
	Invitation for Bid Special Terms and Conditions		Arizona Dept. of Public Safety 2102 W. Encanto Blvd. Phoenix, Arizona 85009	
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Authority to Contract: This contract is issued under the authority of DPS. No alteration of any portion of the contract, any items or services awarded, or any other agreement that is based upon this contract may be made without express written approval of DPS Purchasing Department's Chief Procurement Officer or authorized designee in the form of an official contract amendment. Any attempt to alter any documents on the part of DPS or the contractor is a violation of the contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

1. **Eligible Agency:** DPS.
2. **Contract Type:** Fixed price term, indefinite quantity type contract.
3. **Brand Name Type Specification:** The contract utilizes a Brand Name type specification as specifically authorized under Arizona Administrative Code (AAC) R2-7-403 for the brand name products, accessories/services specified.
4. **Non-Exclusive Contract:** This is a non-exclusive, convenience contract. The State shall reserve the right, at its sole discretion to obtain like goods or services from another source or sources when necessary.
5. **Term of Contract:** The term of the resultant contract shall commence upon award or as specified in the award documents and shall remain in effect for one (1) year unless terminated, canceled, or extended as otherwise provided herein.
6. **Contract Extension (48 months):** DPS reserves the right, upon mutual written contract amendment between DPS and Contractor, to extend the contract period for four (4) additional years for up to a maximum of total contract term not to exceed five (5) years. In the event that DPS exercises such rights, all terms, conditions and provisions of the original contract shall remain the same and apply during the period of performance.
7. **Estimated Quantities:** The contract references quantities as a general indication of the needs of DPS. Although DPS anticipates routine usage during the term of the contract, the quantities referenced herein are estimates only. No commitment of any kind is expressed or implied as to quantities actually purchased during the resultant contract term.
8. **Current Products:** All materials or products covered under the contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and shall be capable of meeting or exceeding all specifications and requirements set forth herein.
9. **Taxes Not Included in Price:** Contract prices shall not include applicable state and local taxes. The state shall pay all applicable taxes. Taxes must be listed as a separate item on all invoices.
11. **FOB Destination:** Contract pricing shall be F.O.B. Destination to the delivery location specified

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herein. All pricing shall be firm, fixed and inclusive of all freight, delivery, unloading and all other costs incidental to the products purchased. Contractor shall retain title and control of all goods until they are delivered, received and contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible and concealed damage shall be filed by the Contractor. The state and/or DPS shall notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

12. **Deliveries:** Deliveries shall be made within 24 hrs after Receipt of Order(s) or as agreed upon in writing.


13. **Packing Slips:** Each shipment shall include a packing slip that, at a minimum identifies the contract number, the purchase order/contract release order, material or product numbers, nomenclatures and quantities shipped.

14. **Serial Numbers:** If the contracted products contain OEM serial numbers, the product shipped shall have OEM serial numbers that have not been altered in any way. DPS reserves the right to reject any altered equipment.

15. **Ordering Process:** DPS may purchase the specific materials contractually covered through contract direct release purchase orders issued by DPS to the Contractor. No work shall be performed without a duly authorized/issued purchase order(s). Any attempt to represent any material and/or service not specifically awarded under the contract is a violation of the contract and the Arizona Procurement Code. Any such action shall be subject to all legal and contractual remedies available to the state inclusive of, but not limited to, contract termination, cancellation, suspension and/or debarment of the Contractor.

16. **Price Adjustment:** All pricing shall be held firm for the first year of the contract. DPS may review a fully documented request for a price increase only after the contract has been in effect for one (1) year. A price increase adjustment shall only be considered at the time of a contract extension and shall be a factor in the extension review process. All written requests for price adjustments made by the contractor shall be initiated 90 days in advance of the contract extension date. The requested increase shall be based upon a cost increase to the contractor that was clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. DPS shall determine whether the requested price increase or an alternate option is in the best interest of the State. Documentation submitted as part of the request may include but is not limited to:
 - A formal announcement from the manufacturer that the cost of the contract product has been increased.
 - Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost increase.

17. **Price Reductions:** Price reductions may be submitted to the state for consideration at any time during the contract period. The contractor shall offer the state a price reduction on the contract product(s) concurrent with a published price reduction made to other customers. The state at its own discretion may accept a price reduction. The price reduction request shall be in writing and include


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the following;

- Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.
 - Documentation showing that the published cost reductions have been offered to other distributors.
 - Sales promotions requests shall include difference in pricing, begin and end date of promotion along with the products covered.
- 18. Billing:** All billing invoices shall, at a minimum include the contract number, the contracted payment terms, the purchase order number, material or product numbers, nomenclature, quantities and contracted pricing.
- 19. Defective Materials/Products:** All defective materials or products shall be replaced and exchanged by the Contractor. All costs associated with replacement, including but may not be limited to re-packaging, and shipping of the defective materials or products back to the Contractor, and all replacement costs as specified herein shall be borne by the Contractor. All replacement products must be received by the state within 30 days of initial notification or as mutually agreed upon in writing by DPS and the contractor.
- 20. Warranty (24 Months):** All products supplied under this contract shall be fully warranted by the contractor for a minimum period of 24 months from the date of acceptance by the state and or as specified elsewhere in the contract, whichever is greater. Any defects of design, workmanship, or materials, resulting from in non-compliance with the contract specification, shall be fully corrected by the contractor without cost to the state.
- 21. Safety Standards:** All materials and products supplied under the contract shall comply with all current applicable occupational safety and health standards of the State of Arizona Industrial Commission, The National Electric Code, and The National Fire Protection Association Standards.
- 22. Products:**
- 22.1 Product Removal. The contractor shall not cancel or remove products without prior approval of the State. The contractor shall provide an equal or acceptable replacement approved by State if available.
- 22.2 Product Discontinuance. In the event that a product or groups of products are discontinued by a manufacturer, written notice shall be submitted to the State within 5 business days of notification from manufacturer. The State at its sole discretion may allow the Contractor to provide replacements for the discontinued product(s) or allow the deletion of such products from the contract. Approval shall be in the form of a contract amendment or change order and shall become effective upon execution of the amendment or change order, unless otherwise stated. Upon approval by the State, the Contractor shall make available all electronic and hard catalog/price list updates to all eligible at no additional cost to the State. The request may be submitted at any time during the contract period and shall be supplemented with the following information. Failure to supply any of the following information with the request may result in the State not considering the request.
- A formal announcement or documentation from the manufacturer stating that

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the product(s) have been discontinued.

- Documentation describing any replacement product providing clear evidence that the replacement product(s) meets or exceeds the specifications of the discontinued product(s) while remaining in the same product group(s) as the discontinued item, and;
- Documentation confirming that the price for the replacement product(s) is equivalent or less than the discontinued item.

22.3 **New Products.** The State, at its sole discretion, reserves the right to include additional products or product categories that are within the scope of work and in the best interest of the State. Approval(s) shall be in the form of a contract amendment or change order and shall become effective on the date specified in the amendment or change order. Upon approval by the State, the contractor shall make available all catalog/price list updates to all eligible agencies at no additional cost to the State. Pricing shall be in line with current contract pricing. Contractor's request for new products shall include the following information;

- Documentation that provides clear evidence that the new products are those that are within the scope of awarded contract. NO products outside the scope of the original award shall be allowed.
- That states prices at which sales are currently or were last made to a significant number of category of buyers or buyers constituting the general buying public for the materials or supplies involved and that will be sold at the existing discount (percent %) form list price as existing products.

23 **Payment:** Payments shall be made in accordance with A.R.S. Titles 35 and 41.


24 **Licensing:** Contractor(s) performing work within the State of Arizona shall, as applicable be properly licensed for the Scope of Work in which they are contracting.

25 **Safety Standards:** All items and/or services supplied on this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, The National Electric Code, and The National Fire Protection Association Standards.

26 **Retention of records, inspection/auditing by others:** Contractor shall retain all records to facilitate inspections and auditing by DPS for a period of five (5) years from the date of termination of the contract. Contractor shall make all records available within 24 hours of DPS request.

27 **I.T. 508 Compliance:** Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this contract shall comply with A.R.S. §41-2531 and §41-2532 and Section 508 of the Rehabilitation Act of 1973, which required that employees and members of the public shall have access to and use information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

28 **Illegal/Non-Prescription Drugs, Alcohol and Weapons:** Illegal/non-prescription drugs, alcohol and

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weapons (of any type) are not permitted on DPS property (land or building). Any contractor or contractor employee possessing illegal/non-prescription drugs, alcohol and/or weapons (of any type) on DPS property shall be immediately removed from the property and not be allowed future access.

- 29 **Indemnification Clause:** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

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

- 30 **Insurance/Endorsement/Condition Requirements Time of Compliance:** Contractor **shall not** perform any work under the contract until it has secured/complied with all minimum insurance/endorsement/condition requirements specified herein and that is has furnished a certificate of insurance form as required by the contact to DPS Procurement. Additionally, Contractor shall not allow any subcontractor to perform any work on any subcontract until said subcontractor has secured/complied with all minimum insurance/endorsement/condition requirements specified herein and that is has furnished a certificate of insurance form as required by the contact to DPS Procurement through the Contractor. Contractor and any subcontractor shall also comply with and maintain all insurance/condition requirements at the levels specified for the entire term of the contract.

Properly executed certificates of insurance shall be received by DPS Procurement within 10 days after contract award and/or as mutually agreed upon in writing between Contractor and DPS Procurement. Non-compliance to this section and/or failure to maintain insurance coverage during the entire contract term shall be treated as a material breach and may result in contract termination.

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



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representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

A. Minimum Scope and Limits of Insurance

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

1. Commercial General Liability (CGL) – Occurrence Form

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

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Fire Legal Liability \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

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

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



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3. Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$500,000
 - Disease – Each Employee \$500,000
 - Disease – Policy Limit \$1,000,000

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

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

a. Additional Insurance Requirements

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


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

b. Notice of Cancellation

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

c. Acceptability of Insurers

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than

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A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

d. Verification of Coverage

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

- i. All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- ii. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- iii. All certificates required by this Contract shall be sent directly to DPS. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

e. Subcontractors

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

f. Approval and Modifications

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

g. Exceptions

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