	Name	select		
9.	Name	select		
10.	Name	select		

ATTACHMENT SUPPLEMENTS:

(Offeror to insert as required and list here or type "None" on first line)

	Title	Document Date	No. of pages	Purpose in Offer
1.	Enter or type "None for Sub #1"			
2.	Enter or type "None for Sub #2"			



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3.	Enter or type "None for Sub #3"			
4.	Enter or type "None for Sub #4"			
5.	Enter or type "None for Sub #5"			
6.	Enter or type "None for Sub #6"			
7.	Enter or type "None for Sub #7"			
8.	Enter or type "None for Sub #8"			
9.	Enter or type "None for Sub #9"			
10.	Enter or type "None for Sub #10"			

End of Attachment [1-C] 3-C



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**SECTION 1-C, Att. 3-D:
Performance Guarantee**

Refer to Scope of Work for performance guarantees and penalties for non-performance in accordance with the contract.

ATTACHMENT SUPPLEMENTS:

(Offeror to insert as required and list here or type "None" on first line)

	Title	Document Date	No. of pages	Purpose in Offer
1.	Enter or type "None"			
2.	Enter or delete row if not needed			
3.	Enter or delete row if not needed			
4.	Enter or delete row if not needed			
5.	Enter or delete row if not needed			
6.	Enter or delete row if not needed			
7.	Enter or delete row if not needed			

End of Attachment [1-C] 3-D





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**SECTION 1-C, Att 4:
Pricing Document**

Offeror shall complete the pricing on Attachment A for each Region (1 through 7) the Offeror is submitting pricing to provide service.

ANNEXES TO THIS ATTACHMENT

- **Annex 1 to Attachment 4 Attachment A Pricing (Excel document)**

ATTACHMENT SUPPLEMENTS:

(Offeror to insert as required and list here or type "None" on first line)

	Title	Document Date	No. of pages	Purpose in Offer
1.	Enter or type "None"			
2.	Enter or delete row if not needed			
3.	Enter or delete row if not needed			
4.	Enter or delete row if not needed			
5.	Enter or delete row if not needed			
6.	Enter or delete row if not needed			
7.	Enter or delete row if not needed			

End of Attachment [1-C] 4





Request for Proposals

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**SECTION 1-C, Att. 5-A:
Confidential Information Designation**

All materials submitted as part of a response to a solicitation are subject to Arizona public records law and will be disclosed if there is an appropriate public records request at the time of or after the award of the contract. Recognizing there may be materials included in a solicitation response that are proprietary or a trade secret, a process is set out in A.A.C. R2-7-103 (copy attached) that will allow qualifying materials to be designated as confidential and excluded from disclosure. For purposes of this process the definition of "trade secret" will be the same as that set out in A.A.C. R2-7-101(52).

Complete this form return it with your Offer along with the appropriate supporting information to assist State in making its determination as to whether any of the materials submitted as part of your Offer should be designated confidential because the material is proprietary or a trade secret and therefore not subject to disclosure.

STATE WILL NOT CONSIDER ANY MATERIAL IN YOUR OFFER "CONFIDENTIAL" UNLESS DESIGNATED ON THIS FORM.

Check one of the following – if neither is checked, State will assume that as equivalent to "DOES NOT":

- This response DOES NOT contain proprietary or trade secret information. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.
- This response DOES contain trade secret information because it contains information that:
 1. Is a formula, pattern, compilation, program, device, method, technique or process, **AND**
 2. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; **AND**
 3. Is the subject of efforts by myself or my organization that are reasonable under the circumstances to maintain its secrecy.

Please note that failure to attach an explanation may result in a determination that the information does not meet the statutory trade secret definition. All information that does not meet the definition of trade secret as defined by A.A.C. R2-7-101(52) will become public in accordance with A.A.C. R2-7-C317. State reserves the right to make its own determination of Offeror's trade secret materials through a written determination in accordance with A.A.C. R2-7-103.

If State agrees with Offeror's designation of trade secret or confidentiality and the determination is challenged, the undersigned hereby agrees to cooperate and support the defense of the determination with all interested parties, including legal counsel or other necessary assistance.

By submitting this response, Offeror agrees that the entire offer, including confidential, trade secret and proprietary information may be shared with an evaluation committee and technical advisors during the evaluation process. Offeror agrees to indemnify and hold State, its agents and employees, harmless from any claims or causes of action relating to State's withholding of information based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by State in defending such an action.

X	Company Name	Signature of Authorized Person
X	Address	Printed Name
X	City State Zip	Title





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ATTACHMENT SUPPLEMENTS:

(Offeror to insert as required and list here or type "None" on first line)

	Title	Document Date	No. of pages	Purpose in Offer
1.	Enter or type "None"			
2.	Enter or delete row if not needed			
3.	Enter or delete row if not needed			
4.	Enter or delete row if not needed			
5.	Enter or delete row if not needed			
6.	Enter or delete row if not needed			
7.	Enter or delete row if not needed			

End of Attachment [1-C] 5-A





Request for Proposals

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**Copy of A.A.C. R2-7-103 [Confidential Information]
as was current at time of Solicitation issuance**

PROVIDED FOR REFERENCE ONLY

- A. *If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.*
- B. *Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.*
- C. *Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:*
- 1. The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest;*
 - 2. The designated information is not confidential; or*
 - 3. Additional information is required before a final confidentiality determination can be made.*
- D. *If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.*
- E. *An agency chief procurement officer may release information designated as confidential under subsection (A) if:*
- 1. A request for review is not received by the state procurement administrator within the time period specified in the notice; or*
 - 2. The state procurement administrator, after review, makes a written determination that the designated information is not confidential.*





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**SECTION 1-C, Att. 5-B:
Conformance Statements**

STATE WILL NOT CONSIDER ANY EXCEPTIONS UNLESS DESIGNATED ON THIS FORM.

READ PARAGRAPH 3.4 OF THE INSTRUCTIONS TO OFFERORS BEFORE TAKING ANY EXCEPTIONS – TAKING
EXCEPTIONS CAN BE GROUNDS FOR STATE REJECTING OR DOWN-GRADING YOUR OFFER IN EVALUATION

CONFORMANCE TO THE INSTRUCTIONS:

(PART 1 OF THE SOLICITATION)

Check one of the following – if neither is checked, State will assume that as equivalent to “YES”:

- YES – Offeror acknowledges that it has read and understands the Instructions to Offerors and the Solicitation Details in Section 1-A of the Solicitation and attests that its Offer complies with both.
- NO – Offeror acknowledges that it has read and understand the Instructions to Offerors and the Solicitation Details in Section 1-A of the Solicitation, and attests that its Offer complies with both EXCEPT FOR the exceptions listed in Attachment Supplement 5-B.1 [Exceptions to Instructions].

CONFORMANCE TO THE TECHNICAL DOCUMENTS:

(PART 2 OF THE SOLICITATION)

Check one of the following – if neither is checked, State will assume that as equivalent to “YES”:

- YES – Offeror acknowledges that it has read and understands the Scope of Work and the Commercial Document in Part 2 of the Solicitation and attests that its Offer complies with both.
- NO – Offeror acknowledges that it has read and understand the Scope of Work and the Commercial Document in Part 2 of the Solicitation and attests that its Offer complies with both EXCEPT FOR the exceptions listed in Attachment Supplement 5-B.2 [Exceptions to Technical Documents].

CONFORMANCE TO THE CONTRACT TERMS AND CONDITIONS:

(PART 3 OF THE SOLICITATION)

Check one of the following – if neither is checked, State will assume that as equivalent to “YES”:

- YES – Offeror acknowledges that it has read and understands the Special Terms and Conditions and the Uniform Terms and Conditions in Part 3 of the Solicitation and attests that its Offer complies with both.
- NO – Offeror acknowledges that it has read and understand the Special Terms and Conditions and the Uniform Terms and Conditions in Part 3 of the Solicitation and attests that its Offer complies with both EXCEPT FOR the exceptions listed in Attachment Supplement 5-B.3 [Exceptions to Terms & Conditions].



Request for Proposals

Solicitation No.
ADSP017-00006906

Description:
Elevator, Escalator, Dumbwaiter, and Moving
Walkway Repair and Maintenance

Arizona Department of Administration

State Procurement Office

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

**ATTACHMENT SUPPLEMENT 5-B.1:
Exceptions to Instructions**

Article / Paragraph Reference	Proposed Changes / Alternate Language	Rationale for Proposed Change
Section 1-A: Solicitation Details		
Section 1-B: Instructions to Offerors		

Company Name

Signature of Person Authorized to Sign



Request for Proposals

Solicitation No.
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Walkway Repair and Maintenance

Arizona Department of Administration

State Procurement Office

100 N 15th Ave., Suite 201
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**SECTION 1-C, Att. 5-C:
Offer Checklist**

	DOCUMENT	SUBMITTED
1.	Attachment 1: Offer and Acceptance Form	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.	Attachment 2-A: Experience and Capacity Questionnaire	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.	Attachment 2-B: Organization Profile	<input type="checkbox"/> YES <input type="checkbox"/> NO
4.	Attachment 3-A: Method Proposal	<input type="checkbox"/> YES <input type="checkbox"/> NO
5.	Attachment 3-B: Key Personnel Proposal	<input type="checkbox"/> YES <input type="checkbox"/> NO
6.	Attachment 3-C: Proposed Subcontractors	<input type="checkbox"/> YES <input type="checkbox"/> NO
7.	Attachment 3-D: Performance Guarantee	<input type="checkbox"/> YES <input type="checkbox"/> NO
8.	Attachment 4: Pricing Document	<input type="checkbox"/> YES, <input type="checkbox"/> NO
9.	Attachment 5-A: Confidential Information Designation	<input type="checkbox"/> YES <input type="checkbox"/> NO
10.	Attachment 5-B: Conformance Statements	<input type="checkbox"/> YES <input type="checkbox"/> NO
11.	Attachment 5-C: Offer Checklist	<input type="checkbox"/> YES <input type="checkbox"/> NO

End of Attachment [1-C] 5-C

End of Section 1-C

End of Part 1



NOTICE OF REQUEST FOR PROPOSALS

Solicitation No.
ADSP016-00006906

Description:
**Elevator, Escalator, Chairlift, and Moving Walkway
Repair and Maintenance**

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

What State Is Soliciting:

The Arizona Department of Administration, State Procurement Office division (the State), as authorized under A.R.S. § 41-2501 is seeking to establish one or more "statewide" contracts to satisfy the needs for all state agencies, boards, and commissions, as well as participating purchasing cooperative members (collectively, the Eligible Agencies) to provide Error! Reference source not found., which in general terms includes **Elevator, Escalator, Chairlift, and Moving Walkway Repair and Maintenance**. The Special Terms and Conditions provide a more detailed definition of Eligible Agencies, and a list of all state agencies and purchasing cooperative members is available on the State Procurement Office website at:

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

How State Anticipates Contracting:

The State anticipates [describe very briefly how this Solicitation will lead to contracts, how many contracts are anticipated, how the scope/commodity will be split between contracts, when the performance would begin, etc.]. Whether or not it actually enters into any contracts, how many contracts it enters into, and how work is awarded between those contracts are all at the State's discretion. Further, the State will use any awarded contracts on an as-needed basis; it makes no guarantee as to its actual spending under them.

What's in the Solicitation:

1	<i>ProcureAZ file #1: ADSP0-2A ADSP017-00006906-xx.RFP.1</i>		
Part 1: Instructions and Attachments	Section 1-A: Solicitation Details Section 1-B: Instructions to Offerors Section 1-C: Attachments (Offeror Forms)	<i>ADSP0-2A ADSP017-00006906-xx.RFP.1A.1, 1A.2, 1A.3, etc. contain Exhibits to Section 1-A</i>	
2	<i>ProcureAZ file #2: ADSP017-00006906-xx.RFP.2</i>		
Part 2: Technical and Commercial	Section 2-A: Scope of Work (Technical Document) Section 2-B: Commercial Document	<i>ADSP0-2A ADSP017-00006906-xx.RFP.2A.1, 2A.2, 2A.3, etc., contain Exhibits to Section 2-A ADSP0-2A ADSP017-00006906-xx.RFP.2B.1, 2B.2, 2B.3, etc., contain Exhibits to Section 2-B</i>	
3	<i>ProcureAZ file #3: ADSP0-2A ADSP017-00006906-xx.RFP.3</i>		
Part 3: Contract Terms and Conditions	Section 3-A: Special Terms and Conditions Section 3-B: Uniform Terms and Conditions	<i>ADSP0-2A ADSP017-00006906-xx.RFP.3A.1, 3A.2, 3A.3, etc., contain Exhibits to Section 3-A ADSP0-2A ADSP017-00006906-xx.RFP.3B.1, 3B.2, 3B.3, etc., contain Appendices to Section 3-B</i>	

How and When Proposals Are Due:

Proposals will only be accepted online in the "ProcureAZ" system at <https://procure.az.gov> until the "Bid Opening Date" indicated in ProcureAZ for the Solicitation No. shown at the top of this page. Proposals must be in the State Procurement Office's possession online no later than that deadline. LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in ProcureAZ.

OFFERORS SHOULD READ THE ENTIRE SOLICITATION CAREFULLY

	<p>Solicitation: Request for Proposal Solicitation No. ADSP017-00006906 Description: Elevators, Escalators, Dumb Waiters and Moving Walkways</p>	<p>Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 201 Phoenix, AZ 85007</p>
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EXHIBIT 3-A.1
to the
SPECIAL TERMS AND CONDITIONS:
Contractor Insurance Requirements

Date: 11-25-2016

EXHIBIT CONTENTS:

1.0	Minimum Scope and Limits of Insurance	2
2.0	General Insurance Requirements	2
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	Commercial General Liability	3
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1.0 Minimum Scope and Limits of Insurance

- 1.1 Contractor shall provide coverage at least as broad and with limits of liability not less than those indicated as "REQUIRED" in the **Insurance Limits Tables** and Appendix A that follow this Exhibit.
- 1.2 The Tables and Appendix 1 are cumulative requirements – the "Add-Ons" specified in that appendix are the required riders, floaters, special endorsements, etc., that are in addition to the required coverage indicated in whichever one of Tables A, B, C, or D is applicable to the Contract.

2.0 General Insurance Requirements

- 2.1 Contractor shall procure the required insurance against claims for injury to persons or damage to property that may arise from or in connection with its performance under the Contract. Reference herein to "Contractor's performance under the Contract" or a like construction is to be construed every time as being a reference to Contractor's performance under the Contract and performance by all its subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, sub-consultants, and agents that is in any way connected with the Contract.
- 2.2 Contractor shall maintain the required coverage until all its obligations under the Contract including warranties have been satisfied, excluding only the record retention obligations that remain once all other obligations have expired or been satisfied. References to "Contractor's obligations under the Contract" or a like construction is to be construed every time as being a reference to Contractor's obligations under the Contract and the obligations of all its subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, sub-consultants, and agents that are in any way connected with the Contract.
- 2.3 The insurance requirements herein are minimums, and in no way limit indemnities given under the Contract. State in no way warrants that these minimums are sufficient to protect Contractor from all the liabilities that might arise out performance under the Contract with respect to Contractor or its subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, sub-consultants, agents, representatives, or employees. Contractor is free to purchase any additional insurance it determines to be in its best interest, however, State will have no obligation to pay for or reimburse Contractor for any such additional coverage it elects to obtain over these specified minimums.
- 2.4 All policies obtained in satisfaction of these minimum requirements must stipulate, or be endorsed to stipulate, as required by this written agreement, that:
 - .1 the insurance afforded Contractor is primary and that any insurance carried by or available to State is excess and non-contributory, as provided in A.R.S. § 41-621 (E); and
 - .2 the insurance provided by Contractor does not and will not limit Contractor's liability assumed under the indemnification provisions of the Contract.
- 2.5 For all policies obtained in satisfaction of these minimum requirements, the policy must provide that it will not expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days' prior written notice to State. Within two (2) business days after receiving any

	<p style="text-align: center;">Solicitation: Request for Proposal Solicitation No. ADSP017-00006906906 Description: Elevators, Escalators, Dumb Waiters and Moving Walkways</p>	<p style="text-align: center;">Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 201 Phoenix, AZ 85007</p>
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insurer notice that a policy has expired, been suspended, cancelled or materially changed for any reason or that it will be expiring, suspended, cancelled or materially changed for any reason. Contractor shall provide the notice to State in conformance to the regular notice provisions set out elsewhere in the Terms and Conditions.

- 2.6 All policies obtained in satisfaction of these minimum requirements must be placed with insurers that:
- .1 are licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance *List of Qualified Unauthorized Insurers*; and
 - .3 have an A.M. Best rating of not less than 'A- VII', provided that, State of Arizona in no way warrants that such a rating is sufficient to protect the Contractor from the potential of insurer insolvency.

3.0 Coverage-Specific Requirements

Commercial General Liability

- 3.1 Every Commercial General Liability ("CGL") policy must:
- .1 include Bodily Injury, Property Damage, and Broad Form Contractual Liability coverage;
 - .2 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 Contractor; and
 - .3 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 Contractor.

Business Automobile Liability

- 3.2 Every Business Automobile Liability policy must:
- .1 cover bodily injury and property damage for any owned, hired, and/or non-owned automobiles used in the performance of the Contract;
 - .2 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, Contractor involving automobiles owned, hired and/or non-owned by Contractor;
 - .3 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 Contractor.

	<p style="text-align: center;">Solicitation: Request for Proposal</p> <p style="text-align: center;">Solicitation No. ADSP017-00006906906</p> <p style="text-align: center;">Description: Elevators, Escalators, Dumb Waiters and Moving Walkways</p>	<p style="text-align: center;">Arizona Department of Administration State Procurement Office</p> <p style="text-align: center;">100 N 15th Ave., Suite 201 Phoenix, AZ 85007</p>
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Workers Compensation and Employer’s Liability

3.3 Every Workers Compensation and Employer’s Liability policy must 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 Contractor. The foregoing requirement does not apply if (1) Contractor is exempt under A.R.S. § 23-901 and (2) Contractor has executed and filed the applicable waiver forms needed to make the exempting waiver effective.

Professional Liability

- 3.4 Every Professional Liability policy must:
- .1 if written on a claims-made basis, be warranted by Contractor to the effect that:
 - (a) any retroactive date under the policy precedes the effective date of the Contract; and
 - (b) continuous coverage will be maintained or an extended discovery period will be exercised for 2 (two) years beginning when work under the Contract is completed; and
 - .2 expressly cover professional misconduct or negligent acts for all key personnel or named positions called out in **Part 2 of the Contract**, Section 2-A [Scope of Work].

Professional Environmental Liability

3.5 Paragraph 3.4 applies as well to any required Professional Environmental Liability coverage. In addition, the coverage must include claims of bodily injury or property damage arising out of pollution or environmental work, asbestos work, laboratory analysis, and/or operations of a treatment plant if and to the extent that those things are included in the scope of the Contract.

Contractor’s Pollution Liability; Pollution Legal Liability

- 3.6 Every Contractor’s Pollution Liability and every Pollution Legal Liability policy must each and separately:
- .1 cover losses caused by pollution conditions that arise from the operations Contractor carries out under the Contract;
 - .2 be specific to the operations Contractor carries out under the Contract;
 - .3 include coverage for:
 - (a) pollution losses arising out of Contractor’s completed operations;
 - (b) bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death and medical monitoring costs;
 - (c) property damage and physical damage to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed including diminution in value;



**Solicitation:
Request for Proposal**

Solicitation No.
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Arizona Department of
Administration
**State Procurement
Office**
100 N 15th Ave., Suite 201
Phoenix, AZ 85007

- (d) environmental damage including physical damage to soil, surface water, ground water, or plant or animal life caused by pollution conditions and giving rise to cleanup costs;
 - (e) asbestos, lead, and mold, with no exclusions; and
 - (f) non-owned disposal site coverage;
- .4 specify that pollution coverage applies to:
- (a) all locations use for acceptance, storage, or disposal of any hazardous materials under the Contract;
 - (b) all phases of the work carried out under the Contract; and
 - (c) coverage for losses that arise from a covered facility for both sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants, into or upon land, atmosphere, or any watercourse or body of water which results in cleanup costs, bodily injury, or property damage.
- .5 be written on either an occurrence basis with no sunset clause or a claims-made basis that Contractor has warranted to the effect that (a) any retroactive date under the policy precedes the effective date of the Contract and (b) continuous coverage will be maintained or an extended discovery period will be exercised for 10 (ten) years beginning when work under the Contract is completed;
- .6 include defense, which includes costs, charges and expenses incurred in the investigation, adjustment or defense of claims for compensatory damages;
- .7 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 Contractor; and
- .8 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 Contractor.

Technical Errors and Omissions

- 3.7 Technical Errors and Omissions insurance must cover any and all errors, omissions, or negligent acts in the delivery of products, services, and/or programs being licensed under the Contract. Coverage must either expressly include or make no exclusion of settlement and/or defense of claims involving intellectual property, including at a minimum patent and/or copyright infringement.

Media Liability

- 3.8 Media Liability insurance must:

EXHIBIT 3-A.1 to the Special Terms and Conditions

Exhibit page 5 of 20

Contractor Insurance Requirements

Date: 11/25/16

A v a i l a b l e o n l i n e a t : P r o c u r e . A Z . g o v



**Solicitation:
Request for Proposal**

Solicitation No.
ADSP017-00006906906

Description:
**Elevators, Escalators, Dumb Waiters and Moving
Walkways**

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

- .1 cover any and all errors, omissions, or negligent acts in the production of content, including at a minimum plagiarism, libel, slander, false advertising, invasion of privacy, and infringement of copyright, title, slogan, trademark, service mark, and trade dress; and
- .2 be written on either an occurrence basis with no sunset clause or a claims-made basis warranted by Contractor to the effect that (a) any retroactive date under the policy precedes the effective date of the Contract and (b) continuous coverage will be maintained or an extended discovery period will be exercised for 2 (two) years beginning when work under the Contract is completed.

Network (Cyber) Security and Privacy Liability

3.9 Network Security and Privacy Liability insurance must:

- .1 include coverage for:
 - (a) third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, identity theft, theft of data), invasion of privacy regardless of the type of media involved, crisis management, and identity theft response costs; and
 - (b) breach notification costs, credit remediation and monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss;
- .2 be written on either an occurrence basis with no sunset clause or a claims-made basis that Contractor has warranted to the effect that (a) any retroactive date under the policy precedes the effective date of the Contract and (b) continuous coverage will be maintained or an extended discovery period will be exercised for 2 (two) years beginning when work under the Contract is completed;
- .3 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 Contractor; and
- .4 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 Contractor.

4.0 Verification of Coverage

- 4.1 Before any work commences, Contractor shall furnish State with certificates of insurance on valid ACORD or approved equivalent forms evidencing that Contractor has the required insurance.
 - 4.1.1 Each certificate must be signed by an authorized representative of the applicable insurer.
 - 4.1.2 The effective date of every policy must be earlier than the date work did or is scheduled to commence.

	<p style="text-align: center;">Solicitation: Request for Proposal Solicitation No. ADSP017-00006906906</p> <p style="text-align: center;">Description: Elevators, Escalators, Dumb Waiters and Moving Walkways</p>	<p style="text-align: center;">Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 201 Phoenix, AZ 85007</p>
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- 4.1.3 Failure to provide the required certificates or to failure to provide evidence of subsequent renewals will be a material breach of the Contract.
- 4.1.4 State's receipt without comment of non-compliant or incomplete certificates or policy endorsements is not and is not to be construed to be a waiver of any requirements.
- 4.1.5 Contractor shall send all certificates and renewals to State's representative designated in the Special Terms and Conditions for insurance matters. Contractor shall note State's project/contract number and project/contract description on each certificate.
- 4.2 State may demand copies of the complete policies for the required coverage at any time during the term of the Contract; Contractor shall provide them promptly in each instance.

5.0 Subcontractors

- 5.1 Contractor's certificates of insurance must include, at a minimum, all subcontractors as insureds or else Contractor will be responsible to State for ensuring that each subcontractor has valid and collectable insurance evidenced by compliant certificates of insurance and endorsements.
- 5.2 Every first-tier subcontractor must provide equivalent insurance to that required from Contractor, except that the minimum limits for subcontractors are 50% (fifty percent) of Contractor required minimums for all coverages other than Damage to Rented Premises (which is unchanged).
- 5.3 State may demand evidence from Contractor of compliant subcontractor insurance at any time during the term of the Contract; Contractor shall provide it promptly in each instance.

6.0 Modifications

- 6.1 State may, by written instruction, modify minimum insurance limits, required coverages, or required endorsements throughout the term of the Contract.
- 6.2 If the net effect of such modifications is to increase limits or coverage or to require additional endorsements, then Contractor may submit a claim for price increase in the manner prescribed in **Part 2 of the Contract**, Section 2-B [Compensation], except that as required substantiation Contractor shall instead provide verifiable quotes and invoices from its insurers with a cover letter from each one stating that the premium increase is entirely attributable to the modified requirements. Once mutually agreed, the modifications and any price increases are to be incorporated by Contract Amendment. Contractor shall provide updated certificates within 10 (ten) business days after both parties have executed the amendment.
- 6.3 If the net effect of such modifications is to decrease limits or coverage or to strike any endorsement requirements, then Contractor shall submit a price reduction in the manner prescribed in **Part 2 of the Contract**, Section 2-B [Compensation]. For the required documentation Contractor shall provide quotes and invoices from its insurers with a cover letter from each one stating that the premium decrease is entirely attributable to the modified requirements. Once mutually agreed, the modifications and any price reductions are to be incorporated by Contract

	<p style="text-align: center;">Solicitation: Request for Proposal Solicitation No. ADSP017-00006906906 Description: Elevators, Escalators, Dumb Waiters and Moving Walkways</p>	<p style="text-align: center;">Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 201 Phoenix, AZ 85007</p>
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Amendment. Contractor shall provide updated certificates within 10 (ten) business days after both parties have executed the amendment.

7.0 Exceptions

If Contractor or subcontractor is a public entity, then these minimum insurance requirements do not apply, provided that, the entity in question shall provide to State a certificate of self-insurance, unless Contractor or subcontractor is a State of Arizona agency, board, commission, or university, in which case no evidence of insurance is required.

8.0 Tables and Appendices

[the Tables and their appendices follow this page]

- .1 Table A: **General Goods and Services Limits**
- .2 Table B: **Event Services Limits**
- .3 Table C: **Environmental Services Limits**
- .4 Table D: **Information Services Limits**
- .5 Appendix 1: **Insurance Add-Ons Table**
- .6 Appendix 2: **Scope Category Definitions**

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Insurance Limits Tables

Arizona Department of Administration
State Procurement Office 100 N 15th Ave.,
 Suite 201, Phoenix, AZ 85007
Risk Management Division 100 N 15th Ave., Suite 301,
 Phoenix, AZ 85007

TABLE A: General Goods and Services Limits

Scope Category:	Professional Services		General Services, Goods, or Equipment		Elevator Maintenance
Insurance Package ID:	A.1.1 ¹	A.1.2 ²	A.2.1 ¹	A.2.2 ²	A.3
Applicable to Contract:	select	select	select	select	REQUIRED
Required Coverage					
Minimum Coverage Limits					
Commercial General Liability (CGL) – Occurrence Form					
General Aggregate	\$ 2,000,000	\$ 1,000,000	\$ 2,000,000	\$ 1,000,000	\$ 10,000,000
Products – Completed Operations Aggregate	\$ 1,000,000	\$ 500,000	\$ 1,000,000	\$ 500,000	\$ 10,000,000
Personal and Advertising Injury	\$ 1,000,000	\$ 500,000	\$ 1,000,000	\$ 500,000	\$ 10,000,000
Damage to Rented Premises	\$ 50,000	\$ 25,000	\$ 50,000	\$ 25,000	\$ 50,000
Each Occurrence	\$ 1,000,000	\$ 500,000	\$ 1,000,000	\$ 500,000	\$ 10,000,000
Workers' Compensation					
Workers' Compensation	by statute	by statute	by statute	by statute	by statute
Employers' Liability					
Each accident	\$ 1,000,000	\$ 500,000	\$ 1,000,000	\$ 500,000	\$ 1,000,000
Disease Each Employee	\$ 1,000,000	\$ 500,000	\$ 1,000,000	\$ 500,000	\$ 1,000,000
Disease Policy Limit	\$ 1,000,000	\$ 500,000	\$ 1,000,000	\$ 500,000	\$ 1,000,000
Business Automobile Liability					
Combined Single Limit	\$ 1,000,000	\$ 500,000	\$ 1,000,000 ³	\$ 500,000 ³	\$ 1,000,000
Professional Liability (Errors and Omissions)					
Each Claim	\$ 2,000,000	\$ 1,000,000			
Annual Aggregate	\$ 2,000,000	\$ 1,000,000			

¹ Limits required for every contract in the Scope Category except purchases not exceeding the amount prescribed in A.R.S. § 41-2535, which amount is to be construed as referring to the "aggregate dollar amount" defined in A.A.C. R2-7-101 [Definitions].

² Limits required for every contract in the Scope Category not exceeding the amount prescribed in A.R.S. § 41-2535, which amount is to be construed as referring to the "aggregate dollar amount" defined in A.A.C. R2-7-101 [Definitions].

³ Coverage required if personal or company vehicles are used to perform the Services or to deliver the Goods; coverage is not required if Contractor's workers use personal or company vehicles only to commute to and from their work locations.



Insurance Limits Tables

Arizona Department of Administration
State Procurement Office 100 N 15th Ave.,
Suite 201, Phoenix, AZ 85007
Risk Management Division 100 N 15th Ave., Suite 301,
Phoenix, AZ 85007

Refer to Appendix 2 for Scope Category definitions.



Insurance Limits Tables

Arizona Department of Administration
State Procurement Office 100 N 15th Ave.,
 Suite 201, Phoenix, AZ 85007
 Risk Management Division 100 N 15th Ave., Suite 301,
 Phoenix, AZ 85007

TABLE B: Event Services Limits

Scope Category:	Small Events	Large Events; Rides; Races	Fireworks Displays
Insurance Package ID:	B.1	B.2	B.3
Applicable to Contract:	not applicable	not applicable	not applicable
Required Coverage	Minimum Coverage Limits		
Commercial General Liability (CGL) – Occurrence Form			
General Aggregate	\$ 2,000,000	\$ 5,000,000	\$ 10,000,000
Products – Completed Operations Aggregate	\$ 1,000,000	\$ 5,000,000	\$ 10,000,000
Personal and Advertising Injury	\$ 1,000,000	\$ 5,000,000	\$ 10,000,000
Damage to Rented Premises	\$ 50,000	\$ 50,000	\$ 50,000
Each Occurrence	\$ 1,000,000	\$ 5,000,000	\$ 10,000,000
Workers' Compensation			
Workers' Compensation	by statute	by statute	by statute
Employers' Liability			
Each accident	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000
Disease Each Employee	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000
Disease Policy Limit	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000
Business Automobile Liability			
Combined Single Limit	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000

Refer to Appendix 2 for Scope Category definitions.



Insurance Limits Tables

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State Procurement Office 100 N 15th Ave.,
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TABLE C: Environmental Services Limits

Scope Category:	Environmental Services and Consulting	Master Environmental Services	Abatement and Remediation Work	Disposal, Recycling or Storage Facilities	Hazardous Material Hauling	Off-Site Control of State Hazardous Waste
Insurance Package ID:	C.1	C.2	C.3	C.4	C.5	C.6
Applicable to Contract:	select	select	select	select	select	select
Required Coverage	Minimum Coverage Limits					
Commercial General Liability (CGL)						
Same as for "Package A.2.1" on page 9						
Workers' Compensation						
Same as for "Package A.2.1" on page 9						
Employers' Liability						
Same as for "Package A.2.1" on page 9						
Business Automobile Liability						
Same as for "Package A.2.1" on page 9					\$ 5,000,000	A.2.1, cont'd.
Professional Environmental Liability						
Each Claim	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000			
Annual Aggregate	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000			
Contractor's Pollution Liability						
Per Occurrence		\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000
General Aggregate		\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000
Pollution Legal Liability						
Per Occurrence			\$ 1,000,000	\$ 1,000,000		\$ 10,000,000
General Aggregate			\$ 2,000,000	\$ 2,000,000		\$ 10,000,000

Refer to Appendix 2 for Scope Category definitions.

EXHIBIT 3-A.1 to the Special Terms and Conditions
Contractor Insurance Requirements

Exhibit page 12 of 20
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TABLE D: Information Services Limits

Scope Category:	Information Technology	Media Services
Package ID:	D.1	D.2
Applicable to Contract:	select	select
Required Coverage	Minimum Coverage Limits	
Commercial General Liability (CGL)		
Same as for "Package A.2.1" on page 9		
Workers' Compensation		
Same as for "Package A.2.1" on page 9		
Employers' Liability		
Same as for "Package A.2.1" on page 9		
Business Automobile Liability		
Same as for "Package A.2.1" on page 9		
Technology Errors and Omissions		
Each Claim	\$ 2,000,000	
Annual Aggregate	\$ 2,000,000	
Network (Cyber) Security and Privacy Liability		
Each Claim	\$ 2,000,000	
Annual Aggregate	\$ 2,000,000	
Media Liability		
Each Claim		\$ 2,000,000
Annual Aggregate		\$ 2,000,000

Refer to Appendix 2 for Scope Category definitions.



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APPENDIX 1: Insurance Add-Ons Table

Add-On No.	Applicable to Contract	Typical conditions for use	Requirements if used
X.01	select	When the Services involve working with or caring for children or "vulnerable adults" (adults who are physically or developmentally disabled or inmates and who are in State's care, custody, and/or control).	Contractor shall maintain coverage for Sexual Abuse and Molestation (SAM), as follows: <ul style="list-style-type: none"> SAM coverage can be sub-limited: <ul style="list-style-type: none"> If the applicable required CGL general aggregate is \$2,000,000, then the SAM sub-limit must be no less than \$500,000; and If the applicable required CGL general aggregate is \$1,000,000, then the SAM sub-limit must be no less than \$250,000. SAM coverage can be included under the CGL policy either: <ul style="list-style-type: none"> within the CGL limits; or by separate endorsement with separate limits. If available carriers will not provide SAM coverage under the CGL policy, then SAM liability must be covered by a Professional Liability policy. The CGL or PLI certificate of insurance (as applicable) must include one of the following statements: <ul style="list-style-type: none"> "Sexual Abuse and Molestation coverage is included." or "Sexual Abuse and Molestation coverage is not excluded."
X.02	select	When the Services are being provided at an airport on the airside (inside the fence).	Contractor's CGL and Business Automobile policies must both be endorsed to include airports.
X.03	select	When the Services include janitorial, building maintenance, or property caretaker work.	Contractor's CGL policy must be endorsed to include: <ul style="list-style-type: none"> Master Key coverage; and coverage for Broad Form Property Damage.
X.04	select	When the Services include providing security services, including armored car services.	Contractor's CGL policy must be endorsed to include: <ul style="list-style-type: none"> security services Errors and Omissions coverage; Master Key coverage, if the scope of the Contract includes key-handling responsibilities; coverage for Broad Form Property Damage to property of others; coverage for the Operation of Mobile Equipment owned or leased by the State of Arizona, if the scope of the Contract includes operating State's vehicles; coverage for Use of Reasonable Force to Protect Persons or Property.



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Add-On No.	Applicable to Contract	Typical conditions for use	Requirements if used
X.05	select	<p>When the Services include providing armored car services to transfer State or State-entrusted money or other negotiable instruments (Note: Add-On X.04 above also applies).</p> <p style="text-align: center;">- OR -</p> <p>When the Services include Contractor's employees handling State or State-entrusted money or other negotiable instruments or having electronic access to State or State-entrusted funds.</p>	<p>Contractor shall provide a Commercial Crime Policy or Blanket Fidelity Bond, as follows:</p> <ul style="list-style-type: none"> • Coverage amount is \$ enter amount or N/A • Coverage must include, at a minimum: <ul style="list-style-type: none"> – Employee Dishonesty, to include coverage for theft and mysterious disappearance and inventory shortage; – Money & Securities Inside/Outside; – Computer Fraud; – Funds Transferred, if the scope of the Contract includes handling funds or if opportunity to handle funds is presented by the performance of the services included in scope of Contract; – Forgery or Alteration; and – endorsement to include State as Loss Payee. • The policy must not contain any condition requiring arrest or conviction as claim prerequisite.
X.06	select	<p>When the Contract includes installation of Equipment or Building Work (both defined in the Uniform Terms and Conditions) where that Equipment or Building Work is not covered under any project builder's risk policy that Contractor would be able to claim against in the event of a loss during staging, installation, testing, and commissioning.</p>	<p>Contractor shall maintain an Installation Floater, as follows:</p> <ul style="list-style-type: none"> • Coverage amount is \$ enter amount or N/A • Policy must be maintained until whichever of the following occurs first: <ul style="list-style-type: none"> – final payment has been made; or – until no person or entity other than State has an insurable interest in the property required to be covered. • Coverage must include, at a minimum: <ul style="list-style-type: none"> – endorsement to include State as Loss Payee; – coverage written on an all risk, replacement cost basis, including coverage for: <ol style="list-style-type: none"> 1) flood and earth movement; and 2) losses occurring during equipment testing and/or commissioning; – endorsement such that the insurance cannot be canceled or lapse because of any partial use or occupancy by State; and – coverage from the time the equipment or material becomes Contractor's responsibility and continuing without interruption during installation, including any time during which the equipment or material is being transported to the installation site or awaiting installation, whether on or off the site. • Contractor is responsible for all deductibles.
X.07	select	<p>When the Services include providing vehicle storage, transport, repair, or maintenance for State vehicles.</p>	<p>Contractor's CGL policy must be endorsed to include:</p> <ul style="list-style-type: none"> • Garage Liability (Premises and Operations), with a sub-limit of no less than \$ 1,000,000; and • Garagekeeper's Legal Liability – Direct Primary Coverage, with sub-limits of no less than: <ul style="list-style-type: none"> – Each Auto for \$ 500,000; and – Each Occurrence for \$ 1,000,000; and • Products Liability

Exhibit page 16 of 20

EXHIBIT 3-A.1 to the Special Terms and Conditions
Contractor Insurance Requirements

Date: **Error! Reference source not found.**



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Add-On No.	Applicable to Contract	Typical conditions for use	Requirements if used
X.08	select	If the Goods are aircraft or aircraft parts. - OR - When the Services include work on State aircraft, aircraft storage, fixed-based air operations, airport tenancy, etc.	The limits of liability for the Products/Completed Operations coverage under Contractor's CGL policy must be increased to: <ul style="list-style-type: none"> - \$ 10,000,000 Each Occurrence; and - \$ 20,000,000 Aggregate.
X.09	select	If Contractor or any subcontractor transports hazardous materials in performance of the Services or delivery of the Goods.	Contractor's Business Automobile Liability policy must include the following endorsements: <ul style="list-style-type: none"> • CA 98 48 Pollution Liability-broadened coverage for covered autos; • MCS-90 (Motor Carrier Act) endorsements; and • Automobile Pollution Liability specific to the covered transportation of hazardous materials.
X.10	select	If Contractor-hired EMT or medical services are required for an event or work site that are within scope of the Contract.	Contractor-hired providers must provide the following minimum Medical Malpractice coverage for their services: <ul style="list-style-type: none"> • Coverage amount is \$ enter amount or N/A • Coverage must include, at a minimum: <ul style="list-style-type: none"> - [●]
X.11	select		Reserved
X.12	select		Reserved
X.13	select		Reserved



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APPENDIX 2: Scope Category Definitions

Scope Category in Tables A – D	Definition
Professional Services	<p>Where the Services are performed by a professional or company of professionals who are licensed, registered, or certified and expected to follow established standards of their profession. Professions in this category are:</p> <ul style="list-style-type: none"> • Accountants • Appraisers • Architects and Engineers • Attorneys • Construction Managers • Land Surveyors • Technical Consultants
Medical/ Healthcare Services	[●]
General Services, Goods, or Equipment	<p>“General Services” are Services that are not included in any other Scope Category. “Services,” “Goods” and “Equipment” are all defined in the Uniform Terms and Conditions.</p> <p>If the Goods are hazardous materials (for example, chlorine or other water treatment chemicals, fertilizers, herbicides and pesticides), then the Goods are to be treated as being in the “Master Environmental Services” for contractual insurance requirements purposes.</p>
Elevator Maintenance	Maintenance and repair of conveyances ⁴ .
Small Events	<p>Contracts between State and another entity for staging special events of less than 1,000 people, whether on State property, other public property, or private property.</p> <p>- OR -</p> <p>Where no single entity is contracted to stage a special event of less than 1,000 people, but the Services are (1) integral to the event, (2) directly affect or present risks to attendees, performers, or staff, and (3) are not covered by any existing State contracts.</p>
Large Events; Rides; Races	<p>Contracts between State and another entity for staging special events of 1,000 people or more, whether on State property, other public property, or private property.</p> <p>- OR -</p> <p>Contracts between State and another entity for providing, erecting, operating, or maintaining anything in the “amusement classification” as used for Arizona transaction privilege tax purposes⁵.</p> <p>- OR -</p> <p>Where no single entity is contracted to stage a special event of 1,000 people or more, but the Services are (1) integral to the event, (2) directly affect or present risks to attendees, performers, or staff, and (3) are not covered by any existing State contracts.</p>
Fireworks Displays	Where the Services include manufacturing, selling, staging, or managing a fireworks display using display fireworks ⁶ .

⁴ As defined in A.R.S. § 23-491(5).

⁵ As defined in A.R.S. § 42-5073.

⁶ As defined in A.R.S. § 36-1601(3).



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Scope Category in Tables A – D	Definition
Environmental Services and Consulting	Where the Services are performed by environmental engineers or consultants and include: <ul style="list-style-type: none"> – consulting on environmental issues; – testing for materials or testing air quality for pollutants or other hazardous materials; and – any other professional service that could result in a claim alleging damage to the environment or injury to the public. <p>- OR -</p> Where the Services being performed by architects or engineers are for environmental projects.
Master Environmental Services	Where the Services combine both Environmental Consulting Services and Remediation and Abatement Work, and which might also include testing for pollutants or transporting hazardous materials (for example, chemicals such as chlorine products, petroleum products such as fuel, hazardous waste such as asbestos). - OR - If the Goods encompass the sale and delivery of hazardous materials.
Abatement and Remediation Work	Where the Services include abatement (removal or encapsulation) or remediation (abatement plus correction of the root cause or issues) for: <ul style="list-style-type: none"> – asbestos; – lead; – acids; – mold, bacteria, or other environmental toxins; or – petroleum and volatile petroleum distillates.
Disposal, Recycling, or Storage Facilities	Recycling facilities that handle non-hazardous solid waste ⁷ and: <ul style="list-style-type: none"> – metals; – lead-acid batteries; or – used oil.
Hazardous Material Hauling	Transporters of hazardous materials, including: <ul style="list-style-type: none"> – chemicals such as chlorine products; – petroleum products such as fuel; and – hazardous waste such as asbestos.
Off-Site Control of State Hazardous Waste	Treatment ⁸ , storage ⁹ , or disposal ¹⁰ of State-generated hazardous waste ¹¹ at a separate facility ¹² (i.e., one that is not State-owned). NOTE: This category's requirements might need to be combined with the requirements for Abatement and Remediation Work, Master Environmental Services, or Disposal, Recycling, or Storage Facilities, depending on the scope of what is being contracted.
Information Technology	Where the Goods or Services are within the scope of "Information Technology", as that term is collectively defined in A.R.S. § 41-3501(6) and State Procurement Office Technical Bulletin 046 [Information Technology Terms and Conditions Usage].
Media Services	Where the Services are performed by publishers, broadcasters, or other media-related content-creation service providers, such as web designers, marketing firms, and advertising agencies.

⁷ All types defined in A.R.S. § 49-701.

⁸ As defined in A.R.S. § 49-921(11).

⁹ As defined in A.R.S. § 49-921(9).

¹⁰ As defined in A.R.S. § 49-921(1).

¹¹ As defined in A.R.S. § 49-921(5).

¹² As defined in A.R.S. § 49-921(2).



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Request for Proposals

Solicitation No.
ADSP017-00006906

Description:
**Elevator, Escalator, Chairlift, and Moving
Walkway Repair and Maintenance**

Arizona Department of Administration

State Procurement Office

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

**SECTION 3-A:
Special Terms and Conditions**

Date: 11/25/2016

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

1.11 Contract Terms and Conditions

Those Uniform Terms and Conditions Appendices for particular work categories that are marked with "●" below are part of the Contract Terms and Conditions, and the ones marked "○" are not, regardless of whether or not a document by that name happens to be bound in with the Solicitation or Contract documents. The version date of the appendix as included in the Contract Terms and Conditions is indicated below.

Appendix Title

<input checked="" type="radio"/>	Appendix 1: Building Work – Maintenance and Operations
<input type="radio"/>	Appendix 2: Building Work – Design and Construction

MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

2.1 Arizona Law

The federal laws and regulations scheduled in Exhibit 1 [*Supplemental Provisions for Federal Work*] apply to the operation and interpretation of the Contract in addition to Arizona law, and take precedence over any Arizona law with respect to interpretation to the extent such precedence is essential to their individual purpose.

MODIFIED or ADDED Provision

3.1 Term of Contract

REVISE to read "**an initial term of three (03) years**" for "*period specified in the Special Terms and Conditions.*"



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MODIFIED or ADDED Provision

3.2 Contract Extensions

REVISE to read mutually agreeable periods **"not to exceed five (05) years"** for *"period specified in the Special Terms and Conditions."*

MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

3.15 Orders

3.15-S1 USE OF THE CONTRACT. The Contract is to be used as follows (indicated by the "●" mark):

- The Contract is a "single-agency/single-use" contract for the exclusive use of **Agency** for a single purchase, project, or assignment (referred to internally as "Elevator, Escalator, Chairlift, and Moving Walkway Repair and Maintenance").
- The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.
The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a "delivery order" sub-type of ID/IQ contract to the extent the Work is Materials, and a "task order" sub-type to the extent the Work is Services (Subpart 16.5 of the Federal Acquisition Regulation provides reference explanations).

MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

3.15 Orders, continued

3.15-S2 ORDERING METHODS. Unless a particular ordering method is specified in the Commercial Document, Contractor shall receive Orders by the methods indicated by an "●" mark below.

3.15-S2(a) The choice of method in each instance will be at the discretion of each Eligible Agency or Co-Op Buyer if more than one method applies to the Contract.

3.15-S2(b) Contractor shall bear the responsibility for and costs of set-up, maintenance, and support for the indicated methods; The Eligible Agency or Co-Op Buyer will not be liable for any separate set-up, service or system maintenance charges on top of the contractual item prices unless expressly stated otherwise in the Commercial Document.

- Online through ProcureAZ by "releasing" established Contract "Items."
- Online through the following Contractor-provided and Contractor-maintained secure ecommerce website or other online end-user order handling system, which must be configured to prevent ordering of off-contract or excluded items:
Contractor to Enter URL:
- Online through the following third party or Subcontractor provided and maintained secure ecommerce website or other online end-user order handling system, which must be configured to prevent ordering of off-contract or excluded items:
enter URL or platform brand name



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MODIFIED or ADDED Provision

- By a Contractor-provided, staffed toll-free telephone number available in **Arizona 24/7/365 Contractor to enter 24/7/365 staffed toll-free telephone number:**
- By a Contractor-provided dedicated or monitored secure email address for ordering:
NA
- By bank-issued purchasing card or business credit card ("P-Card") at either a physical point-of-sale or by telephone, fax, or online. Contractor shall pay any fees or commissions charge by the P-Card carrier, and shall not charge any additional amounts for Orders made by P-Card.
- By hard copy purchase orders by **Eligible Agency.**

MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

3.15 Orders, continued

3.15-S3 EXCLUSIVITY. Exclusivity of scope or location applies as indicated by the "●" mark below:

- The Contract has been awarded with the understanding and agreement that it is for the sole convenience of State, and State reserves the right to obtain like materials or services from another source when necessary without penalty or obligation.
- The Contract has been awarded with the understanding and agreement that it is exclusive to Contractor for the combination of products and delivery/service locations the Contract covers, subject to the *Exclusivity Agreement* that is Exhibit 3 to these Special Terms and Conditions.

MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

3.16 Statewide Contract Provisions

3.16-S1 The administrative fee under subparagraph 3.16(c) is **one (1%) percent** against all sales to Co-Op Buyers under the Contract.

Clarification

14.7.2 Subject to the provisos in clause 14.7.2 of the Uniform Terms and Conditions, the State's and Contractor's respective first party liability under this Contract, whether for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work, will NOT exceed the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim. Furthermore, both parties agree to follow the Contract Claims process described in clause 10 of the Uniform Terms and Conditions to resolve any disputes that may arise as a result of any such claim.



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MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

6.2 Insurance

6.2-S1 Contractor shall provide the insurance specified in Exhibit 1 to these Special Terms and Conditions for each "Insurance Package" (Tables A-E) and "Add-On" (Table F) indicated by a "●" mark in the table below.

6.2-S2 Subcontractors shall provide insurance equivalent to what is required from Contractor at **100% (one hundred percent)** of Contractor's required minimums for all coverages other than Damage to Rented Premises, which is unchanged if that coverage applies to the Contract.

Scope Category	Applicable to Contract	Insurance Package ID	Add-Ons										
			X.01 - S/W	X.02 - Airport	X.03 - Janitor	X.04 - Security	X.05 - Money	X.06 - Install	X.07 - Garage	X.08 - Airtreat	X.09 - HazMat	X.10 - EMT	
Professional Services	<input type="radio"/>	A.1.1	<input type="radio"/>										
	<input type="radio"/>	A.1.2	<input type="radio"/>										
General Services; Materials	<input type="radio"/>	A.2.1	<input type="radio"/>										
	<input type="radio"/>	A.2.2	<input type="radio"/>										
Elevator Maintenance	<input checked="" type="radio"/>	A.3	<input type="radio"/>										
Small Events	<input type="radio"/>	B.1	<input type="radio"/>										
Large Events; Rides; Races	<input type="radio"/>	B.2	<input type="radio"/>										
Fireworks Displays	<input type="radio"/>	B.3	<input type="radio"/>										
Environmental Svcs and Consulting	<input type="radio"/>	C.1	<input type="radio"/>										
Master Environmental Services	<input type="radio"/>	C.2	<input type="radio"/>										
Abatement and Remediation Work	<input type="radio"/>	C.3	<input type="radio"/>										
Disposal, Recycling or Storage Facilities	<input type="radio"/>	C.4	<input type="radio"/>										
Hazardous Material Hauling	<input type="radio"/>	C.5	<input type="radio"/>										



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Scope Category	Applicable to Contract	Insurance Package ID	Add-Ons										
			X.01 - SAM	X.02 - Airport	X.03 - Janitor	X.04 - Security	X.05 - Money	X.06 - Install	X.07 - Garage	X.08 - Atrium	X.09 - HazMat	X.10 - EMIT	
Off-Site Control of Hazardous Waste	<input type="radio"/>	C.6	<input type="radio"/>										
Information Technology	<input type="radio"/>	D.1	<input type="radio"/>										
Media Services	<input type="radio"/>	D.2	<input type="radio"/>										
Large Construction	<input type="radio"/>	E.1	<input type="radio"/>										
Small Construction	<input type="radio"/>	E.2	<input type="radio"/>										
Trade Construction	<input type="radio"/>	E.3	<input type="radio"/>										

MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

7.2 Conformity to Requirements

7.2-S1 GUARANTEES AND PARTICULAR WARRANTIES. Further to the general warranties Contractor has given under paragraph **Error! Reference source not found.** [*Conformity to Requirements*] of the Uniform Terms and Conditions, the Work is subject to the guarantees and particular warranties called for in Exhibit 2 to these Special Terms and Conditions.

MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

7.2 Conformity to Requirements, continued

7.2-S2 PERFORMANCE DEDUCTIONS. Contractor shall provide to State a separate performance guarantee of accurate and timely implementation for key milestones in the form and subject to the specific deductions (identified as "fee-at-risk") set forth in Exhibit 2 to these Special Terms and Conditions.

7.2-S2 (a) State may request additional performance measurements, and once agreed, State will incorporate them by Contract Amendment.

7.2-S2 (b) Contractor shall accurately and comprehensively measure its performance against the guaranteed requirement and provide the necessary reports or other indicative measurement data called for in the Exhibit.

i. Each report must show separately the results for the current period versus the prior period and the current period versus the guaranteed requirement.



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- ii. It is Contractor's obligation to measure, compile, and report in a timely manner without State having to requesting the reports.
- 7.2-S2 (c) State will calculate the specific deductions of fee-at-risk for performance below the guaranteed minimums for the current period at the time of each report.
- i. Each period's results and deductions stand apart from the other periods; therefore, State will not re-average quarterly or monthly measurements to alter past results.
 - ii. State shall settle the specific deductions of fee-at-risk within **thirty (30)** calendar days after the end of the applicable measurement period specified in the Exhibit.

EXHIBITS to the Special Terms and Conditions

Exhibits 1, 2, and 3 apply as described above. The other Exhibits (if any are listed) apply to those portions of the Work the Exhibit covers. For example, an Exhibit providing supplemental provisions for federal work applies to any portions of the Work that are federally-funded, and an Exhibit providing supplemental provisions for privacy protection applies to any portions of the Work that involve handling of protected or private information.

■ Exhibit 1 ... Contractor Insurance Requirements

NOTE: The completed Attachment 3-D [Performance Guarantee] from Accepted Offer will become Exhibit 2 to the Special Terms and Conditions – accordingly, there is no "Exhibit 2" document included as part of the Solicitation.

■ Exhibit 2 ... Attachment 3-D [Performance Guarantee] from Accepted Offer will become Exhibit 2

End of Section 3-A

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
KONE INC.**

**EXHIBIT B
Scope of Work**

PROJECT

In accordance with the terms and conditions of this Agreement and the State of Arizona Contract No. ADSPO17-160330, the City is retaining Kone Inc. to provide monthly maintenance and repair of elevators at City of Glendale Facilities.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
KONE INC.**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Method and amount of compensation is in accordance with Section 3 of this agreement.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$204,480 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

Monthly maintenance and repair of elevators at city facilities, on an as needed basis, at the following locations:

Glendale Municipal Office Complex - 5850 West Glendale Avenue
Public Safety Building - 6835 North 57th Drive
Adult Center - 5970 West Brown Street
Main Library - 5959 West Brown Street
Fire Station 157 - 9658 North 59th Avenue
Foothills Recreation & Aquatic Center - 5600 W. Union Hills Drive
Glendale Municipal Airport - 6801 North Glen Harbor Blvd.
Glendale Public Safety Training Facility - 11550 West Glendale Avenue
Sine Building - 6829 North 58th Drive