

<b>Document</b>	<b>Effective Date</b>
Solicitation Terms & Conditions	08/08/2008
Purchase Order Terms and Conditions	01/01/2009
Special Provisions	01/01/2009

## **STATE OF COLORADO SOLICITATION INSTRUCTIONS/ TERMS AND CONDITIONS**

Requests for Documented Quotes, Invitations for Bids, Requests for Proposals

**Effective August 8, 2008**

### **1. General**

1.1 Applicability. Except to the extent modified, supplemented, or replaced in any solicitation by the Procuring Agency, these provisions and terms and conditions apply to a request for documented quotes, invitation for bids, or request for proposals issued by State agencies and State institutions of higher education on the Bid Information and Distribution System (BIDS) for supplies and services. These instructions are intended to summarize the State's procurement process and provide instructions to offerors, but they are not intended to modify procurement statutes and implementing rules.

1.2. Applicability of Current Version; Significant Changes. This version of these provisions applies to any solicitation published on or after the effective date above. This version adds an Environmental Purchasing Preference section to IFB's.

1.3 Definitions.

"BIDS" is the Bid Information and Distribution System used by State Agencies for publication of their solicitations.

"Contract" includes a State contract executed pursuant to State Fiscal Rules, any purchase order by a State Agency, and any other informal agreement permitted by State Fiscal Rules, unless the context clearly requires another meaning.

"Procuring Agency" is the State Agency that issues the solicitation on BIDS or, in the case of the executed contract or purchase order, the State Agency executing or issuing the purchase order or contract.

"Solicitation" refers to a request for documented quotes, invitation for bids, or request for proposals unless the context requires another meaning.

"State" refers to the State of Colorado.

“State Agency” refers to agencies, departments, and institutions of higher education of the State of Colorado.

"Unless otherwise specified" and "unless otherwise agreed" refers to the Procuring Agency's terms in the solicitation or other instructions to offerors that are inconsistent with these terms and conditions and, when the context requires, the resulting purchase order or contract that are inconsistent with or otherwise modify these terms and conditions.

"Vendor" refers to any person or entity responding to a solicitation, and has the same meaning as "contractor" or "offeror."

1.4 Telephone, E-mail, Facsimile and Electronic Quotes. If permitted by the Procuring Agency, telephone, e-mail, facsimile or other electronic quotations may be submitted in response to requests for documented quotes.

1.5 Late Quotes, Bids, and Proposals.

1.5.1. Vendors submitting quotes, bids, and proposals bear the risk that quotes, bids, and proposals may not arrive within the time required in the solicitation.

1.5.2. Quotes by registered vendors received prior to the time of award may be considered, at the discretion of the Procuring Agency. Vendors are cautioned, however, that State Procurement Rules restrict the authority of the Procuring Agency to consider bids and proposals received after the time specified in the solicitation.

1.6 Present/Former Employee Standards of Conduct -- Disclosures. Pursuant to sections 24-18-101 and 201, *et. seq.*, C.R.S., and section 24-50-507, C.R.S., former and present public employees and officials may not "be interested" in some State Agency contracts and are prohibited from engaging in certain activities in relation to State contracts. The State reserves the right to void or terminate contracts entered into in contravention of those provisions, or contracts in which a current State employee performs any contract administration function involving the use of State time or resources or that is otherwise contrary to State law. Notwithstanding the disclosure provisions in section 24-18-201, C.R.S., the State reserves the right to disqualify any quote, bid, or proposal, or void or terminate any contract involving the participation or use of a present or former employee within the meaning of that section where such disqualification or termination is deemed to be in the best interest of the State. At the time of the submission of any quote, bid, or proposal, the contractor shall disclose to the Procuring Agency the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of receipt of quotes, bids, or proposals) participating in development of the quote, bid, or proposal. Further, the contractor shall disclose during contract performance the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of any resulting contract or purchase order).

1.7 Alternative Bids or Offers/Affiliated Vendors. Unless otherwise permitted by the Procuring Agency, alternative bids or proposals by any vendor are not permitted. Unless otherwise

permitted by the Procuring Agency, quotes, proposals or bids by affiliated vendors are not permitted except in accordance with this paragraph. An affiliated vendor is one who is controlled or owned by another vendor responding to this solicitation, or owned or controlled by a third person or other entity who controls or owns two vendors responding to this solicitation.

"Affiliation" includes one person's having a substantial role in the preparation of offers by two vendors responding to this solicitation. A submission of a quote, bid or proposal in connection with any solicitation represents a certification that the quoter, bidder, or offeror is not affiliated with any known vendor also submitting a quote, bid, or proposal in response to the solicitation, except to the extent the nature of such affiliation is described with particularity. The State reserves the right to disqualify any quote, bid, or proposal by, or void any resulting purchase order or contract with, any vendor responding to a solicitation in violation of this provision or the following certificate of independent price determination.

1.8 Certificate of Independent Price Determination. Except as otherwise disclosed with particularity, through its submission of a quote, bid, or offer, the vendor certifies that the prices and other terms in the quote, bid, or offer have been arrived at independently without any consultation, communication, agreement with, or knowledge of the contents of the quote, bid, or offer by, any other competing vendor. For purposes of this paragraph, "consultation, communication, agreement with, or knowledge" does not include knowledge of prices or terms gained through availability of established price lists or catalogues made available to the public by the competing vendor.

1.9. Submission of Quotes, Bids and Proposals. Unless otherwise specified in the solicitation, any written bid or proposal must be signed by an individual authorized to bind the vendor. Vendors are requested to use any signature/cover sheet included as an attachment to the solicitation by the Procuring Agency. Otherwise, include with the signature page at least the name of vendor, federal employer identification number (FEIN/tax ID), address, point-of-contact, and telephone number. In IFBs and RFPs, comply also with the requirements in section 3.3, Bid Return Format. The vendor's signature represents vendor's acknowledgment that it has received all attachments referred to on the BIDS solicitation pages, and all solicitation modifications posted on BIDS through the date established for receipt of quotes, bids, or proposals.

1.10. Specifications; Samples; Brand Name or Equal. Specifications are provided to identify the product/service required and to establish an acceptable quality level. Bids on products of equal quality and usability will normally be considered unless otherwise stated. The State will be the sole judge in determining "equals" in regard to quality and performance.

1.10.1. Failure to furnish brochures, specifications, and/or samples as requested may be sufficient cause to consider a quote unacceptable or a bid non-responsive.

1.10.2. Samples of product(s), when required, must be furnished free of expense to the State Agency, and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the bidder's expense.

1.10.3. A brand name or equal specification means that the brand name is for the purpose of describing the standard of quality, performance, and characteristics desired. Unless otherwise specified, information to address equivalent substitutes in brand name or equal descriptions must include published information -- such as brochures, descriptions, or other information made available in the general course of the vendor's business -- that demonstrates: equivalent functionality in terms of significant (or other specified, e.g. form, fit, or function) performance characteristics; similar duration and scope of warranty protections; comparable experience with the same, similar, or predecessor product line; and an adequate period (or minimum period specified in the solicitation) of customer support experience to demonstrate a comparable acceptable level and availability of customer support. The determination of whether a proposed substitute is acceptable is totally within the discretion of the Procuring Agency

1.11. Number of Awards. Unless otherwise specified in the solicitation, the Procuring Agency may award individual line items to different vendors or otherwise make multiple awards to vendors who, in the Procuring Agency's judgment, best satisfy the requirements consistent with the award criteria in the solicitation.

1.12. Vendor Inquiries. Vendors may make written or, if permitted by the Procuring Agency, e-mail or fax inquiries concerning this solicitation before the date and time indicated for receipt of quotes, bids, or offers. Send all inquiries to the point-of-contact indicated on the BIDS solicitation. Responses to vendor's inquiries amending or clarifying invitations for bids or requests for proposals will be made in writing by the Procuring Agency and posted on BIDS. Vendors may not rely on any other statements, written or oral, that alter any specification or other term or condition of the solicitation. It is incumbent upon offerors to carefully and regularly monitor BIDS notifications for any such postings.

1.13 BIDS Registration. Unless a limited competition procedure is used by the State Agency in accordance with the Procurement Rules, a vendor must be currently registered on BIDS at the time specified by a Procuring Agency for receipt of quotes, bids or proposals for its bid or proposal to be considered responsive. BIDS registration is not required for responding to requests for information or solicitations not required by the Procurement Rules to be placed on BIDS, e.g. discretionary use of documented quotes for acquisition of services less than \$25,000 and commodities less than \$10,000.

1.14. Protest. A protest of any portion of a State Agency solicitation must be submitted in writing to the Procuring Agency, in accordance with Title 24, Article 109, C.R.S., as amended. Vendors must protest within seven (7) working days after becoming aware of the facts giving rise to the protest. The requirement for timely (seven working days) submission of any protest relating to award will begin on the first working day following posting of the award notice on BIDS, or on receipt of any other award notice issued by the Procuring Agency, whichever is earlier.

1.15. Cancellation of Solicitation. Pursuant to Procurement Rule R-24-103-301, State Agency solicitations may be canceled or any or all quotes, bids or proposals rejected when it is in the best interests of the State.

## **2. Documented Quotes**

2.1 Applicability. Except as replaced, modified or supplemented by the Procuring Agency in the solicitation, these procedures apply to any solicitation identified on the solicitation as a “request for documented quotes” or a "documented quote" issued by a State Agency.

2.2 Description. The documented quote process is a State small purchase procedure that is informal but results in awards that are most advantageous to the State.

### 2.3 Responsiveness of Quotations.

2.3.1. Vendors must furnish the samples (if required) and other information necessary to provide the Procuring Agency with information sufficient to evaluate the price, acceptability of the supply or service, equivalency of substitutes in brand name or equal descriptions, or other factors being considered in the evaluation of quotations.

2.3.2. Unless otherwise specified, information to address delivery terms must describe the time for delivery, terms for transportation (e.g. F.O.B. terms), any unusual or unique packing and handling provisions, or any other delivery and shipping terms.

2.3.3. The Procuring Agency may, but is not required to, contact quoting vendors to obtain additional or missing information and to clarify aspects of the quote as deemed necessary to determine the acceptability of the quote. The Procuring Agency may reject as unacceptable quotes from vendors not registered on BIDS at the time set for receipt of quotes, quotes that do not provide sufficient information to permit their evaluation, or quotes that do not meet the minimum requirements in the solicitation.

### 2.4. Award

2.4.1. In the case of goods or services, the award will be made to the quote determined by the Procuring Agency to be the most advantageous to the State, price/cost being the primary consideration. The determination of whether the quote is acceptable and meets the minimum requirements of the solicitation is solely within the discretion of the Procuring Agency. No formal evaluation system or methodology is required for any documented quote process.

2.4.2. Small purchases of services (less than or equal to \$25,000) and goods (less or equal to \$10,000) are not subject to the Procurement Rule procedures for documented quotes. If BIDS is used by State Agencies in obtaining quotes for goods or services below those thresholds, the selection of the vendor is within the absolute discretion of the Procuring Agency.

2.4.3. The award notice will be posted on BIDS for any solicitation posted on BIDS.

### **3. Invitation for Bids and Requests for Proposals**

Except as replaced, modified or supplemented in the solicitation, the following provisions apply to invitations for bids and requests for proposals issued by State Agencies. For simplicity, unless the context requires another meaning, the term "bid" or "bidder" in this section 3 refers to a bid submitted in response to an invitation for bids (IFB) and a proposal submitted in response to a request for proposals (RFP), both of which are considered "offers."

3.1. Information Required. Bidders shall furnish all the information required to be submitted at the time of bid submission. Bidders are expected to examine the drawings, specifications, schedule of delivery and all instructions. Should the bidder find any part of the listed specifications or terms and conditions to be discrepant, incomplete or otherwise questionable in any respect, it shall be the responsibility of the bidder to call such matters to the attention of the purchasing agent immediately. Failure to do so will be at the bidder's risk. Amendments to this solicitation will be official only furnished, in writing, by the state Procuring Agency. Bidders shall not rely on verbal statements that alter any specification or other term or condition of the solicitation.

3.2. Products/Services Provided. The bidder shall furnish the products and/or services in strict accordance with the specifications, and at the price set forth for each item. All products quoted shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.

3.3. Bid Return Format for Written Responses. Written IFB and RFP responses shall be submitted in a sealed envelope and in accordance with the instructions by the Procuring Agency in the solicitation. The IFB or RFP number and the opening date and time should be written in the lower left corner of the envelope. If the bid package is too large to be submitted in a bid envelope, a bid envelope should be affixed to the outside of the sealed bid package.

3.4. Valid Bid Period. Bids shall be firm for a period of no less than thirty (30) calendar days after the opening of the bids, unless otherwise specified in the solicitation. Proposals submitted in response to a request for proposal shall be firm for a period of not less than ninety (90) calendar days, unless otherwise specified in the solicitation.

3.5. Discounts. Discounts offered for payment within less than thirty (30) calendar days will not be considered in evaluating offers for award, unless otherwise specified. Discounts of less than thirty (30) calendar days will be taken if payment is made within the discount period, even though not considered in evaluation of the bid.

3.6. Bid Acceptance/Obligation. The State of Colorado reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received and to accept all or any portion of the bid, deemed in the best interest of the State and not contrary to law. This solicitation implies no obligation on the part of the State Agency to pay any costs incurred in the preparation or the submission of bids or proposals, or to purchase or contract for products or services offered, nor does the State Agency's silence imply any acceptance or rejection of any offer.

3.7. Modification or Withdrawal of Proposals. Bids or proposals may be modified or withdrawn by the vendor prior to the established due date and time for receipt of offers.

3.8. Evaluation and Award.

3.8.1. In the case of competitive sealed proposals (RFP), the State reserves the right to make an award on receipt of initial proposals, so offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Proposals requiring major revision in order to be susceptible of award, or otherwise not meeting the mandatory or other requirements required for further consideration as specified in the RFP, may be classified as unacceptable and shall be ineligible for further consideration. The State may conduct discussions with offerors in the competitive range for the purpose of promoting understanding of the state's requirements and the offeror's proposal, to clarify requirements, and to make adjustments in services to be performed and in prices. Revisions to proposals, if permitted, will be requested in writing or electronically from offerors.

3.8.2. Award of a contract as a result of an IFB will be made to the low responsive and responsible bidder. For a competitive sealed proposal award (RFP), award will be made to the responsible offeror whose proposal is determined to be most advantageous to the State, price and other factors considered, in accordance with the criteria described in the RFP.

3.8.3. In the case of IFBs, if low tie bids are received, in accordance with section 24-103-202.5, C.R.S., resident bidders shall be given a preference over nonresident bidders. If low tie bids are among resident bidders or nonresident bidders, the procurement officer will use the procedure in Procurement Rule R-24-103-202.5-01 to determine the award, after notice to the interested vendors. Any bidder who wishes to be considered a "resident" bidder for purposes of section 24-103-202.5 shall include with its bid proof that the vendor meets the definition of "resident bidder" set forth in section 24-103-101(6), Colorado Revised Statutes.

3.9. Requirement for Valid Contract. The State Agency will not be responsible for any products delivered or services performed prior to issuance of a purchase order signed by an authorized representative of the State Agency's purchasing department, or a contract signed by a duly authorized representative of the State Agency and approved by the State Controller or designee.

3.10. Vendor Forms. In the event bidder's form(s) or part(s) of forms are included as an attachment(s) bidder agrees that, in the event of inconsistencies or contradictions, the terms and conditions of the solicitation document shall supersede and control over those contained in the bidder's form(s) regardless of any statement to the contrary in a bidder form(s). Unless the State specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on vendor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.

3.11. Environmental Purchasing Preference. In accordance with section 24-103-207.5, C.R.S., titled "Purchasing Preference for Environmentally Preferable Products", bidders responding to this solicitation may seek to qualify for the preference and governmental bodies conducting this

solicitation shall award a contract to a bidder who offers environmentally preferable products subject to the conditions in the Procurement Code and Rules.

3.12. Waste Reduction. The State desires and encourages that bids be submitted on recycled paper, printed on both sides. While the appearance of bids and professional presentation is important, unnecessarily elaborate proposals and the use of non-recyclable or non-recycled glossy paper is discouraged.

#### **4. Purchase/Contract Terms and Conditions.**

4.1. Except as replaced, modified, or supplemented by the terms of the solicitation, a purchase order or a State contract executed between the procuring agency and vendor, an award will be governed by provisions in the Purchase Order Terms and Conditions that follow.

4.2. The State reserves the right to negotiate and clarify the terms and conditions where there is no appreciable affect on price/cost, quality, delivery, or other performance.

4.3. Except as replaced, modified, or supplemented by the procuring agency, the following insurance provision is specified in accordance with paragraph 19 of the Purchase Order Terms and Conditions for all IFBs and RFPs involving services on State property (unless incidental to the delivery of a supply or good), or having services separately priced in excess of \$50,000:

A. The contractor shall obtain, and maintain at all times during the term of the contract, insurance in the following kinds and amounts:

1) Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.

2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

3) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

4) Professional liability insurance with minimum limits of liability of not less than \$\_\_\_\_\_. (To be specified in the solicitation.)

B. The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed



operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

C. The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

D. The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

E. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

F. The contractor shall provide certificates showing insurance coverage required by the contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of the contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

G. Notwithstanding subsection A of this section, if the contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended (“Act”), the contractor shall at all times during the term of the contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

4.4 Software Piracy Prohibition. No State or other public funds payable under any contract or purchase order executed as a result of a solicitation shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Vendor certifies that, for the term of any purchase order or contract, and any extensions, the Vendor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Vendor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under the contract or purchase order, including, without limitation, immediate termination of the contract or purchase order and any remedy consistent with United States copyright laws or applicable licensing restrictions.

4.5. State law limits the use of purchase orders and requires contracts that include services priced at more than \$100,000, or supply/commodity contracts exceeding \$100,000 in value and including unpriced services not incidental to the transaction, to be bilaterally executed, reviewed by the Attorney General, and approved by the State Controller or his designee. Fiscal Rule 3-1, 1 Code of Colorado Regulations Section 101-1. The Special Provisions following the Purchase Order Terms and Conditions are required by State law to be included in State contracts, and the Special Provisions govern over any other terms and conditions in the solicitation, including the provisions in the Purchase Order Terms and Conditions to the extent they are inconsistent.

## **Purchase Order Terms and Conditions**

**Effective January 1, 2009  
(Attachment A)**

## **STATE OF COLORADO SPECIAL PROVISIONS**

**Effective January 1, 2009  
(Attachment B)**

### **State Contracts and Colorado Special Provisions**

Under State law, bilateral State Contracts must be used in lieu of a purchase order for transactions including services priced at more than \$100,000 or for supply/commodity contracts exceeding \$100,000 in value and including unpriced services not incidental to the transaction. In State Contracts, the Colorado Special Provisions attached are required by the Colorado Code of Regulations, Fiscal Rule 3-1, 1 CCR 101-1. The provisions in the Special Provisions govern in the event of conflict or inconsistency with any other term or condition in the solicitation or the vendor's offer.

# Purchase Order Terms and Conditions

**1. Offer/Acceptance.** If this purchase order ("PO") refers to vendor's bid or proposal, this PO is an ACCEPTANCE of vendor's OFFER TO SELL in accordance with the terms and conditions of the "solicitation" identified in vendor's bid or proposal. The solicitation includes an RFP, IFB, or any other form of order by buyer. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to vendor's acceptance, demonstrated by vendor's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order is issued by buyer accepting a counter-offer. This PO shall supersede and control over any vendor form(s) or part(s) thereof included in or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or parts thereof. **2. Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery. **3. Changes.** Vendor shall furnish products and/or services strictly in accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing signed by purchasing agent and accepted by vendor. Each shipment received or service performed shall comply with the terms of this PO, notwithstanding invoice terms or acts of vendor to the contrary, unless this PO has been modified, superseded or otherwise altered in accordance with this section. **4. Delivery.** Unless otherwise specified in the solicitation or this PO, delivery shall be FOB destination. Buyer is relying on the promised delivery date, installation, and/or service performance set forth in vendor's bid or proposal as material and basic to buyer's acceptance. If vendor fails to deliver or perform as and when promised, buyer, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence. **5. Intellectual Property.** Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by vendor in performance of its obligations under this PO shall be the exclusive property of buyer. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the materials. Vendor shall comply with all applicable Cyber Security Policies of the State of Colorado (the "State"), or buyer, as applicable, and all confidentiality and non-disclosure agreements, security controls, and reporting requirements. **6. Quality.** Buyer shall be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and the current model, unless otherwise specified. **7. Warranties.** All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 ("CUCC"), relating to implied and/or express warranties are incorporated herein, in addition to any warranties contained in this PO or the specifications. **8. Inspection and Acceptance.** Final acceptance is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, buyer may exercise all of its rights, including those provided in the CUCC. Buyer shall have the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this section includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to PO requirements, buyer may require vendor to perform the services again in conformity with PO requirements, without additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, buyer may (a) require vendor to take necessary action to ensure that future performance conforms to PO requirements and (b) equitably reduce the payment due vendor to reflect the reduced value of the services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity. **9. Cash Discount.** The cash discount period will start from the later of the date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized buyer representative. **10. Taxes.** Buyer and the State are exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all State and local government sales and use taxes [CRS, Title 39, Article 26, Parts I and II]. Such exemptions apply when materials are purchased for the benefit of State, except that in certain political subdivisions (e.g., City of Denver) vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to buyer. Buyer shall not reimburse such sales or use taxes. **11. Payment.** Buyer shall pay vendor for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Interest on the unpaid balance shall begin to accrue on the 46th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to buyer's obligation to pay all or a portion of the amount due. Vendor shall invoice buyer separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate. **12. Vendor Offset.** [Not Applicable to Inter-governmental POs] Under CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action. **13. Assignment and Successors.** Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express, written consent of buyer. This PO shall inure to the benefit of and be binding upon vendor and buyer and their respective successors and assigns. Assignment of accounts receivable may be made only upon written notice furnished to buyer. **14. Indemnification.** If any article sold or delivered under this PO is covered by a patent, copyright, trademark, or application therefore, vendor shall indemnify and hold harmless buyer from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions or judgments arising out of manufacture, sale or use of such article in violation or infringement of rights under such patent, copyright, trademark or application. If this PO is for services, vendor shall indemnify, save, and hold harmless buyer, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, incurred as a result of any act or omission by vendor, or its employees, agents, subcontractors or assignees, arising out of or in connection with performance of services under this PO. **15. Independent Contractor.** Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither vendor nor any agent or employee of vendor shall be deemed to be an agent or employee of buyer. Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through buyer and buyer shall not pay for or otherwise

provide such coverage for vendor or any of its agents or employees. Unemployment insurance benefits will be available to vendor and its employees and agents only if coverage is made available by vendor or a third party. Vendor shall pay when due all applicable employment, income, and local head taxes incurred pursuant to this PO. Vendor shall not have authorization, express or implied, to bind buyer to any agreement, liability or understanding, except as expressly set forth herein. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by buyer, and (c) be solely responsible for its acts and those of its employees and agents.

**16. Communication.** All communication concerning administration of this PO, prepared by vendor for buyer's use, shall be furnished solely to purchasing agent.

**17. Compliance.** Vendor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**18. Insurance.** Vendor shall obtain, and maintain, at all times during the term of this PO, insurance as specified in the solicitation, and provide proof of such coverage as requested by purchasing agent.

**19. Termination Prior to Shipment.** If vendor has not accepted this PO in writing, buyer may cancel this PO by written or oral notice to vendor prior to shipment of goods or commencement of services.

**20. Termination for Cause.** (a) If vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified herein, buyer may notify vendor in writing of non-performance and, if not corrected by vendor within the time specified in the notice, terminate vendor's right to proceed with the PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated and be liable for excess costs incurred by buyer in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the price set forth in this PO. (b) Buyer may withhold amounts due to vendor as buyer deems necessary to reimburse buyer for excess costs incurred in curing, completing or procuring similar goods and services. (c) If after rejection, revocation, or other termination of vendor's right to proceed under the CUCC or this clause, buyer determines for any reason that vendor was not in default or the delay was excusable, the rights and obligations of buyer and vendor shall be the same as if the notice of termination had been issued pursuant to termination under §21.

**21. Termination in Public Interest.** Buyer is entering into this PO for the purpose of carrying out the public policy of the State, as determined by its Governor, General Assembly, and Courts. If this PO ceases to further the public policy of the State, buyer, in its sole discretion, may terminate this PO in whole or in part and such termination shall not be deemed to be a breach of buyer's obligations hereunder. This section shall not apply to a termination for vendor's breach, which shall be governed by §20. Buyer shall give written notice of termination to vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, buyer shall pay (a) reasonable settlement expenses, (b) the PO price or rate for supplies and services delivered and accepted, (c) reasonable costs of performance on unaccepted supplies and services, and (d) a reasonable profit for the unaccepted work. For existing goods, buyer shall pay (e) reasonable settlement expenses, (f) the PO price for goods delivered and accepted, (g) reasonable costs incurred in preparation for delivery of the undelivered goods, and (h) a reasonable profit for the preparatory work. Buyer's termination liability under this section shall not exceed the total PO price plus a reasonable cost for settlement expenses. Vendor shall submit a termination proposal and reasonable supporting documentation, and cost and pricing data as required by CRS §24-106-101, upon request of buyer.

**22. PO Approval.** This PO shall not be valid unless it is executed by purchasing agent. Buyer shall not be responsible or liable for products or services delivered or performed prior to proper execution hereof.

**23. Fund Availability.** Financial obligations of buyer payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. Buyer represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.

**24. Choice of Law.** State laws, rules and regulations shall be applied in the interpretation, execution, and enforcement of this PO. The CUCC shall govern this PO in the case of goods unless otherwise agreed in this PO. Any provision included or incorporated herein by reference which conflicts with such laws, rules, and regulations is null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Unless otherwise specified in the solicitation or this PO, venue for any judicial or administrative action arising out of or in connection with this PO shall be in Denver, Colorado. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against buyer.

**25. Public Contracts for Services.** [Not Applicable to offer, issuance, or sale of securities, investment advisory services, fund management services, sponsored projects, intergovernmental POs, or information technology services or products and services] Vendor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this PO and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this PO, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Vendor shall not knowingly employ or contract with an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this PO. Vendor shall (a) not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants during performance of this PO, (b) notify subcontractor and buyer within three days if vendor has actual knowledge that subcontractor is employing or contracting with an illegal alien for work under this PO, (c) terminate the subcontract if subcontractor does not stop employing or contracting with the illegal alien within three days of receiving notice, and (d) comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If vendor participates in the Department program, vendor shall deliver to the buyer a written, notarized affirmation that vendor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If vendor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., buyer may terminate this PO for breach and, if so terminated, vendor shall be liable for damages.

**26. Public Contracts with Natural Persons.** Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced a form of identification required by CRS §24-76.5-103 prior to the date vendor delivers goods or begins performing services under terms of the PO.

## Attachment B

### SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

- 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
- 2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 3. GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.
- 5. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- 6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
- 7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
- 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and

shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

**11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

**Revised 1-1-09**