



# ARIZONA SUPREME COURT

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

Invitation for Bids

IFB 05-03

Probation Officer Safety Equipment

May 26, 2005

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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 bids for the purchase of probation officer safety equipment. Vendors who wish to submit a sealed bid based upon the specifications and conditions in this document shall submit it by 10:00 a.m. Arizona Time on June 16, 2005 in accordance with the schedule (see below).

The public opening will be conducted at 10:00 a.m. Arizona Time on June 16, 2005 at the Arizona State Courts Building, 1501 West Washington, Conference Room 227, Phoenix, Arizona.

**2. Bidders' Conference**

A bidders' conference will not be held.

**3. Bid Schedule**

<b>Activity</b>	<b>Date</b>
a. Invitation for Bids (IFB) Published .....	May 26, 2005
b. Bid Due Date* .....	June 16, 2005

The Court reserves the right to deviate from this schedule.

**\* Bids received after 10:00 a.m. Arizona Time will be accepted but will not be opened and will not be taken into consideration in the evaluation of bids.**

**4. Bid Evaluation**

Following the public bid opening, bids 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 bid is determined in writing to be the most advantageous to the Judicial Branch Unit taking into consideration the evaluation factors set forth in the IFB. The Court may request (prior to contract award) vendors to provide sample products for review by the Court and/or 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 bids or parts thereof. This IFB does not commit the Arizona Supreme Court to award any contract or to pay any costs incurred in the preparation of bids. The Court reserves the right to accept or reject, in whole or in part, all proposals submitted and/or to cancel this IFB.

**5. 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) 542-9527 or text telephone (TDD) 542-9545.

**SECTION 2**  
**INSTRUCTIONS AND PROCEDURES**

1. Vendors who wish to submit proposals for IFB 05-03 shall complete all necessary documentation as identified in Section 5 of this Invitation for Bids.
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 IFB, and shall disclose all such agreements.
5. Vendor Certification. By submission of a bid, 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 bid 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 Bid
  - 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 IFB. 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. Submission of Bid

- A. Sealed bids are due on or before June 16, 2005 at 10:00 a.m. Arizona Time, to Don Bentley, Arizona Supreme Court, 1501 West Washington, Suite 221, Phoenix, Arizona 85007-3231. Bids must be in the actual possession of the Court on or prior to the exact time and date indicated. Late bids will not be considered under any circumstances.
- B. **Bids must be submitted in a sealed envelope with the IFB number and the bidder's name and address clearly indicated on the outside of the package.** All bids must be completed in ink or be typewritten.
- C. The bidder must submit one original and 2 copies of each bid.
- D. Bidders submitting a bid shall indicate the bidders's name and the IFB 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 bid and contract.
- F. Contracts shall be entered into with the lowest responsible and responsive bidders whose bids conform in all material respects to the requirements and criteria set forth in the IFB and best meet the needs of the Judicial Branch unit.

8. Explanation to Vendors

A bidders' conference will not be held. Questions concerning this Invitation for Bids can be submitted in writing to the contact person below. All questions must be submitted by June 7, 2005 to:

Don Bentley, Procurement Officer  
Arizona Supreme Court  
1501 West Washington, Suite 221  
Phoenix, Arizona 85007  
Phone: (602) 542-9329  
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>

9. Public Opening

A public opening of bids shall be held at 10:00 a.m. Arizona Time on June 16, 2005 at the Arizona State Courts Building, 1501 W. Washington, Conference Room 227. At that time, the name of each vendor and the amount of each bid shall be publicly read and recorded. This record shall be open to public inspection at the bid opening. The bids 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 bid documents shall remain confidential.-

**SECTION 3  
SPECIFICATIONS**

Please provide a per unit bid for each of the following:

**Items MUST be identified by Brand Name and Model Number if not specified below.**

Black 2 Cell "C: Mag-Lite Flashlight (Model # S2C016)  
Bodyguard LE-10-44 Gram Stream (Model # 44GBGS10QT)  
Bodyguard Inert Stream (Model # 44GINSQT)  
Nylon, Cordura or equivalent synthetic material Handcuff Cuff Case w/ Belt Loop and Snap Top  
Nylon, Cordura or equivalent synthetic material OC holder with Belt Loop and Snap Top Uncle  
"C" Cell Flashlight Ring for belt carry  
Nylon, Cordura or equivalent synthetic material Expandable Baton Holder for 21" ASP Baton  
Smith & Wesson Handcuffs with push pin double locking mechanism (Model # 350135)  
21 "ASP" Expandable Batons (Model # 52411)  
RedMan Training mats 4' x 8' (Model # MATR4SV-DS)  
Nylon Equipment/Gun Belt, 1-3/4", Black, Sizes s-XXL  
Nylon Belt Keeper, 4 pack, Velcro, Black  
Nylon, Cordura or equivalent synthetic material Double (2 mag. capacity) Magazine Pouch,  
Black  
Nylon, Cordura or equivalent synthetic material, Hip Carry, Thumbsnap, Black, Belt loop and  
Paddle mounted Holsters for Glock Mod. 19 and Glock Model 26 (R & L Hand)  
Kydex or equivalent synthetic material, Hip Carry, Thumbsnap, Black, Belt loop and Paddle  
mounted Holsters for Glock Mod. 19 and Glock Model 26 (R & L Hand)  
Leather Hip Carry, Thumbsnap, Belt loop and Paddle mounted Holsters for Glock Mod. 19 and  
Glock Model 26 (R & L Hand)  
TQ-15 E Targets (23"x35")  
TQ-19 E Targets (23"x35")  
Target Backers, cardboard  
Cartridge, 9MM Semi-Auto, 115-124 Gr., TMJ (Training Rounds)  
Cartridge, 9MM Semi-Auto, Speer Golt Dot, 124 gr. JHP  
Leighting 31 Earmuff NPR 31  
Silencio Wrapps MCH 84 w/Nylon Case  
Training Pistol (Inert) configured after Glock Mod. 19  
ASP (soft) Training Knife

All orders must be delivered in no more than 30 days after receipt.

The Court reserves the right to award and purchase from multiple contracts under this IFB.



**SECTION 4  
EVALUATION CRITERIA**

Bids will be evaluated in two phases:

1. An initial review to determine the responsiveness of the bid to the requirements of the Invitation for Bids (IFB). For a bid to be considered responsive, it must meet the following tests:
  - A. A sealed original and 2 copies must be physically in the possession of the Arizona Supreme Court, 1501 W. Washington, Suite 221, no later than 10:00 a.m. Arizona Time on June 16, 2005.
  - B. The bid must be complete and contain no substantive errors or omissions.
  - C. The original and all copies of the bid must be in ink or typewritten.
  - D. All orders must be delivered in no more than 30 days after receipt.
2. An in-depth analysis and evaluation based upon the following criteria. The evaluation criteria are listed in order of relative importance:

EVALUATION CRITERIA

RELATIVE IMPORTANCE

Price

100 %

**SECTION 5**  
**BID SUBMITTAL DOCUMENTS**

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

1. Bid Submittal Letter (see page 9)
2. Three references (see page 10)
3. Vendor Profile (see page 11)
4. Bid pricing sheets.
5. Shipping rates.
6. Delivery Information. Include method of delivery and estimated time of delivery after order is received.
7. Exceptions (if any) to the Standard Terms and Conditions in Section 6.
8. Additional Data (any additional descriptive/narrative data the vendor wants to submit).

**BID 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 Invitation for Bids (IFB) number 05-03, please accept the following.

In submitting this bid, I hereby certify that:

1. the IFB has been read and understood;
2. the materials requested by the IFB are enclosed;
3. all information provided is true, accurate, and complete to the best of my knowledge;
4. this bid 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#: \_\_\_\_\_

**BID 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.

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	<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.

SECTION 6

SAMPLE CONTRACT

Contract No. \_\_\_\_\_

**Arizona Supreme Court  
Administrative Office of the Courts**

**Product and Services Contract**

This Contract is made by and between the ARIZONA SUPREME COURT, herein referred to as "Court," located at 1501 W. Washington, Phoenix, Arizona 85007, and \_\_\_\_\_, herein referred to as "Contractor," a company doing business at \_\_\_\_\_.

**Recitals**

Arizona's probation system is decentralized, with each of the 22 local probation departments (adult and juvenile) reporting directly to the presiding judge of the superior court in their respective counties. In accordance with the administrative and supervisory authority established under Article VI, section 3 of the Arizona Constitution, and pursuant to administrative orders of the Supreme Court and the Arizona Code of Judicial Administration, the Administrative Office of the Courts has developed and is in the process of implementing a comprehensive officer safety program. The officer safety program is intended to assist probation officers in carrying out their powers and duties pursuant to ARS 12-253 and 8-205.

2. The Contractor specializes in law enforcement supplies and can perform the work specified in this Contract within the time limits established by the Court.

3. The Court desires the Contractor to supply the safety equipment described in Invitation for Bids No. IFB 05-03.

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 execution, and shall terminate on June 30, 2006.

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 Work and Products to be Provided**

Contractor shall supply the products outlined and provide the services prescribed in IFB 05-03 section 3 specifications and the response provided at the prices stated (Attached and incorporated herein as exhibit A). Prices are firm throughout the initial term of the contract. Price increases resulting from documented manufacturer/supplier price increases may be allowed at the time of contract extension.

**3. Payment for Services**

Payments shall be made as the work progresses upon the submission of an invoice for services performed and, subject to availability of funds, Court shall process and remit to Contractor within 30 days of the date of receipt of Contractor's correct invoice a warrant for payment of services.

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.

**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. 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 advanced 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. 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.

**9. 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.

**10. 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.

**11. 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.

**12. Technical Assistance**

Court, upon request, shall provide technical assistance to Contractor relative to the terms and conditions, policies, and procedures governing this Contract, and shall assist in the gathering of data within the Court's sole possession and control, but shall not be obligated to provide technical assistance in the performance of services provided under the Contract.

**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 "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.

## 15. **Termination**

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

9. Failure by contractor. 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.
10. **Notice of concern.** 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.

11. **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.

**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. Sec. 12-1518.

## **19. Warranties**

Contractor warrants that all non-service items furnished pursuant to this Contract shall be free from defects and shall conform to Contract requirements. Any items determined by the Court to be in nonconformity with this warranty shall be repaired or replaced, at the Court's option and at the Contractor's expense, for a minimum of one (1) year following the completion or termination of this Contract. 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.

No product substitutions will be accepted.

The materials and supplies called for herein shall be the best of their grade and types, prepared according to the best available standards or accepted formulas, and thoroughly tested and subjected to rigid examination and standardization. Items not meeting these requirements shall be replaced at no cost to the court upon due notice of deficiency.

It shall be the Contractor's responsibility to meet the court's delivery requirements, as called for in the this contract. The court reserves the right to obtain material on the open market in the event the Contractor fails to make delivery and any price differential will be charged against the Contractor.

All manufacturers' warranties shall apply.

## **20. 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.

## **21. 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.

## **22. 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.

**23. 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:**

Administrative Office  
of the Courts  
\_\_\_\_\_ Division  
Arizona Supreme Court

[Address]

Attn: \_\_\_\_\_  
Contract Administrator

**Notice to the Contractor:**

[Contractor]

[Address]

Attn: \_\_\_\_\_  
Contractor's Representative

**24. 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.

**25. 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.

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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.

**31. Relationships of 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.

**32. 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.

**33. Assignments- 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.

**34. 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.

**35. 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.

**36. 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.

**37. 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.

**38. 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.

**39. 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.

**40. 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.

**41. 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.

**42. 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.

**43. 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.

**44. 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.

**45. 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.

**46. 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.

**47. 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.

**48. 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.

**49. 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.

**50. 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.

**51. Price Reduction**

A price reduction adjustment may be offered at any time during the term of this Contract and shall become effective upon notice.

**52. 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.

**53. Public Record**

This Contract is a public record, available for review, as required by state law.

ARIZONA SUPREME COURT  
Administrative Office of  
the Courts

[Contractor's Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Social Security or Federal  
Employer Identification  
Number: \_\_\_\_\_