



**State of Idaho Contract Number SBPO20220977
Amendment No. 2**

Parties

Agency	Contractor
Department of Administration 650 W. State St. Boise, ID 83702	BDM Squared LLC 235 Peachtree Street, #400 Atlanta, GA 30303

Contract Summary

Contract Name: Smartsheet Project Management Software Contract Description: Smartsheet Project Management Software for Idaho public agencies Original Effective Date: 10/6/2021 Current Expiration Date: 10/14/2024	Current Contract Value: \$203,000.00 Contract Usage Type: Open
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Agency Contacts

Contact Name	Contact Type	Contact Email
DOP Contract Administration	Contract Administrator	contractadmin@adm.idaho.gov

Contractor Contacts

Contact Name	Contact Phone	Contact Email
Missy Pitcher	(404) 301-5879	Missy.pitcher@bdmsquared.com

Recitals

1. The Parties entered into a Contract (SBPO20220977) for Smartsheet Project Management Software for Idaho public agencies, effective October 6, 2021.
2. The Contract was renewed on 10/15/2022 (renewal 1), for a one (1) year period.
3. Amendment No. 1 renewed the Contract on 10/15/2023 and adjusted the pricing.
4. With this Amendment No. 2, The Parties desire to renew the Contract and incorporate additional terms and conditions as required by Idaho code, as further detailed below.

Agreement

Based on the above recitals, and good and valuable consideration, the receipt of which is hereby acknowledged, the Contract is amended as follows:

1. The Contract is renewed from October 15, 2024, to October 14, 2025. The estimated value of this renewal period is \$125,000.00.
2. The following terms and conditions are added to the Contract:

2.1 Pursuant to Idaho Code section 67-2347A (Effective July 1, 2024), if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Agreement, engage in, a boycott of any individual or company because the individual or company: (a) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (b) engages in or supports the manufacture, distribution, sale, or use of firearms. The terms in this section defined in Idaho Code section 67-2347A shall have the meaning defined therein, including through reference to another section of Idaho Code.

3. Except as expressly modified in this Amendment, all other terms and conditions of the Contract remain in full force and effect.
4. This Amendment is effective upon the date of the last signature below. In no event will this Amendment be effective until executed by the Department of Administration.

Department of Administration

BDM Squared LLC

Signature: David Miller

Signature: Malissiza Pitcher

Name: David Miller

Name: Missy Pitcher

Title: Contract Administrator

Title: CEO

Date: 10/09/2024

Date: 10/09/2024



**State of Idaho Contract Number SBPO20220977
Amendment No. 1**

Parties

Agency	Contractor
Department of Administration 650 W. State St. Boise, ID 83702	BDM Squared LLC 235 Peachtree Street, #400 Atlanta, GA 30303

Contract Summary

Contract Name: Smartsheet Project Management Software Contract Description: Smartsheet Project Management Software for Idaho public agencies. Original Effective Date: 10/06/2021 Current Expiration Date: 10/14/2023	Current Contract Value: \$78,000.00 Estimated Lifetime Value: \$134,000.00 Contract Usage Type: Open
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Agency Contacts

Contact Name	Contact Type	Contact Email
DOP Contract Administration	Contract Administrator	contractadmin@adm.idaho.gov

Contractor Contacts

Contact Name	Contact Phone	Contact Email
Missy Pitcher	404-301-5879	missy.pitcher@bdmsquared.com

Recitals

1. The Parties entered into a Contract (SBPO20220977) for smartsheet project management software for Idaho public agencies, effective October 6, 2021.
2. The Contract was renewed on October 15, 2022 for a one (1) year period.
3. The Idaho Legislature created Idaho Code 67-2359 requiring certification by the Contractor.
4. With this Amendment No. 1, the Parties desire to renew the Contract, adjust pricing, and obtain Contractor certification of Idaho Code 67-2359, as further detailed below.

Agreement and Signature Page Follows

Agreement

Based on the above recitals, and good and valuable consideration, the receipt of which is hereby acknowledged, the Contract is amended as follows:

1. The Contract is renewed for one (1) year from October 15, 2023 to October 14, 2024. The estimated value of the renewal period is \$28,000.00.
2. The pricing on Attachment 2, Specifications and Bid Schedule, is adjusted as shown below. The Contractor's request letter for this adjustment is included with this Amendment as Exhibit A, below.
 - Line Item 1 is increased from \$570 to \$630 each.
 - Line Item 2 is increased from \$380 to \$396 each.
 - Line Item 3 is increased from \$525 to \$580 each.
 - Line Item 4 is increased from \$335 to \$350 each.
3. Pursuant to Idaho Code 67-2359, the Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China.
4. Except as expressly modified in this Amendment, all other terms and conditions of the Contract remain in full force and effect.
5. This Amendment is effective upon the date of the last signature below. In no event will this Amendment be effective until executed by the Department of Administration.

Department of Administration

Signature: 

Name: Chase Croft

Title: Contract Administrator

Date: 10/12/2023

BDM Squared LLC

Signature: 

Name: Missy Pitcher

Title: CEO

Date: 10/11/2023

Chase Croft
Contract Administrator
Idaho Division of Purchasing

RE: SBPO20220977 for Smartsheet Project Management Software - Contract Amendment Request

I would like to request an amendment to the pricing for Smartsheet Project Management Software licensing due to an increase in license price from Smartsheet. See requested rate changes below:

License Type	Current Price	New Price	Percent Increase
License for Smartsheet Project Management Software with Pro Support and WITH Enterprise licensing	\$570	\$630	10%
Business License with Pro Support for Smartsheet Project Management Software	\$380	\$396	6%
Smartsheet Project Management Software with Standard Support and WITH enterprise licensing	\$525	\$580	11%
Business License with Standard Support for Smartsheet Project Management Software	\$335	\$350	5%

Kind Regards,

Malissiza Pitcher

Missy Pitcher

404.301.5879



info@BDMSquared.com



BDMSquared.com



235 Peachtree Street NE

Atlanta, GA 30303



Idaho Division of Purchasing

Renewal

Purchase Order Name: Smartsheet Project Management Software
Contract Number: SBPO20220977
Parties: State of Idaho
BDM Squared
This Renewal Value: 25,000.00 USD
Total Contract Value: 50,000.00 USD
Start Date: 10/15/2022 12:00 AM
End Date: 10/14/2023 11:59 PM

Contract Managers: Joann Amieva; joann.amieva@adm.idaho.gov

Instructions

SBPO20220977, Smartsheet Project Management Software is extended for the time period, as provided above. All of the terms and conditions contained in the Contract shall remain in effect, except expressly modified herein. Contractor's signed renewal letter to SBPO20220977 is attached and incorporated herein by reference.

Note: The dollar amount listed in the contract renewal pricing is an estimate and cannot be guaranteed. The actual dollar amount of the Contract may be more or less depending on the orders placed by the State; or may be dependent upon the specific terms of the Contract.

Missy Pitcher

+1 404-301-5879
sales@bdmsquared.com

Payment Details Payment
Terms: Net 30

Special Instructions:

Internal Comments:

Joann
Amieva/Buyer

Digitally signed by Joann
Amieva/Buyer
Date: 2022.07.13 11:14:43
-06'00'

Signature signed By:



BRAD LITTLE
Governor
KEITH REYNOLDS
Director
VALERIE BOLLINGER
Administrator

State of Idaho
Department of Administration
Division of Purchasing

650 West State Street, Room 100
Boise, ID 83702
Telephone: (208) 327-7465
Email: purchasing@adm.idaho.gov
www.purchasing.idaho.gov

July 8, 2022

BDM Squared
Attn: Missy Pitcher

VIA ELECTRONIC TRANSMISSION
sales@bdmsquared.com

RE: Renewal of Contract SBPO20220977a Contract for Smartsheet Project Management software, for the Department of Administration.

Expiring 10/14/2022

The State of Idaho would like to renew the above referenced contract for a period of One (1) Year.

The contract renewal period is October 14, 2022 to October 15, 2023. The same terms, conditions and prices prevail for the contract renewal period, except as expressly modified herein.

Please also provide an updated Certificate of Insurance with your renewal documents.

****On April 26, 2021, Governor Little signed Senate Bill 1086. The bill creates a new section of code requiring all public entities in Idaho to insert a certification regarding boycotts of Israel in contracts and renewals of contracts that are effective on or after July 1, 2021. By agreeing to renew this contract, you certify as follows:**

Certification Concerning Boycott of Israel. Pursuant to Idaho Code section 67-2346, if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

If the terms of this renewal letter are acceptable to your company, please sign below and return via mail, or e-mail ContractAdmin@adm.idaho.gov @ the Division of Purchasing. Please update your IPRO profile as well- including contact information, if necessary, to continue to receive e-mail notifications through the IPRO System.

Thank you for your consideration in this matter.

Sincerely,

Joann Amieva

Buyer
Idaho Division of Purchasing

Contractor agrees to the terms detailed herein:

COMPANY: BDM Squared LLC

Name & Title (Printed): Missy Pitcher, CEO

Signature: Malissiza Pitcher

Date: 7/13/2022

Idaho Division of Purchasing

Name & Title (Printed): Joann Amieva

Signature: Joann Amieva

Date: 7/13/2023

If you need to update the contact information for this contract, please do so below.

UPDATED CONTRACTOR CONTACT INFORMATION for SBPO20220977

Contact Name	Missy Pitcher
Title	CEO
Address (Mailing)	14515 Downing Street, Dover FL 33527
Phone	404.301.5879
Fax	
E-mail	missy.pitcher@bdmsquared.com

Contract SBPO20220977
Contract for Smartsheet Project Management
Software, for Department of Administration

Acknowledgment of Idaho State House Bill 220

BDM Squared

“Contractor”

Acknowledges the following by signing below:

Disclosure of Abortion Related Matters. The State is subject to the No Public Funds for Abortion Act, Idaho Code title 18, chapter 87 (the “Act”) and State employees who intentionally violate the provisions of the Act are subject to criminal prosecution. This provision is included in this letter to aid in compliance with the Act. The state of Idaho (State) requests that Contractor disclose, unless Contractor is within one of the exemptions provided in the Act, if it or an affiliate is or becomes, during the term of the Contract, an abortion provider and if it will use State facilities or public funds to provide, perform, participate in, promote or induce, assist, counsel in favor, refer or train a person for an abortion related activity. Please refer to the Act for definitions of the terms used in this section.

Acknowledged by (Print Name): Missy Pitcher

Title: CEO

Signature: Malissiza Pitcher

Date: 7/13/2022



Idaho Division of Purchasing

Statewide Blanket Purchase Order

Purchase Order Summary

Purchase Order Name: Smartsheet Project Management Software
Contract Number: SBPO20220977
Contract Value: 25,000.00 USD
Purchase Order Date: 10/6/2021
Submitted By: Jason Urquhart

Service Start Date: 10/15/2021 12:00 AM
Service End Date: 10/14/2022 11:59 PM

Instructions

NOTICE OF STATEWIDE CONTRACT (SBPO) AWARD

This Contract is for Smartsheet Project Management Software, awarded on behalf of State of Idaho Agencies, institutions, departments, and eligible public agencies as defined by Idaho Code Section 67-2327, pursuant to ITB ITB20221181. This Contract shall be for the period noted above, and may be amended, renewed, or extended upon mutual, written agreement of the parties, as detailed in the ITB.

Contract Type: Open

Public Agency Clause: Yes

Contractor Contact: Missy Pitcher

Phone: +1 404-301-5879

E-mail: sales@bdmsquared.com

This Contract is to be drawn upon as requested by the Ordering Agency for the period noted above. THIS NOTICE OF AWARD IS NOT AN ORDER TO SHIP. Purchase orders against this SBPO will be furnished by the Ordering Agency on whose behalf this Contract is made. Contractor must ship and bill directly to the Ordering Agency. DO NOT INVOICE DOP unless DOP is the Ordering Agency. Notating the Contract Award Number on any invoices/statement will facilitate the efficient processing of payment.

QUANTITIES: DOP can only give approximations of quantities; no maximum or minimum quantities can be guaranteed.



This SBPO, including any attached files, constitutes the State of Idaho's acceptance of your signed Bid (including any electronic submission), which is incorporated herein by reference. In the event of any inconsistency, precedence shall be given in the following order:

1. This SBPO
2. The State of Idaho's sourcing event, ITB20221181
3. The Contractor's signed Bid

Special Instructions:

Internal Comments:

Signature: Jason Urquhart

Signed By: _____

September 1, 2021

AMENDMENT 1

TO: All concerned vendors

RE: ITB20221181, Invitation to Bid (ITB) for Smartsheet Project Management Software for the State of Idaho, closing 5:00 p.m. Mountain time, September 20, 2021.

I. The following are questions, statements, clarifications, and their responses regarding the referenced ITB. This additional information is added to and is made part of the referenced ITB.

Written Vendor Questions

We received some questions yesterday, and even though they were received after the deadline for submission of written questions, we have chosen to answer them.

Question	ITB Section	ITB Page	Question	Response
1			<p>In your last email of 22 April you advised that you planned to review RFI responses the following week. That was over 4 months ago and as we hadn't heard from you, we thought that a decision had now been reached.</p> <p>Was therefore I bit confused what this invitation to bid is for, we can only assume it is the same?</p>	<p>This Invitation to Bid is somewhat different from the Invitation to Bid we issued in 2020. Please read the requirements carefully.</p>
2			<p>THE ADMINISTRATIVE FEE DETAILED IN PARAGRAPH 5 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS WILL APPLY TO THE CONTRACT(S) THAT RESULT FROM THIS SOLICITATION.</p> <p>Was not sure what this was for and whether it indeed applied as it states above that it "WILL APPLY TO THE CONTRACT(S) THAT RESULT FROM THIS SOLICITATION, yet point B1 states that "Notwithstanding any language to the contrary, the Administrative Fee will not apply to Contracts with an original awarded value of \$100,000 or less", which this would likely be. I am not sure why</p>	<p>Yes, we are including the administrative fee requirement in this Invitation to Bid, and Bidders will have to keep this in mind when considering the pricing they bid.</p>

Question	ITB Section	ITB Page	Question	Response
			<p>any contractor would be paying the State of Idaho for a Purchase Order, this is not normal.</p> <p>If you are saying that we would need to pay a one and one-quarter percent (1.25%) Administrative Fee for an invoice that we would raise then we would simply increase the price of the software to cover this.</p>	
3			<p>We are not a subscribed vendor to Idaho. Will that be a problem? If not, how would we receive a purchase order, provide an invoice, for payment? If there are documents that we need to fill out please let me know.</p>	<p>In order to respond to this Invitation to Bid, vendors that are interested in doing to must first profile their company within our e-procurement system, IPRO.</p> <p>There are a number of documents for vendors to read and respond to within IPRO.</p>

Thank you for your interest in supplying the needs of the state of Idaho.

ITB20221181 – Smartsheet Project Management Software

ITB ADMINISTRATION

ITB Title:	Smartsheet Project Management Software
ITB Lead:	Jason Urquhart, Purchasing Officer 208-332-1608 jason.urquhart@adm.idaho.gov
Submit electronically via IPRO:	Electronic Submission IPRO LOGIN
Deadline to Receive Questions:	Monday August 30, 2021 at 5:00 p.m. Mountain time
ITB Closing Date:	<i>See IPRO Header Document</i>
Opening Date: <i>(DOP is currently conducting Virtual Electronic Bid Openings instead of Public Bid Openings due to COVID-19)</i>	<i>See IPRO Header Document</i>
Initial Term of Contract and Renewals:	The initial term of the Contract will be one (1) year. Upon mutual, written agreement, the Contract may be renewed, extended or amended. The anticipated total Contract term is five (5) years.
THE ADMINISTRATIVE FEE DETAILED IN PARAGRAPH 5 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS WILL APPLY TO THE CONTRACT(S) THAT RESULT FROM THIS SOLICITATION.	

1 BACKGROUND INFORMATION

The purpose of this Invitation to Bid (ITB) is to establish a statewide Contract for Smartsheet Project Management Software. The Contract will be for the benefit of various state of Idaho agencies, institutions and departments and eligible political subdivisions or public agencies as defined by Idaho Code, Section 67-2327.

2 RESULTING CONTRACT

If the State awards a contract from this Solicitation, it will do so by issuing a Statewide Blanket Purchase Order (SBPO) document from the State's eProcurement system, IPRO, which will be an acceptance of the successful bid. The Contract will be comprised of that contract document; this ITB, including any incorporated documents; the successful Bid, including any clarifications requested by the state of Idaho (State); and an artifact formalizing any requirements agreed upon through contract discussions or negotiations, if applicable.

The following documents are incorporated into this ITB as if set out in their entirety, whether or not they are attached in IPRO:

- Solicitation Instructions for Vendor
- Standard Contract Terms and Conditions
- State of Idaho Standard Terms and Conditions for Cloud Services

If not attached in IPRO, the documents may be found on the "Information for Vendors" page of DOP's website, www.purchasing.idaho.gov. If multiple versions of any of these documents are available on the website, the version in effect on the day the ITB was issued shall apply.

3 QUESTIONS

3.1 Restrictions on Communications

From the issue date of this ITB, until a contract is awarded or the ITB is cancelled, vendors and their representatives are prohibited from communications (written or verbal) regarding this ITB with the state of Idaho staff, evaluation committee members, or other state employees other than the ITB Lead, except during formal solicitation events or challenges defined in Idaho Code 67-9232.

3.2 Questions

- 3.2.1 This solicitation is issued via the State's e-Procurement system, IPRO (<https://solutions.scquest.com/apps/Router/SupplierLogin?CustOrg=StateofIdaho>.) The ITB Lead is the only contact for this Solicitation. All correspondence must be in writing. If it becomes necessary to revise any part of this ITB, amendments will be posted at IPRO. It is the responsibility of parties interested in this ITB to monitor IPRO for any updates or amendments. NOTE: Accessing this sourcing event via the DOP website may not provide access to all documents, including amendments and answers to questions. Parties interested in this sourcing event must login to IPRO to access the full sourcing event; the State will not be responsible for a vendor's failure to receive information if that vendor fails to login to IPRO. Any oral interpretations or clarifications of this ITB must not be relied upon. All changes to this ITB will be in writing and must be posted to IPRO to be valid.
- 3.2.2 Written questions must be submitted using the IPRO Q and A Board or **Attachment 1 - Bidder's Questions** (under Buyer Attachments). Official answers to all written questions will be posted on IPRO utilizing the Q and A Board. Response times for answering questions may vary as some questions require consultation with agencies, legal counsel, risk management, or other third parties. The State will make every effort to answer questions in a timely manner; however, the State will not guarantee a specific response time and does not guarantee that questions will be answered in the order received.
- 3.2.3 Any questions regarding the State of Idaho Standard Contract Terms and Conditions found at ([Contract Terms and Conditions](#)) must also be submitted in writing, using or **Attachment 1 - Bidder's 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.**
- 3.2.4 Questions or other correspondence must be submitted in writing to the ITB Lead (see contact information in the ITB Administrative Information, page 1). QUESTIONS MUST BE RECEIVED BY THE DEADLINE LISTED IN IPRO.

4 INSTRUCTIONS FOR SUBMISSION OF BID

4.1 General Instructions

- 4.1.1 Bids must be submitted electronically via IPRO, as detailed below. Except as otherwise addressed in this solicitation, all submission materials must be submitted at the same time (via electronic submission in IPRO). If multiple submissions are received, only the latest timely submission will be considered, unless the ITB Lead can determine that the separate materials were intended to constitute a single submission.
- 4.1.2 Alternate Bids are not allowed except as otherwise provided elsewhere in this document or in the Special Terms and Conditions.
- 4.1.3 All electronic files must be in Microsoft Word or Excel format; the only exception is for financials, brochures or other information only available in an alternate format.
- 4.1.4 All Bidders participating in this Solicitation must establish an account in the IPRO system as it is necessary in order for the Bidders to access the entire sourcing event and for the State to process and/or award the resulting Contract(s). Establishing an account is free and only takes a few minutes.
- 4.1.5 **In an effort to limit the risk of spreading COVID-19 through contact between DOP personnel and vendors/mail carriers/couriers, DOP will not accept manual submissions for this solicitation. Only electronic submissions will be accepted. Bids must be submitted electronically via IPRO. Do not fax or e-mail your Bid. Your Bid must be submitted by the date and time specified on the IPRO header document.**

4.2 Electronic Submission via IPRO

If submitting electronically via IPRO, upload all of the Required Bid Submission Items and complete all the mandatory prerequisites and questions listed.

If submitting via IPRO, be advised 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.

4.3 Trade Secrets

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), Bidder's 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 and how the exempting the material complies with the Public Records Law.

Submit a redacted copy of the Bid with all trade secret information removed or blacked out. The redacted copy must be submitted electronically, with the word "redacted" in the file name, whether the Bid is submitted manually or electronically.

6 RESPONSIBILITY

Pursuant to IDAPA 38.05.01.081, the ITB Lead may, in the State's sole discretion, require the apparent lowest responsive Bidder's to provide documentation to demonstrate its responsibility. The ITB Lead may request documentation including, but not limited to: credit or financial reports, and references. Failure to provide requested documentation may result in the Bidder's being deemed non-responsible. Nothing herein shall prevent the State from using other means to determine Bidder's responsibility.

7 AWARD

Award will be made ALL OR NONE to the responsive responsible Bidder with the lowest Extended Price, as provided in **Attachment 2 – Specifications and Bid Schedule**.

8 BILLING PROCEDURE

The Contractor must provide a signed invoice to the ordering agencies upon acceptance of the Smartsheet Project Management Software (for new installations), upon provision of services (if any) or upon renewal of the agency's licenses, whichever applies.

The Contractor must provide the following information with each invoice:

- 1 IPRO contract number and Agency PO number
- 2 Identification of billing period
- 3 Total amount billed for the billing period
- 4 Detailed description of services/products provided and associated # of quantities, as appropriate
- 5 Name of authorized individual and contact information for Contractor

Invoices and reports are to be submitted to the person, location or both designated by the agency.

For new installations of Smartsheet Project Management Software, acceptance shall be in accordance with the State of Idaho Standard Contract Terms and Conditions section 18, Acceptance, paragraph B.

9 SPECIAL TERMS AND CONDITIONS

The following terms and conditions will apply to the resulting Contract (in addition to the terms and conditions incorporated in Section 2 of this ITB.

Regarding any conflicts, these Special Terms and Conditions prevail over the terms and conditions of the State of Idaho Standard Contract Terms and Conditions and the terms and conditions of the State of Idaho Standard Terms and Conditions for Cloud Services.

Where there are conflicts between the terms and conditions of the State of Idaho Standard Contract Terms and Conditions and the terms and conditions of the State of Idaho Standard Terms and Conditions for Cloud Services, the terms and conditions of the State of Idaho Standard Terms and Conditions for Cloud Services shall apply.

9.1 Smartsheet Project Management Software Terms and Conditions

No terms and conditions submitted by any Bidder or referenced in a Bid will be incorporated into the Contract resulting from this ITB.

If the Contractor requires any individual agency to agree to an End-User License Agreement, a Service Level Agreement, or any other kind of document that contains terms and conditions (an “Agreement”) pertaining to the use of the Smartsheet Project Management Software, any terms or conditions contained in any Agreement that contradict the ITB’s Specifications (as defined in IDAPA 38.05.01) or the ITB’s requirements, the State of Idaho Standard Contract Terms and Conditions, the State of Idaho Standard Terms and Conditions for Cloud Services or the Special Terms and Conditions of this ITB, or that do the following (see sections 9.1.1 through 9.1.9 below), are void:

9.1.1 Waive the sovereign immunity of the state of Idaho;

9.1.2 Subject the state of Idaho, its agencies, or political subdivisions of the state of Idaho to the jurisdiction of the courts of other states;

9.1.3 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;

9.1.4 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;

9.1.5 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;

9.1.6 Require indemnification not specifically authorized by the Idaho legislature or subject to appropriation pursuant to Section 67-9215, Idaho Code, and Section 59-1016, Idaho Code;

9.1.7 Require the state of Idaho or its agencies to waive punitive damages; or,

9.1.8 Give a higher order of precedence to any terms and conditions associated with the Smartsheet Project Management Software than the terms and conditions included in the RFP; or,

9.1.9 Hold individual employees or officers of the state of Idaho personally liable.

Additionally, if an employee or officer of the state of Idaho or of a political subdivision of the state of Idaho clicks-through acceptance of any terms and conditions associated with the Smartsheet Project Management Software provided under the Contract, that

click-through does not indicate that the employee or officer has accepted any clicked-through terms and conditions.

Lastly, even if the Smartsheet Project Management Software provided under the Contract belongs to any third party (not to the Contractor), the requirements of this section apply.

9.2 Department of Health and Welfare Data

Department of Health and Welfare data must be stored on servers located within the continental United States.

9.3 Department of Health and Welfare Business Associate Rider

The Department of Health and Welfare reserves the right to require the Contractor to sign a Business Associate Rider. (An example has been uploaded with ITB20221181.)

9.4 Data Protection

See the State of Idaho Standard Terms and Conditions for Cloud Services. Paragraph G of section 10, Data Protection, is changed to read as follows:

“G. FedRAMP: State Data shall be stored in a FedRAMP accredited cloud service if required by the agency that has purchased Smartsheet Project Management Software.”

9.5 Use of the Contract

Use of the Contract shall be mandatory for agencies subject to the State Procurement Act that wish to purchase Smartsheet Project Management Software. Use of the Contract shall not be mandatory for any other agency. No other product or service made by Smartsheet Inc. shall be part of the Contract.

9.6 Price Adjustments

No later than ninety (90) calendar days prior to the expiration date of the Contract, the Contractor may submit a request for price adjustments. Upon request by the State, the Contractor must provide written justification supporting the request. No price adjustment will go into effect unless approved by the State and won't be in effect unless and until the Contract is renewed.

9.7 Records Maintenance

The Contractor shall 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 shall 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.

9.8 Audit Rights

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

9.9 Public Agency Clause

Contract prices shall be extended to other "Public agencies" as defined in Section #67-2327 of the Idaho Code, which reads as follows:

67-2327. DEFINITIONS. "Public agency" means any city or political subdivision of this state, including, but not limited to counties; school districts; highway districts; and port authorities; instrumentalities of counties, cities or any political subdivision created under the laws of the state of Idaho; any agency of the state government; and any city or political subdivision of another state.

"State" means a state of the United States and the District of Columbia.

It will be the responsibility of the Public Agency to independently contract with the Contractor and/or comply with any other applicable provisions of Idaho Code governing public contracts.

ATTACHMENT 2 – BIDDER’S QUESTIONS

ITB20221181 – Smartsheet Project Management Software

Instructions:

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 and Condition or a Special Term and Condition, state the clause number in column 2. If the question is in regard to an attachment, enter the attachment identifier (example “Attachment 1”) in the “ITB Section” (column 2), and the attachment 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.”

ITB20221181 – Smartsheet Project Management Software

Question	ITB Section	ITB Page #	Question	Response
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
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18				
19				
20				

Attachment 2 – Specifications and Bid Schedule

ITB20221181 – Smartsheet Project Management Software

Specifications: Smartsheet Project Management Software (Brand Name Only)

Bid Schedule:

Do not change this Bid Schedule. Doing so may cause your Bid to be found non-responsive.

Line Item #	Description	Estimated Annual Quantity*	Unit	Unit Price (cost per license)	Extended Price
1	License for Smartsheet Project Management Software with Pro Support and WITH enterprise licensing* ²	32	EA		
2	Business License with Pro Support for Smartsheet Project Management Software (without enterprise licensing)	6	EA		
Total Price (the sum of the Extended Prices for Line Items 1 and 2):					

Line Items 1 and 2 do not contemplate any HIPAA-related data, and also do not contemplate the need for related data to be stored in a FedRAMP accredited cloud service.

*** These are the estimated annual quantities for the Idaho Department of Health and Welfare only. It is unknown what quantities other agencies may purchase, which may be substantially higher than the estimated annual quantity shown here. Additionally, these are only estimates and each agency, including the Idaho Department of Health and Welfare, may purchase more or less depending on their needs.**

Unit prices entered for Line Items 1 and 2 will be the prices extended to all agencies that make purchases under the contract in which there will be no HIPAA-related data and for which related data does not need to be stored in a FedRAMP accredited cloud service.

Evaluation of bid prices shall be based on the Total Price (the sum of the Extended Prices for Line Items 1 and 2).

Line Items 3 and 4 (see below) will become part of the Contract but will not be factored in the evaluation. **Line Items 3 and 4 do not contemplate any HIPAA-related data, and also do not contemplate the need for related data to be stored in a FedRAMP accredited cloud service.**

Line Item #	Description	Unit	Unit Price (cost per license)
3	License for Smartsheet Project Management Software with Standard Support and WITH enterprise licensing* ²	EA	
4	Business License with Standard Support for Smartsheet Project Management Software (without enterprise licensing)	EA	

*² - Agencies reserve the right to enter into an enterprise licensing agreement for Smartsheet Project Management Software. An agency may, in coordination with other agencies, negotiate an enterprise agreement on behalf of all Idaho agencies.

Confirm that you are bidding Smartsheet Project Management Software, not an “equivalent” here:

Yes, this bid is for Smartsheet Project Management Software, not an “equivalent”.

Company Name of Bidder: _____

Contact Name/Phone: _____

Contact E-mail: _____

(Response to the two paragraphs below is optional.)

Below, please describe other pricing for things such as training (via electronic means, in-person or both), implementation costs for new agencies or for agencies that implement additional Smartsheet Project Management Software components and costs for any other additional services. This pricing will not be evaluated but will become part of the Contract.

In particular, please describe any government platform pricing (pricing for instances in which there will be HIPAA-related data stored, where an agency may or may not require data to be stored in a FedRAMP accredited cloud service or both). Agencies reserve the right to move to the government platform during the Contract’s term even if they begin with utilizing platforms other than government platform.

Business Associate

Specific obligations and activities of Contractor to protect confidential information in accord with HIPAA privacy and security requirements in compliance with 45 CFR § 164.504(e).

- Contractor agrees to not use or disclose confidential information other than as permitted or required by the contract or as required by law.
- Contractor agrees to use appropriate safeguards, and to comply with Subpart C of 45 CFR Part 164 with respect to electronic confidential information, to prevent use or disclosure of confidential information other than as provided for by this contract.
- Contractor agrees to report to the Department any use or disclosure of confidential information not provided for by this contract of which it becomes aware, including breaches of unsecured confidential information as required at 45 CFR § 164.410, and any security incident of which it becomes aware. Reporting to the Department will be done no later than 10 business days after discovery of breach.
- Contractor agrees to ensure that any agent, including any subcontractors, that create, receive, maintain, or transmit confidential information on behalf of the Contractor agree to the same restrictions, conditions, and requirements that apply through this contract to Contractor with respect to such information.
- Contractor agrees to provide access to confidential information, at the request of Department, and in the time and manner as directed by Department, to an individual in order to meet the requirements under 45 CFR § 164.524.
- Contractor agrees to make any amendment(s) to confidential information that the Department directs or agrees to pursuant to 45 CFR § 164.526 at the request of Department or an individual.
- Contractor agrees to make internal practices, books, and records, including policies and procedures relating to the use and disclosure of confidential information received from, or created or received by Contractor on behalf of the Department available to the Secretary of Health and Human Services, in a time and manner designated by the Secretary, for purposes of the Secretary determining Department's compliance with the Privacy Rule.
- Contractor agrees to document any disclosures of confidential information and information related to such disclosures as would be required for Department to respond to a request by an individual for an accounting of disclosures of confidential information in accordance with 45 CFR § 164.528.
- Contractor agrees to provide to Department or an individual information collected in accordance with this contract, to permit Department to respond to a request by an individual for an accounting of disclosures of confidential information in accordance with 45 CFR § 164.528.

Permitted Uses and Disclosures by Contractor

- a. Except as otherwise limited in this contract, Contractor may use or disclose confidential information to perform functions, activities, or services for, or on behalf of, Department as specified in the scope of work provided that such use or disclosure would not violate the privacy, breach notification or security rule if done by Department or the minimum necessary policies and procedures of the Department.
- b. Contractor may also use or disclose confidential information as required by law or other arrangement pursuant to 45 CFR § 164.504(e)
- c. Contractor may use confidential information to report violations of law consistent with 45 CFR § 164.502(J)(1).

Obligations of Department

- a. Department shall notify Contractor of any limitation(s) in its notice of privacy practices of Department in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's use or disclosure of confidential information.
- b. Department shall notify Contractor of any changes in, or revocation of, permission by an individual to use or disclose confidential information, to the extent that such changes may affect Contractor's use or disclosure of confidential information.
- c. Department shall notify Contractor of any restriction to the use or disclosure of confidential information that Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's use or disclosure of confidential information.

Permissible Requests by Department

Department shall not request Contractor to use or disclose confidential information in any manner that would not be permissible under the privacy or security rule if done by Department.

- a. Action upon Termination of the Contract

Upon termination of this contract, for any reason, Contractor shall return or destroy all confidential information received from Department, or created, maintained or received by Contractor on behalf of Department.

In the event that Contractor determines that returning or destroying the confidential information is infeasible, Contractor shall notify the Department of the conditions that make return or destruction infeasible. If the Department agrees that return or destruction of confidential information is infeasible, Contractor shall extend the protections of this contract to such confidential information and limit further uses and disclosures of such confidential information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such confidential information. Contractor shall also continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic confidential information if return or destruction is infeasible.

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INSURANCE REQUIREMENTS: No later than five (5) business days after award of Contract (or as otherwise designated by the Purchasing Activity), the Contractor must provide certificates of insurance required herein and will maintain the insurance during the entire term of the Contract. There are no provisions for exceptions to this requirement. Failure to provide the certificates of insurance within the requisite time period may be cause for termination of the Contract.

The Contractor shall carry liability and property damage insurance that will protect it and the State of Idaho from claims for damages for bodily injury, including accidental death, as well as for claims for property damages, which may arise from operations under the Contract whether such operations be by themselves or by anyone directly or indirectly employed by either of them.

The Contractor shall not commence work under the Contract until it obtains all insurance required under this provision and furnishes a certificate or other form showing proof of current coverage to the State. All insurance policies and certificates must be signed copies. After work commences, Contractor will keep in force all required insurance until the Contract is terminated.

1.1 Commercial General and Umbrella Liability Insurance. Contractor shall maintain Commercial General Liability (CGL) and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Contract.

1.1.1 CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

1.2 Commercial Automobile and Commercial Umbrella Liability Insurance. Contractor shall maintain Commercial Automobile Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

1.2.1 Bidder or offeror may request a waiver from providing Commercial Automobile and Commercial Umbrella Liability Insurance in its bid or proposal if the bidder or offeror will not use any owned, hired or non-owned vehicles to conduct business under the contract, if it is awarded the contract, and the State of Idaho will consider the request. If the bidder or offeror submits a request to waive the provision of Commercial Automobile and Commercial Umbrella Liability Insurance after the due date and time for receipt of bids or proposals, the State of Idaho may not consider the request.

1.3 Workers Compensation Insurance and Employer's Liability. Contractor shall maintain workers compensation and employer's liability. The employer's liability shall have limits not less than \$100,000 each accident for bodily insurance by accident, \$500,000 disease policy limit, and \$100,000 disease, each employee.

1.3.1 Contractor must provide either a certificate of workers compensation insurance issued by a surety licensed to write workers compensation insurance in the State of Idaho, as evidence that the contractor has in effect a current Idaho workers 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.

1.4 Professional Liability for Information Technology (IT), including Cyber Risk.

The Contractor shall maintain professional liability for IT technology, including cyber with limits of not less than \$2,000,000 each claim/loss and \$2,000,000 aggregate.

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the scope of services of the Contract. In the event that the professional liability insurance required by the Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of the Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under the Contract is completed.

If such insurance is maintained on an occurrence form basis, the Contractor must maintain such insurance for an additional period of one (1) year following termination or expiration of the Contract. If such insurance is maintained on a claims-made basis, the Contractor must maintain such insurance for an additional period of three (3) years following termination or expiration of the Contract.

If the Contractor contends that any of the insurance it maintains pursuant to other parts of the Insurance Requirements satisfies this requirement (or otherwise insures the risks described in this section), then the Contractor must provide proof of same.

The insurance must provide coverage for the following risks:

1. Liability arising from theft, dissemination, and/ or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc., information) stored or transmitted in electronic form.
2. Network security liability arising from the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, unless caused by a mechanical or electrical failure.
3. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a State-operated computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.

The state of Idaho reserves the right to require higher limits for this insurance if agencies that use the Contract indicate that higher limits are needed. In any such case, the state of Idaho may allow for adjustments to the Contract's prices.

1.5 State of Idaho as Additional Insured: The liability insurance coverage required for performance of the Contract shall include the state of Idaho and its divisions, officers and employees as additional insured, but only with respect to the Contractor's activities to be performed under this Contract.

1.5.1 The Contractor must provide proof of the state of Idaho and its divisions, officers and employees being additional insured by providing endorsements to the liability insurance policies showing the state of Idaho and its divisions, officers and employees as additional insured. The endorsements must also show the policy numbers and the policy effective dates.

1.5.2 If a liability insurance policy provides for automatically endorsing additional insured when required by contract, then, in that case, the Contractor must provide proof of the state of Idaho and its divisions,

officers and employees being additional insured by providing copies of the policy pages that clearly identify the blanket endorsement.

1.6 Notice of Cancellation or Change: Contractor shall ensure that should any of the above described policies be cancelled before the expiration date thereof, or if there is a material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s), that written notice will be delivered to the Division of Purchasing (if the Contract was issued by the Division) or to the Purchasing Activity (contracting state agency) in accordance with the policy provisions.

1.7 Contractor shall further ensure that all policies of insurance are endorsed to read that any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the state of Idaho and its divisions, officers and employees.

1.8 Acceptable Insurers and Deductibles: Insurance coverage required under the Contract shall be obtained from insurers rated A-VII or better in the latest Bests Rating Guide and in good standing and authorized to transact business in Idaho. The Contractor shall be financially responsible for all deductibles, self-insured retention's and/or self-insurance included hereunder. The coverage provided by such policy will be primary to any coverage of the State on or related to the contract and shall provide that the insurance afforded applies separately to each insured against whom a claim is made, except with respect to the limitation of liability

1.8 Waiver of Subrogation: All policies shall contain waivers of subrogation. The Contractor waives all rights against the State and its officers, employees, and agents for recovery of damages to the extent these damages are covered by the required policies. Policies may contain deductibles but such deductibles will not be deducted from any damages due to the State.

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.

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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 <https://purchasing.idaho.gov/governing-laws-and-policies/>. 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 ~~67-2049~~ (Reciprocal Preference) and Idaho Code Section 60-101 – 103 (Printing).

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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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SOLICITATION INSTRUCTIONS TO VENDORS

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.).

SOLICITATION INSTRUCTIONS TO VENDORS

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

SOLICITATION INSTRUCTIONS TO VENDORS

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).

STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

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.

STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

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 \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 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 Effective May 6, 2021

STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

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. GENERAL INDEMNIFICATION:

A. Contractor's Indemnification. Contractor shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Contractor's acts or omissions under this Contract or Contractor's failure to comply with any state or federal statute, law, regulation, or rule during performance or applicable to the performance of the Contract.

B. Actions on Tender; Limitations. Upon receipt of the State's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under the Contract. Contractor shall not be required to hold the State harmless for damages attributed to the State in a final order issued by a court of competent jurisdiction. If it is determined by a final judgment that the State's negligent act or omission is the sole proximate cause of a suit or claim, the State, to the extent funds are legally available therefore, shall reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 12.C.

C. Requirements of Defense. Any legal defense provided by Contractor to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

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

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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.

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 product(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.

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STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

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 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

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STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

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.

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 100
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

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STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

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. CERTIFICATION CONCERNING BOYCOTT OF ISRAEL: Pursuant to Idaho Code section 67-2346 (effective July 1, 2021), if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

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, 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.

STATE OF IDAHO STANDARD TERMS AND CONDITIONS FOR CLOUD SERVICES

Note: In the event of conflict with the State of Idaho Standard Contract Terms and Conditions, the following provisions will take precedence:

1. DEFINITIONS: Unless the context clearly requires otherwise, the definitions set forth in the *State of Idaho Standard Contract Terms and Conditions* shall apply to terms used in these *State of Idaho Standard Terms and Conditions for Cloud Services*. In addition, the following terms shall have the following meanings when used in these *State of Idaho Standard Terms and Conditions for Cloud Services*:

A. Data Breach - Any unauthorized access to or acquisition of Non-Public State Data following a Security Incident that compromises the security, confidentiality, or integrity of the Non-Public State Data, or the ability of the State to access the Non-Public State Data.

B. Infrastructure as a Service (IaaS) - The capability provided to the user to provision processing, storage, networks, and other fundamental computing resources where the user is able to deploy and run arbitrary software, which can include operating systems and applications. The user does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications; and possibly limited control of select networking components (e.g., host firewalls).

C. Non-Public State Data - State Data that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public State Data includes, but is not limited to, Personal State Data.

D. Personal State Data - State Data alone or in combination with other data that includes information relating to an individual that identifies the individual by name, identifying number, mark or description that can be readily associated with a particular individual and which is not a public record. Personal State Data includes but is not limited to the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; Protected Health Information (PHI) relating to a person; or education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv).

E. Platform as a Service (PaaS) - The capability provided to the user to deploy onto the cloud infrastructure user-created or user-acquired applications created using programming languages and tools provided by the Contractor. This capability does not necessarily preclude the use of compatible programming languages, libraries, services, and tools from other sources. The user does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.

F. Protected Health Information (PHI) - Individually identifiable health information held or transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI also includes but may not be limited to information that is a subset

of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

G. Service – The performance of the specifications and requirements described in the Contract.

H. Security Incident - The unauthorized access to the Contractor's network that the Contractor or the State believes could reasonably result in the use, disclosure or theft of the State's Non-Public State Data within the possession or control of the Contractor. A Security Incident also includes a security breach to the Contractor's system, regardless if Contractor is aware of unauthorized access to the State's Non-Public State Data. A Security Incident may or may not turn into a Data Breach.

I. Software as a Service (SaaS) - The capability provided to the user to use the Contractor's applications running on the Contractor's infrastructure (commonly referred to as "cloud infrastructure"). The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email), or a program interface. The user does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

J. State Data - All information and data developed, documented, derived, stored, installed or furnished by the State under the Contract, including all data related to records owned by the State of Idaho.

K. Update – An enhancement, repair, patch or fix to a Service.

L. FedRAMP – Federal Risk and Authorization Management Program; a civilian-side, federal government-wide program that standardizes the approach to assessing, authorizing and continuously monitoring cloud products and services: <https://www.fedramp.gov/>.

2. Subscription Terms: Contractor grants to the State a license to: (i) access and use the Service for its business purposes; (ii) use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation.

3. Data Access Controls: Contractor will provide access to State Data only to those Contractor employees and subcontractors ("Contractor Staff") who need to access the State Data to fulfill Contractor's obligations under the Contract. Contractor shall not allow access the State's user accounts or State Data, except during the course of data center operations, in response to service or technical issues, as required by the express terms of these *State of Idaho Standard Terms and Conditions for Cloud Services*, or at the State's written request. Contractor must not share State Data with its affiliates or any third party without the State's express written consent. Contractor must ensure that, prior to being granted access to the State Data, Contractor Staff who perform work under the Contract have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all State Data protection provisions of the Contract, and that Contractor Staff possess qualifications

appropriate to the nature of the employees' duties and the sensitivity of the State Data they will be handling.

4. Operations Management: Contractor shall maintain the administrative, physical, technical, and procedural infrastructure associated with the provision of the Service in a manner that is, at all times during the term of the Contract, at a level equal to or more stringent than those specified in the Contract.

5. Data Ownership: The State owns and retains full right and title, and unrestricted access to State Data. Additionally, the State retains the right to back-up State Data at its own data center. Contractor shall not collect, access, or use State Data except (1) in the course of data center operations pursuant to Service provided under this Contract, (2) in response to service or technical issues, (3) as required or expressly allowed by the terms of the Contract, or (4) at the State's written request. Except as expressly allowed by the terms of the Contract, no information regarding the State's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. These obligations shall extend beyond the term of the Contract in perpetuity.

6. Service Failure or Damage: In the event of Service failure or damage caused by Contractor or its Service, the Contractor agrees to restore the Service within twenty-four (24) hours after failure or damage is sustained, unless otherwise specified in the Contract, or agreed to in writing by the State.

7. Title to Product: If access to the Service requires an application program interface (API), Contractor shall convey to the State an irrevocable and perpetual license to use the API for the duration of the Contract.

8. Data Privacy: The Contractor must comply with all applicable laws related to data privacy and security, specific to the type(s) of Data and as otherwise specified in the Contract, which may include, but is not limited to IRS Pub 1075, HIPAA, PCI, and FERPA.

9. Warranty: In addition to any other requirements for warranties elsewhere in the Contract, the Contractor warrants the following:

A. Contractor has acquired all rights for the Contractor to provide the Service described in the Contract.

B. Contractor will perform materially as described in the Contract.

C. That the Service is fit for a particular purpose.

D. The Contractor will not interfere with the State's access to and use of the Service it acquires under the Contract.

E. The Service(s) provided by the Contractor are compatible with and will operate successfully with any environment (including web browser and operating system) specified in the Contract.

F. The Service it provides under the Contract is free of malware, and Contractor will use for the term of the Contract current industry standard security measures to prevent from entry, detect within and remove from the Service malicious software.

10. Data Protection: Protection of personal privacy and State Data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State Data at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State Data and comply with the following conditions:

A. All Non-Public State Data shall be encrypted at rest and in transit with controlled access. Unless otherwise provided in the Contract, the Contractor is responsible for encryption of the Non-Public State Data. All encryption shall be consistent with validated cryptography standards such as the current standards in FIPS 140-2, Security Requirements for Cryptographic Modules, or the then-current NIST recommendation.

B. The State shall identify State Data it deems as Non-Public State Data to the Contractor. The level of protection and encryption for all Non-Public State Data shall be identified in the Contract.

C. At no time shall any State Data or processes, that either belong to or are intended for the use of the State or its officers, agents or employees, be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.

D. The Contractor shall not use any information collected in connection with the Service provided under the Contract for any purpose other than fulfilling the Service.

E. Data Location: The Contractor shall provide its Service to the State and its end users solely from data centers within the United States; and storage of State Data at rest shall be located solely in data centers within the United States. The Contractor shall not allow its personnel or subcontractors to store State Data on portable devices, except for devices that are used and kept only at its U.S. data centers. Each data center used by the Contractor to support the Contract must be within a physical security perimeter to prevent unauthorized access, and physical entry controls must be in place so that only authorized personnel have access to State Data and State-written applications.

F. The Contractor shall permit Contractor Staff to access State Data remotely only as required to provide technical support.

G. FedRAMP: State Data shall be stored in a FedRAMP accredited cloud service.

11. Shared Security Responsibilities: The Contractor and the State agree that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The State is responsible for its operating system, firewalls and other logs captured within the operating system. If there are other shared responsibilities, they must be identified within the Contract. (Note: State agencies are required to adhere to the NIST Cyber Security Framework as provided in Executive Order 2017-02.)

12. Security Incident and Data Breach Responsibilities: In the event of a Security Incident or Data Breach, the Contractor shall:

A. Notify the State-designated contact(s) by telephone within twenty-four (24 hours), unless shorter time is required by applicable law, if the Contractor has confirmed that there is, or the Contractor reasonably believes that there has been, a Security Incident or Data Breach. The Contractor shall (1) immediately quarantine all State Data from external access, (2) cooperate with the State as requested by the State to investigate and resolve the Security Incident or Data Breach, (3) promptly implement remedial measures, if necessary, (4) (for a Data Breach) identify to the State, if the following is known by the Contractor, the persons affected, their identities, and the State Data disclosed, and (5) document responsive actions taken related to the Security Incident or Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the Service, if necessary.

B. Unless otherwise stipulated in the Contract, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Non-Public State Data or otherwise prevent its release as reasonably determined by the State, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to by the State and the Contractor; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to by the State and the Contractor; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws; all not to exceed the average per record per person cost calculated for Data Breaches in the United States (as of January 2019, \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

C. Incident Response: The Contractor may need to communicate with outside parties regarding a Security Incident or Data Breach, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon between the State and the Contractor in writing, defined by law or contained in the Contract. Discussing Security Incidents with the State must be handled on an urgent as needed basis, as part of Contractor's communication and mitigation processes as mutually agreed upon between the State and the Contractor in writing, defined by law or as delineated in the Contract.

13. Notification of Legal Requests: The Contractor shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to State Data under the Contract, or which in any way might reasonably require access to State Data. The Contractor shall not respond to subpoenas, service of process or other legal requests related to the State without first notifying and obtaining the approval of the State, unless prohibited by law from providing such notice.

14. Background Checks and Security Awareness: Upon the request of the State, the Contractor shall obtain criminal background checks for Contractor Staff that the Contractor intends to utilize in the provision of services under the Contract and must provide the results of the criminal background checks to the State. If any Contractor Staff are not acceptable to the State in its sole opinion based upon the results of a criminal background check, the State, in its sole discretion, shall have the right to request that such Contractor Staff not provide services under the Contract. The Contractor must comply with such requests and provide replacement Contractor Staff in such cases.

The Contractor shall promote and maintain an awareness of the importance of securing the State's information among the Contractor's employees and agents.

15. Data Center Audit: The Contractor shall have an independent audit of its data centers at least annually at its expense, and upon written request from the State must provide an unredacted (save that the Contractor may remove its information that is trade secret in accordance with the Idaho Public Records Act) version of the audit report to the designated State representative no later than thirty (30) calendar days after the report is published. A Service Organization Control (SOC) 2 audit report is required, or, the State may, in its sole discretion, approve another audit type upon Contractor request. In addition, the State shall have the right to inspect the data centers used by the Contractor to support the Contract, subject to reasonable restrictions imposed by Contractor, within ten (10) calendar days of written notice to Contractor, or such other timeframe as may be mutually agreed upon by the parties.

16. Change Control and Advance Notice: The Contractor shall give a minimum forty-eight (48) hour advance written notice (or as otherwise identified in the Contract) to the State of any Updates that may impact availability of Service or performance.

Contractor must provide Updates to State at no additional cost when Contractor makes such Updates generally available to its users.

No Update or other change to the Service may decrease or otherwise negatively impact the Service's functionality or adversely affect the State's use of or access to the Service.

17. Non-Disclosure and Separation of Duties: The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of State Data to that which is absolutely necessary to perform job duties.

18. Responsibilities and Uptime Guarantee: The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the Service being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The Service shall be available twenty-four (24) hours per day, seven (7) days per week and three hundred sixty-five (365) days per year (excepting reasonable downtime for maintenance).

19. Transition, Transfer Assistance Termination or Suspension:

A. The State shall have the ability to import or export all or portions of State Data and State-written applications at its discretion without interference from the Contractor at any time during the term of the Contract. This includes the ability for the State to import or export State Data and State-written applications to and from other entities.

B. The Contractor shall reasonably cooperate without limitation with any State authorized entity for the transfer of State Data to the State upon termination or expiration of the Contract. The Contractor must transfer State Data or allow the State to extract State Data and State-written applications, at no additional cost to and in a format designated by, the State, and the State Data must be unencrypted.

C. The return of State Data and State-written applications shall occur no later than sixty (60) calendar days after termination or expiration of the Contract; or within another timeframe as agreed to in writing by the parties. Contractor shall facilitate the State's extraction of State Data and State-

written applications by providing the State with all necessary access and tools for extraction, at no additional cost to the State.

D. During any period of suspension of Service, the Contractor shall continue to fulfill its obligations to maintain State Data and State-written applications.

E. In the event of termination or expiration of the Contract, the Contractor shall not take any action to intentionally erase State Data or State-written applications for a period of sixty (60) calendar days after the effective date of termination or expiration. After such period, the Contractor shall have no obligation to maintain or provide any State Data or to maintain any State-written applications and shall thereafter, unless legally prohibited, delete all State Data and State-written applications (in all forms) within its systems or otherwise in its possession or under its control, unless otherwise instructed by the State. State Data and State-written applications shall be permanently deleted and shall not be recoverable in accordance with National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the State no later than ninety (90) calendar days after termination or expiration of the Contract.

F. The Contractor must maintain the confidentiality and security of State Data and State-written applications during any transition or transfer and thereafter for as long as the Contractor possesses State Data and State-written applications.

20. Access to Security Logs and Reports: The Contractor shall provide reports to the State; or alternatively, provide the State with access to report data and reporting tools. Unless specified otherwise in the Contract, reports shall include latency statistics, system performance statistics, user access logs, user access IP address, user access history, security logs and event logs for all State Data.



BRAD LITTLE

Governor

D. KEITH REYNOLDS

Director

VALERIE BOLLINGER

Administrator

State of Idaho

Department of Administration

Division of Purchasing

304 N 8th Street, Rm 403 (83702)

P. O. Box 83720

Boise, ID 83720-0075

Telephone (208) 327-7465

Fax: 208-327-7320

<http://purchasing.idaho.gov>

SIGNATURE PAGE for Use with a Manually Submitted Invitation to Bid (ITB) or Request for Proposal (RFP) Response

Bids or proposals and pricing information shall be typewritten or handwritten in ink. Originals and copies of the bid or proposal shall be submitted in accordance with the solicitation documents. MANUALLY SUBMITTED BIDS/PROPOSALS MUST INCLUDE THIS SIGNATURE PAGE WITH THE ORIGINAL SIGNATURE (INK or ELECTRONIC SIGNATURE) OF AN INDIVIDUAL AUTHORIZED TO BIND THE SUBMITTING VENDOR.

NO LIABILITY WILL BE ASSUMED BY THE STATE OF IDAHO AGENCY FOR A VENDOR'S FAILURE TO OBTAIN THE TERMS AND CONDITIONS AND ANY PROPERLY ISSUED SOLICITATION ADDENDUMS IN A TIMELY MANNER FOR USE IN THE VENDOR'S RESPONSE TO THIS SOLICITATION OR ANY OTHER FAILURE BY THE VENDOR TO CONSIDER THE TERMS, CONDITIONS, AND ANY ADDENDUMS IN THE VENDOR'S RESPONSE TO THE SOLICITATION.

The words "SEALED BID" and the bid number must be noted on the outside of your SEALED BID package. To ensure that your SEALED BID is handled properly, label the exterior of your package as follows:

"SEALED BID"

BUYER: [name of the RFP or ITB Lead]

SEALED BID FOR: [title of solicitation]

BID NUMBER: [ITB# or RFP#]

CLOSES: [Closing Date]

Send your sealed bid package via USPS to: State of Idaho Agency
PO Box XXXXX
Boise, ID XXXXX-XXXX

FedEx, UPS or other Couriers/Hand Deliver: State of Idaho Agency
XXXXX Street, Rm XXX
Boise, ID XXXXX

This ITB or RFP response is submitted in accordance with all documents and provisions of the specified Bid Number and Title detailed below. By my signature below I accept the terms, conditions and requirements contained in the solicitation, including, but not limited to, the STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS and the SOLICITATION INSTRUCTIONS TO VENDORS in effect at the time this ITB or RFP was issued, as incorporated by reference into this solicitation; as well as any SPECIAL TERMS AND CONDITIONS incorporated in the solicitation documents (e.g. Software, Telecommunications, Banking, etc.). As the undersigned, I certify I am authorized to sign and submit this response for the Bidder/Offeror. I further acknowledge I am responsible for reviewing and acknowledging any addendums that have been issued for this solicitation.

BID Number: ITB20221181 BID Title: Smartsheet Project Management Software
BIDDER/OFFEROR(CompanyName) BDM Squared LLC
ADDRESS 235 Peachtree Stree, #400
CITY, ST, ZIP Atlanta, GA 30303
PHONE: 404.301.5879 FAX: _____ FEIN: 81-3594260
E-Mail missy.pitcher@bdmsquared.com

THIS SIGNATURE PAGE MUST BE SIGNED WITH AN ORIGINAL HANDWRITTEN SIGNATURE (PREFERABLY IN BLUE INK) OR AN ELECTRONIC SIGNATURE AND RETURNED WITH YOUR MANUALLY SUBMITTED BID OR PROPOSAL.

Malissiza Pitcher
Original Signature (Manually Signed in Ink or Electronic Signature)
Malissiza Pitcher
Printed Name

09/03/2021
Date
President & CEO
Title

Project Management Simplified

Get Support To Successfully Execute Projects

COMPANY OVERVIEW

BDM Squared is a minority-owned, woman-owned Project Management Consultancy. We focus on project success from our client's perspective by managing all of the internal and external stakeholders, vendor deliverables, and dependencies for their projects. This gives our client's the peace of mind needed to delegate the details that will make their project a success.

DIFFERENTIATORS

- ✓ Boutique consulting firm with proven methodology and governance model that provides transparency and visibility
- ✓ Access to project management expertise when and how you need it
- ✓ Ability to scale to meet project and organizational needs

INDUSTRY CODES

NAICS

541611	Administrative Management and General Consulting Services
561110	Office Administration Services
541320	Temporary Help Services (Contract staffing)
541618	Other Management Consulting Services
541690	Other Scientific and Technical Consulting
611430	Professional and Management Development Training

D-U-N-S 117226633

CAGE 8KK92

EIN 81-3594260



CORE COMPETENCIES



Project Management On Demand

On-site or remote interaction with your certified project manager.

Avoid the cost of a full-time employee.

Get the benefits of an experienced team & proven methodology.



CIS & ERP Implementation

Cloud or on-premise deployment for a seamless transition.

Mitigate the factors that typically derail software implementations and upgrades.

Minimal disruption to your company's operations.



Business Process Management

Produce more consistent results and revenue.

Discover the inefficiencies and bottlenecks in your processes.

Automate processes to maximize your business potential.



Governance, Risk & Compliance

Protection from fines, lawsuits, and potential insolvency.

Gain insights on potential threats to operational functions.

Restructure your projects or programs in ways that mitigate those risks.

ATLANTA OFFICE

404.301.5879
info@bdmsquared.com
235 Peachtree Street, NE
Suite 400
Atlanta, GA 30303

BDM SQUARED PROFESSIONAL SERVICES LIMITED

Missy Pitcher, MPA, PMP, MCTS, SA, CSM
President & CEO
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BERMUDA OFFICE

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New Venture House, 3rd Floor
3 Mill Creek Road
Pembroke HM 05, Bermuda

Attachment 2 – Specifications and Bid Schedule

ITB20221181 – Smartsheet Project Management Software

Specifications: Smartsheet Project Management Software (Brand Name Only)

Bid Schedule:

Do not change this Bid Schedule. Doing so may cause your Bid to be found non-responsive.

Line Item #	Description	Estimated Annual Quantity*	Unit	Unit Price (cost per license)	Extended Price
1	License for Smartsheet Project Management Software with Pro Support and WITH enterprise licensing* ²	32	EA	\$570	\$18,240
2	Business License with Pro Support for Smartsheet Project Management Software (without enterprise licensing)	6	EA	\$380	\$2,280
Total Price (the sum of the Extended Prices for Line Items 1 and 2):				\$20,520	

Line Items 1 and 2 do not contemplate any HIPAA-related data, and also do not contemplate the need for related data to be stored in a FedRAMP accredited cloud service.

*** These are the estimated annual quantities for the Idaho Department of Health and Welfare only. It is unknown what quantities other agencies may purchase, which may be substantially higher than the estimated annual quantity shown here. Additionally, these are only estimates and each agency, including the Idaho Department of Health and Welfare, may purchase more or less depending on their needs.**

Unit prices entered for Line Items 1 and 2 will be the prices extended to all agencies that make purchases under the contract in which there will be no HIPAA-related data and for which related data does not need to be stored in a FedRAMP accredited cloud service.

Evaluation of bid prices shall be based on the Total Price (the sum of the Extended Prices for Line Items 1 and 2).

Line Items 3 and 4 (see below) will become part of the Contract but will not be factored in the evaluation. **Line Items 3 and 4 do not contemplate any HIPAA-related data, and also do not contemplate the need for related data to be stored in a FedRAMP accredited cloud service.**

