



ARIZONA SUPREME COURT

Administrative Office of the Courts
1501 West Washington, Suite 221
Phoenix, Arizona 85007

Request for Proposals

RFP 04-01

Educational Software for LEARN Labs

November 4, 2004

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SECTION 1 INTRODUCTION AND OVERVIEW

1. Introduction

The Arizona Supreme Court (hereinafter referred to as the Court) is requesting proposals from qualified bidders who wish to be pre-qualified to provide educational software for LEARN Labs on an "as-needed" basis. Bidders who wish to submit a sealed proposal based upon the specifications and conditions in this document shall submit it by December 1, 2004 at 4 P.M. Arizona Time in accordance with the schedule below.

This Request for Proposals (RFP) is being issued solely for the procurement of contracts in which no warranty, expressed or implied, is made to the contractor(s) by the Court that any purchases will be made during the term of the contract. Any contract(s) awarded pursuant to this RFP shall state that purchases will be made only on an "as-needed" basis. Any Arizona Court, any political subdivision acting on behalf of a court, or any authorized purchaser may obtain services under this agreement.

It is the intention of the Court to award contracts for a two-year period with options to extend for additional years, pending availability of funds and satisfactory contractor performance. Multiple contracts may be awarded.

The public opening will be conducted on December 1, 2004 at 4 P.M. Arizona Time at the Arizona State Courts Building, 1501 W. Washington, Conference Room 230, Phoenix, Arizona.

2. Proposers' Conference

No proposers' conference will be held.

3. Proposal Schedule

Activity	Date
a. Request for Proposals (RFP) published	November 4, 2004
b. Deadline to Submit Written Questions	November 16, 2004
c. Response to Written Questions/RFP Amendments	November 18, 2004
d. Proposal Due Date*	December 1, 2004

The Court reserves the right to deviate from this schedule.

- * **Proposals received after December 1 , 2004 will be accepted but will not be opened and will not be taken into consideration in the evaluation of proposals.**

4. Proposal Evaluation

Following the public proposal opening, proposals will be evaluated based upon the criteria outlined in Section 4 of this document. The contract(s) shall be entered into with the responsible bidder(s) whose proposal is determined in writing to be the most advantageous to the Judicial Branch Unit taking into consideration the evaluation factors set forth in the Request for Proposals. The Court reserves the right (prior to contract award) to inspect a vendor's facilities, and to consider other sources of information to determine evaluation scores.

No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal if a competing bidder located outside of this state is not subject to a transaction privilege or use tax of a political subdivision of this state.

If there are no bidders who adequately meet the Court's specifications and/or budget, the Court reserves the right to reject any or all proposals or parts thereof. This RFP does not commit the Arizona Supreme Court to award any contract or to pay any costs incurred in the preparation of proposals. The Court reserves the right to accept or reject, in whole or in part, all proposals submitted and/or to cancel this RFP. Multiple contracts may be awarded.

5. Proposal Discussions

Discussions may be conducted with responsible bidders who submit proposals determined to be reasonably susceptible to permit a contractual agreement for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Bidders shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before finalization of a contract for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing bidders.

6. Americans with Disabilities Act

People with disabilities may request special accommodations such as interpreters, alternative formats, or assistance with physical accessibility.

Requests should be made as early as possible to allow time to arrange the accommodation.

If you require special accommodations, please call (602) 542-9329 or text telephone (TDD) 542-9545.

SECTION 2 INSTRUCTIONS AND PROCEDURES

1. Necessary Documents. Vendors who wish to submit proposals for RFP 04-01 shall complete all necessary documentation as identified in Section 5 of this Request for Proposals.
2. Specifications. The specifications included in this package provide adequate information as to whether or not vendors can meet the needs of the Court. Significant deviations from the specifications may be grounds for disqualification of the proposal.
3. Procurement Rules. The Rules Prescribing Procurement Policies and Procedures for the Judicial Branch (hereafter referred to as the Judicial Procurement Rules) adopted by the Arizona Supreme Court in accordance with the provisions of the Arizona Revised Statutes 41-2501.E are incorporated by reference herein and are made a part of this document as if they are fully set forth herein. Copies of these rules can be obtained from Don Bentley, Arizona Supreme Court at the address referenced on the cover page.
4. Subcontractors. The vendor has sole responsibility for any contracts or agreements made with any subcontractors in relationship to this RFP, and shall disclose all such agreements.
5. Vendor Certification. By submission of a proposal, the vendor certifies that:
 - A. The vendor has not paid nor agreed to pay any person, other than a bona fide employee, a fee or a brokerage resulting from the award of the contract.
 - B. The prices in the proposal have been arrived at independently without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other vendor.
6. Preparation of the Proposal
 - A. Vendors are expected to examine all rules, documents, forms, specifications, standard provisions, and all instructions. These materials can be made available in alternative formats upon request. Failure to do so will be at the vendor's risk.
 - B. Each vendor shall furnish all information required by the RFP. The vendor should refer to Section 5 which contains the proposal submittal checklist,

to ensure all required materials have been enclosed.

C. Time, if stated as a number of days, will be calendar days.

7. Explanation to Bidders

Any inquiries/questions related to this RFP are to be directed in writing to the contact person below. Any verbal or written inquiries directed to anyone other than the contact person specified below will not be considered. All questions must be submitted by November 16, 2004 to:

Victoria Prins, Chief Financial Officer
Arizona Supreme Court
1501 West Washington, Suite 221
Phoenix, Arizona 85007-3231
Email: vprins@supreme.sp.state.az.us
Fax: (602) 542-9735

The question and response will be posted to the Arizona Judicial Department's website. Any explanations or clarifications given at the website will be considered added to the specifications. Interested parties must check the website at <http://www.supreme.state.az.us/rfp>.

8. Submission of Proposal

- A. Sealed proposals are due on or before December 1, 2004 at 4 P.M. Arizona Time to Don Bentley, Arizona Supreme Court, 1501 West Washington, Suite 221, Phoenix, Arizona 85007-3231. Proposals must be in the actual possession of the Court on or prior to the exact time and date indicated. Late proposals will not be considered under any circumstances.
- B. **Proposals must be submitted in a sealed envelope with the RFP number and the vendor's name and address clearly indicated on the outside of the package.** All proposals must be completed in ink or be typewritten.
- C. The vendor must submit one original and 5 copies of each proposal.
- D. Vendors submitting a proposal shall indicate the vendor's name and the RFP number on each page of the document.
- E. Erasures, interlineations, or other modifications in the proposal must be initialed by a person authorized to sign the proposal and contract.

9. Public Opening

A public opening of proposals shall be held on December 1 , 2004 at 4 P.M. Arizona Time at the Arizona State Courts Building, 1501 W. Washington, Conference Room 230. At that time, the name of each vendor shall be publicly read and recorded. All other information contained in the proposal shall be confidential so as to avoid disclosure of contents prejudicial to competing vendors during the process of negotiation. This record shall be open for public inspection after a contract is entered into. However, where the vendor designates, and the court concurs, trade secrets or other proprietary data contained in the proposal documents shall remain confidential.

10. Contract

The contract(s) shall be entered into with the responsible vendor(s) whose proposal is determined in writing to be the most advantageous to the Judicial Branch Unit, taking into consideration the evaluation factors set forth in the RFP. The vendor will submit a license/maintenance/support contract with their proposal. In addition to the vendor terms and the requirements of this RFP, the Court will insist on the inclusion of the general terms and conditions listed in Section 6.

SECTION 3 SPECIFICATIONS

History

The mission of the Literacy Education and Resource Network (LEARN) is to provide for the literacy and educational needs of high risk populations in a rehabilitative effort to reduce the likelihood of continued delinquent or criminal careers.

The Administrative Office of the Courts (AOC) in conjunction with probation departments, community organizations, educational institutions and other state agencies have established 40 LEARN Labs in Arizona since 1987. The first LEARN Lab began as a pilot program. The location of this lab was at Catalina High School in Tucson, Arizona. Within months LEARN Labs were being installed in a variety of counties. The Court provides hardware, software and one year of software support, training, and data collection for the labs. The lab sites provide the location, teachers, and on-going operational costs for the lab.

The AOC had a sole source software agreement with New Century Education Corporation from July 1, 1999 until June 30, 2004.

Purpose

The purpose of this RFP is to solicit proposals for the purchase of software packages that will satisfy curricula needs of LEARN Labs throughout the state. The solution(s) will adhere to the requirements outlined in this RFP.

Requirements

The software package must meet the following minimum general requirements to be eligible for consideration:

- Improve the academic performance of students (juveniles and/or adults) in the areas of mathematics, reading, language arts and science
- Prepare all students, particularly those at-risk, to improve their scores on standardized tests and criterion-referenced tests
- Provide supplemental instruction that is aligned to the Arizona State Standards
- Provide management system features that will increase the efficiency of the teacher in the classroom and support direct assignment of supporting lessons and independent student learning, as required

- Provide software version for both networked PC's and standalone multimedia computer use
- Provide tailored services to train teachers and administrators in the use of the software to provide individually targeted instruction that will improve student achievement

Software Selection Criteria

Content:

Supports range of developmentally appropriate options

Aligned with academic expectations found in the Arizona State Standards

Uses developmentally appropriate vocabulary

Addresses various learning styles and intelligences

Adapts to interest/ability of the student

Uses instructional strategies based on current scientific-based research

Lacks bias (social, ethnic, racial, religious and gender)

Presents accurate and current information

Presentation and Content:

Presents materials in an organized manner

Provides consistent, easy-to-use on screen instructions

Provides developmentally appropriate presentation format

Addresses the needs of limited English-proficiency students

Provides appropriate feedback to student's response

Adapts to individual, small and large group environments

Runs smoothly, without long delays

Employs accurate grammar and spelling

Presents easy to view text and graphics

Presents easy to hear and understand sounds

Avoids unnecessary screens, sounds, and graphics

Incorporates various presentation methods

Includes materials for enrichment, and remedial activities

Provides a variety of assessments, where appropriate

Management:

Allows customizing for individual learning needs

Allows student to exit and resume at a later time

Keeps student's performance record accurately

Allows teacher control of appropriate aspects (e.g. turning sound off)

Allows student control of appropriate aspects of the software

Gives teacher meaningful reports that will help determine additional instruction.

Student Response:

Engages the learner throughout the session

Encourages active learning

Generates positive responses (e.g. shows the software to peers)

Yields measurable growth

**SECTION 4
PROPOSAL EVALUATION CRITERIA**

Proposals will be evaluated in two phases:

1. An initial review to determine the responsiveness of the proposal to the requirements for the Request for Proposals (RFP). For a proposal to be considered responsive, it must meet the following tests:
 - A. A sealed original and 5 copies must be physically in the possession of the Arizona Supreme Court, 1501 W. Washington, Suite 221, no later than 4 P.M. Arizona Time on December 1, 2004.
 - B. The proposal must include all required items on the Proposal Submittal Checklist (Section 5).
 - C. The original and all copies of the proposal must be in ink or typewritten.
2. An in-depth analysis and evaluation will be based upon the following criteria. The evaluation criteria are listed in order of relative importance.

Evaluation Criteria	Relative Importance
A. Functionality / Ability to Meet Specifications	45%
B. Price	25%
C. Vendor Reputation	15%
D. Training, Service and Support	15%

SECTION 5 PROPOSAL SUBMITTAL DOCUMENTS

The following materials must be submitted as part of a vendor response:

1. Proposal Submittal Letter (see page 13)
2. Three references (see page 14)
3. Vendor Profile (see page 15)
4. Proposal pricing sheet
5. Vendor's license, maintenance, and service/support contract
6. A description of exceptions (if any) to the standard terms and conditions provided in Section 6 of the RFP. Any exceptions to the standard terms and conditions must be noted in the vendor response.
7. Comprehensive narrative statements addressing the "requirements" and "software selection criteria" in Section 3 of the RFP.
8. Comprehensive narrative statements addressing training, service, and support.
9. Additional Data (any additional descriptive/narrative data the vendor wants to submit.

PROPOSAL SUBMITTAL LETTER
(Use as page 1 of proposal)

Mr. Don Bentley
Arizona Supreme Court
Administrative Office of the Courts
1501 W. Washington, Suite 221
Phoenix, Arizona 85007-3231

Dear Mr. Bentley:

In response to your Request for Proposals (RFP) number 04-01, the following response is submitted

In submitting this proposal, I hereby certify that:

1. the RFP has been read and understood;
2. my company will comply with the requirements set forth in the RFP;
3. the materials requested by the RFP are enclosed;
4. all information provided is true, accurate, and complete to the best of my knowledge;
5. this proposal is submitted by, or on behalf of, the party that will be legally responsible for service delivery should a contract be awarded.

Signature of Authorized Official _____ Date _____

Name of Signatory: _____

Company: _____

Title: _____ Phone: _____

Address: _____

Federal Employer ID# or SSN#: _____

PROPOSAL REFERENCES

(Use as page 2 of proposal)

Vendors shall provide at least three (3) references (Phoenix or Tucson metropolitan areas preferred). Please provide the following information for each reference:

- CLIENT NAME:** Identify the name of the client or site as appropriate.
- CONTACT NAME:** Identify who the point of contact at the client or site should be.
- CONTACT INFORMATION:** Provide the address and telephone number where the client or contact can be reached.
- PROJECT DESCRIPTIONS:** Attach brief descriptions of projects performed for the references provided.

<u>CLIENT NAME</u>	<u>CONTACT NAME</u>	<u>CONTACT INFORMATION</u>
1.	_____	_____
	_____	_____
2.	_____	_____
	_____	_____
3.	_____	_____
	_____	_____

VENDOR PROFILE

(Information can be on a separate sheet)

What is the physical address, mailing address, and fax number of your company's main office?

Who in your company will be our primary point of contact during the proposal evaluation process? (Please provide name, title, direct phone number, e-mail address, fax number, and mailing address).

Who in your company is authorized to negotiate a contact with us? (Please provide name, title, direct phone number, fax number, and mailing address).

Provide a brief history of your company.

Indicate the total number of employees in your company and their distribution by function.

Provide most recent annual report and financial statement.

Comment on any partnership(s) with other vendors.

SECTION 6

Arizona Supreme Court
Administrative Office of the Courts

STANDARD TERMS AND CONDITIONS

Solicitation No.: _____

Vendor: _____

These terms supplement and modify the terms and conditions of the contract with the vendor named above. In the event of any conflict between any "form" contract and these provisions, these terms shall govern unless expressly overridden. "Court" means the Arizona Supreme Court and the Administrative Office of the Courts. "State" means the State of Arizona and its departments, agencies, boards and commissions. "Contract" or "Agreement" means the agreement between the Court and the vendor named, including all attachments and other documents incorporated by reference. "Contractor" means the vendor named above.

1. **Certification.** By execution of this Contract, Contractor certifies:

A. The submission of the offer did not involve collusion or other anti-competitive practices.

B. Contractor shall comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action. Contractor shall include a clause to this effect in all subcontracts related to this Contract.

C. The Contractor 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 this Contract. Signing this Contract with a false statement shall void the Contract and may be subject to all legal remedies provided by law.

D. The Contractor agrees to promote and offer to agencies eligible to purchase under this Contract only those materials and/or services as stated in and allowed for under this Contract as Court contract items.

E. No individual or agent has been employed or retained to solicit or secure this Contract for a commission, percentage, brokerage or contingent fee, except a bona fide employee maintained by Contractor to secure business. This paragraph does not apply to payment of fees for assistance in marketing, installation, and support or for any other purpose in performance of this Contract.

2. **Availability of Funds.** Payments for contractual obligations are contingent on funds for that purpose being appropriated, budgeted, and otherwise made available, and the provisions of the Contract shall be effective only when funds appropriated for

the purpose of compensating Contractor actually are available to the Court for disbursement. The Administrative Director of the Courts shall be the sole judge and authority in determining the availability of funds under the Contract and shall keep the Contractor informed as to the availability of funds. The Court shall not be liable for any purchases or subcontracts entered into by Contractor in anticipation of funding.

3. **Gratuities.** The Court may, by written notice to the Contractor, terminate the Contract if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Court or the state with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of such Contract. In the event this Contract is canceled by the Court pursuant to this provision, the Court shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible customers shall not be prohibited by this paragraph.

4. **Applicable Law.** The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract and any dispute thereunder. Any action relating to this Contract shall be brought in an Arizona Court in Maricopa County. Any changes in the governing laws, rules and regulations during the term of this Contract shall apply and do not require an amendment to this Contract.

5. **Arizona Procurement Code.** The Arizona Procurement Code (ARS Title 41, Chapter 23) and the Arizona Supreme Court Rules Prescribing Procurement Policies and Procedures for the Judicial Branch (Judicial Branch Procurement Rules) are incorporated as a part of this document as if fully set forth herein.

6. **Entire Agreement.** The Contract contains the entire agreement between the Court and the Contractor concerning the subject transaction and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

7. **Amendments and Waivers.** Amendments to the Contract shall be in writing and shall be signed by all parties to the Contract. To the extent that any amendments to the Contract are in conflict with the basic terms and conditions of the Contract, the amendments shall control the interpretation of the Contract. No condition or requirement contained in or made a part of the Contract shall be waived or modified without a written amendment to the Contract.

8. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

9. **Conflicts of Interest.** The Court may cancel this Contract without penalty or further obligation pursuant to ARS '38-511, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the Court

is or becomes at any time, while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. Cancellation shall be effective when written notice from the Court is received by all parties to the Contract unless the notice specifies a later time.

10. **Severability.** If any provision of the Contract is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by law.

11. **Relationship of the Parties.** It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Contractor is an independent contractor in the performance of work and the provision of services under this Contract, and taxes or Social Security payments shall not be withheld from a Court payment issued hereunder.

12. **Interpretation.** This Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object. Whenever a term defined by the Arizona procurement code or the Judicial Branch Procurement Rules is used in this Contract, the definition contained in this code or these rules shall control with the provisions of the Judicial Branch Procurement Rules governing in the case of conflicting terms.

13. **Assignment - Delegation.** No right or interest in this Contract shall be assigned by the Contractor or the Court without prior written permission of the other party, and no delegation of any duty of the Contractor or the Court shall be made without prior written permission of the other party. The Court and the Contractor will not unreasonably withhold approval and will notify the other of its position within 15 days of receipt of written notice by the other. Any attempt to assign any of the rights, duties or obligations of this Contract, or otherwise assign any item acquired under this Contract, without such consent is void.

14. **Subcontracts.** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the Court. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for Contract performance whether or not subcontractors are used. The Court shall not unreasonably withhold approval and shall notify the Contractor of the Court's position within 15 days of receipt of written notice by the Contractor.

15. **Rights and Remedies.** No provision in this document or in the Contractor's offer shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release either party from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

16. **Disputes.**

A. Contract Administrator Procedure. If any dispute arising under this Contract is not disposed of by agreement between the parties within thirty (30) days, then the Court contract administrator identified in this Contract shall decide the dispute in writing and send a copy of the decision to Contractor.

B. Appeals. If the Court contract administrator's decision is not acceptable to Contractor, the dispute shall be resolved in accordance with the procedures set forth in Supreme Court Administrative Policy 7.04.

C. Continued Performance. The Court and the Contractor agree that the existence of a dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Contract that are not affected by the dispute.

17. **Warranties.** Contractor warrants that all material, service or construction delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material, service, or construction specified, and any inspection incidental thereto by the Court, shall not alter or affect the obligations of the Contractor or the rights of the Court under the foregoing warranties. Additional warranty requirements may be set forth in this document.

18. **Indemnification.** Contractor shall indemnify, defend, and save harmless the Court from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any reasonable attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by the Court on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of the Contractor, its employees, agents, representatives, or subcontractors, their employees, agents or representatives in connection with or incidental to the performance of this Agreement, or arising out of worker's compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of Contractor and/or its subcontractors or claims under similar such laws or obligations. Contractor's obligation under this Section shall not extend to any liability caused by the negligence of the Court, or its employees.

19. **Overcharges by Antitrust Violations.** The Court maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to

the Court any and all claims for such overcharges as to the goods or services used to fulfill the Contract.

20. **Force Majeure.**

A. 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 refusal 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. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement.

B. Force majeure shall not include the following occurrences:

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

(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. 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.

C. 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 practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand 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 modification 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.

21. **Right to Assurance.** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

22. **Records.** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes '35-214 and '35-215 each Contractor shall retain, and shall contractually require each subcontractor to 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 the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the Auditor General, the Attorney General, the Supreme Court or any agency doing business under this Contract. This paragraph does not apply to confidential information or trade secrets, such as product costing data, research and development data, and the like.

23. **Advertising.** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the Court. The Court shall not unreasonably withhold permission.

24. **Right to Inspect Plant.** The Court may, at reasonable times, and at the Court's expense, inspect the plant or place of business of a Contractor or subcontractor which is related to the performance of any contract as awarded or to be awarded, in accordance with the Judicial Branch Procurement Code.

25. **Inspection and Acceptance.** All material, service and construction are subject to final inspection and acceptance by the Court. Material, service or construction failing to conform to the specifications of this Contract shall be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Compliance shall conform to the termination clause set forth in this document.

26. **Exclusive Possession.** All services, information, computer program elements, reports and other deliverables which may be created under this Contract are the sole property of the Court and shall not be used or released by the Contractor or any other person except with prior written permission of the Court.

27. **Shipping - Title and Risk of Loss.** Unless otherwise indicated by the Court, prices shall be F.O.B. Destination to any delivery location in the State of Arizona, in accordance with the Contractor's current shipping practices, using handling methods, equipment, and access routes which are normal for the particular goods. Contractor shall retain title and control of all goods until they are delivered, received, and the contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible and concealed damage shall be filed by the Contractor. The Court will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

28. **No Replacement of Defective Tender.** Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender. Compliance shall conform to the termination clause set forth within this document.

29. **Default in one Installment to Constitute Total Breach.** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the Court, shall constitute a breach of the Contract as a

whole. Compliance shall conform to the termination clause set forth within this document.

30. **Shipment under Reservation Prohibited.** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials. Compliance shall conform to the termination clause set forth within this document.

31. **Liens.** All goods, services and other deliverables supplied to the Court under this Contract shall be free of all liens other than the security interest held by the Contractor until payment in full is made by the Court. Upon request of the Court, the Contractor shall provide a formal release of all liens.

32. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material, service or construction and correct invoice. Payment shall be subject to the provisions of ARS Title 35. Court will provide the Contractor with a contract number and the Contractor will reference the number on all invoices. The Court will make every effort to process payment for the purchase of goods or services within (30) calendar days after receipt of goods or services and a correct invoice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. Payment for deliverables subject to an acceptance test shall be made within 30 days following acceptance. Any amount that is due after (30) calendar days will be considered past due.

33. **Licenses and Permits.** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

34. **Insurance.** Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State, and rated at least "A - VII" in the current A.M. Best's, the minimum insurance coverage below:

a. Commercial General Liability, with minimum limits of \$1,000,000 per occurrence and an unimpaired products and completed operations aggregate limit and general aggregate minimum limit of \$2,000,000. Coverage shall be issued on an occurrence basis and endorsed to add the State and Court as Additional Insureds with reference to this contract. The policy shall include coverage for:

- Bodily Injury
- Broad Form Property Damage (including completed operations)
- Personal Injury
- Blanket Contractual Liability

--Products and Completed Operations, and this coverage shall extend for one year past acceptance, cancellation or termination of the services or work defined in this contract
--Fire Legal Liability

b. Business Automobile Liability, with minimum limits of \$1,000,000 per occurrence combined single limit, with Insurance Service Office Inc. declarations to include Symbol One (Any Auto) applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any auto. The policy shall be endorsed to add the State and Court as Additional Insureds with reference to this contract.

c. Workers Compensation and Employers Liability insurance as required by the State Workers Compensation statutes, as follows:

Workers Compensation (Coverage A):	Statutory Arizona benefits
Employers Liability (Coverage B):	\$500,000 each accident
	\$500,000 each employee/disease
	\$1,000,000 policy limit/disease

Policy shall include endorsement for All State coverage for the state of hire. This coverage does not apply to any contractor exempt under A.R.S. § 23-901 where the contractor executes an appropriate waiver.

d. Professional Liability Insurance with minimum limits of \$1,000,000 Each Claim (or Each Wrongful Act) with a Retroactive Liability Date (if applicable to Claims-Made coverage) the same as the effective date of this contract. The policy shall cover professional misconduct or lack of ordinary skill for those positions providing services in the Description of Work of this contract. The policy shall contain an Extended Claim Reporting Provision of not less than one year following termination of the policy.

e. The Court reserves the right to request and receive certified copies of all policies and endorsements at any time during the term of the contract. Upon such request, contractor shall deliver the requested information within 10 calendar days.

f. Certificates of Insurance acceptable to the Court shall be issued and delivered prior to the commencement of the work defined in this contract, and shall identify this contract and include certified copies of endorsements naming the State and Court as Additional Insureds for liability coverages. The certificates, insurance policies and endorsements required by this paragraph shall contain a provision that coverages afforded will not be canceled until at least 30 days prior written

notice has been given to the Court. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this contract.

g. Failure on the part of the Contractor to meet these requirements shall constitute a material breach of contract, upon which the Court may immediately terminate this agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the Court or the State shall be repaid by the Contractor upon demand, or the Court may offset the cost for the premiums against any monies due to the Contractor. Costs for coverages broader than those required or for limits in excess of those required shall not be charged to the Court. Contractor and its insurer(s) providing the required coverages shall waive their rights of recovery against the Court, State, and their Departments, Employees and Officers, Agencies, Boards and Commissions.

35. **Safety Standards.** All items supplied on this Contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association standards.

36. **Serial Numbers.** Offers must be for equipment on which the original manufacturers' serial number has not been altered in any way. Throughout the Contract term, the Court reserves the right to reject any altered equipment.

37. **Addition of New Models.** In the event that a product or model described in this Contract is discontinued or a new model or a comparable product is announced by the manufacturer, the Court at its sole discretion may allow the Contractor to substitute the comparable product for the discontinued product or the new or comparable model for the product described in the Contract subject to the procurement provisions of the Judicial Branch Procurement Rules. The Contractor shall request permission to substitute a new product or model and provide the following:

1. Certification by the manufacturer that the product or model described in the Contract has been discontinued or that a new model or a comparable product has been announced.
2. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.
3. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
4. Documentation confirming that the price/performance for the replacement is the same as or better than the discontinued model.

38. **Confidentiality of Records.** The Contractor shall establish and maintain procedures and controls that are acceptable to the Court for the purpose of assuring that no information contained in its records or obtained from the Court or from others in carrying out its functions under the Contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the Court. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the Court.

39. **Patents and Copyrights.** The Contractor will, at its expense, indemnify and defend the Court against any claim that any item furnished under this Contract infringes a patent or copyright in the United States or Puerto Rico. The Contractor will pay all costs, damages, and attorney's fees that a court finally awards as a result of such claim. To qualify for such defense and payment, the Court will give the Contractor prompt written notice of any such claim and allow the Contractor to control, and fully cooperate with the Contractor in, the defense and all related settlement negotiations.

If the use of any item furnished under this Contract becomes, or the Contractor believes is likely to become, the subject of such a claim, the Court will permit the Contractor, at the Contractor's option and expense, either to secure the right for the Court to continue using the item or to replace it or modify it so that it becomes non-infringing so long as the item continues to meet the specifications of the original Contract. However, if neither of the foregoing alternatives is available on terms which are reasonable in the Contractor's judgment, the Court will return the item upon the Contractor's written request. The Contractor will grant the Court a credit for returned items in the full amount of the purchase price.

The Contractor shall have no obligation with respect to any such claim based upon the State's modification of the item or its combination, operation or use with apparatus not furnished by the Contractor.

This paragraph states the Contractor's entire obligation to the Court regarding infringement or the like.

40. **End User Certification.** The Court understands that the Contractor is providing any volume discounts under this Contract in reliance on the State's representation that it is acquiring the items for use within its own organization, within the United States or Puerto Rico, and not for remarketing. However, the Court is under no obligation to actually purchase any quantity of items.

41. **Taxes.** The Arizona Supreme Court is exempt from Federal Excise Tax, including the Federal Transportation Tax. The Court will pay all applicable taxes resulting from this Contract or activities hereunder exclusive of taxes based on Contractor's net income. Sales tax, as required, shall be indicated as a separate item on all invoices.

42. **Other Contracts.** The Court may perform additional work related to this Contract or award other contracts for such work. The Contractor shall reasonably

cooperate with such other contractors or state employees in the scheduling of and coordination of its own work with such additional work.

43. Termination.

A. The Court reserves the right to terminate the whole or any part of this Contract due to failure by the Contractor to carry out any material obligation, term or condition of the Contract. The Court will issue written notice to Contractor for acting or failing to act as in any of the following:

- (1) The Contractor provides material that does not meet the specifications of the Contract;
- (2) The Contractor fails to adequately perform the services set forth in the specifications of the Contract;
- (3) The Contractor fails to complete the work required or to furnish the materials required within the time stipulated in the Contract;
- (4) The Contractor fails to make progress in the performance of the Contract and/or gives the Court reason to believe that the Contractor will not or cannot perform to the requirements of the Contract.

B. Upon receipt of the written notice of concern, the Contractor shall have ten (10) days to provide a satisfactory response. During the ten day period, the parties will have an opportunity to address the concern. If the response is considered unsatisfactory, the Court will so indicate and participate in continued discussion toward resolving the concern. This process will continue during the ten day period until the concern is adequately addressed. Failure on the part of the Contractor to satisfactorily address all issues of concern by the end of the ten day period may result in the Court resorting to any single or combination of the following remedies:

- (1) Cancel the Contract;
- (2) Reserve all rights or claims to damage for breach of any covenants of the Contract;
- (3) Perform any test or analysis on materials for compliance with the specifications of the Contract. If the results of any test or analysis confirms a material noncompliance with the specifications, any reasonable expense of testing shall be borne by the Contractor;
- (4) In case of default, the Court reserves the right to purchase materials, or to complete the required work in accordance with the Judicial Branch Procurement Code. The Court may recover any reasonable actual excess costs up to the greater of \$100,000 or the purchase price of the equipment or services that are the subject matter of, or directly related to, the cause of action, from the Contractor by:
 - (a) Deduction from an unpaid balance;

- (b) Collection against any bid and/or performance bond, or:
- (c) Any combination of the above or any other remedies as provided by law.

44. **Prices.** The prices quoted in contractor's proposal are fixed for the term of the contract. A price reduction adjustment may be offered at any time during the term of this Contract and shall become effective upon notice.

45. **Installation.** Any order, acceptance or other document evidencing a purchase under this Contract for equipment or software shall describe the responsibilities of the parties regarding installation of the goods ordered, including the establishment of the date of installation.

46. **Statewide Purchasing.** If authorized in a particular solicitation, any Arizona court or any political subdivision on behalf of a court may procure material or services described in this Contract for use by Arizona courts or judicial branch units. Where so authorized, Contractor agrees to provide such materials or services to other courts at the Contract prices and under the Contract terms. Any attempt to represent any material and/or service as being under contract with the Court which is not a subject of or addition to this Contract is a violation of the Contract and the Judicial Branch Procurement Rules. Any such action is subject to the legal and contractual remedies available to the Court inclusive of, but not limited to, Contract cancellation, suspension and/or debarment of the Contractor.

47. **Life Cycle Costs and Application Benefits.** ARS ' 41-2553 requires any state agency purchasing an information or telecommunication system costing more than \$100,000 to take into account the total life cycle cost and application benefit of the system, as defined by statute. Upon request, the Contractor shall provide this information at the time such a system is proposed for purchase under this Contract.

48. **Public Record.** The parties acknowledge that this Contract and supporting documents are public records subject to the requirements of Supreme Court Rule 123. Any provision requiring non-disclosure is limited to the extent necessary to comply with that rule and other provisions of state law. In the event a public records request is received for information which Contractor has designated as confidential or proprietary, the Court will notify Contractor as soon as possible.

49. **Criminal History Check.** The Court may require Contractor to provide identifying information for Contractor and any individuals working in judicial facilities or having access to judicial information for the purposes of conducting a criminal history records check for security purposes. Contractor agrees to cooperate with such requests and understands that the Court may terminate this Agreement if the results of the criminal history records check would disqualify the Contractor or individual and there is no acceptable alternative.

50. **Undue Influence.** The Court may terminate this Contract if the Court finds that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or

employee of the Court with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of a Contract. If the Contract is terminated under this section, the Court shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible customers of the Contractor is not prohibited by this paragraph.

51. **Non-Discrimination.** The parties agree to comply with all applicable court, state and federal laws, rules, regulations and executive orders governing nondiscrimination, including the Americans with Disabilities Act, equal employment opportunity, immigration, and affirmative action. Contractor shall include a clause to this effect in all subcontracts related to this Contract.

52. **Independent Contractor Status.** Contractor is an independent contractor in the performance of work and the provision of services under this Contract and is not to be considered an officer, employee, or agent of the Court or the State.

53. **Y2K Compliance.** Contractor represents and warrants that any equipment, software or services provided pursuant to this Contract are millennium compliant. Millennium compliant means that the equipment, software or system a) allows for the input of all dates in a four-digit format; b) provides date output in a four-digit format; c) accommodates same-century and multi-century date-related formulas and calculations (including leap-year calculations); d) functions accurately and without interruption before, during and after January 1, 2000, and e) responds to two-digit date input in a way that resolves any ambiguity as to the century in a disclosed, defined and predetermined manner, as provided in the system specifications.

SPECIAL TERMS AND CONDITIONS

54. **Products and Services.** Services will be ordered only on an "as needed" basis, as determined by the Court. Contractor is not guaranteed any work under this contract. The specific tasks, deliverables, performance standards, and costs for services shall be detailed in a written work order, signed by both parties.

55. **Software License.** Contractor hereby grants to AOC a nonexclusive, non-transferable license to use the Contractor-owned software and delivery systems to access the computer-based training courses provided by Contractor under this contract as provided in the online license for the courses.

56. **Ownership.** Nothing herein shall be construed to assign or transfer any intellectual property rights in Contractor's course content, software, website architecture or delivery systems and Contractor retains all right title and interest subject only to the license granted herein. AOC agrees to use commercially reasonable efforts to safeguard Contractor's intellectual property and to accurately reproduce all trademarks, copyrights statements or other means of identification used on Contractor's products.