



SPiRiT

Automated eProcurement System



PARTICIPATING ADDENDUM

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

MASTER PRICE AGREEMENT
IBM Corporation

A63311

State of Arizona

1. Scope

This Participating Addendum (PA) to the Western States Contracting Alliance (WSCA) Computer contract is for the elective use of the State of Arizona, its departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate, a university, political subdivision, or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by the A.R.S. 41-2632.

2. Changes:

The following items under the Master Price Agreement (MPA) are hereby changed.

2.1. Additions:

Contract Terms and Conditions of the State of Arizona as included herein as Attachment 2.1.

2.2. Deletions.

2.2.1. Band 5 equipment. Notwithstanding any future amendments, this PA is limited to servers, desktops, laptops, printers and storage. PDA's will not be procured by the State of Arizona under this contract.

2.2.2. No wireless services shall be purchased under this PA.

2.3. Revisions.

2.3.1. **Software Licensing:** Notwithstanding any future amendments, this PA is limited to the sale of computer hardware, peripherals and all licensed software included therein. All applications and operating system software shall be purchased by the manufacturer either through their own pricing agreement or the Arizona Software Value Added Reseller (SVAR) contract whichever price is less. All software requests shall be captured and reported through the State's SVAR.

2.3.2. **Servicing Subcontractors:** Notwithstanding any future amendments, all acceptable subcontractors that may do business in the State of Arizona under this contract shall be listed in Attachment 2.3.2 of this PA including all contact information and the processes and procedures used to certify a small business, or a woman- or minority-owned business enterprise. Provide detail concerning your firm's program. Emphasis should be placed on the specific areas of use. Furthermore, the percent (%) contract commitment or the level of involvement of small businesses, women-, and minority-owned businesses should be identified as well as how the program will be administered and managed (inclusive of reporting requirements).

2.3.2.1. The State of Arizona has a contract with the WSCA contractor. Any disputes between any subcontractors and the contractor shall be resolved by that subcontractor and the contractor.

2.3.2.2. Small Businesses, Women Owned Business Enterprises, and Minority Owned Business Enterprises shall be clearly indicated.

2.3.3. **Term of Contract:** Notwithstanding any future amendments, this PA is limited from the time of its signature to August 1, 2005. The Participating Addendum shall have the option to extend for one (1) year periods if a review by the State of Arizona proves that the vendor's performance is acceptable AND the Master Price Agreement is still valid. Acceptable performance shall include but is not limited to:

2.3.3.1. Timely submission of usage reports to the State of Arizona in accordance with the usage report schedule given by the MPA

2.3.3.2. Clearly formatted usage reports in accordance with the usage report template given by the MPA

2.3.3.3. On-going compliance with the terms of the MPA and the further requirements under this PA.

- 2.3.4. **Standardized Configurations:** Notwithstanding any future amendments, this PA establishes the potential use of standardized configurations to be determined in intervals of approximately six months or a shorter or longer period as deemed in the best interests of the State. The State will share these standardized configurations with the contractor in pursuit of further discounts beyond those available under the PA. All additional discounts shall be displayed within the contractor's Arizona-dedicated website accessible through the WSCA approved website. The current standardized configurations shall be an attachment named "Attachment 2.3.4 Standard Configurations as of 12-01-2004". Future Standard configurations shall have a similar naming convention.
- 2.3.5. **Bulk Purchases:** Notwithstanding any future amendments, this PA establishes the potential use of further discounts for bulk purchases. The State Procurement Office has established the Value in Procurement (VIP) Committee. A major initiative of the VIP Committee is to aggregate specific procurements to increase efficiency and cut costs. A method of achieving this is for the State to periodically make bulk purchases of equipment.
- 2.3.6. Paragraph 31 of Master Price Agreement is revised to read: **Limitation of Liability:** The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to twice the amount of the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages, or the loss of, or damage to data, lost profits, business, revenue, goodwill, or anticipated savings even if the Contractor has been advised of the possibility of such damages, arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder. Both parties agree that this Contract does not create any right or cause of action for any third party against the other except for third party claims that fit within the indemnification provision of this Contract.

3. Primary Contact:

The primary participating entity contact for this participating addendum is as follows:

Name: Catherine Newton
Participating Entity Name: State of Arizona
Address: 100 North 15th Avenue, Suite 104
Phoenix, AZ 85007
Telephone: 602.542.9142
Fax: 602.542.5508
E-mail: Catherine.newton@ad.state.az.us

The primary Contractor contact for this participating addendum is as follows:

Name: James Schroeder
Contractor: IBM Corporation
Address: 4263 Commercial St. SE, Suite 100, Salem, OR 97302
Telephone: 503.399.3825 (TL284)
Fax: 503.399.3793 (TL 284)
E-mail: jschroed@us.ibm.com

4. Servicing IBM Third Parties:

Only those third parties authorized by IBM, as listed on the IBM WSCA/NASPO website, are eligible to support the IBM WSCA/NASPO Master Price Agreement. Such third parties are only authorized to quote to the Participating Entity the products and pricing specified by IBM for the WSCA/NASPO Master Price Agreement. Eligible products include ThinkCentre commercial desktop systems, ThinkPad notebooks, ThinkVision Products, IBM options, and Express Models, eServer xSeries and IntelliStation Products.

All Participating Entity orders and payments are to be issued directly to IBM. Each Purchase Order, at the time of order placement, must include the Location ID (LOCID) of the quoting third party, if such a third party has been used, and must identify the WSCA/NASPO Master Price Agreement number. Inclusion of the LOCID on the Purchase Order will result in a fee payment to such third party. Such fee payment will not affect the pricing specified in the WSCA/NASPO Master Price Agreement.

IBM may add or delete eligible Products upon 30 days' written notice to the Participating Entity, and written approval by the Participating Entity. IBM may also add or delete eligible third parties at its discretion with 30 days written notice to the Participating Entity. Such changes will be posted to the WSCA/NASPO website 30 days after the date of notification.

All orders are to be issued directly to:
IBM Corporation
Western States Contracting Alliance
WSCA-YE085
7100 Highlands Parkway
Smyrna, GA 30082

And all payments are to be issued to:
IBM Corporation
PO Box 945684
Atlanta, GA 30394-5684

The Master Price Agreement Number and the Arizona State Contract Number MUST be shown on all Purchase Orders issued against this Agreement.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.
Signatures as required by State Statutes, Rules or Policies

IBM Corporation

State of Arizona


SIGNATURE


SIGNATURE

Denise A. Lopez-Roppinger
NAME (PRINT)

James Scarboro
NAME (PRINT)

Client Manager -
TITLE

Strategic Contracts Manager
TITLE

2/17/05
DATE

2/19/05
DATE

Attachment 2.1
State of Arizona Terms and Conditions

1. Definition of Terms:

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

- 1.1. "Attachment" means any item specifically referenced herein and required to be included as a part of this Participating Addendum.
- 1.2. "Contract" means the terms and conditions set forth in Amendment 2.1 and are hereby incorporated into the Participating Addendum
- 1.3. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. "Contractor" or "Manufacturer" means IBM Corporation.
- 1.5. "Days" means calendar days unless otherwise specified.
- 1.6. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. "Master Price Agreement" or "MPA" means the contract that the State of Minnesota Materials Management Division (MMD) approved that contains the primary Terms and Conditions for the acquisition of the Contractor's products and/or services by Purchasing Entities. The MPA is a permissive price agreement. In order for a Purchasing Entity to participate in a MPA the Arizona State Procurement Official or other designated procurement official must be a participating State or Participating Entity.
- 1.9. "Materials" means literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that are required to be delivered by Contractor to the State under this Contract. The term "Materials" does not include licensed program products available under their own license agreements.
- 1.10. "Participating Addendum" or "PA" means a bilateral agreement executed by the Contractor and the State. Terms and conditions contained in the PA, to the extent that they are in conflict, shall take precedence over the corresponding terms in the MPA.
- 1.11. "Participating State" or "Participating Entity" means the State of Arizona.
- 1.12. "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.13. "Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by the Participating State to enter into an agreement for the purchase of goods and/or services described in this contract.
- 1.14. "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which is permitted under the MPA but does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.15. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.16. "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.17. "State Fiscal Year" means the period beginning with July 1 and ending June 30,

2. Contract Interpretation

2.1. Arizona Law.

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

2.2. Implied Contract Terms.

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

2.3. Contract Order of Precedence.

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

- 2.3.1. Executed PA and Attachments;
- 2.3.2. Terms and Conditions of the MPA;
- 2.3.3. Exhibits and Amendments to the MPA;
- 2.3.4. The list of products and services contained in the purchase order;

2.3.5. The request for proposals document P-1331 and Addenda thereto;

2.3.6. Contrator's proposal including any written clarifications and/or best and final offer.

2.4. Relationship of Parties.

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

2.5. Severability.

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

2.6. No Parole Evidence.

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

2.7. No Waiver.

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract administration and operation.

3.1. Records.

Contractor shall comply with the requirements of A.R.S. § 35-214 and § 35-215.

3.2. Non-Discrimination.

The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit.

Contractor shall comply with the requirements of ARS § 35-214.

3.4. Facilities Inspection and Materials Testing.

The Contractor agrees to permit reasonable access to its facilities, and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. Any such access must comply with applicable IBM security procedures, and requires an IBM escort.

3.5. Notices.

Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract.

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State and Ownership of Intellectual Property.

See section 49 of Master Price Agreement.

3.8. Acceptance.

See section 6.A of the Master Price Agreement

4. Costs and Payments

4.1. Payments.

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery.

Reference Section 10A of MPA

4.3. Applicable Taxes.

4.3.1. Payment of Taxes.

Each Party shall be responsible for any real, personal property taxes, assessments or levies on property it owns or leases, for any franchise, business and occupation and privilege taxes on its business and for any taxes based on its net income or gross receipts.

Contractor will be responsible for any sales, use, excise, value-added, and other similar taxes and duties payable by Contractor on any goods or services used or consumed by Contractor in providing the Services where the tax is imposed on Contractor's acquisition or use of such goods or services and the amount of tax is measured by Contractor's cost in acquiring such goods or services. State of Arizona shall be responsible and liable to Contractor for the amount of any sales, use, excise, value-added, consumption or other similar tax that is imposed on the provision of the Services as a whole, on any particular Service provided by Contractor, or on Contractor's charges for some or all of the Services, unless, State timely produces valid exemption documentation to Contractor.

4.3.2. State and Local Transaction Privilege Taxes.

The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification.

Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, owed and unpaid by Contractor if applicable, contributions required under Federal, and/or state and local laws and regulations such as unemployment compensation insurance, Social Security and Worker's Compensation. Contractor's/Subcontractor's indemnification obligation in this Section is limited to taxes for which Contractor/Subcontractor is legally and contractually responsible and is subject to the State: (i) promptly notifying Contractor, in accordance with section 43 of the MPA, in writing of the claim; and (ii) allowing Contractor to control, and cooperate in the defense and related settlement negotiation.

4.3.4. IRS W9 Form.

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

4.4. Availability of Funds for the Next State fiscal year.

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

4.5. Availability of Funds for the current State fiscal year.

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

- 4.5.1. Accept a decrease in price offered by the contractor
- 4.5.2. Cancel the Contract
- 4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract changes

5.1. Amendments.

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials (other than substitute equipment which is compatible with what was ordered and offers capacity and functionality that is equivalent to or greater than what was ordered), directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts.

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

5.3. Assignment and Delegation.

See MPA section 40.

6. Risk and Liability

6.1. Risk of Loss.

Reference Section 10 of MPA

6.2. Indemnification.

Reference Section 24 of MPA

6.3. Indemnification - Patent and Copyright.

Reference Section 12 of MPA

6.4. Force Majeure.

- 6.4.1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; terrorism, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- 6.4.2. Force Majeure shall not include the following occurrences (except to the extent they are themselves caused by a Force Majeure event):
 - 6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
 - 6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations.

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

7. Warranties

7.1. Liens.

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

7.2. Quality.

Reference Section 11A of MPA

7.3. Fitness.

Reference Section 11A2 of MPA

7.4. Inspection/Testing.

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

7.5. Year 2000.

- 7.5.1. Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that during the warranty period, all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
- 7.5.2. Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that during the warranty period, each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it.

7.6. Compliance with Applicable Laws.

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

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

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

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

8. State's Contractual Remedies

8.1. Right to Assurance.

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

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for a period of days [not to exceed twenty (20) business days or as mutually agreed upon] indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

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

8.3. Non-exclusive Remedies.

The rights and the remedies of both parties under this Contract are not exclusive unless otherwise stated in the MPA, and expressly referenced under this clause, including but not limited to section 12.B. of the MPA.

8.4. Nonconforming Tender.

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it. Termination under this clause may only occur after written notification has been sent to the designated Contractor representative and a reasonable period of time has been given to the Contractor to provide a cure of the non-conformance.

8.5. Right of Offset.

The State shall be entitled to offset against any sums due the Contractor under this Contract, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions in each case limited to those expenses, costs or damages for which Contractor is otherwise liable under the terms and conditions of this Contract.

9. Contract Termination

9.1. Cancellation for Conflict of Interest.

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities.

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment.

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience.

The State reserves the right to terminate the Contract, in whole or in part by giving the Contractor thirty (30) days written notice, when in the best interests of the State without penalty or recourse. Within 30 days of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall be delivered to the State with the same ownership rights as the State would have received under the contract had the contract not been terminated. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials delivered in accordance with the Contract before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any material term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall be delivered to the State with the same ownership rights as the State would have received under the Contract had the Contract not been terminated.
- 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs, subject to the Limitation of Liability provision in section 31 of the MPA, incurred by the State in procuring materials or services in substitution for those due from the Contractor. Any such termination shall only occur if Contractor has failed to cure such default after the State has given written notice and reasonable time for Contractor to cure such default.

9.6. Continuation of Performance through Termination.

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

10. Contract Claims.

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

11. Arbitration.

If the Complaint Resolution Process in Exhibit B of the MPA fails to resolve a dispute, the parties to this Contract agree, if required by ARS 12-1518, to resolve the dispute arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome .

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

13. Insurance

13.1. Indemnification.

Reference Section 24 of MPA

13.2. INSURANCE REQUIREMENTS:

Vendor shall procure and maintain, until all of their obligations, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the purchase and or use of the commodity.

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 Vendor from liabilities that might arise out of the purchase and use of the commodities sold under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase such additional insurance as may be determined necessary.

13.2.1. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.

13.2.1.1. Commercial General Liability – Occurrence Form

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

General Aggregate	\$5,000,000
Products – Completed Operations Aggregate	\$5,000,000
Personal and Advertising Injury	\$5,000,000
Fire Legal Liability	\$ 50,000
Blanket Contractual Liability – Written and Oral	\$5,000,000
Each Occurrence	\$5,000,000

The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor.”***

13.2.1.2. Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor.”***

13.2.1.3. Worker's Compensation and Employers' Liability

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

Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

13.2.1.4. ADDITIONAL INSURANCE REQUIREMENTS: The liability policies are to contain, or be endorsed

to contain, the following provisions:

- 13.2.1.4.1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required for the Scope of Work as outlined in this PA such additional insured shall be covered as their interests may appear.
- 13.2.1.4.2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources for the Scope of Work as outlined in this PA.
- 13.2.1.4.3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

13.3. NOTICE OF CANCELLATION:

Each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to the State of Arizona's Primary Contact and shall be sent, return receipt requested.

13.4. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A- VII except for where Contractor reserves the right to self insure or use its captive insurance company which is not AM BEST rated. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Vendor from potential insurer insolvency.

13.5. VERIFICATION OF COVERAGE:

Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, may be a material breach of contract.

All certificates required by this Contract shall be sent directly to the State of Arizona's Primary Contact. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any reasonable time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

13.6. APPROVAL:

Any modification or variation from the *insurance requirements* in this Contract must have prior approval from the State of Arizona Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

13.7. EXCEPTIONS:

In the event the Contractor or sub-contractor(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 sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.

14. Price Increase

The State Procurement Office may review a fully documented request for a price increase. 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. The State Procurement Office shall determine whether the requested price increase or an alternate option, is in the best interest of the state.

Written request by the contractor is required thirty (30) days in advance of any desired price change. Following approval by the State Procurement Office, the request shall provide the following:

1. A formal announcement from the manufacturer that the cost of the contract product has been increased.
2. Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost increase.

**Attachment 2.3.2
Servicing Subcontractors**

Approved Subcontractors:

Ajilon (IMI Systems)
Alternative Resources Corp. (ARC)
Codesoft International
Computer Task Group (CTG)
L&A, Inc.
Manpower, Inc.
TEKSYSTEMS, Inc.
Sirius
Advanced System Group

Unapproved Subcontractors: (IBM can put these on the list and get them approved on an as needed basis)

eCooridor
Emericon