



ARIZONA SUPREME COURT

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

Request for Proposals

RFP 03-07

Polygraph Examination Services

October 2, 2003

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**SECTION 1
INTRODUCTION AND OVERVIEW**

1. Introduction

The Arizona Supreme Court (hereinafter referred to as the Court) is soliciting written, sealed proposals for polygraph examination services. Vendors who wish to submit a sealed proposal based upon the specifications and conditions in this document shall submit it by October 23, 2003 in accordance with the schedule (see below).

The public opening will be conducted on October 23, 2003 at 3:00 P.M. Arizona Time at the Arizona State Courts Building, 1501 West Washington, Conference Room 227, Phoenix, Arizona.

2. Proposers= Conference

No proposers= conference will be held.

3. Proposal Schedule

Activity	Date
a. Request for Proposals (RFP) Published	October 2, 2003
b. Proposal Due Date*.....	October 23, 2003

The Court reserves the right to deviate from this schedule.

*** Proposals received after October 23, 2003 at 3:00 P.M. 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 shall be entered into with the responsible offerer(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. Multiple contracts may be awarded. The Court reserves the right (prior to contract award) to inspect a vendors facilities.

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 offerer 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 offerers 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.

5. Proposal Discussions

Discussions may be conducted with responsible offerers 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. Offerers 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 offerers.

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. Vendors who wish to submit proposals for RFP 03-07 shall complete all necessary documentation as identified in Section 5 of this Request for Proposals.
2. 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. 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 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. 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 Proposers

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 October 14, 2003 to:

Don Bentley, Procurement Officer
Arizona Supreme Court
1501 West Washington, Suite 221
Phoenix, Arizona 85007-3231
Email: dbentley@supreme.sp.state.az.us
Fax: (602) 542-9735

The question and response will be posted on 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 October 23, 2003 at 3:00 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 offerer's name and address clearly indicated on the outside of the package.** All proposals must be completed in ink or be typewritten.
- C. The offerer must submit one original and 3 copies of each proposal.
- D. Offerers submitting a proposal shall indicate the offerer'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 October 23, 2003 at 3:00 P.M. Arizona Time, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 227. 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.

SECTION 3 SPECIFICATIONS

BACKGROUND:

The Arizona Court Appointed Special Advocate (CASA) Program is a statewide community-based volunteer organization administered by the Arizona Supreme Court. Currently, over 850 CASA volunteers speak out for the best interests of abused and neglected children in this state. One of the many screening requirements for applicants to be accepted into the program is to take a polygraph examination. In fiscal year 2004, it is expected there will be approximately 300 new volunteers statewide who will need to take the examination.

The Probation Departments and Juvenile Courts in the 15 counties of Arizona are administered locally within guidelines established by the Arizona Supreme Court. Each department or Juvenile Court may choose to use a polygraph examination as a component of the hiring process for selected applicants. A polygraph examination may also be required of currently employed Probation Officers and Surveillance Officers requesting authorization to carry firearms.

The chief probation officer or director of juvenile court services may require that the applicant or requesting officer submit to a polygraph examination to inquire about matters that would reasonably be the basis for declining employment or not authorizing an officer to carry a firearm including, but not limited to, sexual misconduct, use of excessive force and abuse of authority. A polygraph examination may also be used to question particular applicants or officers where the truthfulness or accuracy of information provided in the application or request to be armed is at issue.

PROVIDER QUALIFICATIONS:

- A. PROVIDER and PROVIDER-s examiners shall have graduated from an accredited American Polygraph Association (APA) school.
- B. PROVIDER and PROVIDER-s examiners must be members in good standing with one of the following polygraph associations:

The American Polygraph Association
The American Association of Police Polygraphists
The National Polygraph Association
- C. PROVIDER and PROVIDER-s examiners shall adhere to the established code of ethics, standards and practices of the American Polygraph Association (APA), the

American Association of Police Polygraphists or the National Polygraph Association.

- D. PROVIDER and PROVIDER-s examiners shall conduct all treatment in a manner that is consistent with reasonably accepted standards of practice in the clinical polygraph community.
- E. PROVIDER and PROVIDER-s examiners shall document at least three years experience in conducting polygraph examinations.
- F. PROVIDER and PROVIDER-S examiners shall have completed an APA approved polygraph examiner training program including training in pre-employment examinations.
- G. PROVIDER shall use standardized polygraph techniques that are numerically scored and have experience in more than one standardized polygraph technique.
- H. PROVIDER shall render a diagnostic opinion on test results based on appropriate and recognized analysis of polygraph charts.
- I. PROVIDER shall use equipment that is current/modern technology and guaranteed to operate in accordance with acceptable industry standards.
- J. PROVIDER shall maintain an effective quality control process that allows for independent review of all documentation, polygraph charts and reports by reviewers selected by the COURT.
- K. PROVIDER will ensure the applicants rights to privacy and informed consent are protected in compliance with all applicable federal and state laws including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191)(HIPAA) and the regulations promulgated thereunder.

CREDENTIAL VERIFICATION:

- A. PROVIDER must submit copies of resumes, certificates of expertise and college degrees for all employees providing direct services to the applicants referred by the COURT. Resumes must include both education and related work experience.
- B. PROVIDER-s employees who have contact with applicants must submit to a

background check by the COURT. The background check may include a criminal records check. PROVIDER must also direct its employees to the County Sheriff's Department to be fingerprinted prior to any contact with applicants. PROVIDER shall be responsible for any cost associated with fingerprinting of its employees.

- C. PROVIDER will obtain a signed background check release form from employees who have contact with applicants. PROVIDER shall provide the signed background check release form to the COURT prior to any contact with applicants. A background check typically takes two to three weeks to complete, although the COURT cannot guarantee a specific time frame. PROVIDER's employees shall not have contact with applicants until the COURT has completed the background investigation and given permission for the employee to have such contact.
- D. The COURT reserves the right to deny the utilization of an employee of the PROVIDER for the purposes of this contract. The decision of the COURT as to the eligibility of the employee for contact with applicants is final and not appealable. Pursuant to state law, the information derived from the background check cannot be divulged to the PROVIDER, the PROVIDER's employee or any other unauthorized party.

OTHER SPECIFICATIONS:

Arizona CASA Program:

- A. An examiner shall not limit the number of exams to be conducted on any given trip.
- B. The Arizona CASA Program provides program-specific questions to ask prospective CASA volunteers.
- A. Examiner will provide a Consent/Waiver of Liability form to each applicant, and ensure the form is signed prior to administering an examination.
- B. The examiner is responsible for providing in writing, in a timely manner, the results of volunteer examinations to the appropriate county coordinator. The state program office supplies the form for this purpose.
- C. In counties other than Maricopa, the CASA county coordinator will provide office space in which to hold exams. In Maricopa County, the examiner must locate an appropriate facility in which to hold polygraph examinations.

- D. Mileage, lodging, and per diem expenses shall not exceed allowable limits for state employees on travel status, as published in the Arizona Accounting Manual.
- E. All lodging must be approved by the CASA county coordinator prior to travel.

Probation/Juvenile Courts:

- H. An examiner shall not limit the number of exams to be conducted on any given trip.
- I. Departments / Juvenile Courts shall provide a list of questions and a separate list of specific topics to address, if applicable, to ask applicants or Officers requesting authorization to carry firearms.
- J. Examiner will provide a Consent/Waiver of Liability form to each applicant, and ensure the form is signed prior to administering an examination.
- K. The examiner is responsible for providing in writing, in a timely manner, the results of examinations to the Chief probation Officer/Director of Juvenile Court Services or designee.
- L. In counties outside the examiner-s established place of business, departments will provide office space in which to hold exams.
- M. Mileage, lodging, and per diem expenses shall not exceed allowable limits for state employees on travel status, as published in the Arizona Accounting Manual.
- N. All projected travel expenses must be approved by the Chief probation Officer/Director of Juvenile Court Services or designee of the department scheduling tests prior to travel.

SECTION 4
PROPOSAL EVALUATION CRITERIA

Proposals will be evaluated in two phases:

1. An initial review for compliance with the submission of required items as listed on the Submittal Checklist (see Section 5). Responses that are deemed non-responsive will be eliminated from further consideration.
2. An in-depth analysis and evaluation based upon the following criteria. The evaluation criteria are listed in order of relative importance:

<u>EVALUATION CRITERIA</u>	<u>RELATIVE IMPORTANCE</u>
A. Experience	35%
B. Methodology	35%
C. Cost	30%

SECTION 5
PROPOSAL SUBMITTAL DOCUMENTS

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

1. Proposal Submittal Letter (see page 12)
2. Three references (see page 13)
3. Vendor Profile (see page 14)
4. Vendor performance criteria (see page 15).
5. Proposal pricing sheet.
6. Exceptions (if any) to the Specifications or Sample Contract.
7. 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 03-07, please accept the following.

In submitting this proposal, I hereby certify that:

1. the RFP has been read and understood;
2. the materials requested by the RFP are enclosed;
3. all information provided is true, accurate, and complete to the best of my knowledge;
4. 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. 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.

	<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 contract 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 partnerships(s) with other vendors.

VENDOR PERFORMANCE CRITERIA

1. Summary of Business

A. Describe your experience in conducting polygraph examinations, the length of time you have been providing services and the specific agencies and/or businesses with whom you have worked.

B. Identify any lawsuits, complaints or challenges that you have been involved in and any actions taken as a result.

2. Testing Methodology

Describe your polygraph examination process and provide copies of any questionnaires or structured interview questions as applicable.

3. Confidentiality

Describe disclosure and retention policies for maintaining clinical records.

SECTION 6

SAMPLE CONTRACT

Arizona Supreme Court
Administrative Office of the Courts

PERSONAL SERVICES CONTRACT

This Contract is made by and between the ARIZONA SUPREME COURT, herein referred to as ACourt,@ located at 1501 W. Washington, Phoenix, Arizona 85007, and _____, herein referred to as AContractor,@ a polygraph examiner doing business at _____ .

Recitals

1. Article 6, Section 3, of the Arizona Constitution grants administrative supervision over all of the courts of the state to the Arizona Supreme Court.
2. The Contractor specializes in administering polygraph examinations and can perform the work specified in this Contract within the time limits established by the Court.
3. The Court desires to employ the Contractor to perform the polygraph examinations described in Request for Proposals (RFP) 03-07.

Now, therefore, in consideration of the mutual promises set forth in this Contract, the parties agree as follows:

Terms and Conditions

1. Duration of Contract

- a. **Duration.** This Contract shall begin on December 1, 2003, and shall terminate on November 30, 2005.
- b. **Extension of Term.** The Contract may be extended beyond the basic term by mutual agreement of the parties. To extend the term, Court shall provide written notice to Contractor of its desire to extend the Contract not less than 60 days prior to the expiration of the Contract term or any subsequent extension. If both parties agree, any extension shall be effected by an amendment to the Contract signed by both parties. Contract extensions are subject to the availability of funds.

2. Description of Services

The Contractor agrees to perform the following services:

Upon request of a Court representative, Contractor shall perform polygraph examinations. Contractor agrees to ask only those questions attached hereto as Exhibit A and incorporated by reference or questions otherwise provided by the Court. The Court reserves the right to amend these questions and such amendments will be provided to Contractor.

The examination(s) shall be given at Contractor's office, currently located at _____, or at a place to be designated and supplied by the Court. Services will be statewide. Contractor shall be available to provide these services weekdays and weekends.

Results of these polygraph examinations shall be provided to the Court representative who referred the examinee for the service within five (5) working days from when the exam was taken. The Contractor shall submit an invoice to the Court which includes the name of the examinee, the date of the exam, the county of the exam, and the results of the exam. Written documentation of the exam results shall be provided upon request to substantiate the invoice. The Court may request a full, written report on any exam it deems necessary. Contractor will not release any information or documentation regarding this contract to any other person. All requests for information or documentation will be referred to the Court.

3. Payment for Services

Contractor shall submit a detailed invoice for services rendered no more often than once per month. Court will provide the Contractor with a contract number and the Contractor will reference the number on all invoices. The invoice shall include the name of the examinee, date of exam, and the county of the exam. Documentation, where appropriate, must accompany each invoice submitted.

Fees for the polygraph examination will be as follows:

\$ ___ per Examination

Mileage, lodging, and per diem expenses shall not exceed allowable limits for state employees on travel status, as established for State Employees travel. A copy of the guidelines can be obtained from the Finance Division of the Court upon request.

No expense for lodging will be paid without written approval by the Court prior to travel.

4. 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 this 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 this 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.

5. Assignments and Subcontracts

No rights or obligations under this Contract shall be assigned, delegated, or subcontracted in whole or in part, without the prior written approval of the Court.

6. Other Contracts

The Court may perform additional work related to this Contract or award other contracts for such work. The Contractor shall cooperate fully with such other contractors or state employees in the scheduling of and coordination of its own work with such additional work.

7. 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 this Contract shall be used or disclosed by it, its agents, officers, or employees, except as is necessary in the performance of duties under this Contract. Persons requesting such information shall be referred to the Court. The Contractor also agrees that any information pertaining to probationers or juveniles shall not be divulged, other than to employees or officers of Contractor as required for the performance of duties under the Contract, except upon the prior, written consent of the Court. Any unauthorized disclosure of confidential information shall constitute a breach of the Contract.

8. Ownership of Information

Title to all reports, information, or data, prepared by Contractor in performance of this Contract shall vest with the Court. Subject to applicable state and federal laws and regulations, Court shall have full and complete rights to reproduce, duplicate, disclose, and otherwise use all such information.

9. Visitation and Inspection

Court representatives or other appropriate agents of the state or federal government shall, with timely notice to the Contractor, be entitled to review and inspect the Contractor's facilities, its program operation, and those records which pertain to the program funded by

this Contract during the term of this Contract. Any reports prepared pursuant to this section shall be made available to Contractor upon request.

10. Books and Records

- a. Retention.** Contractor shall retain and shall require its subcontractors to retain all financial books, records, and other documents relevant to this Contract for five years after final payment or until after the resolution of any audit questions or contract disputes, whichever is longer. Court, state, or federal auditors, as applicable, and any other persons duly authorized by Court shall have full access to, and the right to examine, copy, and make use of any and all said materials.
- b. Adequacy of Records.** Contractor shall reimburse Court for services that are not adequately supported and documented in the Contractor's books and records for work performed under this Contract.

11. Financial Audit

At any time during the term of this Contract, the Contractor's financial operations related to this Contract may be audited by the Court, by auditors designated by the Court, or by any other appropriate agency of the state or federal government.

12. Evaluation

Court may evaluate any services provided by the Contractor and may assess Contractor's progress and success in achieving the goals and objectives described in the service section of this Contract. Evaluation reports shall be made available to Contractor upon request.

13. Indemnification

Contractor agrees to defend, indemnify, and save harmless the State of Arizona and its departments, agencies, boards and commissions, and all its officers, agents, and employees, each severally and separately, against any and all liabilities, demands, claims, damages, losses, costs, and expenses of whatsoever kind or nature arising out of, resulting from, or which would not have occurred or existed but for the negligence of the Contractor, its employees, or its agents.

14. 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 AA - 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.

15. Termination

The Court may terminate this Contract under any of the following conditions:

- a. **General Procedure.** The Court, in addition to other rights set forth elsewhere in the Contract, reserves the right to terminate this Contract, in whole, or in part, without cause, effective thirty (30) days after mailing written notice of termination by certified mail, return receipt requested, to the Contractor. In the event of termination, the Contractor shall stop all work as specified in the notice of termination and immediately notify all subcontractors in writing to do the same. Contractor shall be paid the Contract price for all services and items completed up to the date of termination, and shall be paid its reasonable, actual costs for work in progress as determined by generally accepted accounting principles and practices. Upon such termination, the Contractor shall deliver to the Court a complete set of all documents, programs, and other information described in the Contract.
- b. **Undue Influence.** The Court may, by written notice to the Contractor, also terminate this 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 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. 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 shall not be prohibited by this paragraph.

- c. **Conflicts of Interest.** The Court may cancel this Contract without penalty or further obligation to the State pursuant to A.R.S. ' 38-511, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Contract on behalf of the Court is or becomes at any time, while this Contract or any extension of this Contract is in effect, an employee of any other party to this Contract in any capacity or a consultant to any other party to this Contract with respect to the subject matter of this Contract. Cancellation shall be effective when written notice from the Court is received by all parties to this Contract, unless the notice specifies a later time.

16. Default

- a. **General Procedure.** The Court, in addition to other rights set forth elsewhere in the Contract, may at any time terminate this Contract, in whole or in part, effective ten (10) days after mailing written notice of termination by certified mail, return receipt requested, to Contractor, if it is determined that the Contractor has failed to perform any requirements of this Contract or has failed to make satisfactory progress toward performance. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.
- b. **Alternative Services.** In the event the Court terminates this Contract in whole or part as provided in this section, the Court may procure, upon such terms and in such manner as it may deem appropriate, services similar to those so terminated, and unless the Contractor is a governmental agency, instrumentality, or subdivision thereof, it shall be liable to the Court for any excess costs incurred by the Court in obtaining such similar services.
- c. **Partially Completed Reports.** If this Contract is terminated as provided herein, the Court, in addition to any other rights provided in this section, may require the Contractor to transfer title to and deliver to the state, in the manner and to the extent directed by the Court, such partially completed reports or other documentation as the Contractor has specifically produced or specifically

acquired for the performance of such part of this Contract as has been terminated. Payments for completed reports and other documentation delivered to and accepted by the Court shall be at the Contract price. Payment for partially completed reports and other documentation delivered to and accepted by the Court shall be in an amount agreed upon by the Contractor and the Court.

17. Recoupment of Contract Payments

- a. Unearned Funds.** Any unearned Court funds that have been paid to the Contractor and remain in its possession at the end of the Contract period, or at the time of termination of the Contract, shall be refunded to the Court within thirty (30) days thereafter.
- b. Inappropriate Expenditures.** The Contractor shall reimburse the Court for all Contract funds expended which are determined by the Court or the Auditor General not to have been spent by the Contractor in accordance with the terms of this Contract.
- c. Audit Exceptions.** If state or federal audit exceptions are made relating to this Contract, the Contractor shall reimburse all costs and fees of whatever nature incurred by the State of Arizona and the Court associated with defending against the audit exception or performing an audit or follow-up audit.

18. Disputes

- a. General Procedure.** If any dispute arising under the Contract is not disposed of by agreement between the parties then the contract administrator identified in the notice section of this Contract shall decide the dispute in writing and send a copy of the decision to Contractor. The contract administrator's decision may be appealed according to Supreme Court Administrative Policy 7.04. Pending the final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of the Contract in accordance with the contract administrator's decision.
- b. Arbitration.** After exhausting applicable administrative reviews, the parties agree to use arbitration where the sole relief sought is monetary damages of ten thousand dollars (\$10,000) or less, exclusive of interest and costs, pursuant to A.R.S. ' 12-1518.

19. Infringement of Patents and Copyrights

- a. The Contractor, at its own expense, will defend any claim or suit which may be brought against the state for the infringement of United States patents or copyrights arising from the Contractor's or Court's use in its original form of any equipment, materials, or information prepared or developed by the Contractor in connection with performance of this Contract, and in any suit will satisfy any final judgment for such infringement. The Court will give the Contractor written notice of such claim or suit and full rights and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation. If principles of governmental or public law are involved, the Court or the state may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without written consent.
- b. If in Contractor's opinion, the equipment, materials, or information mentioned here is likely to or does become the subject of a claim of infringement of a United States patent or copyright, then, without diminishing Contractor's obligation to satisfy any final award, Contractor may, with the Court's written consent, substitute other equally suitable equipment, materials, and information, or at Contractor's option and expense, obtain the right for Contractor or the Court to continue the use of such equipment, materials, and information.

20. Non-Discrimination

The parties agree to 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.

21. General Requirements

- a. **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 disputes thereunder. Any action relating to this Contract shall be brought in an Arizona court. Any changes in the governing laws, rules, and regulations during the term of this Contract shall apply but do not require an amendment.
- b. **Unenforceability of Provisions.** If any provision of this Contract is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by law.
- c. **Licenses and Permits.** Contractor shall, at its expense, obtain and maintain all licenses, permits, and authority necessary to do business, render services, and perform work under this Contract, and shall comply with all laws regarding

unemployment insurance, disability insurance, and worker's compensation.

- d. **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 State of Arizona or the Court.
- e. **Failure to Waive Compliance.** Acceptance by administration of performance not in strict compliance with the terms hereof shall not be deemed to waive the requirement of strict compliance for all future performance obligations.
- f. **Certification of Employee Status.** Contractor certifies that 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.

22. Notices

Notice required pursuant to the terms of this Contract shall be in writing and shall be directed to the Court's contract administrator and Contractor's representative at the addresses specified immediately below or to such other persons or addresses as either party may designate to the other party by written notice. Notice shall be delivered in person or by certified mail, return receipt requested.

Notice to the Court:

Arizona Supreme Court
Administrative Office of the Courts
1501 W. Washington Ste. 221
Phoenix, AZ 85007-3231
Attn: Don Bentley
Contract Administrator

Notice to the Contractor:

23. 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.

24. Amendments and Waivers

Amendments to this 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 this Contract shall be waived or modified without a written amendment to this Contract.