



**STATE OF IDAHO
DIVISION OF PURCHASING**

Invitation to Bid (ITB) ITB1800090

FACILITIES MRO

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ITB ADMINISTRATIVE INFORMATION

ITB Title:	Facilities MRO
ITB Project Description:	The Division of Purchasing (DOP) is issuing this Invitation to Bid (ITB) to obtain bids from qualified vendors to provide Facilities Maintenance Repair and Operations (MRO) products.
ITB Lead:	Arianne Quignon, Purchasing Officer Idaho Division of Purchasing 650 W. State St., Room B-15 Boise, ID 83720 Arianne.Quignon@adm.idaho.gov (208) 332-1604
Submit sealed Bid (if submitting manually):	Address for Courier Division of Purchasing LBJ Bldg., Lower Level 650 W. State St., Room B-15 Boise, ID 83702
MANUAL BIDS MUST BE RECEIVED AT THE PHYSICAL ADDRESS DESIGNATED FOR COURIER SERVICE AND TIME/DATE STAMPED BY DOP PRIOR TO THE CLOSING DATE AND TIME.	Address for US Mail Division of Purchasing P.O. Box 83720 Boise, ID 83720-0075
Submit electronically via IPRO:	Electronic Submission http://purchasing.idaho.gov/iprologin.html
Pre-Bid Conference:	Friday, October 6, 2017, 10:00 a.m. Mountain Time
Pre-Bid Conference Location:	JRW East Conference Room Joe R. Williams (JRW) Building, 700 W. State Street, Boise, 83702, 1st floor, east side
Deadline to Receive Questions:	Monday, October 16, 2017, 11:59:59 p.m. Mountain Time
ITB Closing Date:	See IPRO Header Document
ITB Opening Date:	10:30 a.m. Mountain Time the following business day after closing
Award:	The State may award multiple contracts, as further detailed in Section 10.12, below.
Initial Term of Contract and Renewals:	The initial contract term will be two (2) years. Upon mutual, written agreement, contract(s) may be renewed, extended or amended. The anticipated total contract term is five (5) years.
TAKE NOTE OF THE 1.25% ADMINISTRATIVE FEE DETAILED IN PARAGRAPH 5 OF THE STATE'S STANDARD TERMS AND CONDITIONS.	

1 PURPOSE

The Division of Purchasing (DOP) is issuing this Invitation to Bid (ITB) to obtain bids from qualified vendors to provide Facilities Maintenance Repair and Operations (MRO) products. The State anticipates awarding multiple contracts: contracts will be awarded by category and by area, groups of areas, or statewide; and the state may also make “multiple awards” within an area, for an individual category, in accordance with Idaho Code 67-9211 (as further detailed in Section 10.12, below).

This ITB has been divided into categories with products that generally represent those most frequently purchased from the current statewide contracts for Facilities MRO products. There are eleven (11) mandatory use categories and seven (7) optional use categories.

In order for your bid to be considered, you must provide a Comprehensive Offering of products in a minimum of one (1) mandatory use category listed below AND you must be able to supply the products within the category(ies) bid to all locations within at least one (1) of the three (3) areas identified on the State of Idaho Area Map, attached as **Appendix 4**.

To better describe each category, the United Nations Standard Products and Services Code (UNSPSC) code (<https://unspsc.org>) has been used as a basic outline for the products classified within each category. It is not intended that the provided UNSPNC Codes represent a comprehensive list of all products within each category, but rather guidelines for better understanding the overall intent of the category.

DOP reserves the right to determine whether any specific products within the categories outlined are mandatory use under Idaho Code 67-9216, “Open Contracts.”

Categories for this solicitation include:

Mandatory Use Categories:

- | | |
|-------------------------------|---|
| 1. HVAC | Code 4010 |
| 2. Air Filters | Code 40161505 |
| 3. Lamps, Ballasts & Fixtures | Codes 3911 and 3910 |
| 4. Electrical | Code 3912 |
| 5. Fasteners | Code 3116 |
| 6. Paint & Accessories | Code 3121 |
| 7. Plumbing | Codes 3018 thru 4014 |
| 8. Power & Hand Tools | Codes 2700 and 2711 |
| 9. Janitorial Supplies | Codes 4713 and 4712 |
| 10. Safety | Code 4618 (Excludes Public Safety Equip.) |
| 11. Paper/Plastic Products | Code 60122503, 47121701, 14111703 |

Optional Use Categories:

- | | |
|-----------------------------|--------------------------|
| 12. Batteries & Flashlights | Code 26111702, 39111610 |
| 13. Outdoor Garden | Code 27112 |
| 14. Welding/Soldering | Code 2327 (Excludes gas) |
| 15. Security | Code 4617 |
| 16. Pneumatic Tools | Code 2713 |
| 17. Motors & Accessories | Codes 2700 and 2711 |
| 18. Material Handling | Codes 2410 and 3019 |

2 GENERAL INFORMATION, SOLICITATION INSTRUCTIONS AND STANDARD TERMS AND CONDITIONS

This ITB is issued by the state of Idaho (the "State") via IPRO: (<https://purchasing.idaho.gov/iprologin.html>). The ITB Lead is the only contact for this Solicitation. All correspondence regarding this ITB must be in writing. In the event that it becomes necessary to revise any part of this ITB, amendments will be posted at IPRO. It is the responsibility of the bidder to monitor IPRO for any updates or amendments. Any oral interpretations or clarifications of this ITB must not be relied upon. All changes to this ITB must be in writing and posted at IPRO to be valid.

Note: Alternate bids are not allowed.

3 BID FORMAT

These instructions describe the format to be used when submitting a bid. The format is designed to ensure a complete submission of information necessary for an equitable analysis and evaluation of submitted Bids. There is no intent to limit the content of Bids.

3.1 Table of Contents

Include a table of contents in the Technical Bid identifying the contents of each section, including page numbers of major Sections.

3.2 Format

Bids must follow the numerical order of this ITB and be accurately numbered to reflect any sections requiring response. Bid Response Sections must be identified with the corresponding numbers and headings used in this ITB. In your response, restate the ITB section and/or Section number, followed with your response.

Bidders are encouraged to use a different color font, bold text, italics, or other indicator to clearly distinguish the ITB section language from the Bidder's response.

3.3 Evaluation Codes

- (M)** Mandatory Specification or Requirement - failure to comply with any mandatory specification or requirement will render Bidder's Bid non-responsive and no further evaluation will occur.
- (ME)** Mandatory and Evaluated Specification - failure to comply will render Bidder's Bid non-responsive and no further evaluation will occur. Bidder must respond to each section that includes an ME evaluation code with a detailed response identifying its understanding and how it will comply. Points will be awarded based on predetermined criteria.
- (E)** Evaluated Specification - a response is desired and will be evaluated and scored. If not available, respond with "Not Available" or other response that identifies Bidder's ability or inability to supply the product or service or meet the specification. Failure to respond will result in zero (0) points awarded for the specification. If available, Bidder is to respond to each section with a detailed response identifying its understanding and how it will comply, and points will be awarded based on predetermined criteria.

Note: Bidders are directed to IDAPA 38.05.01.074.03.a, as well as IDAPA 38.05.01.091.05, which allow the designated State official to waive minor informalities as well as minor deviations. The State also reserves the right to seek clarification on any M, ME or E requirement.

4 INQUIRIES

Questions or other correspondence must be submitted in writing to the ITB Lead listed below. **QUESTIONS MUST BE RECEIVED BY 11:59:59 P.M. Mountain Time ON THE DATE LISTED IN THE ITB ADMINISTRATIVE INFORMATION.** Written questions must be submitted using **Appendix 1**, Bidder Questions. Official answers to all written questions will be posted on IPRO as an amendment to this ITB.

ITB Lead: Arianne Quignon, Purchasing Officer, CPPB
Division of Purchasing
P.O. Box 83720
650 W. State St., Room B-15
Boise, Idaho 83720-0075
Fax: 208-327-7320
E-mail: Arianne.Quignon@adm.idaho.gov

Any questions regarding the State of Idaho Standard Contract Terms and Conditions found at http://purchasing.idaho.gov/terms_and_conditions.html must also be submitted in writing, using **Appendix 1**, Bidder Questions, by the deadline identified in the ITB Administrative Information. The State will not consider proposed modifications to these requirements after the date and time set for receiving questions. Questions regarding these requirements must contain the following:

1. The rationale for the specific requirement being unacceptable to the party submitting the question (define the deficiency).
2. Recommended verbiage for the State's consideration that is consistent in content, context, and form with the State's requirement that is being questioned.
3. Explanation of how the State's acceptance of the recommended verbiage is fair and equitable to both the State and to the party submitting the question.

Bids which condition the Bid based upon the State accepting other terms and conditions not found in the ITB, or which take exception to the State's terms and conditions, will be found non-responsive, and no further consideration of the Bid will be given.

5 PRE-BID CONFERENCE

All parties interested may attend the optional pre-bid conference, at their expense. Parties interested in attending this conference should notify the ITB Lead no later than one (1) business day prior to the date of the pre-bid conference. The written request should specify the name and title of each person who will be attending. A maximum of three (3) persons for each party interested will be allowed to attend in-person.

Parties interested may also attend the pre-bid conference via teleconference by obtaining conference call-in details from the ITB Lead. Call-in instructions will be supplied upon request prior to the meeting time.

Failure to attend the optional pre-bid conference shall not relieve the Bidder of meeting the requirements of this ITB.

6 BACKGROUND AND GENERAL INFORMATION

The State has historically participated on the NASPO ValuePoint Facilities MRO Master Agreements led by the State of Nevada. At this time, DOP has decided to issue an Idaho-only solicitation for MRO products instead. The state's

existing agreements are currently set to expire November 30, 2017. It is our desire to have new Facilities MRO contracts in place by December 1, 2017 when the current contracts expire.

Given the geography of the state and the nature of the products; and in the interest of maximizing competition, DOP has determined to allow Bidders to bid by area and by category. The three (3) geographic areas are delineated in **Appendix 4 – Idaho Area Map**.

The contracts resulting from this solicitation will be mandatory use for state agencies (in accordance with Idaho Code 67-9216) for the mandatory categories and optional use for the optional use categories. All categories are optional use for Idaho “public agencies,” as defined in Idaho Code 67-2327:

“Public Agency means any city or political subdivision of this state, including but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties; cities or any political subdivision created under the laws of the State of Idaho.”

By submitting a bid, bidders agree to extend contract pricing, terms and conditions to all Idaho “Public Agencies.” Bidders must acknowledge this contractual requirement by signing and returning Appendix 6 with the bid submittal.

Single Unit Price Limit: Products with a single unit cost in excess of \$5,000, after discount, are excluded from the resulting contract(s). When analyzing the cost of a product, the State will include the cost of any components or accessories that would reasonably be considered part of a single unit. See **Appendix 3**, Special Terms and Conditions, Section 3.

7 HISTORICAL SPEND

The historical total spend for all state agencies (and other Idaho public agencies) is as follows:

2016:	\$ 6,905,499.00
2015:	\$ 6,637,551.00
2014:	\$ 5,865,304.00
2013:	\$ 5,151,139.00

It is anticipated for the potential five (5) year life of the resulting contracts, the spend for all categories and all Contractors combined will easily exceed twenty-five million (\$25M) dollars; however, the total value and quantity of purchases on the contract is not known; no minimum or maximum is guaranteed. DOP has attempted to give an accurate estimate of purchases for the contract period based on historical and projected use.

8 REQUIRED BID SUBMISSION ITEMS

Your Bid Submission must consist of the following:

8.1 (M) Cover Letter

The Technical Bid must include a cover letter on official letterhead of the Bidder; with the Bidder’s name, mailing address, telephone number, facsimile number, e-mail address, and name of the Bidder’s authorized signer. The cover letter must identify the ITB Title and number, and must be signed by an individual authorized to commit the Bidder to perform the requirements. In addition, the cover letter must include:

8.1.1 Identification of the Bidder’s corporate or other legal entity status. Bidders must include their tax identification number. The Bidder must be a legal entity with the legal right to contract.

- 8.1.2 A statement indicating the Bidder's acceptance of and willingness to comply with the requirements of the ITB and appendices, including but not limited to the State of Idaho Standard Contract Terms and Conditions (http://purchasing.idaho.gov/terms_and_conditions.html) and any Special Terms and Conditions included in **Appendix 3**.
- 8.1.3 A statement of the Bidder's compliance with affirmative action and equal employment regulations.
- 8.1.4 A statement that Bidder has not employed any company or person other than a bona fide employee working solely for the Bidder or a company regularly employed as its marketing agent, to solicit or secure the contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor or a company regularly employed by the Contractor as its marketing agent, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract. The Bidder must affirm its understanding and agreement that for breach or violation of this term, the State has the right to annul the Contract without liability or, in its discretion, to deduct from the Contract price the amount of any such fee, commission, percentage, brokerage fee, gifts or contingencies.
- 8.1.5 A statement naming the firms and/or staff responsible for writing the Bid.
- 8.1.6 A statement that Bidder is not currently suspended, debarred or otherwise excluded from federal or state procurement and non-procurement programs. Vendor information is available on the Internet at: <https://sam.gov>.
- 8.1.7 A statement affirming the Bid will be firm and binding for one hundred-twenty (120) calendar days from the Bid opening date.
- 8.1.8 A statement that the Bidder warrants that it does not knowingly and willfully employ persons who cannot legally work in this country; it takes steps to verify that it does not hire persons who have entered our nation illegally or cannot legally work in the United States; and that any misrepresentation in this regard or any employment of persons who have entered our nation illegally or cannot legally work in the United States constitutes a material breach and will be cause for the imposition of monetary penalties up to five percent (5%) of the Contract price, per violation, and/or termination of its Contract.
- 8.1.9 A specific list of Categories and Areas bid.
- 8.1.10 A statement that the Bidder warrants that the catalogue(s) submitted in their response in Section 8.3 is the same for all Area(s) bid.
- 8.2 (M) The State of Idaho Signature Page must be completed and submitted as part of your Bid. The State of Idaho Signature Page is attached in IPRO. A signed .pdf version is acceptable if the bid is submitted electronically.
- 8.3 (M) An electronic copy (on either a thumb drive or cd) of your current standard catalogue covering at least the categories bid. Individual catalogues may be combined into one (1) large catalogue, if desired. The State does not require one (1) single catalogue submitted for all categories bid; a Bidder may submit several catalogues, but no more than one (1) catalogue per category. Hard copies may be submitted as well, however, electronic copies will be required for market basket evaluation.

- 8.4 (M) A completed copy of **Appendix 2** – Category Discount Schedule.
- 8.5 (M) Technical Response for each Mandatory Use Category bid.
- 8.6 (M) A completed copy of **Appendix 6** – Public Agency Acknowledgment.

9 BID SUBMISSION METHODS

Bids may be submitted electronically via IPRO or manually in a sealed envelope/package. Do not fax or e-mail your Bid (it will not be accepted). Your Bid must be received at the Division of Purchasing by the date and time specified on the IPRO header document. The official time, for bid closing purposes, is the Division of Purchasing’s time clock.

While it is not mandatory to submit your Bid electronically via IPRO, all Bidders participating in a Solicitation issued through IPRO must establish an account in the IPRO system (even if submitting a Bid manually outside of IPRO) as it is necessary in order to process and award the resulting Contract(s). It is free to establish an account and only takes a few minutes.

9.1 Electronic Submission via IPRO

If submitting electronically via IPRO, upload all the Required Bid Submission Items (See Section 8) and enter \$0.00 in IPRO for each line item as your cost in IPRO.

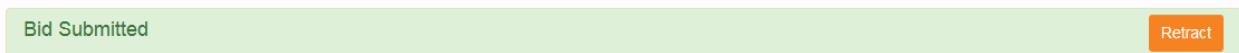
Upload all Required Bid Submission Items using Microsoft products such as Word and Excel. Do not submit items in .pdf format, unless provided otherwise in this ITB. If the electronic catalogue (see Section 8.3) is too large to attach in IPRO, the Bidder may submit all other documents through IPRO and submit the catalogue manually. All manually submitted catalogues must be received prior to the closing date and time.

When a Bidder has successfully submitted a response to IPRO, the Bidder should see a change in the system from “Draft” (see Fig. 1) to “Bid Submitted” (see Fig. 2). Bidders are encouraged to document notification of successful submission for their records. If you believe you have submitted your Bid, but have not received the “Bid Submitted” message, you are advised to contact the IPRO provider’s help desk (phone number available at <https://purchasing.idaho.gov/ipro.html>) and notify the solicitation lead *prior to the solicitation End Time*. Vendors are **strongly encouraged** to begin the process of submitting the response far enough in advance of the End Time to allow for resolution of technical difficulties. Be advised that the state is not responsible for a Vendor’s failure to timely submit a responsive submission due to any technical or technological difficulties. See IDAPA 38.05.01.61.02.

Fig. 1



Fig. 2



If submitting via IPRO, be advised that that the Bidder for Bid evaluation and award purposes is the entity profile under which submit in IPRO, which must be the same legal entity presented in your uploaded response materials. If the entity identified on the state supplied Signature Page differs from the entity under which you submit your Bid in IPRO, the information provided on the Signature Page prevails.

Bidders are further advised to upload response materials with descriptive file names, organized and consolidated in a manner which allows the State to efficiently navigate the Bidder's response; as the State will print uploaded documents for evaluation in the manner received via IPRO.

9.2 Manual Submission

If submitting manually (via U.S. Mail, courier or hand-delivery), seal all Required Bid Submission Items in a single envelope or package (*be certain to include an original hand-written signature in ink OR an electronic signature on the State of Idaho Signature Page*) and label the outside of the package as follows:

Attn: Arianne Quignon, Idaho Division of Purchasing
Bidder Name: (Company Name)
ITB Number: ITB18000090
ITB Title: Facilities MRO

Bidders submitting manually must provide one (1) original and five (5) copies of their Bids, as well as an electronic copy on a USB or CD. Please clearly identify the original manual submission and be certain that the Signature Page is located at the front of the original Bid.

9.3 Trade Secrets

If your Bid contains trade secret information which you have identified, you must also submit a redacted copy of the Bid (in electronic format, with the word "redacted" in the file name) with all trade secret information removed or blacked out; as well as a separate document containing a complete list (per the instructions in the three (3) paragraphs directly below) of all trade secret information which was removed or blacked out in the redacted copy.

Paragraph 28 of the Solicitation Instructions to Vendors describes trade secrets to "*include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy.*" In addition to marking each page of the document with a trade secret notation (as applicable; and as provided in Paragraph 28 of the Solicitation Instructions to Vendors), Bidders must also:

Identify with particularity the precise text, illustration, or other information contained within each page marked "trade secret" (it is not sufficient to simply mark the entire page). The specific information you deem "trade secret" within each noted page must be highlighted, italicized, identified by asterisks, contained within a text border, or otherwise clearly delineated from other text/information and specifically identified as a "trade secret."

Provide a separate document entitled "List of Redacted Trade Secret Information" which provides a succinct list of all trade secret information noted in your Bid; listed in the order it appears in your submittal documents, identified by Page #, Section #/Paragraph #, Title of Section/Paragraph, specific portions of text/illustrations; or in a manner otherwise sufficient to allow the State's procurement personnel to determine the precise text/material subject to the notation. Additionally, this list must identify with each notation the specific basis for your position that the material be treated as exempt from disclosure.

10 BID REVIEW, EVALUATION AND AWARD

Each Category will be evaluated for each Area in the manner described below.

- 10.1 All Bids will be reviewed first to ensure that they meet the Mandatory Submission Requirements of the ITB as addressed in **Sections noted with an (M) or (ME)**. Any Bid(s) not meeting the Mandatory Submission Requirements may be found non-responsive.
- 10.2 The State may evaluate Technical and Cost Bids simultaneously. If Cost is to be evaluated before the finalization of the Technical evaluation, different evaluators will be utilized for the Cost evaluation.
- 10.3 The Technical Bid (including the Business Technical and Category Technical sections) will be weighted and evaluated utilizing one (1) or more Technical Bid Evaluation Committee(s). Optional Categories will not be evaluated.
- 10.4 The scores for the Technical Bid will be normalized as follows: The Technical Bid with the highest raw combined technical score for the category will receive all available Category Technical Points. Other Bids for that category will be assigned a portion of the maximum available Category Technical Points, using the formula: Total Possible Category Technical Points X raw score of Technical Bid being evaluated for the category / highest raw technical score for the category.
- 10.5 Each Category Market Basket and each Category Discount Section of the Cost Proposal will be weighted and evaluated separately. Optional Categories will not be scored.
- 10.6 Each Category Market Basket will be evaluated utilizing a blind market basket (based on historical state usage) and one (1) or more Market Basket Evaluation Committee(s). For each product in the market basket, the Market Basket Evaluation Committee will identify the lowest cost product in each Bidder's catalogue that meets the specifications and use that catalogue product for the evaluation. Only Bids that provide a Comprehensive Offering, as defined in **Appendix 3**, Paragraph 29, for a given category will be considered for award in that category. The State may elect to eliminate products from the market basket if not all Bidders for the category have a product which meets the specifications for that market basket product. The State also reserves the right to evaluate a sample of the market basket products, rather than evaluating all the products; however, a minimum of ten (10) items will be evaluated for each Category Market Basket. The total cost for the Category Market Basket will be determined by summing all evaluated market basket products for the category.
- 10.7 Each Category Market Basket will be normalized as follows: The Category Market Basket with the lowest total cost for the category will receive all available Category Market Basket Points. Other Bids will be assigned a portion of the maximum available Category Market Basket Points, using the formula: Total Possible Category Market Basket Points X Lowest Total Market Basket Cost for the category / Market Basket Cost being evaluated.
- 10.8 The Category Discount Section will be normalized as follows: The Category Discount Section with the highest discount for the category will receive all available Category Discount Section Points for that category. Other Bids in the same category will be assigned a portion of the maximum available Category Discount Section Points, using the formula: Total Possible Category Discount Section Points X Category Discount being evaluated / highest Category Discount.
- 10.9 The number of total points for each category will be determined by adding the normalized scores for the Technical Bid, Category Market Basket and Category Discount Section.

10.10 Evaluation Criteria

Available Points							
Mandatory Categories:	Business Technical	Category Technical	Total Business Points Possible	Market Basket	Category Discount	Total Cost Points Possible	TOTAL COMBINED POINTS POSSIBLE
1. HVAC	100	100	200	700	100	800	1000
2. Air filters	100	100	200	700	100	800	1000
3. Lamps, Ballasts & Fixtures	100	200	300	600	100	700	1000
4. Electrical	100	100	200	700	100	800	1000
5. Fasteners	100	100	200	700	100	800	1000
6. Paint & Accessories	100	300	400	500	100	600	1000
7. Plumbing	100	100	200	700	100	800	1000
8. Power & Hand Tools	100	100	200	700	100	800	1000
9. Janitorial Supplies	100	200	300	600	100	700	1000
10. Safety	100	200	300	600	100	700	1000
11. Paper Products	100	200	300	600	100	700	1000

10.11 Responsibility: Pursuant to IDAPA 38.05.01.081, the RFP Lead may conduct a review to determine if the Bidder is responsible. As part of the responsibility review, the RFP Lead may require any Bidder to provide satisfactory financial reports.

10.12 Award

Award of Contract(s) will be made to the responsive, responsible Bidder(s) whose Bid receives the highest number of total normalized points for each category, and may be made by area, groups of areas, or statewide, as determined to be in the best interest of the State. The State reserves the right to make “Multiple Awards” for any given category within the same area, in accordance with Idaho Code 67-9211.

11 BUSINESS TECHNICAL INFORMATION

Business Technical information will be evaluated based on the categories and areas for which the Bidder has indicated it is bidding. For example, if a Bidder is bidding one (1) category for one (1) area, the Business Technical Information will be scored based on the qualifications of the Bidder to provide that category of goods in that area.

11.1 (ME) Experience

Describe in detail your knowledge and experience in providing services similar to those required in this ITB. Include the Bidder’s business history, description of current service area, and customer base. Include information detailing contracts already implemented of similar size and scope and your ability to meet the requirements of a Contract of this nature.

11.2 (ME) Key Personnel and Qualifications

Provide a list of key management, contract managers, customer service and other personnel to be used in the fulfillment of the contract, to include all pertinent contact information. Provide resumes for employees who will be managing and/or directly providing services under the Contract. For positions that are not filled, a position description (including requisite qualifications/experience) must be provided.

11.3 Customer Service Representatives

Customer Service Representatives must be provided in accordance with **Appendix 3**, Section 15, Customer Service.

11.3.1 Provide contact information for customer service representatives (CSRs) for each area bid who will be assigned to handle questions, train public agency users on using the Contract and resolve any issues that arise (e.g. pricing, delivery, invoicing, returns, etc.).

11.3.2 (ME) Describe your customer service plan.

11.3.3 CSRs must be available, at a minimum, from 8:00 am to 5:00 pm, Monday through Friday, local time, for each area bid. CSRs must be available by phone (via local or toll free number), fax, or email during the required response times.

11.3.4 All CSRs must have online access to account information and provide a response within two (2) hours (or next business day if after 3 p.m. local time) to inquiries concerning the status of orders (shipped or pending), delivery information, back-order information, Contract Pricing, category discounts, product availability, product information, account and billing questions, and contract compliance requirements.

11.4 (ME) Ordering Process:

Describe your ordering process, addressing the following (at a minimum): how customers are to place orders, order tracking, order history, and cancelled orders.

If you have online ordering capabilities, please include the following: Website details, how or if Contract pricing is designated on your website, how or if environmental preferable products (EPP) are available or designated, Safety Data Sheet (SDS) availability, how any other product classifications are identified, search options, order history and or lists, order status and tracking, ability to block categories or products, and online help tools.

Other desirable features (non-mandatory features) include order replication or repeats from a standard or previous order, order status inquiry capability, and identification of the available quantity of products.

11.5 Vendor Managed Inventory/Vending Machines (**OPTIONAL**)

If your company has Vendor Managed Inventory, Vending Machines or similar value-add programs for the category(ies) offered in response to this ITB, provide a description of each program, including pricing.

If an awarded vendor has a value-add program, the State may elect to include the program as an “option” in the resulting contract. Ordering agencies will have the option to participate in the program(s), at their discretion, at any time during the term of the contract.

A template “Draft Vending Machine Lease Agreement” is attached as **Appendix 5**. If an agency elects to utilize vending machines, the lease agreement will be in substantially the same form as provided in the template.

12 CATEGORY TECHNICAL INFORMATION

For each of the following categories, mandatory and optional use alike, the State is looking for vendors to provide a full line catalogue of products. For each category bid, each Bidder must have a Comprehensive Offering of products in their catalogue to be considered for award (see Section 10.6). All products offered to the State must be of a character and quality ordinarily associated with those routinely utilized in commercial buildings and for commercial and industrial applications.

The resulting Contracts will be predominantly for the purchase of goods. Where ancillary services are included, such as towel dispenser installation, training, etc., the category descriptions will define the only allowable services. For each category, the State has provided examples of included items for illustrative purposes. In the event of any dispute, the State will make the final determination of how any given item is to be categorized.

MANDATORY USE CATEGORIES:

Instructions: Only provide a response to the categories that you are bidding.

CATEGORY 1. HVAC: UNSPSC Code 4010

The products allowed in this category include but are not limited to: motors, fans, ventilators, evaporation coolers/coils, condenser units, blowers, air cleaners, controls, thermostats, portable heaters, ductwork and fittings, gases, etc. No installation, maintenance or repair services are included.

Evaluated Section:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.

CATEGORY 2. Air Filters: UNSPSC Code 40161505

The products allowed in this category include but are not limited to: Air filters for HVAC units. EXCLUDED: Automotive air filters. No installation, maintenance or repair services are included.

Evaluated Section:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.

CATEGORY 3. Lamps, Ballasts & Fixtures: UNSPSC Codes 3911 and 3910

The products allowed in this category include but are not limited to: LED/CFL lamps or bulbs, ballasts, lighting fixtures, lighting retro fit kits, light bars (non-automotive) light diffusers, track lighting, recessed lighting, lighting accessories. EXCLUDED: light towers with attached generators and portable lighting (see Category 12 Batteries and Flashlights). No installation, maintenance or repair services are included.

Evaluated Sections:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agency's to determine products that will meet agency needs.
2. (E) Describe any other value-added services your company offers such as site surveys, recycling programs or programs to work with Utility companies to lower costs and/or provide rebates/incentives.

CATEGORY 4. Electrical: UNSPSC Codes 3912

The products allowed in this category include but are not limited to: wire, cable, connectors, relays, switches, fans, receptacles, and circuit breakers, etc. No installation, maintenance or repair services are included.

Evaluated Section:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.

CATEGORY 5. Fasteners: UNSPSC Code 3116

The products allowed in this category include but are not limited to: nuts, bolts, screws, nails, ties, washers, anchors, rivets, spacers, pins, extractors, etc. No installation, maintenance or repair services are included.

Evaluated Section:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.

CATEGORY 6. Paint & Accessories: UNSPSC Code 3121

The products allowed in this category include but are not limited to: paint, brushes, scrapers, dry wall compound, masks, drop cloths, sand paper, stirrers, stripping compound, sealers, stain, spackle, thinner, trays, rollers, etc. No installation, maintenance or repair services are included.

Evaluated Sections:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.
2. (ME) Bidders are required to have at least one (1) physical location, to provide paint and associated services, within each area Bid. List your locations and hours of operation.
3. (ME) Bidders are required to Color Match. Describe your Color Match process and capabilities.

CATEGORY 7. Plumbing: UNSPSC Codes 3018 through 4014

The products allowed in this category include but are not limited to: filters, faucets, pipes, clamps, seals, sink components, drains, shower and tub components, toilet seats and units, valves, repair parts, PVC pipe, copper tubing, etc. No installation, maintenance or repair services are included.

Evaluated Section:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.

CATEGORY 8. Power & Hand Tools: UNSPSC Codes 2700 and 2711

The products allowed in this category include but are not limited to: wrenches, screwdrivers, pliers, pliers, saws, drills, masonry/concrete/woodworking tools, hammers, bits, vises, heat/glue/caulking/staple guns, scythes/sickles, shovels, rakes, hoes, grinders, lathes, chisels, brooms, files, awls, levels, stud finders, pipe bending tools, picks, axes, hatchets, machetes, chainsaws, post-holders, utility knives, and clamps. This includes various types of the above list including hand and power versions. No installation, maintenance or repair services are included.

Evaluated Section:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.

CATEGORY 9. Janitorial Supplies: UNSPSC Codes 4713 and 4712

The products allowed in this category include but are not limited to: cleaning agents, floor sweepers/scrubbers, floor machine pads, polishes, dusters, dust pans, trash cans, plungers, steam cleaners, vacuums, mops, brooms, squeegees, ash trays, cleaning equipment, cleaning rags, sponges, scouring pads, urinal/toilet accessories, air hand dryers, air fresheners, drain cleaners, spill kits, cleaning cloths/wipes, and granular absorbents. EXCLUDED: laundry, ware washing and janitorial chemical management systems and all products related to Category 11 – Paper/Plastic Products. No installation, maintenance, janitorial or repair services are included.

Evaluated Sections:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.
2. (E) Describe the extent to which your catalogue includes Green Cleaning product offerings.

CATEGORY 10. Safety: UNSPSC Code 4618

The products allowed in this category include but are not limited to: spill kits, hazardous waste disposal kits/supplies, safety glasses/goggles, respiratory protection, fall protection, safety hoods, safety/work gloves, ear plugs/protection, hard hats, safety vests, eye washers/eye wash stations, safety ladders, elbow/knee guards/protectors, safety floor mats, anti-static equipment/supplies. EXCLUDED: public safety equipment, footwear, and uniforms. No installation, maintenance or repair services are included.

Evaluated Sections:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.
2. (E) Describe any safety related value-added programs or resources your company offers.

CATEGORY 11. Paper/Plastic Products: UNSPSC Code 60122503, 47121701, 14111703

The products allowed in this category include but are not limited to: bath tissue (including dispensers), hand towels (including dispensers), plastic bags and liners, paper and plastic cups/plates/bowls, plastic bags of various sizes and types, Styrofoam/paper/plastic cups and containers. No installation, maintenance or repair services are included except as outlined in **Appendix 3** - Special Terms and Conditions, Section 28.

Evaluated Sections:

1. (ME) Describe how you will provide expert help or guidance for Ordering Agencies to determine products that will meet agency needs.
2. (E) Describe any programs or offerings related to dispensing equipment. Specifically, identify any additional discounts you will provide on consumables if an Ordering Agency orders dispensing equipment. DO NOT INCLUDE ACTUAL PRICING IN THIS SECTION; simply describe the nature of the discount program.

OPTIONAL USE CATEGORIES:

You may provide a response to one or more “optional use” categories, below; however, you are not required to do so in order to be considered for an award. Optional use categories will not be mandatory use for state agencies; and the State will have the discretion, at the time of award or at any time during the contract term, to determine whether to award any of the optional use categories to the apparent successful bidder(s).

CATEGORY 12. Batteries & Flashlights: UNSPNC Codes 26111702, 39111610

The products allowed in this category include but are not limited to: Standard batteries (AA, AAA, C, D, 9-volt etc.), lithium ion batteries, specialty batteries, flashlights, portable lighting, etc. EXCLUDED: Automotive related products and light towers. No installation, maintenance or repair services are included.

CATEGORY 13. Outdoor Garden: *UNSPNC Code 27112*

The products allowed in this category include but are not limited to: hardscaping, potting soils, fertilizer, ground covers, sprinklers and all related sprinkler system hardware (pipe, sprinkler heads, pipe glue, etc.), wheel barrows, chainsaws, power washers, lawn mowers, trimmers, blowers, garden tools, etc. EXCLUDED: live plants/trees. No installation, maintenance or repair services are included.

CATEGORY 14. Welding/Soldering: *UNSPNC Code 2327 (does not include gas)*

The products allowed in this category include but are not limited to: plasma and arc welders, solder, flux, welding wire and pencils, soldering irons, torch strikers etc. No installation, maintenance or repair services are included.

CATEGORY 15. Security: *UNSPNC Code 4617*

The products allowed in this category include but are not limited to: Padlocks, door locks, chain, lockers, lock or key boxes, safes, etc. EXCLUDED: alarm systems, surveillance systems, body scanners, video monitors. No installation, maintenance or repair services are included.

CATEGORY 16. Pneumatic Tools: *UNSPNC Code 2713*

The products allowed in this category include but are not limited to pneumatic versions of any of the following: hammers, drills, compressors/related hoses, sanders, hand tools. etc. No installation, maintenance or repair services are included.

CATEGORY 17. Motors & Accessories: *UNSPNC Codes 2700 and 2711*

The products allowed in this category include but are not limited to: generators, electric motors, belts, pulleys, gears, power transmissions, etc. EXCLUDED: Automotive related products. No installation, maintenance or repair services are included.

CATEGORY 18. Material Handling: *UNSPNC Codes 2410 and 3019*

The products allowed in this category include but are not limited to: Carts, scales, bubble wrap/packaging materials, boxes, shelving, tape measures, levels, storage, ladders, winches, pallets, dolly, casters, etc. No installation, maintenance or repair services are included.

13 COST

Provide your Category Percent Discounts (for the categories and Area(s) bid) on **Appendix 2 - CATEGORY DISCOUNT SCHEDULE** and submit your electronic catalogue(s) as detailed in Section 8.3.

Contract Pricing (after the discount is applied) must be fully burdened, to include: service fees and other additional costs, the 1.25% Administrative Fee as outlined in Section 5 of the State's Standard Terms and Conditions, small order charges, minimum order charges, special order charges, shipping costs (except Rush Delivery), hazardous materials charges, costs of pallets, fuel charges, surcharges, and any other costs associated with providing the products in accordance with the requirements of this ITB, FOB Destination, inside delivery.

14 BILLING PROCEDURE

The Contractor must provide an invoice to the Ordering Agency upon Agency delivery. The invoice must be submitted no later thirty (30) calendar days after delivery. No invoice will be accepted or paid without receipt of

any required documentation. Invoices submitted without the required documentation will be returned to the Contractor for resubmission.

The Contractor must provide the following information with each invoice:

- 1 IPRO Contract number and Agency PO number (if applicable)
- 2 Identification of billing period
- 3 Total amount billed for the billing period
- 4 Detailed description of products provided
- 5 Name of authorized individual and contact information for Contractor

Invoices are to be submitted to the ordering Agency.

APPENDIX 1-BIDDER QUESTIONS
ITB18000090 – FACILITIES MRO

PLEASE DO NOT IDENTIFY YOUR NAME OR YOUR COMPANY’S NAME OR PRODUCT NAMES OF INTELLECTUAL PROPERTY IN YOUR QUESTIONS.

ADD ROWS BY HITTING THE TAB KEY WHILE WITHIN THE TABLE AND WITHIN THE FINAL ROW.

The following instructions must be followed when submitting questions using the question format on the following page.

1. DO NOT CHANGE THE FORMAT OR FONT. Do not bold your questions or change the color of the font.
2. Enter the ITB section number that the question is for in the “ITB Section” field (column 2). If the question is a general question not related to a specific ITB section, enter “General” in column 2. If the question is in regards to a State Term or Condition or a Special Term or Condition, state the clause number in column 2. If the question is in regard to an appendix, enter the appendix identifier (example “Appendix 1”) in the “ITB Section” (column 2), and the appendix page number in the “ITB page” field (column 3).
3. Do not enter text in the “Response” field (column 5). This is for the State’s use only.
4. Once completed, this form is to be e-mailed per the instructions in the ITB. The e-mail subject line is to state the ITB number followed by “Questions.”

ITB18000090 – FACILITIES MRO

	ITB Section	ITB Page	Question	Response
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**APPENDIX 2 – CATEGORY DISCOUNT SCHEDULE
ITB18000090 – FACILITIES MRO**

Company Name of Bidder: _____

Contact Name/Phone: _____

Contact E-mail: _____

This completed Category Discount Schedule must be submitted with your response. Insert your Percent Discount off the Catalogue Price for each Category/Area bid. This percent discount will be the minimum allowable discount on Contract purchases for all purchases in the designated Area, within that category. These discounts will be considered “Ceiling Pricing” in that a Contractor may increase the discount, or provide more advantageous pricing in any way for any reason (example: high quantity, large dollar single purchase, etc.).

Note: At a minimum, Bidders must bid on a single Category in a single Area.

<u>Mandatory Use Categories:</u>	Area A	Area B	Area C
1. HVAC	%	%	%
2. Air filters	%	%	%
3. Lamps, Ballasts & Fixtures	%	%	%
4. Electrical	%	%	%
5. Fasteners	%	%	%
6. Paint & Accessories	%	%	%
7. Plumbing	%	%	%
8. Power & Hand Tools	%	%	%
9. Janitorial Supplies	%	%	%
10. Safety	%	%	%
11. Paper Products	%	%	%

Optional Use Categories:	Area A	Area B	Area C
12. Batteries & Flashlights	%	%	%
13. Outdoor garden, etc.	%	%	%
14. Welding/soldering	%	%	%
15. Security	%	%	%
16. Pneumatic Tools	%	%	%
17. Motors & Accessories	%	%	%
18. Material Handling	%	%	%

Category 11 Pricing: See Section 28 of the Special Terms and Conditions:

Hourly rate for repair, installation and removal of dispensing equipment: _____

****Remember to also submit electronic catalogue(s) as detailed in Section 8.3****

APPENDIX 3 - SPECIAL TERMS AND CONDITIONS
ITB18000090 – FACILITIES MRO

Note: In the event of conflict with the State’s Standard Terms and Conditions, or other terms, conditions or requirements contained in this ITB, the following provisions will take precedence

1 SAFETY DATA SHEETS

Upon request, the Contractor must provide a Safety Data Sheet (SDS) to the Ordering Agency for any product ordered which is a hazardous chemical or contains any hazardous chemicals.

2 USE OF EXISTING CONTRACT UNTIL EXPIRED

State Agencies (as defined in the State Procurement Act, Idaho Code 67-9201 et seq.) are required to utilize the current statewide contract, SBPO1392, for the purchase of Category 11 products (Paper/Plastic Products), until SBPO1392 expires (exempt state agencies and other Ordering Agencies, such as cities, counties, school districts, etc. may begin using the new Category 11 contract(s) upon execution).

3 SINGLE PRODUCT LIMIT

Products with a single unit cost in excess of \$5,000.00, after discount, are excluded from the resulting contract(s). When analyzing the cost of a product, the State will include the cost of any components or accessories that would reasonably be considered part of a single unit. Contractors are prohibited from separating or itemizing quotes unnecessarily in order to avoid the single product limit.

4 SOURCED PRODUCTS

Sourced Products are products which are not included in the Contractor’s current catalogue, but fall within established product categories. In the event of a dispute as to whether a product falls within an established product category, the State’s determination will be conclusive and binding.

In order to offer a Sourced Product:

- 4.1 The Contractor must already have a publicly recognized business partnership with the “brand” offered as a sourced product.
- 4.2 Contractors may only source products if they are asked to by an Ordering Agency.
- 4.3 Sourced products will remain optional for the duration of the Contract unless they are added to Contractor’s catalog within the designated category, and meet the category definition provided in this ITB.

5 ORDER FULFILLMENT RATE

Contractors are expected to have the capacity to fulfill ninety-five percent (95%) of all orders placed by Ordering Agencies. Orders that are partially filled, or deliveries that are delayed due to backordered products, will not be considered “fulfilled” for purposes of this performance expectation. Failure of a Contractor to meet this requirement, based on reports from Ordering Agencies, may result in the State electing not to renew the Contract with that Contractor, or to pursue other remedies, as the State determines to be appropriate.

6 CATALOGUES AND PRICING

The State requires the ability to purchase Contract products through a standard supplies catalogue provided by the Contractor. The catalogue, at a minimum, must include ordering information (company phone number and email address), catalogue number, product description, unit description, and list pricing.

For any web-based catalogue, the system must be accessible by Ordering Agencies using a standard internet web browser (such as Internet Explorer, Chrome or Mozilla Firefox). Any such system must include, at a minimum:

- 6.1 The catalogue product number, product description, unit of measure, and net State pricing for the particular Area of the State;
- 6.2 Links to the Safety Data Sheets for applicable products displayed within the system;
- 6.3 The system must provide a quick reference capability that will locate desired products by description, catalogue number, manufacturer, manufacturer part number, or other quick reference methods;
- 6.4 Immediately after an Agency places an order within the system, the system must provide a printable version of the order, either through a prompt or a button, so that the Agency can to print the order;
- 6.5 The system must electronically transmit the order to the Contractor;
- 6.6 The system must accept credit cards for payment, and provide safeguards for security of credit card information in compliance with PCI Data Security Standards (<https://www.pcisecuritystandards.org/>); and
- 6.7 Product pricing must be reflected as a discount percentage from the Catalogue List Price. (For example, the Bidder enters a 40.00% discount from the Catalogue List Price of \$10.00; so, the Discounted Unit Price (Contract Price) will be \$6.00.)

7 VOLUME DISCOUNTS

Additional volume and other price discount options are encouraged.

8 FORCED SUBSTITUTIONS

Forced substitutions are not allowed. If an ordered product is out of stock, the Contractor must notify the Ordering Agency for prior approval before substituting for the out of stock product.

9 MINIMUM ORDERS

The Contractor cannot require a minimum dollar amount to fulfill an order.

10 IN-STORE PURCHASES:

If the Contractor operates or has special arrangements with physical locations, the Contractor must extend Contract pricing for in-store purchase and must have a method instituted to identify an Ordering Agency so that Contract pricing will be made available during check out.

11 WEBSITE ORDERING

- 11.1 If the Contractor provides a website for Agencies to place orders, any terms or conditions associated with the website that do the following are void:
 - 11.1.1 Waive the sovereign immunity of the state of Idaho;
 - 11.1.2 Subject the state of Idaho, its agencies, or political subdivisions of the state of Idaho to the jurisdiction of the courts of other states;
 - 11.1.3 Limit the time in which the state of Idaho, its agencies, or political subdivisions of the state of Idaho may bring a legal claim to a period shorter than that provided in Idaho law;
 - 11.1.4 Impose a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code; or,

11.1.5 Require the state of Idaho, its agencies, or political subdivisions of the state of Idaho to accept arbitration or to waive right to a jury trial.

11.2 Any terms or conditions associated with the website that require indemnification not specifically authorized by the Idaho legislature or subject to appropriation are void pursuant to Idaho Code Section 67-9215, and Section 59-1016. Additionally, terms or conditions associated with the website that hold individual users (employees or officers of the state of Idaho and of political subdivisions of the state of Idaho) personally liable are void.

11.3 If the website provided by the Contractor requires Ordering Agencies to click through and accept any terms and conditions associated with a website, that click-through will not bind the state to any terms and conditions that contradict the terms and conditions of the Contract or otherwise violate Idaho Code or the Idaho Constitution.

12 PACKAGING

All orders packed for shipping and delivery must be individually wrapped and labeled with the Ordering Agency's name, location (street address, building, floor and room number), specific delivery point designation, name of ordering person (if required), order number, and number of cases. A packing list must be included with each order.

13 RETURNS

13.1 Damaged Products

Any products delivered in poor or damaged condition, or in error (including or additional products, quantities, etc.) may, at the discretion of the Ordering Agency, be returned to the Contractor, at the Contractor's expense, within thirty (30) calendar days of the Ordering Agency having received them. Credits for returned products must be provided immediately once the Contractor receives the returned products.

13.2 Failure of Performance

If any product is rejected and returned to a Contractor for failure of performance, the Contractor must, at the State's option, either refund all amounts paid to the Contractor for such product or replace the product, and the following will apply:

13.2.1 Within twenty (20) calendar days of written notification by the Ordering Agency, the Contractor must make arrangements for the return of the product.

13.2.2 The Contractor will be responsible for all costs associated with returning the product.

13.2.3 The Contractor will be liable for damages to the product in transit, unless caused by fault or negligence of the Ordering Agency during the return process.

13.2.4 If the product is replaced, the replacement product must comply with all contractual requirements, and must be delivered to the Ordering Agency within 48 hours of notification of rejection of the original product.

13.3 Unopened Products

The Contractor must provide a full credit (including return freight charges, if applicable) for all unopened products returned within ten (10) business days after receipt. The Contractor may not charge any restocking fees and the Agencies must not incur any return freight charges. The Contractor must notify the freight company and settle any claims.

13.4 Prior to the Service Start Date of the Contract, the Contractor must provide to the State the customer service telephone number that Ordering Agencies must use to arrange for returns. The Contractor may also provide an email address, and identify a method for arranging returns within its web-based ordering system (if applicable).

14 INSPECTION

In addition to any other typical means of inspection, the Ordering Agency may immediately reject any product if the package is visibly damaged, or is clearly in error. If the Ordering Agency rejects products, either at the time of delivery or at any time within the Acceptance period defined in the State of Idaho Standard Contract Terms and Conditions, Section 18, the Contractor must replace the products within two (2) business days of the notice of rejection.

15 CUSTOMER SERVICE

The Contractor must provide one (1) or more designated customer service representative(s) for the Contract. If the Contractor provides more than one (1) designated customer service representative, each must be assigned to specific Agencies or Areas of the State. The Contractor must provide a written list of customer service representatives to DOP within fifteen (15) business days of the Service Start Date of the Contract, including name(s), contact information, and assigned Agencies or Areas, and must provide timely updates to DOP throughout the Contract term in the event the customer service representatives (or contact information) change.

16 RESPONSE TIME

The Contractor must respond to all customer inquiries, including, but not limited to, order status, billing or pricing issues, and web-based catalogue and ordering system assistance, within eight (8) business hours. Business hours are Monday through Friday, 8:00 am to 5:00 pm Local Time, excluding state holidays.

17 TRAINING

The Contractor must provide training, at no additional cost to the State, including initial training and training on an as-needed, on-going basis to individual Ordering Agencies on the following: Order placement, shipping, billing, receiving, return of merchandise, Contractor's customer service structure and contact information, order placement through the Contractor's web-based catalogue ordering system (if any), and features and functions of any web-based catalogue or ordering system.

18 CONTRACT MONITORING

18.1 The State will monitor the Contract utilizing any one (1) or more of the following methods:

- 18.1.1 In-person or telephonic meeting to discuss performance of the Contract;
- 18.1.2 Survey of the Contractor and Agencies;
- 18.1.3 Additional reports submitted from the Contractor; or
- 18.1.4 Any other means the State chooses to employ to accurately monitor the Contract.

19 REPORTING REQUIREMENTS

Quarterly Usage Reports are required as outlined in **Section 5** of the State of Idaho Standard Contract Terms and Conditions. **Attachment 1**, MRO Detailed Usage Report is required for reporting.

20 DELIVERY

- 20.1 Prices for all products associated with this Contract are to be FOB Destination, inside delivery, anywhere within the Areas bid.
- 20.2 Rush Delivery requiring special shipping and handling will be at the Ordering Agency's expense (with prior written approval from the Ordering Agency). Rush Delivery provided as a result of the Contractor's error, and not at the request or required by the Ordering Agency, will be at the Contractor's expense.

- 20.3 Delivery must be available for every product offered within the Bidders standard catalogue.
- 20.4 Acceptable hours for deliveries vary by location, and some facilities do not accept palletized deliveries. It is the Contractor's responsibility to ascertain the acceptable delivery times and packing requirements for each customer at the time the first orders are placed. Typically, delivery times will be between 8:00 am and 5:00 pm MT; excluding weekends and holidays. State of Idaho holidays can be found at:
<https://www.sos.idaho.gov/general/holidays.html>
- 20.5 **Non-Delivery:** After notification of impending short or out-of-stock products, Ordering Agencies may cancel the balance of incomplete deliveries without penalty. Ordering Agencies may purchase shorted or out-of-stock products from other sources until they are available from the Contractor within the contract's required delivery time.
- 20.6 Delivery time for in-stock products must not exceed forty-eight (48) hours for all points within the awarded Areas.
- 20.7 Special Order or non-stock products must not exceed ten (10) business days within the awarded Areas.
- 20.8 Any deviations from the timelines identified in this section must be agreed to in writing by the Ordering Agency prior to shipping.
- 20.9 All orders must be delivered directly to the Ordering Agency and must contain a packing slip/bill of lading with the following information: Line product description, date ordered, quantity ordered, quantity included in shipment, any backordered products, unit price and extended price, number of parcels within the order, purchase order number, and the Ordering Agency name.

21 FUEL SURCHARGE

If fuel prices rise more than 25% above the current U.S. Department of Energy's average diesel price as of the Closing Date of this ITB, the State may allow variable fuel surcharge fees to be assessed. The surcharge will be based on the U.S. Department of Energy's average diesel price from the previous month. A request for a fuel surcharge must be approved by the State prior to implementation. No fuel surcharge will be allowed when fuel prices are within 25% of the current U.S. Department of Energy's average diesel price as of the Closing Date of this ITB.

22 USE OF STATE PURCHASING CARD

Contractor must accept the State Purchasing Card (P-Card) for purchases from the Contract(s).

23 INSURANCE REQUIREMENTS

See the IPRO Requirements Section.

24 RECORDS MAINTENANCE

The Contractor must maintain or supervise the maintenance of all records necessary to properly account for all payments made to the Contractor pursuant to the Contract. These records must be retained by the Contractor for at least three (3) years after the Contract terminates, or until all audits initiated within the three (3) years have been completed, whichever is later.

25 AUDIT RIGHTS

The Contractor agrees to allow State and Federal auditors and State purchasing staff access to all the records relating to the contract, for audit, inspection, and monitoring of services or performance. Such access will be during normal business hours or by appointment.

26 MANUFACTURER SPECIALS

The Contractor must extend to the Ordering Agency all rebates and special offers (including commercial and consumer offers) made available by the manufacturer or by the Contractor.

27 DISASTERS AND EMERGENCIES

In the event of a disaster or other emergency at an Ordering Agency location, the Contractor must provide delivery within twenty-four (24) hours after receipt of order to the affected facilities, including weekends, unless the Contractor's ability to perform is impaired by the same disaster or emergency.

28. DISPENSING EQUIPMENT - CATEGORY 11 ONLY

When an Ordering Agency chooses to procure toilet paper and hand towels (or other products, such as liquid hand soap) from one (1) specific Contractor, that Ordering Agency and Contractor may enter into an Agreement for the Contractor to provide toilet paper and/or hand towels exclusively. That Agreement must minimally meet the following requirements:

28.1 Toilet Paper and Hand Towel Dispensing Equipment

28.1.1 The Contractor must provide and install toilet paper and hand towel dispensing equipment at no additional cost to the State, regardless of whether or not the dispensing equipment is automated. Removal of existing equipment in order to install equipment contemplated in this paragraph must also be at no additional cost to the State.

28.1.2 The Contractor must timely repair or replace, at no additional cost to the State, all malfunctioning toilet paper and hand towel dispensing equipment, and all toilet paper and hand towel dispensing equipment that has been damaged to such a degree that the Ordering Agency finds the equipment to be unsightly, regardless of whether or not the Contractor provided the equipment to the Ordering Agency or was the installer of the equipment. However, if damage to the toilet paper or hand towel dispensing equipment is caused by Ordering Agency employees or clients (clients are students and institutional residents, such as inmates), see Section 28.4.

28.2 Other Dispensing Equipment

28.2.1 For dispensing equipment, other than toilet paper and hand towel dispensing equipment, such as liquid hand soap dispensing equipment, the Contractor may charge the Ordering Agency for the purchase of the equipment at the list price found in its catalogue, less any Contract discounts. Additionally, the Contractor may charge the hourly rate for repair, installation and removal of equipment if agreed to, in advance and in writing, by the Ordering Agency. Installation must include removal of any existing equipment, if removal of existing equipment is necessary in order to install the equipment.

28.2.2 For all dispensing equipment that the Contractor has installed, or provided to the Ordering Agency for installation, the Contractor must timely repair or replace, at no additional cost to the State, all malfunctioning dispensing equipment, and all dispensing equipment that has been damaged to such a degree that the Ordering Agency finds the equipment to be unsightly. However, if damage to the dispensing equipment is caused by Ordering Agency employees or clients (clients are students and institutional residents, such as inmates), see Section 28.4.

28.3 Dispensing Equipment in Place at Time of Service Start Date of Contract

For State-owned dispensing equipment in place at the time of the Service Start Date of the Contract, the Contractor may make arrangements with the Ordering Agency to keep the existing equipment in place, and to provide products that can be dispensed out of that equipment without damaging the equipment or the product, and without causing the equipment to malfunction. It is in the Ordering Agency's sole discretion as to whether or not it will allow the Contractor to keep existing equipment in place.

Additionally, Ordering Agencies reserve the right to keep dispensing equipment (all State-owned dispensing equipment) in place at the time of the Service Start Date until such time as products purchased under the previous Contract have been depleted.

28.4 Delivery, Repair, Removal and Installation of Equipment

28.4.1 If damage to dispensing equipment is caused by Ordering Agency employees or clients (clients are students and institutional residents, such as inmates), then the Contractor may take one of the actions listed in section 28.4.1.1 or section 28.4.1.2 below:

28.4.1.1 Remove the existing equipment and install new equipment. In this case, the Contractor may charge the Ordering Agency the cost of the replacement equipment, less the Contract discounts, plus the hourly rate for repair, installation and removal of equipment that it has entered into the Category Discount Schedule.

28.4.1.2 Repair the equipment. In this case, the Contractor may charge the hourly rate for repair, installation and removal of equipment that it has entered into the Category Discount Schedule.

28.4.2 For cases in which the Ordering Agency has placed an order for equipment: The Contractor must deliver and install dispensing equipment (including removal of any existing equipment to install equipment) after receipt of order from an Ordering Agency. The Contractor must install the equipment within seven (7) calendar days after the Contractor receives the order.

28.4.3 For cases in which the Contractor has discovered malfunctioning equipment, or is notified by the Ordering Agency that equipment is malfunctioning or is damaged, and the Contractor will repair the equipment or remove it and replace it: The Contractor must repair the equipment or remove it and replace it within seven (7) calendar days of its discovery or notification by the Ordering Agency.

28.4.4 If the dispensing equipment is automated and is malfunctioning solely because the batteries need to be replaced, then the Contractor must advise the Agency to replace the batteries, not replace the equipment itself, or, the Contractor must replace the batteries.

28.5 Equipment Removal

There may be cases in which an Agency requires removal of equipment without replacing it with other equipment. In these cases, the Contractor may charge the hourly rate for repair, installation and removal of equipment if agreed to, in advance and in writing, by the Agency.

28.6 Installation and Removal of Dispensing Equipment in a Workmanlike Manner

Installation and removal of dispensing equipment must be performed by the Contractor in a Workmanlike Manner. The Contractor must also take care to not damage surfaces when installing and removing dispensing equipment.

28.7 Battery Replacement

If battery replacement requires special tools or expertise in order to install, or, if battery replacement must be done by the Contractor in order to not void a warranty, then the Contractor must provide and install the batteries within seven (7) calendar days of notification by the Ordering Agency. Provision and installation of batteries as outlined by this section must also be at no additional cost to the State.

29 DEFINITIONS

Catalogue Pricing – The catalogue price is the fully burdened price for the products to be received, prior to discounts being applied. Catalogue pricing can also be known as the list price.

Comprehensive Offering – for purposes of evaluation and award of this ITB, a catalogue will be deemed a Comprehensive Offering for a particular category if it includes items that meet the specifications of a minimum of fifteen (15) of the items in the blind market basket established by the State for that category.

Contract Pricing - The contract price is the fully burdened price for the products to be received after all discounts are applied.

Ordering Agency – any public agency, authorized to use these contracts by the Division of Purchasing, capable of placing orders and committing Contractors to provide products or services for the state of Idaho.

Rush Delivery – any means of expedited delivery accelerating the delivery sooner than required by the contract terms.

Special Order - An order for a product placed by an Ordering Agency which the Contractor does not have or keep in stock; an order placed for a product which needs to be specially made or customized.

Workmanlike Manner: Executed in a skilled manner; e.g., generally plumb, level, square, undamaged and without marring adjacent work, and in accordance with any manufacturer’s guidelines.

30 ADMINISTRATIVE FEE

Any contract resulting from this solicitation will be subject to Section 5 of the State’s Standard Terms and Conditions as outlined below:

A. Application of Administrative Fee:

1. All Statewide Blanket Purchase Orders (SBPO) shall be subject to an Administrative Fee of one and one-quarter percent (1.25%), based on orders placed against the Contract (unless the SBPO is exempt), as follows:
 - a. The prices to be paid by the State (the price BID by Contractor) shall be inclusive of a one and one-quarter percent (1.25%) Administrative Fee. On a quarterly basis, Contractor will remit to State of Idaho, Attn: Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075 an amount equal to one and one-quarter percent (1.25%) of Contractor’s net (sales minus credits) quarterly Contract sales. For Example: If the total of Contractor’s net sales to the Agency for one quarter = \$10,000, Contractor would remit $\$10,000 \times 0.0125 = \125 to the Division of Purchasing for that quarter, along with the required quarterly usage report.
 - b. Contractor will furnish detailed usage reports as designated by the State. In addition to any required detailed usage reports, Contractor must also submit a summary quarterly report of purchases made from the Contract to purchasing@adm.idaho.gov, utilizing the State’s Summary Usage Report Form.
 - c. Reporting Time Line (Fiscal Year Quarters): Fee and Report Due:
 - 1st Quarter July 1 - Sept 30 October 31st
 - 2nd Quarter Oct 1 - Dec 31 January 31st
 - 3rd Quarter Jan 1 - Mar 31 April 30th
 - 4th Quarter Apr 1 - Jun 30 July 31st
2. Unless otherwise exempt, the Administrative Fee will apply regardless of how Contractor submits its response to the solicitation (i.e. manual (paper) or electronic via IPRO).
3. A Contractor’s failure to consider the Administrative Fee when preparing its Solicitation response shall not constitute or be deemed a waiver by the State of any Administrative Fees owed by Contractor to the State as a result of an Award issued through IPRO.

B. Administrative Fee Exemptions:

1. Notwithstanding any language to the contrary, the Administrative Fee will not apply to Contracts with an original awarded value of \$100,000 or less.
2. The Administrative Fee will not apply to Purchase Orders (PO), Contract Purchase Orders (CPO) or Blanket Purchase Orders (BPO).
3. The Administrative Fee will not apply to Contracts issued without a competitive solicitation, e.g. Emergency Procurements (EPA), Sole Source Procurements (SSA), etc.
4. The Administrator of the Division of Purchasing may also exempt a specific solicitation or class of solicitations from the Administrative Fee requirement.

C. Payment of Administrative Fee:

Contractor will remit the Administrative Fee to the Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075, as follows:

1. SBPOs: Contractor will remit the Administrative Fee and Report for the prior quarter based on the schedule outlined in Paragraph 5.A.1.c., above.

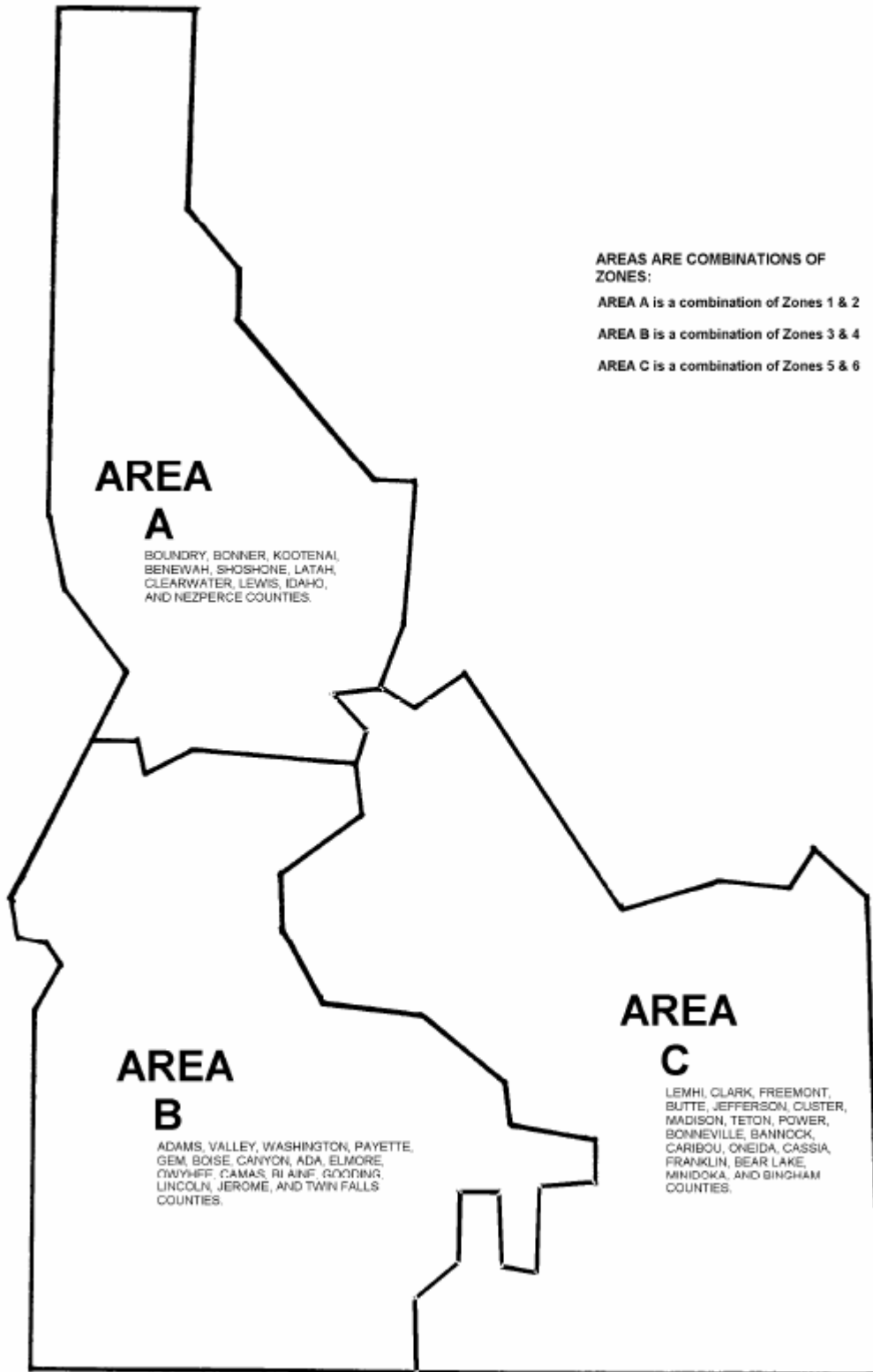
D. Refund of Administrative Fee:

In the event that a Contract is cancelled by the State through no fault of the Contractor, or if item(s) are returned by the State through no fault, act, or omission of the Contractor after the sale of any such item(s) to the State, the State will refund the Contractor any Administrative Fees remitted. Administrative Fees will not be refunded or STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS January 1, 2017 returned when an item is rejected or returned, or declined, or the Contract cancelled by the State due to the Contractor's failure to perform or comply with specifications or requirements of the Contract. If, for any other reason, the Contractor is obligated to refund to the State all or a portion of the State's payment to the Contractor, or the State withholds payment because of the assessment of liquidated damages, the Administrative Fee will not be refunded in whole or in part.

E. Failure to Remit Administrative Fees:

If a Contractor fails to remit the Administrative Fee, as provided above, the State, at its discretion, may declare the Contractor in default; cancel the Contract; assess and recover re-procurement costs from the Contractor (in addition to all outstanding Administrative Fees); seek State or federal audits, monitoring or inspections; exclude Contractor from participating in future solicitations; and/or suspend Contractor's IPRO account.

APPENDIX 4 – IDAHO AREA MAP



APPENDIX 5 – DRAFT VENDING MACHINE LEASE AGREEMENT

STATE OF IDAHO
EQUIPMENT LEASE AGREEMENT

This **Equipment Lease Agreement** is between:

Lessor [Contractor's Name]

With its principal address at: [Address]

and

Lessee [AGENCY NAME]

With its principal address at: [Address]

1. EQUIPMENT TO BE LEASED.

Lessor agrees to lease the equipment identified on **Exhibit A**, for the designated Lease Term(s).

2. SERVICES ASSOCIATED WITH THE LEASE.

Lessor will provide Services related to the Leased Equipment, as specifically detailed on **Exhibit A**.

3. LEASE TERM.

This Lease Agreement (Agreement) shall be effective for a period of time as set forth on **Exhibit A**, unless terminated sooner by either party, as set forth in Paragraph 12, below. The Lease Term will not commence until the Leased Equipment is accepted by Lessee.

4. DEFINITIONS.

“State” means the State of Idaho and the state agency identified above as Lessee.

“Lease Term” means the term of the Agreement set forth in Section 1.

“Leased Equipment” means the equipment described in **Exhibit A** and any equipment replaced by Lessor during the term of this Agreement.

5. CONSIDERATION.

The parties agree that for the Lease Term set forth in Section 3, above, Lessee will make [monthly] payments to Lessor by government voucher, at the address provided by Lessor, on a recurring date agreed to by the parties. [Monthly] payment

amounts for the Leased Equipment are provided on **Exhibit A**. The obligation to make payments on the Leased Equipment will begin after delivery and acceptance by Lessee. Late payment by Lessee will not constitute grounds for default; however, invoices remaining unpaid in excess of thirty (30) calendar days from the due date may be subject to a late charge of five percent (5%) of the amount due.

6. DELIVERY, ACCEPTANCE AND RETURN OF LEASED EQUIPMENT.

6.1 Leased Equipment will be delivered by Lessor FOB Destination, inside delivery, to the location designated by Lessee.

6.2 Lessee will inspect the Leased Equipment within five (5) business days of delivery. Failure to notify Lessor of any defects or non-acceptance within the five (5) business days will constitute automatic acceptance.

6.3 In the event that the Leased Equipment is determined by Lessee to be defective prior to acceptance, Lessor will replace the defective Leased Equipment with equivalent unit(s) ready for immediate use by Lessee at no additional charge within five (5) days of notice to Lessor of such defects.

6.4 Lessee shall have possession of the Leased Equipment for the Lease Term set forth in Section 3, above, unless this Agreement is earlier terminated in accordance with Section 12, below.

6.5 At the expiration of the term of this Agreement, Lessee shall make the Leased Equipment available to Lessor for pickup at Lessee's premises. If Lessee is not in breach of this Agreement, all costs of removing and transporting the Leased Equipment at the expiration of the Lease Term shall be the responsibility of Lessor.

7. TRUE LEASE.

LESSOR AND LESSEE AGREE THAT THIS LEASE AGREEMENT IS A "TRUE LEASE" AND NOT AN INSTALLMENT OR FINANCING AGREEMENT.

8. OWNERSHIP AND INSPECTION.

8.1 This is an agreement for leasing only. Lessee will acquire no right, title or interest in or to the Leased Equipment, except those of a Lessee, as detailed in this Agreement. Lessor covenants that it has good title to the Leased Equipment. Title of the Leased Equipment at all times shall remain in the Lessor's name. Lessee shall keep the Leased Equipment free from any and all liens or claims and shall do or permit no act or thing whereby Lessor's title may be encumbered or impaired.

8.2 Lessor will be responsible for the payment of any property taxes on the Leased Equipment.

8.3 Lessee will permit Lessor to inspect the Leased Equipment during Lessee's regular business hours, upon a minimum of 24 hours' advance notice.

9. DAMAGE.

9.1 Lessor bears the risk of loss until the Leased Equipment is delivered to Lessee's designated location and received by an authorized employee or agent of Lessee.

9.2 Lessee shall maintain the Leased Equipment in as good condition as when received, ordinary wear and tear or defect excepted; and will be responsible for any damage to the Leased Equipment caused by Lessee's negligence or misuse.

10. MAINTENANCE OF LEASED EQUIPMENT.

10.1 Lessor shall be responsible for routine service and preventive maintenance of the Leased Equipment for the duration of the Lease Term. Lessor will provide Lessee with toll-free telephone support for customer service or maintenance calls during Lessee's normal business hours. The use of third-party service providers is subject to the approval of Lessee.

10.2 Lessor will be responsible for the cost associated with maintenance and repairs.

10.3 Should Lessor's repair extend beyond 72 hours, Lessor agrees to provide equivalent replacement equipment to Lessee at Lessor's expense, until such time as the Leased Equipment is repaired and returned to Lessee.

11. INSURANCE AND LIMITATION OF LIABILITY.

Lessee is a State of Idaho agency and is provided a comprehensive liability plan through the Risk Management Program (Program) established under Idaho Code section 67-5773 et seq. The Program utilizes the Retained Risk Account, which is funded and in effect subject to limitation on liability of the Tort Claims Act, Idaho Code section 6-901 et seq. In addition to the comprehensive liability plan, the Program covers certain property damage, subject to the deductibles established by the Program. Evidence of financial responsibility will be provided upon request, and will consist of a Certificate of Financial Responsibility.

Lessor will maintain insurance in amounts as required by [SBPO#], and such insurance will include equivalent coverage for Lessor's activities related to installation and operation of the Leased Equipment at Lessee's facilit(ies).

Limits of liability are as established in [SBPO#].

12. TERMINATION.

12.1 Mutual Termination. Any discretionary or vested right of renewal notwithstanding, this Agreement may be terminated by mutual consent of the parties.

12.2 Termination for Convenience.

12.2.1 Lessee may terminate this Agreement with respect to any Leased Equipment at any time within a Lease Term by:

- 12.2.1.1 Giving Lessor thirty (30) day written notice;
- 12.2.1.2 Paying all currently due monthly payments; and
- 12.2.1.3 Making the Leased Equipment available for Lessor to remove.

12.2.2 Lessor may terminate this Agreement with respect to any Leased Equipment at any time within a Lease Term by:

- 12.2.2.1 Giving Lessee thirty (30) days written notice; and
- 12.2.2.2 Removing the Leased Equipment from Lessee's facility.

12.3 Termination for Default. A default or breach may be declared with or without termination. This Agreement may be terminated by either party upon written notice to the other party for any material breach or default by the other party of any terms, conditions, covenants, or obligations of this Agreement. Notice of Termination for Breach or Default is effective 30 days following service of notice, or upon any subsequent date specified in the notice of termination.

12.4 Non-appropriation. Lessee is a government entity and this Agreement shall not be construed so as to bind or obligate the State beyond the term of any particular appropriation of funds by the Idaho Legislature, as may exist from time to time. In the event the Idaho Legislature fails, neglects or refuses to appropriate funds to continue the Lease

Payments, all affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Lessor.

13. NOTICE.

All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally in hand, (b) delivered by facsimile or email; or (c) mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above. For purposes of computing times from service of notice, service of notice by delivery in hand or via confirmed facsimile or e-mail shall be effective on the date of confirmed delivery; notices that are mailed shall be effective on the third calendar day following the date of mailing.

14. END OF TERM NOTIFICATION.

Lessor must notify Lessee, in writing, 90 days prior to the end of any Lease Term.

15. PROPER AUTHORITY. The parties confirm that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement.

16. OFFICIALS, AGENTS AND EMPLOYEES OF LESSEE NOT PERSONALLY LIABLE.

In no event shall any official, agent or employee of the State of Idaho be, in any way, personally liable or responsible for any covenant or agreement herein contained whether express or implied, nor for any statement, representation, or warranty made herein or in any way connected with this Agreement.

17. FORCE MAJEURE. Neither party shall be liable or deemed to be in default for any Force Majeure delay or failure in performance under this Agreement, or interruption of service, resulting from Acts of God, civil or military authority, acts of war, riots, insurrections, labor disputes, or unusual delays beyond the party's control.

18. GOVERNING LAW, JURISDICTION AND VENUE. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Idaho, without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction. Any action to enforce the provisions of the Agreement shall be brought in State district court in Ada County, Boise, Idaho.

19. INCORPORATED DOCUMENTS. This Agreement incorporates the following attachments in descending order of constructive precedence; any additional Lessor Attachments shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Agreement, or as a subsequent fully executed amendment:

- Exhibit A: Schedule of Leased Equipment, Lease Term, Services and Monthly Lease Amount
- The State of Idaho Purchase Order for [Solicitation #]
- The original solicitation document [Solicitation #]
- Lessor's submittal response to [Solicitation #]
- Lessor's Terms and Conditions specific to [Leased Vending Solution and any EULAs]

20. ASSIGNMENT. Neither this Agreement, nor the Lessor's rights hereunder, shall be assignable or in any other manner transferable by Lessor to any other party, without the approval in writing of the Administrator of the Division of Purchasing, and any such agreement or transfer without such approval shall cause the annulment of the agreement so assigned or

transferred, at the option of the State. Neither this Lease, nor the Lessee's rights hereunder, shall be assignable by Lessee without Lessor's written consent, which will not be unreasonably withheld.

21. ENTIRE AGREEMENT. This Lease Agreement, including the Incorporated Documents listed in Section 19, above, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all previous proposals, both oral and written, negotiation, representations, commitments, and all other communications between the parties. This Lease Agreement may not be released, discharged or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

LESSOR:

[Contractor Name]

Signature

Printed Name and Title

Date: _____

LESSEE:

[AGENCY NAME]

Signature

Printed Name and Title

Date: _____

[EXHIBIT A TO FOLLOW]

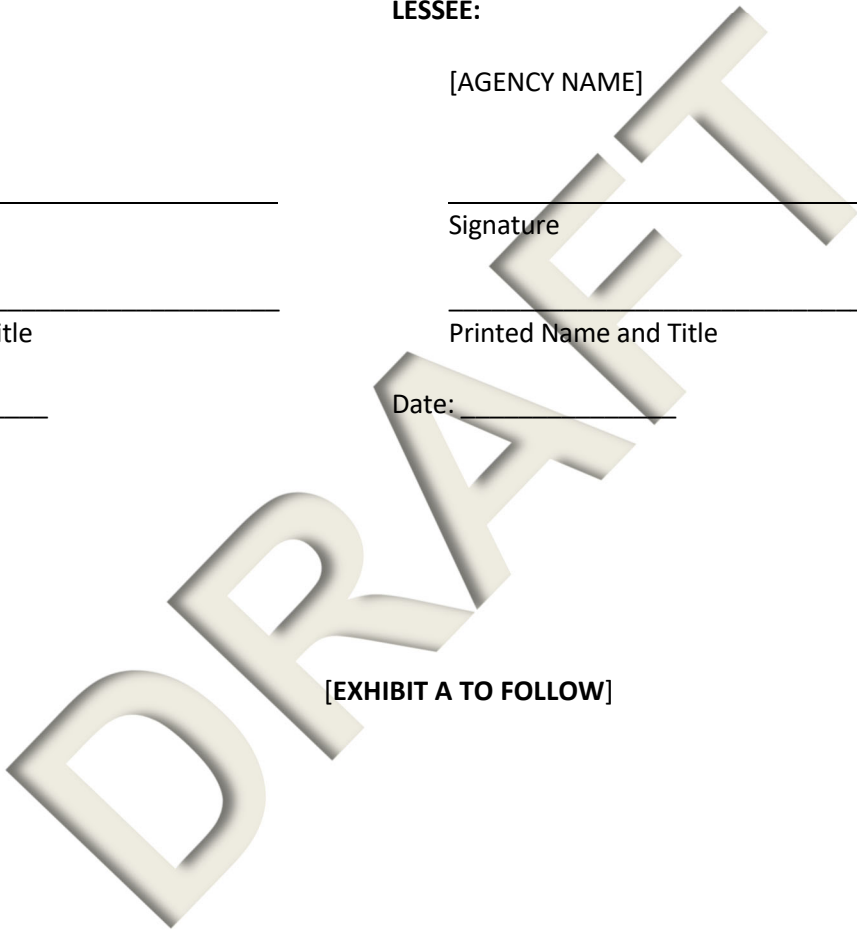


EXHIBIT A

EQUIPMENT LEASE AGREEMENT

LEASE TERM:

Lease Term is # months, with # optional renewals of # months each, upon mutual written agreement. Lease Term will commence upon Lessee's acceptance of Leased Equipment.

Lease Term:

LEASED EQUIPMENT:

SERVICES:

[Address and mutually agree to scope of service in terms of stocking/refilling, timeliness of service, etc.]

Note: Exhibit A will be finalized by mutual agreement of the parties, following contract award

DRAFT

APPENDIX 6 – PUBLIC AGENCY ACKNOWLEDGEMENT

Prices offered in this ITB must be made available to other "Public Agencies", including agencies of the State of Idaho, and as defined in Section 67-2327 of the Idaho Code, which reads: "Public Agency" means any city or political subdivision of this State including, but not limited to counties; school districts; highway districts; port authorities; instruments of counties; cities or any political subdivision created under the laws of the State of Idaho. It will be the responsibility of the "Public Agency" to independently contract with the Bidder and/or comply with any other applicable provisions of Idaho Code governing public contracts. Typically, other municipalities routinely buy from contracts established by the Division of Purchasing.

Please indicate if you accept this Public Agency Clause AND return this completed form with your Proposal Response.
Failure to accept this provision will result in a finding that your Proposal is non-responsive.

YES _____

NO _____

Name of Offeror: _____

ATTACHMENT 1 – MRO DETAILED USAGE REPORT

UNDER SEPARATE COVER

SOLICITATION INSTRUCTIONS TO VENDORS

1. AUTHORITY TO PURCHASE: The Administrator of the Division of Purchasing, Department of Administration or the Administrator's delegates are the only statutory agents authorized to execute Contracts for the procurement of goods and services, unless exempted pursuant to statute or rule.

2. E-PURCHASING: The State of Idaho, Division of Purchasing and many individual Agencies utilize the Idaho e-Procurement System (IPRO), an electronic procurement system. Depending upon which profiling options vendors select in IPRO, vendors may be sent e-mail notifications of acquisition opportunities on those Solicitations electronically posted.

3. ELECTRONIC SIGNATURES: IDAPA 38.05.01.061 specifically allows for electronic signatures on responses submitted to formal solicitations. For vendors submitting via IPRO, IPRO processes all information electronically on the Internet. Signatures by both the submitting Vendor and the State when using IPRO may be electronic and electronic signatures used with IPRO are as fully binding and legal for the State's purchasing process as a manually affixed signature. Any reference in these *Solicitation Instructions to Vendors* to "signed," "signature," "manually signed in ink," or equivalents will include electronic signatures.

4. DEFINITIONS: Unless the context requires otherwise, all terms not defined below shall have the meanings defined in Idaho Code Section 67-9203 or IDAPA 38.05.01.011.

A. Agency. All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction.

B. Bid – A written offer that is binding on the Bidder to perform a Contract to purchase or supply Property in response to an Invitation to Bid.

C. Bidder – A Vendor who has submitted a Bid.

D. Contract - Contract means any state written agreement, including a Solicitation or specification documents and the accepted portions of the Solicitation, for the acquisition of Property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries.

E. Contractor - A Vendor who has been awarded a Contract.

F. Invitation to Bid (ITB) – All documents, whether attached or incorporated by reference, utilized for soliciting formal sealed Bids.

G. Offeror – A Vendor who has submitted a proposal in response to a Request for Proposals for Property to be acquired by the State.

H. Property. Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such Property. Includes concession services and rights to access or use state property or facilities for business purposes.

I. Proposal – A written response, including pricing information, to a Request for Proposals that describes the solution or means of providing the Property requested and which Proposal is considered an offer to perform in full response to the Request for Proposals. Price may be an evaluation criterion for Proposals, but will not necessarily be the predominant basis for Contract award.

J. Quotation – An offer to supply Property in response to a Request for Quotation and generally used for small or emergency purchases.

K. Request for Quotation – The document, form or method generally used for purchases solicited in accordance with small purchase or emergency purchase procedures.

L. Request for Proposals (RFP) – Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive Proposals and is generally utilized in the acquisition of services or complex purchases.

January 1, 2017

SOLICITATION INSTRUCTIONS TO VENDORS

M. Solicitation – An Invitation To Bid, a Request For Proposals or other document issued by the purchasing activity for the purpose of soliciting Bids, Proposals or Quotations to perform a Contract.

N. State – The state of Idaho including each Agency unless the context implies other state(s) of the United States.

O. Vendor – A person or entity capable of supplying Property to the State.

5. AWARD METHOD: Contracts may only be awarded to the "Lowest Responsible Bidder." The Lowest Responsible Bidder is defined by Idaho Code Section 67-9203(9) as "The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price." When deemed to be in the best interest of the State, and set forth in the Solicitation documents, additional consideration may be given to the elements of discounts, supply location, quality of products or previous service, delivery time, or other elements.

6. ADMINISTRATIVE FEE: In accordance with Paragraph 5 of the State of Idaho Standard Terms and Conditions, Contracts issued through IPRO as Statewide Blanket Purchase Orders (SBPO) will be subject to an Administrative Fee of one and one-quarter percent (1.25%) based on orders placed against the Contract, unless specifically exempted. The Administrative Fee must be included in the prices offered by the Vendor submitting a response to an ITB or RFP issued by the State, when the solicitation will result in a Statewide Blanket Purchase Order (SBPO) which is not otherwise specifically exempt (See Paragraph 5, State of Idaho Standard Terms and Conditions).

7. DETERMINATION OF RESPONSIBILITY: The State reserves the right to make reasonable inquiry about or from the submitting Vendor or from third parties to determine the responsibility of a submitting Vendor. Such inquiry may include, but not be limited to, inquiry regarding financial statements, credit ratings, references, potential subcontractors, and past performance. The unreasonable failure of a submitting Vendor to promptly supply any requested information may result in a finding of non-responsibility.

8. SOLICITATION AMENDMENTS: It will be the Vendors' responsibility to check for any amendments to the solicitation document(s) prior to submitting a Bid, Proposal, or Quotation. In the event it becomes necessary to revise any part of the Solicitation, amendment(s) will be made available via IPRO. Information given to one Vendor will be available to all other Vendors if such information is necessary for purposes of submitting a Bid, Proposal or Quotation, or if failure to give such information would be prejudicial to uninformed Vendors.

9. NOTICE OF EFFECTIVENESS: No Contract is effective until the authorized State purchasing official has signed the Contract (which signature may be electronic), and the effective or award date has passed. The Vendor shall not provide any goods or render services until the Contract has been executed by the State purchasing official and the Contract has become effective. Furthermore, the State is in no way responsible for reimbursing the Vendor for goods provided or services rendered prior to execution by the authorized State purchasing official and the arrival of the effective date of the Contract.

10. ECONOMY OF PREPARATION: If submitting a response to a solicitation, responses should be prepared simply and economically, providing a clear, complete and concise description of the Offeror's capabilities to satisfy the State's requirements.

11. SPECIFICATIONS: Specifications describe the Property the State wants to acquire. Vendors are encouraged to review the specifications closely and present written questions within the time prescribed in the Solicitation to the designated purchasing official. See also Paragraph 14 on Administrative Appeals. The State is prohibited from accepting Property that does not meet the minimum specifications pursuant to Idaho Code Section 67-9230(6).

12. LAWS: The laws governing the State's purchases of goods and services are found in Idaho Code Section 67-9201 through Section 67-9234 and IDAPA 38.05.01 et seq., both available on the Internet at http://purchasing.idaho.gov/rules_and_policies.html. It is the Vendor's responsibility to conform to **ALL** applicable federal, state and local statutes or other applicable legal requirements. The information provided herein is intended to assist Vendors in meeting applicable requirements but is not exhaustive and the State will not be responsible for any failure by any Vendor to meet applicable requirements.

13. PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES: Idaho preferences are governed by Idaho Code Section 67-2349 (Reciprocal Preference) and Idaho Code Section 60-101 – 103 (Printing).

January 1, 2017

SOLICITATION INSTRUCTIONS TO VENDORS

14. ADMINISTRATIVE APPEALS: The laws applicable to administrative appeals are set forth at Idaho Code Section 67-9232(1) (Specification Appeals), Idaho Code Section 67-9232(2) (Nonresponsive Appeals), Idaho Code Section 67-9232(3) (Bid Award/Lowest Responsible Bidder Appeal), and Idaho Code Section 67-9232(4) (Sole Source Appeal).

15. SUBMISSION FORMS:

A. Manual Submissions – For manually sealed and submitted Bids or Proposals, a submitting Vendor must use the State's supplied signature page (or other binding document as specified) when submitting its Bid or Proposal. The signature page must be manually signed in ink or contain an electronic signature of an authorized agent of the submitting Vendor and returned with the submission package. Manually submitted Bids or Proposals submitted without the signature page or other binding document shall be found nonresponsive and will not be considered. An incomplete, modified or unsigned signature page will be cause for a finding of non-responsiveness. Submissions must be completed either in ink or typewritten. Forms or figures written in pencil are not acceptable. Mistakes should not be erased but may be crossed out and corrections inserted next to the errors and initialed **IN INK** (or with an electronic signature) by the person signing.

B. Submission Forms – Manual Quotations – For manually submitted Quotations, the submitting Vendor may use any response and submission form authorized by the Request For Quotation, including oral, telephonic, facsimile, e-mail, regular mail or via IPRO.

C. Submission Forms – Electronic – For Vendors using IPRO, proper completion of the electronic forms is required.

D. Submission Forms – Manual or Electronic – Regardless of Submission Form, Vendor warrants by submitting a Bid, Proposal or Quotation that it accepts the State of Idaho Standard Contract Terms and Conditions and the Solicitation Instructions to Vendors, and any Special Terms and Conditions identified in the Solicitation. Additionally, one or more of the following may be applicable:

1. If the Vendor is a corporation, partnership, sole proprietorship or other legal entity, and employs individual persons, by submitting its Bid, Proposal or Quotation, vendor warrants that any Contract resulting from this Solicitation is subject to Executive Order 2009-10 [http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html]; it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent (5%) of the Contract price, per violation, and/or termination of its Contract; or

2. If Vendor is a natural person eighteen (18) years of age or older,

a. by submitting its Bid, Proposal or Quotation, warrants that its Bid, Proposal or Quotation is subject to Idaho Code section 67-7903 and, pursuant thereto, by submitting its Bid, Proposal or Quotation, attests, under penalty of perjury, that it is a United States citizen or legal permanent resident or that it is otherwise lawfully present in the United States pursuant to federal law; and

b. prior to being issued a Contract, Vendor will be required to submit proof of lawful presence in the United States in accordance with Idaho Code Section 67-7903.

16. BID AND REQUEST FOR PROPOSAL SUBMISSIONS:

A. Manual Submissions – Unless otherwise stated elsewhere in the Solicitation, the submission package or envelope must be **SEALED** and plainly marked in the **LOWER** left corner with the following: (i) the name of the item or service being sought; (ii) opening date and time; and (iii) the Solicitation number. This information is found in the Solicitation document. The submitting Vendor's return address must appear on the envelope or package. Any Bid sheets and the signature page containing an authorized signature must be submitted in a sealed envelope or package. **(Do not respond to more than one Solicitation in the same envelope!)** A submission made using "Express/Overnight" services must be shipped in a separate sealed inner envelope/package identified as stated above, and enclosed inside the "Express/Overnight" shipping container or package. No responsibility will attach to the State, or to any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open a submission not properly addressed and identified. No oral, telephone, facsimile or late submissions will be considered. All submissions must be received at the physical address designated for courier service and time/date stamped by the purchasing activity prior to the closing date and time. It is the submitting Vendor's responsibility to

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timely submit its Bid or Proposal in a properly marked envelope, prior to the scheduled closing, for receipt in sufficient time to allow the submission to be time and date stamped **prior to the closing time**.

B. Bid Submissions – Electronic – For Bids or Proposals submitted electronically via IPRO, the submitting Vendor is the individual or entity as it is profiled in IPRO. If Vendor's submittal includes a signed State supplied signature page which identifies a different legal entity than the IPRO profile under which the Bid or Proposal was submitted, the submitting Vendor is the individual or entity identified on the state supplied Signature Page. Vendors submitting electronically must complete all steps in the IPRO submission process prior to the scheduled closing date and time.

C. Late Submissions – It is the submitting Vendor's responsibility to ensure that its Bid, Quotation, or Proposal is delivered or electronically submitted to the place designated for receipt prior to the specified closing time. Late submissions will not be considered under any circumstances. The official time used in the receipt of manual submissions is determined by the automatic time/date stamp located at the physical address designated for receipt of Bids, Quotations or Proposals. Electronic submissions will use IPRO's time to determine receipt time. No responsibility will be assumed for delays in the delivery of mail by the U.S. Post Office, private couriers, the intra-State mail system, or for the failure of any computer or electronic equipment. Submitting Vendors are advised that the intra-State mail system may increase delivery time from Central Postal to the place designated for receipt and should plan accordingly. **LATE SUBMISSIONS WILL NOT BE ACCEPTED, AND WILL BE RETURNED TO THE SUBMITTING VENDOR. NO DEVIATIONS WILL BE ALLOWED.**

17. TABULATION INFORMATION:

Manual/Electronic Opening – Electronic and manually distributed Solicitations will contain detailed information regarding closing/opening dates and times. Vendors may attend openings of manually submitted Solicitations at the place, date, and time specified on the Solicitation. At that time, for Bids, the names of Bidders and Bid amount will be announced. For Proposals, only the names of the Offerors will be announced. No other information will be disclosed at that time. Individuals may request tabulation information when it becomes available. No tabulation information will be given over the phone.

18. TERMS AND CONDITIONS OF ENSUING CONTRACT: Any ensuing Contract will be governed by the *State of Idaho Standard Contract Terms and Conditions*, any applicable Special Terms and Conditions and, if applicable, any negotiated provisions, all as specified in the Solicitation. Unless otherwise identified in the Solicitation, no additional or supplemental terms and conditions submitted by the submitting Vendor as part of its response shall be evaluated or considered. Any and all such additional terms and conditions shall have no force and effect and shall be inapplicable to the Solicitation and any ensuing Contract. If additional or supplemental terms and conditions, either intentionally or inadvertently appear separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed that *the State of Idaho Standard Contract Terms and Conditions* and any Special Terms and Conditions in the Solicitation are the only conditions applicable to the Solicitation and any ensuing Contract and the submitting Vendor's authorized signature affixed to the signature page form attests to this. If you condition your Bid or Proposal on such additional terms and conditions, your Bid or Proposal will be deemed nonresponsive. **IF YOU HAVE QUESTIONS OR CONCERNS REGARDING THE STATE'S TERMS AND CONDITIONS, ADDRESS THEM IN WRITING TO THE DESIGNATED PURCHASING OFFICIAL WITHIN THE TIME PERIOD PRESCRIBED PRIOR TO THE SOLICITATION CLOSING DATE.**

19. PRE-OPENING SOLICITATION WITHDRAWALS OR MODIFICATION:

A. Manual – Manual submissions may be withdrawn or modified only as follows: Bids or Proposals may be withdrawn or modified prior to the closing by written communication signed by the submitting Vendor. Bids or Proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting Vendor. Any withdrawing or modifying communication must clearly identify the Solicitation. A modifying letter should be worded so as **NOT** to reveal the amount.

B. Pre-Opening Solicitation Withdrawals – Electronic – A submitting Vendor using IPRO may withdraw a previously submitted Solicitation response at any time prior to the closing by submitting another response with a zero unit price for each affected line item of the Solicitation and inserting the words "WITHDRAWAL OF PREVIOUSLY SUBMITTED BID" in the comments field for each affected line item or may select the "INTENTIONAL NO BID" checkbox in IPRO.

C. Pre-Opening Solicitation Modification – Electronic – A submitting Vendor using IPRO may modify or change a previously submitted Solicitation response at any time prior to the closing by amending its solicitation response in IPRO and resubmitting (i.e. adding or removing attachments, modifying pricing, etc.).

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20. REJECTION OF BIDS AND PROPOSALS AND CANCELLATION OF SOLICITATION:

A. Prior to the issuance of a Contract, the State shall have the right to accept or reject all or any part of a Bid, Proposal or Quotation or any and all Bids, Proposals and Quotations when: (i) it is in the best interests of the State; (ii) the Bid, Proposal or Quotation does not meet the minimum specifications; (iii) the Bid, Proposal or Quotation is not the lowest responsible Bid, Proposal or Quotation; (iv) a finding is made based upon available evidence that a submitting Vendor is not responsible or is otherwise incapable of meeting specifications or providing an assurance of ability to fulfill Contract requirements; or (v) the item offered deviates to a major degree from the specifications, as determined by the State (minor deviations, as determined by the State, may be accepted as substantially meeting the Solicitation requirements). Deviations will be considered major when such deviations appear to frustrate the competitive Solicitation process or provide a submitting Vendor an unfair advantage.

B. Prior to the issuance of a Contract, the State shall have the right to reject all Bids, Proposals, or Quotations or to cancel a Solicitation. Cancellation may be for reasons that include, but are not limited to: (i) inadequate or ambiguous specifications; (ii) specifications have been revised; (iii) Property is no longer required; (iv) there is a change in requirements; (v) all submissions are deemed unreasonable or sufficient funds are not available; (vi) Bids, Proposals or Quotations were not independently arrived at or were submitted in bad faith; (vii) it is determined that all requirements of the Solicitation process were not met; (viii) insufficient competition; or (ix) it is in the best interests of the State.

21. BURDEN OF PROOF: It shall be the responsibility and burden of the submitting Vendor to furnish, with its original submission, unless otherwise provided in the Solicitation, sufficient data for the State to determine whether or not the property offered conforms to the specifications.

22. ALTERNATE BIDS: Multiple bids submitted by a single submitting Vendor, or a submitting Vendor's alternate bids, **WILL NOT BE ACCEPTED UNLESS SO STATED IN THE SPECIFICATIONS.**

23. DISCOUNTS: Discounts, when applicable, shall be shown in a single net percentage figure (e.g. 57-1/4% instead of 50, 10, and 5 percent). **DISCOUNTS FOR PROMPT PAYMENT WILL BE ACCEPTED BUT CANNOT BE USED IN DETERMINING THE LOWEST BID.**

24. UNIT PRICES GOVERN: Unit prices shall govern. **IMPORTANT:** Prices must be given in the "unit of measure" required in the Solicitation. Example: If the Solicitation requires an item by the "piece," submit pricing by the "piece." If the Solicitation requires an item by the "foot," submit pricing by the "foot."

25. FIRM PRICES: The submitting Vendor agrees that its Bid, Quotation or Proposal shall be good and may not be withdrawn for a period of ninety (90) days after the scheduled closing date, unless otherwise identified in the Solicitation. No Bid, Quotation or Proposal will be accepted if marked "price prevailing at time of delivery," "estimated prices," "actual costs to be billed," or similar phrases. After the date and time of closing, no price change will be allowed, unless otherwise stated in the Solicitation. All Bids, Quotations and Proposals must be in U.S. Dollars.

26. ORAL INFORMATION: Questions concerning a Solicitation must be directed in writing to the designated purchasing official in the period of time prescribed in the Solicitation. Bids, Proposals, or Quotations deviating from the specifications by any means other than that which is allowed by an amendment to the Solicitation written and issued by the State will be subject to rejection. The State will not be responsible for any verbal or oral information given to Vendors by anyone other than an authorized purchasing official who has provided information in writing. Reliance on any oral representation is at the Vendor's sole risk.

27. GOVERNMENTAL USE ONLY: Unless otherwise noted in the Solicitation, all purchases made pursuant to the Solicitation are for the internal use of government only and will not be resold to the general public at retail. Upon request, the State will issue a certification that all purchases made pursuant to the Solicitation are intended for the internal use of government and will not be resold to the general public at retail.

28. PUBLIC RECORDS:

A. The Idaho Public Records Law, Idaho Code Sections 74-101 through 74-126, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by a State Agency or a local agency (political subdivision of the state of Idaho) regardless of the physical form or character. All, or most, of the information contained in your response to the State's

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Solicitation will be a public record subject to disclosure under the Public Records Law. The Public Records Law contains certain exemptions. One exemption potentially applicable to part of your response may be for trade secrets. Trade secrets include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy. If you consider any material that you provide in your Bid, Proposal or Quotation to be a trade secret, or otherwise protected from disclosure, you **MUST** so indicate by marking as "exempt" **EACH PAGE** containing such information. Marking your entire Bid, Proposal or Quotation as exempt is not acceptable or in accordance with the Solicitation or the Public Records Law and **WILL NOT BE HONORED**. In addition, a legend or statement on one (1) page that all or substantially all of the response is exempt from disclosure is not acceptable or in accordance with the Public Records Law and **WILL NOT BE HONORED**. Prices that you provide in your Bid, Proposal or Quotation are not a trade secret. The State, to the extent allowed by law and in accordance with these Solicitation Instructions, will honor a designation of nondisclosure. Any questions regarding the applicability of the Public Records Law should be addressed to your own legal counsel **PRIOR TO SUBMISSION** of your Bid, Proposal or Quotation.

B. If your Bid, Proposal or Quotation contains information that you consider to be exempt, you must also submit an electronic redacted copy of the Bid, Proposal or Quotation with all exempt information removed or blacked out. The State will provide this redacted Bid, Proposal or Quotation to requestors under the Public Records Law. Submitting Vendors must also:

1. Identify with particularity the precise text, illustration, or other information contained within each page marked "exempt" (it is not sufficient to simply mark the entire page). The specific information you deem "exempt" within each noted page must be highlighted, italicized, identified by asterisks, contained within a text border, or otherwise be clearly distinguished from other text or other information and be specifically identified as "exempt."
2. Provide a separate document with your Bid, Proposal or Quotation entitled "List of Redacted Exempt Information," which provides a succinct list of all exempt material noted in your Bid, Proposal or Quotation. The list must be in the order in which the material appears in your Bid, Proposal or Quotation, identified by Page#, Section#/Paragraph#, Title of Section/Paragraph, specific portions of text or other information; or in a manner otherwise sufficient to allow the State to determine the precise material subject to the notation. Additionally, this list must identify with each notation the specific basis for your position that the material be treated as exempt from disclosure.

C. Vendor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring a designation of exempt or for the Vendor's failure to designate individual documents as exempt. The Vendor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release. If the State receives a request for materials claimed exempt by the Vendor, the Vendor shall provide the legal defense for such claim.

29. LENGTH OF CONTRACT: Pursuant to Idaho Code Section 67-9205(10), the State may enter into Contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such Contracts contain no penalty to or restriction upon the State in the event cancellation is necessitated by a lack of financing for any such Contract or Contracts.

30. LEASE-PURCHASE OPTIONS: Idaho Code Section 67-9222 reads, in part, as follows: "Any exercise of an option to acquire previously nonowned property, or any other procedure which shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and, prior to execution all applicable provisions and procedures of this chapter shall be exercised." (**NOTE:** This provision is **NOT** applicable to time purchase or installment purchase contracts).

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1. DEFINITIONS: Unless the context requires otherwise, all terms not defined below shall have the meanings defined in Idaho Code Section 67-9203 or IDAPA 38.05.01.011.

A. Agency. All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction.

B. Bid – A written offer that is binding on the Bidder to perform a Contract to purchase or supply Property in response to an Invitation to Bid.

C. Contract - Any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of Property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries.

D. Contractor – A Vendor who has been awarded a Contract.

E. Property – Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interest in such Property. Includes concession services and rights to access or use state property or facilities for business purposes.

F. Proposal – A written response, including pricing information, to a Request for Proposals that describes the solution or means of providing the Property requested and which Proposal is considered an offer to perform in full response to the Request for Proposals. Price may be an evaluation criterion for Proposals, but will not necessarily be the predominant basis for Contract award.

G. Quotation – An offer to supply Property in response to a Request for Quotation and generally used for small or emergency purchases.

H. Solicitation – An Invitation to Bid, a Request for Proposals, or a Request for Quotation issued by the purchasing activity for the purpose of soliciting Bids, Proposals, or Quotes to perform a Contract.

I. State – The state of Idaho including each Agency unless the context implies other state(s) of the United States.

J. Vendor – A person or entity capable of supplying Property to the State.

2. TERMINATION: The State may terminate the Contract (and/or any order issued pursuant to the Contract) when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days. If the Contract is terminated for default or non-compliance, the Contractor will be responsible for any costs resulting from the State's award of a new contract and any damages incurred by the State. The State, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.

3. RENEWAL OPTIONS: Notwithstanding any other provision in the Contract limiting or providing for renewal of the Contract, upon mutual, written agreement by the parties, the Contract may be extended under the same terms and conditions for the time interval equal to the original contract period, or for such shorter period of time as agreed to by the parties.

4. PRICES: Prices shall not fluctuate for the period of the Contract and any renewal or extension unless agreed to in writing by the State. Unless otherwise specified, prices include all costs associated with delivery to the F.O.B. Destination address identified in the Solicitation, as provided in Paragraph 17, Shipping and Delivery, below.

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5. ADMINISTRATIVE FEE:

A. Application of Administrative Fee:

1. All Statewide Blanket Purchase Orders (SBPO) shall be subject to an Administrative Fee of one and one-quarter percent (1.25%), based on orders placed against the Contract (unless the SBPO is exempt), as follows:

- a. The prices to be paid by the State (the price BID by Contractor) shall be inclusive of a one and one-quarter percent (1.25%) Administrative Fee. On a quarterly basis, Contractor will remit to State of Idaho, Attn: Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075 an amount equal to one and one-quarter percent (1.25%) of Contractor's net (sales minus credits) quarterly Contract sales.

For Example: If the total of Contractor's net sales to the Agency for one quarter = \$10,000, Contractor would remit \$10,000 x 0.0125 = \$125 to the Division of Purchasing for that quarter, along with the required quarterly usage report.

- b. Contractor will furnish detailed usage reports as designated by the State. In addition to any required detailed usage reports, Contractor must also submit a summary quarterly report of purchases made from the Contract to purchasing@adm.idaho.gov, utilizing the State's Summary Usage Report Form.

c. Reporting Time Line (Fiscal Year Quarters):	Fee and Report Due:
1st Quarter July 1 - Sept 30	October 31 st
2nd Quarter Oct 1 - Dec 31	January 31 st
3rd Quarter Jan 1 - Mar 31	April 30 th
4th Quarter Apr 1 - Jun 30	July 31 st

2. Unless otherwise exempt, the Administrative Fee will apply regardless of how Contractor submits its response to the solicitation (i.e. manual (paper) or electronic via IPRO).

3. A Contractor's failure to consider the Administrative Fee when preparing its Solicitation response shall not constitute or be deemed a waiver by the State of any Administrative Fees owed by Contractor to the State as a result of an Award issued through IPRO.

B. Administrative Fee Exemptions:

- 1. Notwithstanding any language to the contrary, the Administrative Fee will not apply to Contracts with an original awarded value of \$100,000 or less.
- 2. The Administrative Fee will not apply to Purchase Orders (PO), Contract Purchase Orders (CPO) or Blanket Purchase Orders (BPO).
- 3. The Administrative Fee will not apply to Contracts issued without a competitive solicitation, e.g. Emergency Procurements (EPA), Sole Source Procurements (SSA), etc.
- 4. The Administrator of the Division of Purchasing may also exempt a specific solicitation or class of solicitations from the Administrative Fee requirement.

C. Payment of Administrative Fee:

Contractor will remit the Administrative Fee to the Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075, as follows:

- 1. SBPOs: Contractor will remit the Administrative Fee and Report for the prior quarter based on the schedule outlined in Paragraph 5.A.1.c., above.

D. Refund of Administrative Fee: In the event that a Contract is cancelled by the State through no fault of the Contractor, or if item(s) are returned by the State through no fault, act, or omission of the Contractor after the sale of any such item(s) to the State, the State will refund the Contractor any Administrative Fees remitted. Administrative Fees will not be refunded or

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returned when an item is rejected or returned, or declined, or the Contract cancelled by the State due to the Contractor's failure to perform or comply with specifications or requirements of the Contract. If, for any other reason, the Contractor is obligated to refund to the State all or a portion of the State's payment to the Contractor, or the State withholds payment because of the assessment of liquidated damages, the Administrative Fee will not be refunded in whole or in part.

E. Failure to Remit Administrative Fees: If a Contractor fails to remit the Administrative Fee, as provided above, the State, at its discretion, may declare the Contractor in default; cancel the Contract; assess and recover re-procurement costs from the Contractor (in addition to all outstanding Administrative Fees); seek State or federal audits, monitoring or inspections; exclude Contractor from participating in future solicitations; and/or suspend Contractor's IPRO account.

6. CHANGES/MODIFICATIONS: Changes of specifications or modification of the Contract in any particular manner can be affected only upon written consent of all parties. In the event that a typographical or other ministerial or clerical error is discovered, the State may correct such error after providing notice to the Contractor of its intent to make the clerical correction. A copy of the corrected Contract (or that portion of the Contract which contains correction(s)) will be provided electronically to the Contractor immediately after the correction(s) are made.

7. CONFORMING PROPERTY: The Property shall conform in all respects with the requirements of the State's Solicitation. In the event of non-conformity, and without limitation upon any other remedy, the State shall have no financial obligation in regard to the non-conforming goods or services. Additionally, upon notification by the State, the Contractor shall pay all costs for the removal of nonconforming Property from State premises.

8. OFFICIAL, AGENT AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE: In no event shall any official, officer, employee or agent of the State be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with the Contract.

9. CONTRACT RELATIONSHIP: It is distinctly and particularly understood and agreed between the parties to the Contract that the State is in no way associated or otherwise connected with the performance of any service under the Contract on the part of the Contractor or with the employment of labor or the incurring of expenses by the Contractor. Said Contractor is an independent contractor in the performance of each and every part of the Contract, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of the Contract, whether it may be for personal injuries or damages of any other kind. The Contractor shall exonerate, defend, indemnify and hold the State harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, worker's compensation and income tax laws with respect to the Contractor or Contractor's employees engaged in performance under the Contract. The Contractor will maintain any applicable worker's compensation insurance as required by law and will provide certificate of same if requested. There will be no exceptions made to this requirement and failure to provide a certificate of worker's compensation insurance may, at the State's option, result in cancellation of the Contract or in a contract price adjustment to cover the State's cost of providing any necessary worker's compensation insurance. The Contractor must provide either a certificate of worker's compensation insurance issued by a surety licensed to write worker's compensation insurance in the state of Idaho, as evidence that the Contractor has in effect a current Idaho worker's compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission. The State does not assume liability as an employer.

10. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: The Contractor is bound to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964, in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for Contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Act of 1990, are also incorporated into the Contract. The Contractor shall comply with pertinent amendments to such laws made during the term of the Contract and with all federal and state rules and regulations implementing such laws. The Contractor must include this provision in every subcontract relating to the Contract.

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11. TAXES: The State is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service (Chapter 32 Internal Revenue Code [No. 82-73-0019K]). Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State, it shall be solely responsible for the payment of those taxes. If, after the effective date of the Contract, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time the Contract becomes effective, the State will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the State be responsible for personal property taxes affecting items subject to the Contract at the time it becomes effective.

12. INDEMNIFICATION: Contractor shall defend, indemnify and hold harmless the State from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, caused by or that arise from the negligent or wrongful acts or omissions of the Contractor, its employees, agents, or subcontractors under the Contract that cause death or injury or damage to property or arising out of a failure to comply with any state or federal statute, law, regulation or act. Contractor shall have no indemnification liability under this section for death, injury, or damage arising solely out of the negligence or misconduct of the State.

13. CONTRACT NUMBERS: The Contractor shall clearly show the State's Contract number or Purchase Order number on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

14. CONTRACTOR RESPONSIBILITY: The Contractor is responsible for furnishing and delivery of all Property included in the Contract, whether or not the Contractor is the manufacturer or producer of such Property. Further, the Contractor will be the sole point of contact on contractual matters, including all warranty issues and payment of charges resulting from the use or purchase of Property.

15. SUBCONTRACTING: Unless otherwise allowed by the State in the Contract, the Contractor shall not, without written approval from the State, enter into any subcontract relating to the performance of the Contract or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of any responsibility under the Contract. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Contract by Contractor's subcontractor. Subcontractor(s) must maintain the same types and levels of insurance as that required of the Contractor under the Contract; unless the Contractor provides proof to the State's satisfaction that the subcontractor(s) are fully covered under the Contractor's insurance, or, except as otherwise authorized by the State.

16. COMMODITY STATUS: It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the State in the Solicitation. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. "New" means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the State as their first user and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. The warranty is to include replacement, repair, and any labor for the period of time required by other specifications or for the standard manufacturer or warranty provided by the Contractor, whichever is longer.

17. SHIPPING AND DELIVERY: Unless otherwise required in the Contract, all orders will be shipped directly to the Agency that placed the order at the location specified by the State, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. Unless otherwise specified in the Contract, deliveries shall be made to the Agency's receiving dock or inside delivery point, such as the Agency's reception desk. The Contractor shall deliver all orders and complete installation, if required, within the time specified in the Contract. Time for delivery commences at the time the order is received by the Contractor.

18. ACCEPTANCE: Unless otherwise specified in the Contract:

A. When the Contract does not require installation, acceptance shall occur fourteen (14) calendar days after delivery, unless the State has notified the Contractor in writing that the product delivered does not meet the State's specification requirements or otherwise fails to pass the Contractor's established test procedures or programs or test procedures or programs identified in the Contract.

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B. When the Contract requires installation, acceptance shall occur fourteen (14) calendar days after completion of installation, unless the State has notified the Contractor in writing that the products(s) delivered does not meet the State's specification requirements, that the product is not installed correctly or otherwise fails to pass the Contractor's established test procedures or programs or test procedures or programs identified in the Contract.

C. When the Contract requires the delivery of services, acceptance shall occur fourteen (14) calendar days after delivery of the services, unless the State has notified the Contractor in writing that the services do not meet the State's requirements or otherwise fail to pass the Contractor's established test procedures or programs or test procedures or programs identified in the Contract.

19. RISK OF LOSS: Risk of loss and responsibility and liability for loss or damage will remain with Contractor until acceptance, when responsibility will pass to the State with the exceptions of latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under the Contract.

20. INVOICING: ALL INVOICES are to be sent directly to the **AGENCY TO WHICH THE PROPERTY IS PROVIDED**, unless otherwise required by the Contract. The Contract number is to be shown on all invoices. Invoices must not be sent to the Division of Purchasing unless required by the Contract.

21. ASSIGNMENTS: Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from the Contract, or delegate any of its performance obligations, without the express written consent of the Administrator of the Division of Purchasing and the Idaho Board of Examiners. Transfer without such approval shall cause the annulment of the Contract, at the option of the State. All rights of action, however, for any breach of the contract are reserved to the State. (Idaho Code Section 67-9230).

Notwithstanding the foregoing, and to the extent required by applicable law (including Idaho Code Section 28-9-406), Contractor may assign its right to payment on an account provided that the State shall have no obligation to make payment to an assignee until thirty days after Contractor (not the assignee) has provided the responsible State procurement officer with (a) proof of the assignment, (b) the identity of the specific state contract to which the assignment applies, and (c) the name of the assignee and the exact address to which assigned payments should be made. The State may treat violation of this provision as an event of default.

22. PAYMENT PROCESSING: Idaho Code Section 67-9218 reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered." Payments shall be processed within the timeframes required by I.C. § 67-9218 unless otherwise specified in the Contract.

23. COMPLIANCE WITH LAW, LICENSING AND CERTIFICATIONS: Contractor shall comply with **ALL** requirements of federal, state and local laws and regulations applicable to Contractor or to the Property provided by Contractor pursuant to the Contract. For the duration of the Contract, the Contractor shall maintain in effect and have in its possession all licenses and certifications required by federal, state and local laws and rules.

24. PATENTS AND COPYRIGHT INDEMNITY:

A. Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States' patent, copyright, trade secret, or trademark for Property purchased under the Contract. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.

B. Contractor shall have no liability to the State under any provision of this clause with respect to any claim of infringement that is based upon: (i) the combination or utilization of the Property with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications unless such combination or utilization was disclosed in the specifications; (ii) the modification of the Property unless such modification was disclosed in the

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specifications; or (iii) the use of the Property not in accordance with Contractor's previously established specifications unless such use was disclosed in the specifications.

C. Should the Property become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States' patent, the Contractor shall, at its option and expense, either procure for the State the right to continue using the Property, to replace or modify the Property so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the Property and accept its return.

25. CONFIDENTIAL INFORMATION: Pursuant to the Contract, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Such Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its services under the Contract and shall not disclose Confidential Information or any advice given by it to the State to any third party, except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then only upon timely notice to the State. Confidential Information shall be returned to the State upon termination or expiration of the Contract.

Confidential Information shall not include data or information that:

A. Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;

B. Becomes generally available to the public other than as a result of disclosure by Contractor; or

C. Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

26. USE OF THE STATE OF IDAHO NAME: Contractor shall not, prior to, in the course of, or after performance under the Contract, use the State's name in any advertising or promotional media, including press releases, as a customer or client of Contractor without the prior written consent of the State.

27. TERMINATION FOR FISCAL NECESSITY: The State is a government entity and it is understood and agreed that the State's payments under the Contract shall be paid from Idaho State Legislative appropriations, funds granted by the federal government, or both. The Legislature is under no legal obligation to make appropriations to fulfill the Contract. Additionally, the federal government is not legally obligated to provide funds to fulfill the Contract. The Contract shall in no way or manner be construed so as to bind or obligate the state of Idaho beyond the term of any particular appropriation of funds by the Idaho State Legislature, or beyond any federal funds granted to the State, as may exist from time to time. The State reserves the right to terminate the Contract in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the state of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available (e.g. through repeal of enabling legislation), or if the State discontinues or makes a material alteration of the program under which funds were provided, or if federal grant funds are discontinued. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Contractor. Further, in the event that funds are no longer available to support the Contract, as described herein, the State shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom. In the event of early Contract termination under this section, the State will collect all Contractor-owned equipment and accessory items distributed under the Contract within thirty (30) calendar days of Contract termination. Items will be collected at a central (or regional) location(s) designated by the State. Contractor will be responsible for all costs associated with packaging and removing all Contractor-owned items from the State-designated location(s), which must be completed within thirty (30) calendar days of written notification from the State. If Contractor fails to remove its items within that time period, the State may charge Contractor for costs associated with storing the items; and may otherwise dispose of the items as allowed by applicable law. At Contractor's request, the State shall promptly provide supplemental documentation as to such Termination for Fiscal Necessity. Nothing in this section shall be construed as ability by the State to terminate for its convenience.

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28. PUBLIC RECORDS:

A. Pursuant to Idaho Code Section 74-101, et seq., information or documents received by the State will be open to public inspection and copying unless the material is exempt from disclosure under applicable law. The person or entity submitting the material must clearly designate specific information within the document as "exempt," if claiming an exemption; and indicate the basis for such exemption (e.g. Trade Secret). The State will not accept the marking of an entire document as exempt; or a legend or statement on one page that all, or substantially all, of the document is exempt from disclosure.

B. Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate specific information within the document as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release. If the State receives a request for materials claimed exempt by the Contractor, the Contractor shall provide the legal defense for such claim.

29. NOTICES: Any notice which may be or is required to be given pursuant to the provisions of the Contract shall be in writing and shall be hand delivered, sent by facsimile, email, prepaid overnight courier or United States' mail as follows:

A. For notice to the State, the address, phone and facsimile number are:

State of Idaho
Division of Purchasing
650 W State Street – Room B15
P.O. Box 83720
Boise, ID 83720-0075
208-327-7465 (phone)
208-327-7320 (fax)

Additionally, for notice to the State, the email address to use is the email address identified in the Contract, courtesy copied to purchasing@adm.idaho.gov.

B. For notice to the Contractor, the address, facsimile number or email address shall be that contained on the Contractor's Bid, Proposal or Quotation (including, for any Bid, Proposal or Quotation submitted electronically through IPRO, the address, facsimile number or email address in the profile under which the Contractor submitted its Bid, Proposal or Quotation). Notice shall be deemed delivered immediately upon personal service, facsimile transmission (with confirmation printout), email (with printout confirming sent) the day after deposit for overnight courier or forty-eight (48) hours after deposit in the United States' mail. Either party may change its address, facsimile number or email address by giving written notice of the change to the other party.

30. NON-WAIVER: The failure of any party, at any time, to enforce a provision of the Contract shall in no way constitute a waiver of that provision, nor in any way affect the validity of the Contract, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

31. ATTORNEY FEES: In the event suit is brought or an attorney is retained by any party to the Contract to enforce the terms of the Contract or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorney fees, court costs, costs of investigation and other related expenses incurred in connection therewith in addition to any other available remedies; however, the State's liability is limited to that which is identified in the Idaho Tort Claims Act, Idaho Code Section 6-9 et seq.

32. RESTRICTIONS ON AND WARRANTIES – ILLEGAL ALIENS: Contractor warrants that the Contract is subject to Executive Order 2009-10 [http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html]; it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent (5%) of the contract price, per violation, and/or termination of its contract.

33. FORCE MAJEURE: Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of either party,

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including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, or unusually severe weather, provided that in all cases the Contractor shall notify the State promptly in writing of any cause for delay and the State concurs that the delay was beyond the control and without the fault or negligence of the Contractor. The period for the performance shall be extended for a period equivalent to the period of the Force Majeure delay.

34. PRIORITY OF DOCUMENTS: The Contract consists of and precedence is established by the order of the following documents:

1. The State's Blanket Purchase Order, Statewide Blanket Purchase Order, Contract Purchase Order, Purchase Order, or Participating Addendum;
2. The Solicitation; and
3. Contractor's Bid, Proposal or Quotation as accepted by the State.

The Solicitation and the Contractor's Bid, Proposal or Quotation accepted by the State are incorporated into the Contract by this reference. The parties intend to include all items necessary for the proper completion of the Contract's requirements. The documents set forth above are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a lower numbered document shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. Provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur.

Where terms and conditions specified in the Contractor's Bid, Proposal or Quotation differ from the terms in the Solicitation, the terms and conditions in the Solicitation shall apply. Where terms and conditions specified in the Contractor's Bid, Proposal or Quotation supplement the terms and conditions in the Solicitation, the supplemental terms and conditions shall apply only if specifically accepted by the Division of Purchasing in writing.

35. ENTIRE AGREEMENT: The Contract is the entire agreement between the parties with respect to the subject matter hereof. Where terms and conditions specified in the Contractor's Bid, Proposal or Quotation differ from those specifically stated in the Contract, the terms and conditions of the Contract shall apply. In the event of any conflict between the State of Idaho Standard Contract Terms and Conditions and any Special Terms and Conditions in the Contract, the Special Terms and Conditions will govern. The Contract may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties; however, Termination for Fiscal Necessity is excepted, and, the State may issue unilateral amendments to the Contract to make administrative changes when necessary.

36. GOVERNING LAW AND SEVERABILITY: The Contract shall be construed in accordance with and governed by the laws of the state of Idaho. Any action to enforce the provisions of the Contract shall be brought in State district court in Ada County, Boise, Idaho. In the event any term of the Contract is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms of the Contract will remain in force.