



REQUEST FOR PROPOSAL
COMPREHENSIVE LEGAL SERVICES

RFP #09-10-07

The Lake Havasu Unified School District No. 1 is inviting sealed proposals for: Comprehensive Legal Services.

Proposals must be received at 2200 Havasupai Blvd., Lake Havasu City, AZ, to arrive no later than the date and time listed below in a sealed envelope that is plainly worded:

SEALED PROPOSAL FOR: COMPREHENSIVE LEGAL SERVICES
DATE DUE: September 10, 2009 @ 2:00 P.M., ARIZONA TIME
RFP: #09-10-07

It is the responsibility of the offeror to insure timely delivery of the proposal. Any proposal received after the proposal closing time will be returned unopened. Unsigned proposals will be considered non-responsive and will be rejected.

Proposals will be opened and recorded publicly immediately after the proposal closing time. However, proposals will not be available for public inspection until a contract is awarded. You are invited to attend the proposal opening.

The initial period of the contract shall be one year beginning on the date of award. The District reserves the option to renew the contract for a total of four (4) additional years on an annual basis or a portion thereof. Annual renewals thereafter shall be based solely on the determination of the District as to the performance, costs and general quality of the services provided by the successful vendor or vendors selected. Prices shall be firm for the initial term of the contract.

The District reserves the right to accept or reject any or all proposals or any part thereof, and to waive any minor informalities in any proposal not deemed to be in the best interest of the District.

Please refer questions regarding this proposal to Elaine Wood at 928-505-6936

Elaine E. Wood
Director of Business Services
August 13, 2009

**GENERAL AND SPECIFIC INSTRUCTIONS
FOR
SUBMITTING COMPETITIVE SEALED PROPOSALS**

I. CERTIFICATION

By submission of this proposal the Offeror certifies:

- A. That, the Offeror has not paid nor agreed to pay any person, other than a bona fide employee, a fee or brokerage resulting from the award of this contract.
- B. That the fees quoted in this proposal have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such fees with any other firm.
- C. That, if awarded a contract, the Offeror agrees not to discriminate against any employee or applicant for employment pursuant to Executive Orders 99-4 and 2000-4 as amended.
- D. That, the Offeror is duly licensed for the class or work on this proposal at the time of proposal opening; and will comply with all applicable legal provisions as set forth in the Arizona Revised Statutes, to include all federal, state and county regulations and understands these provisions are part of any contract awarded to him/her.
- E. The parties to this Agreement, for valuable consideration exchanged, stipulate that an administrative hearing process shall be the sole and exclusive means of resolving disputes under this Agreement. Pending the final approval of Arizona Board of Education's modification of its Procurement Code adjudication rules, the parties agree that all disputes will be heard and a final and binding decision rendered by a hearing officer mutually agreed upon by the District and contractor (vendor). Both parties agree to mutually share in the cost of the administrative hearing and agree that a timely hearing on this matter will occur within sixty (60) days of the time and grieving party seeks to have an administrative review of a district representative's final decision. Either party may appeal the hearing officer's decision to the Arizona Superior Court consistent with rules applicable to a final administrative decision.

II. PROPOSALS

- A. All proposals must be submitted on the forms provided by the District, or if none are included, in accordance with the requirements of the RFP. All information required in the Request for Proposal must be given to constitute an acceptable proposal.

PROPOSALS - Continued

- B. Proposals shall be time stamped. They shall be accepted up to and no later than, the time indicated in the Notice Inviting Sealed Proposals. Those received after this time will be recorded and retained in the proposal file unopened. A Vendor submitting a late proposal shall be so notified. Late proposals shall only be returned at the Vendor's request and cost. Late proposals not claimed within thirty days of written notice will be destroyed. The Vendor will assume responsibility for delivery on time at the place specified, whether sent by mail or delivered in person. Telephone, telegraphed or proposals sent via facsimile are not acceptable.
- C. Proposals shall be opened publicly at the time and place designated in the Request for Proposal. The name of each Offeror shall be publicly read and recorded. All other information contained in the proposal shall be held confidential.
- D. All proposals will be made available for public inspection after the award has been made; except to the extent that the Vendor has designated, AND THE DISTRICT CONCURS, that certain information remain confidential.

If a Vendor believes that a proposal, specification, or protest contains trade secrets or other proprietary data that should remain confidential and not be disclosed as required in ARS 39-121, a statement advising the District of this factor shall accompany the proposal, and the INFORMATION IS TO BE IDENTIFIED WHEREVER IT APPEARS. PROPOSALS SUBMITTED REQUESTING THAT THE ENTIRE PROPOSAL BE HELD CONFIDENTIAL MAY BE REJECTED AS NON-RESPONSIVE.

- E. The submission of a proposal will indicate the Vendor has read the general and specific instructions, that the Vendor understands the requirements and can supply the products and/or services specified.
- F. No alterations, erasures or additions are to be made in the typewritten or printed matter, unless initialized in ink.
- G. All information required by the proposal except the signature should be typewritten and must be legible. Signature must be handwritten. Illegible or vague proposals will be rejected. Proposals not properly signed will be considered non-responsive.
- H. No oral interpretation will be given on any part of the proposal documents. Such interpretation shall be issued in the form of a written addendum to all submitters of record and shall become a part of the contract documents.
- I. Concerns or questions regarding this proposal request must be directed to the contact person(s) listed herein. For all other matters, Elaine Wood, Director of Business Services will act as the District Representative.

PROPOSALS - Continued

- J. The District will assume no responsibility for costs incurred in the preparation or submission or responses to this proposal. All information, copies of proposals, and any back-up or other related materials submitted in response to this Request for Proposal shall become the property of the District and will not be returned.

III. AWARDS

- A. Awards will not be made based on price alone. The award will be made as will best promote the public interest, taking into consideration the qualifications of the firm submitting the proposal; the responsiveness of the proposal in meeting the requirements and specifications; contractual requirements and any additional specific criteria for evaluation included in the Request for Proposals. Only the school District is in a position to determine its own best interest, therefore, the school District shall be the sole judge in determining the quality and appropriateness of their products, materials or services proposed. Their decision shall be final. The District reserves the right to arrange for discussions with those offerors who submit proposals determined to be reasonably susceptible of being selected for award and to request best & final offers in accordance with A.A.C. R7-2-1047 and A.A.C. R7-2-1048.
- B. Unless the offeror states otherwise, or unless otherwise provided within the Request for Proposal, the District reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the District.
- C. In case of discrepancy between the unit price or rate and the extension of that unit price, the unit price or rate shall prevail.
- D. The District reserves the right to make awards at any time within ninety (90) days after the date of the opening, during which period proposals may not be withdrawn unless authorized by the District.
- E. The District reserves the right to reject any or all proposals or any part thereof, or to accept any proposals or any part thereof; or to waive any informalities when deemed to be in the best interest of the school District.
- F. Each contractor shall retain all books, accounts, reports, files and other records relating to the acquisition and performance of the contract for a period of five (5) years after completion of the contract. This requirement includes any subcontractors.

IV. CONTRACT

- A. The issuance of a formal contract or a purchase order to the successful Vendor will be considered sufficient notice of acceptance of contract. This contract shall bind the offeror to furnish and deliver goods or services at the prices, and in accordance with, the conditions of this proposal. If the offeror will require the District to sign an additional contract, then a copy of the contract **MUST** be included with the proposal. In the event of a conflict between the requirements of this Request for Proposals and the proposed contract, the terms and conditions of the Request for Proposals will take precedence.
- B. Non-performance of contract will give sufficient cause for the District to cancel the contract. Non-performance shall be construed to include, but is not restricted to, failure of successful firm to deliver in the time specified, or in the manner required. Cancellation of contract for any reason may result in the removal of the successful firm's name from the vendors list on future proposals for an indeterminate time.
- C. Per A.R.S. 38-511 the school district/public entity may cancel this contract without penalty or further obligation due to conflict of interest if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the school district/public entity, or becomes at any time while the contract or an extension 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.
- D. The school district/public entity may, by written notice to the contractor, immediately terminate this contract if the school district/public entity determines that employment or gratuity was offered or made by the contractor or a representative of the contractor to any officer or employee of the school district/public entity 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 school district/public entity, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the gratuity offered by the contractor.
- E. If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled and the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of materials or services delivered under the contract or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for such purposes.

CONTRACT - Continued

- F. In the case of default, the school District reserves the right to purchase in the open market, or to complete the required work, at the expense of the vendor. The school District may recover any actual excess costs by:
 - 1. Deduction from an unpaid balance
 - 2. Collection against the proposal and/or performance bond or;
 - 3. Any combination of the aforementioned remedies or any other remedies as provided by law.
- G. Any contract entered into as result of this solicitation is for the convenience of the District and as such, may be terminated without default by the District by providing a written thirty (30) day notice of termination.

V. PAYMENTS

- A. Payment will be made only after submission of proper invoices as required by the District and within applicable state law. The invoice must identify the nature of the services performed, hours worked at contract rates and individuals performing the services.
- B. Payment of any invoice shall not preclude the District from making claim for adjustment on any item or service found not to have been in accordance with general conditions and specifications.

VI. OTHER

- A. The successful firm(s) shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies strikes, fires, floods, acts of God or any other acts not within the control of the successful firm and which by the exercise of reasonable diligence he is unable to prevent.
- B. Assignment - Unless otherwise provided for in the specific instructions or specifications, it is mutually understood and agreed that the successful firm shall not assign, transfer, convey, sublet or otherwise dispose of this contract or his right, title or interest therein without prior written approval of the District.
- C. Indemnification - Vendors shall hold the District's officers, agents and employees free and harmless from, and against any and all liability, including cost of claims, suits and counsel fees arising from, growing out of, or incidental to, the actual or alleged use of any copyrighted composition, secret or proprietary process, patented or unpatented invention, article or appliance, including foreign letters patents, furnished as a result of this Request for Proposal.

OTHER - Continued

- D. Proposal protests must be in writing, and filed with the District Representative. Protests based upon an alleged impropriety in solicitation apparent before the proposal opening, must be filed before the proposal opening. Protests of a proposed award, or of an award must be filed within ten (10) calendar days after a protester knows, or should have known the basis of the protest. The protest must include:
- 1) the name, address, and telephone number of the protestor;
 - 2) the signature of the protestor or its representative
 - 3) identification of the RFP title and number
 - 4) a detailed statement of the legal and factual grounds of protest, including copies of relevant documents; and
 - 5) the form of relief requested.
- E. Periods of time, stated as number of days, shall be in calendar days.
- F. The District's prospective vendor list will not be made available for public inspection and will be kept confidential in the best interest of competition in accordance with A.R.S. 39-121 and A.A.C. R7-2-1023.

VII. IMPORTANCE OF RESPONSE

- A. Failure to respond to two consecutive bids or proposals on the same commodity will result in the removal of your firm's name from the bid list for that specific commodity. A "no bid" will be considered a response.
- B. It is the Vendor's responsibility to keep the District informed of any address change so that notification of proposals or bids will arrive in a timely manner.

**LAKE HAVASU UNIFIED SCHOOL DISTRICT NO. 1
INFORMATION FOR PROPOSED COMPREHENSIVE LEGAL SERVICES PROVIDERS**

I. INTRODUCTION & BACKGROUND

Lake Havasu Unified School District No. 1 is a political subdivision of the State of Arizona and Mohave County. The District consists of approximately 6,300 students and approximately 650 employees. There are ten (10) school locations, a district office, and other miscellaneous locations.

The purpose of this RFP is to select legal services firms to provide comprehensive legal services for District programs on an as-needed, if needed basis in support of the District and self-insured trusts in several specialty fields, some of which involve the District as a party to litigation. To this end, the District will enter firm fixed price agreements with several attorneys who from time to time may be called upon to provide comprehensive legal services at an amount and according to the terms fixed by their agreement. Pricing shall remain firm for a period of one (1) year from the date of award.

The District makes no guarantees as to the amount of services required. The District reserves the right to review the qualifications of, and to approve in advance, any attorney within a given firm that is assigned to provide comprehensive legal services to the District. The use of subsequent contracts shall be at the sole discretion of the District.

The term of contract shall be the date of award through one year with an option to extend the contract at the sole discretion of the District for four (4) additional one-year periods or a portion thereof.

II. SCOPE OF SERVICES

The services requested may include, but are not necessarily limited to, the following:

1. Advice, direction and representation in cooperation with the Lake Havasu Unified School District No. 1;
2. Investigation, legal research and writing, preparation of pleadings, legal memoranda and brief appearances before administrative boards, trial and appellate courts;

SCOPE OF SERVICES - Continued

3. Legal advice and representation of the District in litigation on an as-required basis on any or all matters. The legal services may include, but are not limited to:
 - Student/Parent Actions
 - Vendor Actions
 - Governing Board Policies and Procedures
 - Intergovernmental Agreements
 - Real Estate Acquisitions/Disposals, Easements, Leases and other contracts involving interest in real property matters
 - Public Purchase and Lease Contracts
 - Personnel and Employee Relations
 - Review and Interpretation of Statutes, Rules etc.
 - Governing Board Liability
 - Public Elected Officials Liability
 - Construction Litigation
 - Construction and Maintenance Liability
 - General Tort Liability
 - Medical Malpractice
 - Personal Injury
 - Worker's Compensation
 - Insurance Contracts
 - Bond Counsel Services
 - Employee Benefit Trust
 - General School District matters as required
4. Other required services including all clerical assistance, printing and duplicating as required. District personnel will be made available, when appropriate, to provide necessary assistance such as research of historical records, or other information needed to perform comprehensive legal services for the District.
5. Regular accounting and billing for services and expenses shall be required.
6. Agreement not to engage in private litigation against the District without first obtaining written permission to do so from the Governing Board during the effective period of the agreement to provide comprehensive legal services.

III. GENERAL INFORMATION

1. Any agreement to provide comprehensive legal services must conform to and be governed by the laws of the State of Arizona.
2. The Lake Havasu Unified School District No. 1 will pay for professional services on the basis of an hourly rate. All other expenses incurred in representation of the District by the vendor will be reimbursed on a cost formula basis or paid direct, (e.g., deposition or expert witness fees.)

IV. SPECIAL TERMS & CONDITIONS

1. All counsel providing legal representation for the District shall be properly licensed to practice in the State of Arizona.
2. The District reserves the right of approval regarding the assignment of the firm's personnel to represent the District. At the written request of the District, the firm will immediately replace any personnel assigned.
3. The services of any firm may be terminated upon 10 days written notice given by the District. In the event of such action, the firm will comply immediately and provide the necessary best effort to transfer records and historical data to the District and/or succeeding counsel. The District reserves the right to utilize outside counsel not covered under the contract when deemed to be in the best interest of the District.
4. The successful offeror(s) shall be required to provide proof of and maintain:
 - a) Worker's Compensation and Employer's Liability Insurance as required by law.
 - b) Comprehensive General Liability Insurance with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate coverage with a deductible of not more than \$5,000 and naming the Lake Havasu Unified School District as an additional insured party
 - c) Professional Liability Insurance including errors and omissions with a limit of not less \$1,000,000.

The offeror shall provide required Certificate(s) of Insurance within ten (10) days of contract award notification and maintain such insurance during the entire term of the contract.

IV. PROPOSAL REQUIREMENTS

One original and two (2) copies of your proposal must be submitted. The original should be marked, "Original" and the complete copies should be marked, "Copy". The Lake Havasu Unified School District No. 1 will not assume responsibility for any costs related to the preparation or submission of the proposal. In order for your proposal to be considered, it must include the following:

1. A signed letter of interest, stating the firm's interest and qualifications in providing these services; a brief history of the firm; the names and resumes of principals of the firm; and key individuals who will be assigned to work with the District; details of any technical training, or specialized education; professional organizations in which the firm is active; publications or other media to which the firm has contributed and any other accomplishments pertinent to the District's needs.
2. Summary of the firm's experience on similar types and sizes of engagements. This summary must include your firm's experience in each of the areas of concern listed in the Scope of Services section above.
3. A statement indicating that the firm has a clear understanding of the services to be provided. Offerors should rank their own and their firm's expertise, using a scale of 1-10 (with 10 being highest) for those subject matters or areas (as related to the scope of work) in which they are qualified and willing to accept assignments. Offerors shall list any subject matter or area (as related to the scope of work) in which the firm is not offering to represent the District.
4. Resources of the firm (i.e., number of partners, associates, clerical staff, etc.)
5. A summary of professional or staff training educational programs of the firm.
6. Client references (minimum of five which encompass the areas for which the offeror is proposing to provide services) – especially other local school districts and governmental agencies. The list must include the organization name, address, telephone number, and individual to contact.
7. Professional memberships, certifications, licenses (especially as related to education and employee relations) for key individuals assigned to the District.
8. Fees for services to be provided, are to include hourly rates for firm's partners, associates, and paralegals. Fees for the first year are to be firm. In evaluating proposals, preference may be given to firms who are able to submit firm cost figures for more than the first year. Pricing should be submitted for years 1 through 5 of the proposed contract period. However, note that price change requests for subsequent years will be subject to negotiation at the time of renewal, require approval by the District, and may result in non-renewal of the contract.
9. A listing of any items such as letters, phone calls or other types of services generating a cost to the District and not included in the fees shown on the proposal are to be included, plus a formula or explanation on how these additional costs will be determined and billed to the District.

PROPOSAL REQUIREMENTS – Continued

10. The form of contract for any award made as a result of this proposal will be a District purchase order, referencing this RFP, which shall be considered a part of the contract. The amount will be based upon the fees shown in the proposal, and will take into consideration previous and anticipated expenses for the forthcoming year. If your firm will require the District to sign an additional or separate contract, a copy of the proposed contract must be included with the proposal.
11. An indication that the firm shall provide the required Certificate(s) of Insurance within ten (10) days of contract award notification.

VI. EVALUATION AND CRITERIA

District representatives and any outside experts the District considers necessary shall evaluate the proposals. The District reserves the right to arrange for discussions to assist in making the selection in accordance with R7-2-1047.

Evaluation of the proposals will be based upon the following criteria (listed in the relative order of importance). Specific weighting may be used, but will not be required.

1. Responsiveness of the proposal in clearly stating and understanding the scope of work, and in meeting the requirements of the RFP;
2. Previous experience of the firm in general as well as that of the individual(s) assigned to work with the District;
3. Qualifications of the firm, financial and otherwise, to provide the District with these services for the required period of time, provide appropriate staffing, provide necessary resources and show a history of demonstrated competence;
4. District's assessment of the firm's abilities to meet and satisfy the needs of the District; taking into consideration additional services or expertise offered that exceed the requirements, or the vendor's inability to meet some of the requirements of the specifications;
5. Relevancy to the District and appropriateness of firm's affiliations, professional memberships, professional and staff training programs, publications and other contributions;
6. Information obtained by the District from firm's references or other clients;
7. Fees for services to be provided. The ability to submit firm cost figures for more than the first year shall have a positive impact on the evaluation of the proposal.
8. Best interest of the District.

EVALUATION AND CRITERIA – Continued

Awards will be made to the most advantageous offers to the District, taking into consideration the factors outlined in this request for proposal. Awards may be made to more than one (1) vendor based on their area(s) of expertise. Therefore, a multiple award may be made by the Governing Board in order to obtain the services deemed necessary. Only the District is in a position to determine their own best interests, and their decision shall be final.

NON COLLUSION AFFIDAVIT

State of _____

County of _____

I, _____
Affiant (Name)

the _____
(Title)

of _____
(Contractor/Offeror)

The persons, corporation, or company who makes the accompanying Proposal, having first been duly sworn, deposes and says:

That such Proposal is genuine and not sham or collusive, nor made in the interest or behalf of any persons not herein named, and that the Offeror has not directly or indirectly induced or solicited any other Offeror to put in a sham bid, or any other person, firm, or corporation to refrain from bidding or providing an offer, and that the offeror has to in any manner sought by collusion to secure for itself an advantage over any other Offeror.

(Signature)

(Title)

Subscribed and sworn to before me

this _____ day of _____, 2009

Signature of Notary Public in and for the

County of _____

State of _____

OFFER AND ACCEPTANCE
RFP #09-10- 07
Comprehensive Legal Services

Lake Havasu Unified School District #1
2200 Havasupai Blvd.
Lake Havasu City, AZ 86403

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications, and amendments in the Solicitation and any written exceptions in the offer.

Arizona Transaction (Sales) Privilege Tax License No.: _____

For clarification of this offer, contact:
Name: _____

Federal Employer Identification No. _____

Phone: _____
Fax: _____

Tax Rate: _____%

Email: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City State Zip

Title

CERTIFICATION

By signature in the Offer section above, the offeror certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The offeror shall not discriminate against any employee or applicant for employment in violation of State Executive Order 99-4, 2000-4 or A.R.S. § 41-1461 through 1465.
3. The offeror 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 shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The offeror warrants that it and all proposed subcontractors will maintain compliance with the Federal Immigration and Nationality Act (FINA), A.R.S. § 41-4401 and A.R.S. § 23-214 and all other Federal immigration laws and regulations related to the immigration status of its employees which requires compliance with Federal immigration laws by employers, contractors and subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
5. In accordance with A.R.S. § 35-391, the offeror is in compliance and shall remain in compliance with the Export Administration Act.
6. In accordance with A.R.S. § 35-397, the offeror does not have scrutinized business operations in Iran or Sudan.
7. In accordance with A.R.S. § 15-512, the offeror shall comply with fingerprinting requirements unless otherwise exempted.

ACCEPTANCE OF OFFER

The offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the School District/public entity.

This contract shall henceforth be referred to as Contract No. _____.

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document, or written notice to proceed.

Award this _____ day of _____ 20_____

AUTHORIZED SIGNATURE

UNIFORM INSTRUCTIONS TO OFFERORS

1. **Definition of Terms**

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

- A. **“Attachments”** means any item the Solicitation requires an Offeror to submit as part of the Offer.
- B. **“Contract”** means the combination of the Solicitation, including the uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments; and any terms applied by law.
- C. **“Contract Amendment”** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- D. **“Days”** means calendar days unless otherwise specified.
- E. **“Exhibits”** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the solicitation.
- F. **“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.
- G. **“Offer”** means bid, proposal or quotation.
- H. **“Offeror”** means a vendor who responds to a Solicitation.
- I. **“Procurement Officer”** means the person duly authorized to enter into and administer Contracts and make written determinations with respect to the Contract or his or her designee.
- J. **“Solicitation”** means an Invitation for Bids (IFB), a Request for Proposals (RFP), or a Request for Quotations (RFQ).
- K. **“Solicitation Amendment”** means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
- L. **“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 furnishings of any material or any service required for the performance of the Contract.

2. **Inquiries**

- A. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing, and check its Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for withdrawing the Offer after the Offer due date and time nor shall it give rise to any Contract claim.
- B. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation, shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquires concerning this Solicitation to any other employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
- C. Submission of Inquires. The Procurement Officer or the person identified in the Solicitation as the contact for inquires may require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page, and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquire since it may then be identified as an Offer and not be opened until after the Offer due date and time.
- D. Timeliness. Any inquiry shall be submitted as soon as possible and at least seven (7) days before the Offer due date and time. Failure to do so may result in the inquiry not being answered.
- E. No Right to Rely on Verbal Responses. Any inquiry that results in changes to the Solicitation shall be answered solely through a written Solicitation Amendment. An Offeror may not rely on verbal responses to its inquires.
- F. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
- G. Pre-Offer Conference. If a pre-Offer conference has been scheduled under this Solicitation, the date, time, and location appear on the Solicitation cover sheet or elsewhere in the Solicitation. An Offeror should raise any questions it may have about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.

- H. Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

3. **Offer Preparation**

- A. Forms: No Facsimile or Telegraphic Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation will be legible and contain the same information requested on the form. A facsimile, telegraphic or mailgram offer shall be rejected.
- B. Typed or Ink; Corrections. The Offer must be typed or in ink. Erasures, interlineations or other modifications in the Offer must be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
- C. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation must be submitted with the Offer and must include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate, and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, shall result in rejection of the Offer.
- D. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically referenced by the Procurement Officer in a written statement. The Offeror's Preprinted or standard terms will not be considered as a part of any resulting Contract.
- E. Invitation for Bids: An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
- F. Request for Proposals: All exceptions that are contained in the Offer may negatively affect the proposal evaluation based on the evaluation criteria as stated in the Solicitation or result in rejection of the Offer.

- G. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- H. Cost of Offer Preparation. The District will not reimburse any Offeror the cost of responding to a Solicitation.
- I. Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment shall result in rejection of the Offer.
- J. Federal Excise Tax. School districts/public entities are exempt from Federal Excise Tax on manufactured goods. Exemption Certificates will be prepared upon request.
- K. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax number and/or Federal Tax Identification number, if applicable, in the space provided on the Offer and Acceptance Form and provide the tax rate and amount, if applicable, on the Price Sheet.
- L. Identification of Taxes in Offer. School districts/public entities are subject to all applicable state and local transaction privilege taxes. If Arizona resident Offerors do not indicate taxes on a separate item in the Offer, the school district/public entity will conclude that the price(s) offered includes all applicable taxes.
- M. Disclosure. If the Firm, business, or person submitting this Offer has been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror must fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above must be provided.
- N. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:
1. Special Terms and Conditions;

2. Uniform General Terms and Conditions;
 3. Statement of Scope of Work;
 4. Specifications;
 5. Attachments;
 6. Exhibits;
 7. Special Instructions to Offerors; and
 8. Uniform Instructions to Offerors
- O. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination(s).

4. **Submission of Offer**

1. Sealed Envelope or Package. **Please submit three (3) copies of your offer, one (1) marked “original” and two (2) marked “copy”.** Each Offer shall be submitted to the submittal location identified in this Solicitation, in a sealed envelope or package that identifies its contents as an Offer and the Solicitation number to which it responds. The appropriate Solicitation number shall be plainly marked on the outside of the envelope or package. Proposals shall be time stamped. They shall be accepted up to and no later than, the time indicated in the Notice of Solicitation.
- B. Inclusions. In order for your proposal to be considered, the following items **MUST** be included with your response.
 1. Letter of Interest
 2. Firm & Staff Experience
 3. Proposal Cost Forms
 4. Completed Offer and Acceptance form
- C. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- D. Public Record. Under applicable law, all Offers submitted and opened are public records and must be retained by the school district/public entity. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the school district/public entity. If an Offeror believes that information in its Offer should remain confidential, it shall stamp as confidential that information and submit a statement with its Offer detailing the reasons that information should not be disclosed. The school district/public entity shall make a determination

on whether the stamped information is confidential pursuant to the school district/public entity's Procurement Code.

- E. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or other official contract form, the offeror certifies that:
1. It did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its offer; and
 2. It does not discriminate against any employee, applicant for employment, or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state, and local laws and executive orders regarding employment.
 3. That, the Offeror is duly licensed for the class or work on this solicitation; and will comply with all applicable legal provisions as set forth in the Arizona Revised Statutes, to include all federal, state, and county regulations and understands these provisions are part of any contract awarded to him/her.

5. **Evaluation**

- A. Unit Price Prevails. Where applicable, in the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- B. Taxes. All applicable taxes in the Offer will be considered by the school district/public entity when determining the lowest bid or evaluating proposals; except when a responsive Offeror which is otherwise reasonably susceptible for award is located outside of Arizona and is not subject to a transaction privilege or use tax of a political subdivision of this state. In that event, all applicable taxes which are the obligation of Offerors in state and out of state, Offerors shall be disregarded in the Contract Award. At all times, payment of taxes and the determination of applicable taxes and rates are the sole responsibility of the Contractor.
- C. Late Offers. An offer submitted after the exact Offer due date and exact time shall be rejected.
- D. Disqualification. The Offer of an Offeror who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity may be rejected.
- E. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the

Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for the Offer acceptance, the number of days shall be ninety (90). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for ninety (90) days from the Best and Final due date.

- F. Payment. 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 within thirty (30) days.
 - G. Waiver and Rejection Rights. Notwithstanding any other provision of the solicitation, the school district/public entity reserves the right to:
 - 1. Waive any minor informality;
 - 2. Reject any and all offers or portions thereof; or
 - 3. Cancel a solicitation.
6. **Award**
- A. Number or Types of Awards. Where applicable, the school district/public entity reserves the right to make multiple awards or to award a Contract by individual line items, by a group of line items, or to make an aggregate award, whichever is deemed most advantageous to the school district/public entity. If the Procurement Officer determines that an aggregate award to one Offeror is not in the school district/public entity's interest, "all or none" Offers shall be rejected.
 - B. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature of the Offer and Acceptance Form. A letter or other notice of award or of the intent to award shall not constitute acceptance of the Offer.
 - C. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance Form or other official contract form, unless another date is specifically stated in the Contract.
 - D. Awards:

1. Invitation for Bid: Will be awarded in accordance with R7-2-1031: “District shall award contract to lowest responsible responsive bidder whose bid conforms in all material respects to the requirements and evaluation criteria set forth in the IFB”.

2. Request for Proposal: Will be awarded in accordance with R7-2-1050, which states; “District shall award contract to the offeror whose proposal is determined in writing to be the most advantageous to the School District based on the factors set forth in the RFP”.

The District shall be the sole judge in determining the quality of the products, materials and/or services offered. Their decision shall be final.

7. **Protests**

A protest shall comply with and be resolved according to Arizona Department of Education school district/public entity Procurement code R7-2-1141 through R7-2-1153. Protests shall be in writing and be filed with the Procurement Officer of the school district/public entity. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed with the Procurement Officer within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- A. The name, address, and telephone number of the protester;
- B. The signature of the protester or its representative;
- C. Identification of the purchasing agency and the Solicitation or Contract number;
- D. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- E. The form of relief requested.

UNIFORM GENERAL TERMS AND CONDITIONS

1. **Definition of Terms**

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

- A. **“Attachments”** means any item the Solicitation requires an Offeror to submit as part of the Offer.
- B. **“Contract”** means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments; and any terms applied by law.
- C. **“Contract Amendment”** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- D. **“Contractor”** means any person who has a Contract with the school district/public entity.
- E. **“Days”** means calendar days unless otherwise specified.
- F. **“Exhibits”** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- G. **“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.
- H. **“Offer”** means bid, proposal or quotation.
- I. **“Offeror”** means a vendor who responds to a Solicitation.
- J. **“Procurement Officer”** means the person duly authorized to enter into and administer Contracts and make written determinations with respect to the Contract or their designee.
- K. **“Solicitation”** means an Invitation for Bids (IFB), a Request for Proposals (RFP), or a Request for Quotations (RFQ).

- L. **“Solicitation Amendment”** means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
- M. **“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 furnishings of any material or any service required for the performance of the Contract.
- N. **“School District/Public Entity”** means the school district or public entity that executes the Contract.

2. **Contract Interpretation**

- A. **Arizona Law.** The law of Arizona 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.
- B. **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.
- C. **Contract Order of Preference.** In the event of a conflict in the provisions of the Contract, the following shall prevail in the order set forth below:
 - i) Special Terms and Conditions;
 - ii) Uniform General Terms and Conditions;
 - iii) Statement or Scope of Work;
 - iv) Specifications;
 - v) Attachments;
 - vi) Exhibits;
 - vii) Documents Referenced in the Solicitation;
- D. **Relationship of Parties.** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee agent of the other party to the Contract.
- E. **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.
- F. **No Parol 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.

- G. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed 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**

- A. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall Contractually require each Subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- B. 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.
- C. Audit. At any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the school district/public entity and, where applicable, the Federal Government, the extent that the books and records relate to the performance of the Contract or Subcontract.
- D. Inspection and Testing. The Contractor agrees to permit access to its facilities, Subcontractor facilities and the Contractor's processes for producing the materials, at reasonable time for inspection of the materials and services covered under this Contract. The school district/public entity shall also have the right to test at its own cost the materials to be supplies under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If the school district/public entity determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the school district/public entity for testing and inspection.
- E. Notices. Notices to the Contractor required by this Contract shall be made by the school district/public entity to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the school district/public entity 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 notices shall be given by written notice and an Amendment to the Contract shall not be necessary.

- F. Advertising and Promotion of Contract. The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- G. Property of the School District/Public Entity. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the school district/public entity. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the school district/public entity.

4. Costs and Payments

- A. 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 school district/public entity within thirty (30) days. The Purchase Order number must be referenced on the invoice
- B. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. destination and shall include delivery and unloading at the destinations.
- C. Applicable Taxes.
 - 1) Payment of Taxes by the School District/Public Entity. The school district/public entity will pay only the rate and/or amount of taxes identified in the Offer and in any resulting Contract.
 - 2) State and Local Transaction Privilege Taxes. The school district/public entity is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.
 - 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 school district/public entity harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- 4) IRS W-9. In order to receive payment under any resulting Contract, Contractor shall have a current I.R.S. W-9 Form on file with the school district/public entity.

- D. Availability of Funds for the Next Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of the school district/public entity for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of the Contract. The school district/public entity will make reasonable efforts to secure such funds.

5. Contract Changes

- A. 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 signed by the Procurement Officer. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized employee or made unilaterally by the Contractor are violations of the Contract and or 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 and this Contract based on those changes.
- B. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract without the advance written approval of the Procurement Officer. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- C. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The Procurement Officer shall not unreasonably withhold approval.

6. **Risk and Liability**

- A. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- B. General Indemnification. To the extent permitted by A.R.S. § 41-621 and § 35-154, the school district/public entity shall be indemnified and held harmless by the Contractor for its vicarious liability as result of entering into this Contract. Each party to this Contract is responsible for its own negligence.
- C. Indemnification - Patent and Copyright. To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless the school district/public entity against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the school district/public entity of materials furnished or work performed under this Contract. The school district/public entity shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.
- D. Force Majeure.
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; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
 2. Force Majeure shall not include the following occurrences:
 - a) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or

- b) 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
 - c) Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
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 requested, 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.
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.
- E. Third Party Antitrust Violations. The Contractor assigns to the school district/public entity any claim for overcharges resulting from antitrust violation the extent that those violations concern materials of services supplied by third parties to the Contractor toward fulfillment of this Contract.

7. **Warranties**

- A. Liens. The Contractor warrants that the materials supplies under this Contract are free of liens.
- B. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that for one year after acceptance by the school district/public entity of the materials or services, they shall be:
 - 1) Of a quality to pass without objection in the trade under the Contract description;
 - 2) Fit for the intended purposes for which the materials or services are used;

- 3) Within the variations permitted by the Contract and are of even kind, quality, and quality within each unit and among all units;
 - 4) Adequately contained, packaged and marked as the Contract may require; and
 - 5) Conform to the written promises or affirmations of fact made by the Contractor.
- C. Fitness. The Contractor warrants that any material or service supplied to the school district/public entity shall fully conform to all requirements of the Solicitation and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- D. Inspection/Testing. The warranties set forth in subparagraphs A through C of this paragraph are not affected by inspection testing of or payment for the materials or services by the school district/public entity.
- E. Exclusions. Except as otherwise set forth in this Contract, there are no express or implied warranties or merchant ability fitness.
- F. 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 permits.
- G. Survival of Rights and Obligations after Contract Expiration or Termination.
1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration of 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 school district/public entity is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.
 2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Offices, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. **School District/Public Entity's Contractual Remedies**

- A. Right to Assurance. If the school district/public entity in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing the Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent or ability to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the school district/public entity's option, be the basis for terminating the Contract under the Uniform General Terms and Conditions.
- B. Stop Work Order.
1. The school district/public entity 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 up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. 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.
 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.
- C. Non-exclusive Remedies. The rights and the remedies of the School district/public entity under this Contract are not exclusive.
- D. Nonconforming Tender. Materials supplied under this Contract shall fully comply with the Contract. The delivery of materials or a portion of the materials in an installment that do not fully comply constitutes a breach of Contract. On delivery of nonconforming materials, the school district/public entity may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- E. Right to Offset. The school district/public entity shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the school district/public entity or damages assessed by the school district/public entity concerning the Contractor's nonconforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform General Terms and Conditions.

9. Contract Termination

- A. Cancellation for Conflict of Interest. Per A.R.S. 38-511 the school district/public entity 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 school district/public entity is, or becomes at any time while the Contract or an extension 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.
- B. Gratuities. The school district/public entity may, by written notice, terminate this Contract, in whole or in part, if the school district/public entity determines that employment or gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the school district/public entity 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 school district/public entity, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the gratuity offered by the Contractor.
- C. Suspension or Debarment. The school district/public entity may, by written notice to the Contractor, immediately terminate this Contract if the school district/public entity determines that the Contractor has been disbarred, 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.
- D. Termination for Convenience. The school district/public entity reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the school district/public entity without penalty recourse. Upon receipt of the written notice, the Contractor shall immediately 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 school district/public entity. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the school district/public entity. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of the

termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

E. Termination for Default.

1. In addition to the rights reserved in the Uniform Terms and Conditions, the school district/public entity reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
2. Upon termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the school district/public entity.
3. The school district/public entity may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials and services to replace those under this Contract. The Contractor shall be liable to the school district/public entity for any excess costs incurred by the school district/public entity reprocurring the materials or services.

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

11. **Form of Contract**

It shall be understood by the offeror and the school district that the proposal received is a signed agreement to furnish all goods and perform all services, including labor (if any), as stipulated in the documents, upon the award of proposal, the Purchasing Services Department may issue a numbered purchase order (form of contract) which will serve as a Contractual Agreement with the successful offeror.

The two (2) documents (the original proposal bearing the signature of the offeror and the school district's signed purchase order(s)) become the forms of

Contractual Agreement, agreeing to the performance of all conditions set forth in the proposal, the standard proposal instruction standard conditions and special instructions and conditions, including any addenda issued by the solicitation. The purchase order(s) to be issued by the school district may be examined at the Purchasing Services Department.