



# STATE OF ARIZONA ARIZONA LOTTERY

## NOTICE OF REQUEST FOR PROPOSALS

**ARIZONA LOTTERY**  
4740 E. University Dr.  
Phoenix, AZ 85034  
Ph: (408) 921-4400  
Fx: (480) 921-4425

SOLICITATION NUMBER:

**AL10-02**

SOLICITATION DUE

DATE/TIME:

**December 7, 2009, at 3:00 P.M., Arizona Time**

SUBMITTAL LOCATION:

**Arizona Lottery  
Main Lobby, Receptionist  
4740 E. University Dr.  
Phoenix, Arizona 85034**

DESCRIPTION:

**GENERAL MARKET AND MULTI-CULTURAL ADVERTISING  
AGENCY SERVICES**

PRE-OFFER CONFERENCE:

**November 19, 2009**

**10:00 A.M.,  
Arizona  
Time**

**4740 E.  
University Dr.  
Phoenix, AZ  
85034  
1<sup>st</sup> Floor  
Conference  
Room**

Date

Time

Location

This is a Request for Proposal for acquisition of Advertising and Marketing Services for the promotion of the Arizona Lottery and its products. If you are interested in submitting an offer to this request for proposal, you may offer for: general market advertising, multicultural advertising, or both.

This RFP will have three phases: In the Pre-Bid Phase, you should register your intent to bid. Phase I you submit a written response to the requests in this RFP and submit the completed price sheet. Phase II will require the selected qualified bidders from Phase II to present a creative solution/demonstration to a case study.

We encourage all interested bidders to review this RFP in its entirety to understand the requirements to bid. This RFP is organized into the following parts: (1) Scope of Work where you will learn about the services the Lottery is interested in obtaining, (2) Special Terms and Conditions which includes special contract terms that are specific to controlling this RFP, (3) Uniform Terms and Conditions which control all contracts with the State, (4) Special Instructions that give you precise information on how to respond to the RFP, and (5) Uniform Instructions that are required instructions for all contracts with the State. You need to know that if there is a conflict between the Uniform and the Special terms or instructions, the Special terms or instructions control.

You are not required to attend the Pre-Offer conference, but if you have any questions, this conference may be helpful. We recommend that you send your questions to the Lottery at least five days before the conference and the Lottery will try to cover the questions both orally and in writing. All answers to submitted questions will be distributed to everyone who registers an intent to bid with the procurement officer, Earl Payne at [epayne@azlottery.gov](mailto:epayne@azlottery.gov). You should file your intent to [epayne@azlottery.gov](mailto:epayne@azlottery.gov) by November 24, 2009. Written questions from prospective bidders will be accepted anytime up to 5:00 p.m. on December 11, 2009. Written answers will be issued by the Lottery as soon as possible after the Lottery receives a question but all will be answered by 5:00 p.m. December 16, 2009.



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If you discover any conflict, discrepancy, ambiguity, omission, or other error in the RFP, you must request clarification or protest prior to the date the RFP response is due. Arizona Administrative Code R2A-7-901(C) provides that "[i]f the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time."

Offers must be submitted in a sealed envelope or package with the Solicitation number and the Offeror's name and address clearly indicated on the envelope or package. Offers must be in the actual possession of the Arizona Lottery on or prior to the time and date, and at the location indicated above. Late offers cannot be accepted. Offers received by the correct time and date will be opened and only the name of each Offeror will be publicly read. Proposals will not be subject to public inspection until after the contract is awarded.

To obtain a copy of the solicitation, send an email request to Earl Payne, Chief Procurement Officer at [epayne@azlottery.gov](mailto:epayne@azlottery.gov). A PDF of the solicitation will be sent by return email. To receive any amendments to the RFP you must submit an intent to bid by November 24, 2009. This is not a firm commitment, but places you on the list to receive answers to questions and amendments. It is your duty to obtain the amendments and you are bound by them whether you file an intent to bid or not.

With 72 hours prior notice, persons with disabilities may request special accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Such requests are to be addressed to the Solicitation Contact Person named below.

### **OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.**

**Solicitation Contact Person:**

Earl Payne, Chief Procurement Officer

Phone: 480-921-4508

Email: [epayne@azlottery.gov](mailto:epayne@azlottery.gov)

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### 1. Introduction

This solicitation requests competitive sealed proposals for the Arizona Lottery to award a two-year contract with three one-year options for extension of Advertising Agency Services. The Lottery's advertising is both product and image-oriented. Product advertising is game-specific and image advertising focuses on "How the Money Helps," or the ways in which Lottery revenues benefit communities throughout the state. Lottery advertising uses a media mix of outdoor, broadcast, print and point-of-sale to inform and educate players and the public. It is the mission of the Lottery to help generate revenue for the state of Arizona through the sale of entertaining lottery tickets. The Lottery places advertising in both English-language and Spanish-language media to ensure reaching all communities, including general market and the multi-cultural market.

- 1.1. The Lottery is interested in contracting with one or more vendors. The Lottery can award the contract to a vendor for general advertising, multicultural advertising, or both. The resulting Contract(s) will be awarded based on the best value for the Lottery, taking into consideration the Contractor's skill and experience, the scope and professionalism of proposed services, demonstration of services achieving the Lottery's objectives, and cost to the Lottery.
- 1.2. The Lottery has the following objectives in issuing this RFP:
  - 1.2.1. Maintain the public's trust and confidence in the Lottery and its operations;
  - 1.2.2. Consistently and efficiently respond to innovations in the industry and changes in the demands of the marketplace;
  - 1.2.3. Use the Contractor's marketing expertise and experience to develop innovative and creative products to achieve sales objectives;
  - 1.2.4. Market a continually updated product, manufactured and sold using state-of-the-art technology to achieve sales objectives.
  - 1.2.5. The acquisition of services that optimize the net revenue to the State of Arizona to fund the Lottery's legislatively mandated beneficiaries.
- 1.3. The Lottery's present advertising contract will end June 30, 2010. The awardee(s) of this new contract(s) will be expected to meet with Key Lottery staff within 15 days of the award. The contractor(s) will actively participate in marketing status meetings cooperatively working with multiple vendors and be prepared to receive historical data working files. The contractor(s) key personnel will actively engage in development and planning to assure Lottery initiatives and revenue generating campaigns will continue to be seamlessly executed on July 1, 2010. The new awardee(s) will commence being paid July 1, 2010.
- 1.4. If more than one contract is awarded, all awardees are expected to work cooperatively as a team to accomplish the Lottery's objectives.
- 1.5. The Contractor must be authorized to do business in Arizona.

### 2. Background

- 2.1. The mission of the Lottery is to support Arizona programs for the public good by maximizing revenue in a responsible manner. With a Governor-appointed Commission and Executive Director overseeing operations, the Lottery works with a retailer network to provide players with innovative and entertaining games.

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- 2.2. Lottery products compete with other entertainment and consumer products for the discretionary income of the Arizona consumer. The current product mix includes the online games of Powerball®, The Pick™, Pick5™, Pick3™, CA\$H4™, 2by2™, FastPlay™ and Millionaire Raffle™, and the Scratchers<sup>SM</sup> games in \$1, \$2, \$3, \$5, \$10 and \$20 price points.
- 2.3. The Lottery's approach is to constantly refresh its lottery inventory with initiatives in new online games and approximately 45-50 new Scratchers<sup>SM</sup> games annually to provide players with a variety of new games to choose from throughout the year.
- 2.4. Approximately 2,700 retailers make up the Lottery retailer network. The majority of the retailer network is comprised of the convenience store category with 74% of the locations and the grocery category with 16% of the locations. The sales in these two categories combined represent nearly 95% of the total Lottery revenues. Maricopa County with 55% of the retailers and Pima County with 15% account for the largest percentage of the retailer network.

The Lottery has been successful in increasing revenues and expects the contractor(s) to assist in continuing this growth. The following table outlines recent sales history and FY2010 projections.

	FY2006	FY2007	FY2008	FY2009	* FY2010
Scratchers <sup>SM</sup>	\$249,289,305.00	\$261,018,451.00	\$252,448,439.00	\$278,924,357.00	\$290,000,000.00
Powerball®	\$157,891,886.00	\$127,278,294.00	\$130,424,083.00	\$117,238,451.00	\$118,000,000.00
The Pick™	\$ 43,064,318.00	\$ 52,410,989.00	\$ 52,552,416.00	\$ 45,489,149.00	\$ 48,000,000.00
Pick5™	\$ 9,988,384.00	\$ 12,566,113.00	\$ 14,191,389.00	\$ 16,996,584.00	\$ 19,000,000.00
Pick3™	\$ 7,922,934.00	\$ 8,926,133.00	\$ 9,530,550.00	\$ 9,409,924.00	\$ 9,200,000.00
CA\$H4™	N/A	N/A	N/A	\$ 3,036,194.00	\$ 8,750,000.00
2by2™	N/A	N/A	N/A	N/A	\$ 8,750,000.00
FastPlay™	N/A	N/A	\$ 1,847,281.00	\$ 2,206,885.00	\$ 2,300,000.00
Millionaire Raffle™	N/A	N/A	\$ 11,943,120.00	\$ 11,184,560.00	\$ 6,000,000.00
<b>Total Sales</b>	<b>\$468,156,827.00</b>	<b>\$462,199,980.00</b>	<b>\$472,937,278.00</b>	<b>\$484,486,104.00</b>	<b>\$510,000,000.00</b>

\*FY10 Lottery sales projections for the fiscal year July 1, 2009 through June 30, 2010

### 3. General Proposal Instructions

- 3.1. We encourage all interested bidders to review this RFP in its entirety to understand the requirements to bid. This RFP is organized into the following parts: (1) Scope of Work where you will learn about the services the Lottery is interested in obtaining, (2) Special Terms and Conditions which includes special contract terms that are relevant to this RFP, (3) Uniform Terms and Conditions which control all contracts with the State, (4) Special Instructions that gives you precise information on how to respond to the RFP, and (5) Uniform Instructions that are required instructions for all contracts with the State. You need to know that if there is a conflict between the Uniform and the Special terms or instructions, the Special terms or instructions control.
- 3.2. Any resulting Contract is comprised of the Offer and Acceptance, Scope of Work, Pricing Sheet and the Terms and Conditions provided by the Lottery and your responding Methodology to the Scope of Work, completed Pricing Sheet, completed Questionnaires, and signed Offer and Acceptance form. Please review your proposal to ensure that you respond completely as required in the instructions and provide all parts. Take particular care to submit the pricing schedules in a separate sealed envelop.

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- 3.3. If you have any questions regarding this RFP, the only person you may contact is the Procurement Officer: Earl Payne at 480-921-4508, [epayne@azlottery.gov](mailto:epayne@azlottery.gov) or in writing at 4740 E. University Dr., Phoenix, AZ 85034.

# **SCOPE OF WORK ADVERTISING AGENCY SERVICES SOLICITATION NO. AL10-02**

## **1. General Requirements**

- 1.1. The Contractor shall perform all functions normally required of a full-service advertising agency necessary for the development, preparation, and placement of advertising in various media throughout the state of Arizona as the Lottery shall direct or deem necessary.
- 1.2. The requirements listed below are intended to clarify the types of services to be provided, but do not represent a complete listing.
- 1.3. The Contractor may be required to perform additional functions for the Lottery over the term of the Contract at the Lottery's request.
- 1.4. The Contractor shall maintain a full-time office in the Phoenix metropolitan area so that all account, media, public relations, interactive and creative staffs are available to the Lottery on a daily basis.
- 1.5. The Contractor must manage the Lottery's account in a business-like manner, consistent with the Lottery's needs, and conform to the highest possible industry and quality standards. Contractor shall provide the following services including, but not limited to:
  - 1.5.1. Strategic advice, guidance, and recommendations regarding effective advertising, point of sale (POS), retailer merchandising, strategic alliances, and cross-promotional opportunities;
  - 1.5.2. Integrated general market and multi-cultural advertising, interactive, media, public relations and promotional planning;
  - 1.5.3. Media, interactive, public relations, and promotions design, development and execution;
  - 1.5.4. Assure all materials necessary to fulfill media contracts and plans are implemented or placed/trafficked as approved.
  - 1.5.5. Integrated retailer point-of-sale materials (POS) and promotions;
  - 1.5.6. Public relations expertise and assistance with key communication issues;
  - 1.5.7. Assist in the development of a yearly integrated Marketing Plan;
  - 1.5.8. Develop all Advertising and Media to support the overall Marketing plan;
  - 1.5.9. Establish and execute an annual Budget, maintaining control and shared responsibility for cost savings;
  - 1.5.10. Assistance with retailer promotions, community outreach, and special events;
  - 1.5.11. Provide research, analysis, advice, recommendations, and support for all Lottery initiatives. Provide post-activity evaluation of all initiatives and media performance.
  - 1.5.12. Attend 2-3 various conventions, trade shows, educational seminars, special events, and meetings with lottery staff at Contractor's expense annually. Attendance with client is expected at, but not necessarily limited to the NASPL (North American Association of State and Provincial Lotteries) annual

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convention, LaFleurs conference and conclave, coordinated marketing retreats, strategic planning sessions, and various other trade shows and industry educational opportunities.

**2. Required Objectives**

The Contractor shall provide the following services:

**2.1. Advertising Budget**

- 2.1.1. The Contractor shall develop an annual budget for all advertising expenditures and all other services and modify this budget as required by the Lottery. The level of anticipated annual spending will be determined by the Arizona State Legislature and the Lottery based on projections as determined by the Lottery.
- 2.1.2. The Lottery will provide the Contractor with a yearly budget for advertising services and will expect the Contractor to develop cost-efficient plans that are responsive to the Lottery's sales goals and marketing needs.
- 2.1.3. The Contractor shall make recommendations regarding ways to generate cost savings, and document actualized savings.
- 2.1.4. All budget adjustments are subject to approval by the Lottery.
- 2.1.5. The Contractor shall make recommendations regarding ways to improve efficiencies, develop added value opportunities, maximize impact and exposure, and document actualized efforts.
- 2.1.6. The Contractor shall make no commitments on behalf of the Lottery without prior written approval.

**2.2. Advertising Plan**

- 2.2.1. The Contractor shall work with the Lottery to develop an annual integrated Marketing & Advertising Plan in a time frame set by the Lottery. The Marketing and Advertising Plan must support sales and marketing initiatives as directed by the Lottery.
- 2.2.2. The Marketing & Advertising Plan shall be submitted to the Lottery for approval. The plan shall be reviewed at least once per quarter and shall be revised as required by changes in initiatives, strategies, budget, or other market conditions, or as directed by the Lottery.
- 2.2.3. The Marketing & Advertising Plan shall detail all integrated campaigns planned during each fiscal year, including budget estimates.
- 2.2.4. The Marketing & Advertising Plan shall provide a breakdown of proposed spending by initiative to include recommended media and creative production costs.

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**2.3. Account Management**

- 2.3.1. All staff assigned to Lottery's account shall be approved by the Lottery.
- 2.3.2. The Contractor shall provide sufficient and solely dedicated staff to meet the Scope of Work and respond to daily needs as required by the Lottery. Primary Lottery account contacts must be skilled in the following:
- 2.3.3. Marketing, advertising, communications & interactive/digital disciplines and practices with the ability to communicate clearly and in a timely manner.
- 2.3.4. Knowledge of internal and external Lottery information; they must become thoroughly familiar with and dedicated to all aspects of the account.
- 2.3.5. The ability to manage a high volume account with accurate record keeping and communication.
- 2.3.6. Resource management skills, as well as the ability to ensure the highest quality work from third party vendors.
- 2.3.7. Familiarity with consumer product and entertainment marketing best practices, and forward strategic planning in order to achieve Lottery sales goals.
- 2.3.8. Demonstrated ability to control costs and achieve cost savings while ensuring the highest standards and quality possible, consistent with budget constraints.
- 2.3.9. Compatibility with Lottery Marketing staff and the ability to present ideas clearly, as well as listen and respond.
- 2.3.10. Proven ability to handle the volume of accounting and business functions associated with annual multi-million dollar account billings.
- 2.3.11. The account management staff shall conduct weekly status meetings with the Lottery and provide accurate, detailed weekly status reports on all projects in process, to include individual project and initiative timelines.
- 2.3.12. Designated key senior managers shall meet regularly with Lottery management executives to evaluate, develop, and discuss ongoing and future programs, plans and strategies.
- 2.3.13. Account management staff shall provide regular budget updates as required by the Lottery.
- 2.3.14. Creative concepts and recommendations presented to the Lottery shall be accompanied by a written Contractor- recommend/ rationale & reasoning.
- 2.3.15. Account management staff (in conjunction with key agency personnel) to develop and maintain a Graphic Standards manual. All agency personnel working on the account shall be required to attend a training to familiarize themselves with the key brand logos, marks, elements, taglines, legal language, boilerplates, and other key brand items. This training will occur within the first two weeks of any new account changes or hires.

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- 2.3.16. A senior representative from the account management staff or other senior level designee approved by the Lottery may also be required to provide reports and presentations to the Arizona Lottery Commission and attend Commission meetings.
- 2.3.17. Account management staff shall provide reports as required by the Lottery, e.g., year-end summaries of spending by game category by media, special reports on specific markets or programs, post-initiative analysis, point-of-view white papers, etc.
- 2.3.18. Upon award of the contract, key account and creative personnel assigned to the Lottery account will be required to spend a day in the field with Lottery District Sales Representatives. Additional field visits will be scheduled on a bi-annual basis. The purpose of these visits is to elicit retailer comments, review POS materials and stay intimately familiar with the environment in which POS and signage are presented and intended to be effective.
- 2.3.19. On a quarterly basis, Contractor to prepare and present an overview of current industry trends and advertising campaigns, along with samples of interesting, applicable work and best practices from other lotteries. The entire account team including creative, media, and public relations will attend all presentations.
- 2.4. **Research**
  - 2.4.1. The Contractor shall recommend, design, implement, and analyze research opportunities and results—utilizing research to develop strategies for marketing Lottery products. The Contractor shall manage research projects to determine program effectiveness and gauge changes in target audience attitudes and perceptions to improve advertising, marketing, and product development effectiveness.
  - 2.4.2. Research services to be provided by the Contractor will include, but are not limited to: monthly tracking studies, focus group research, consumer segmentation studies, media research, psychographic behavior studies, and advertising concept testing.
  - 2.4.3. The Contractor shall offer in-house research services or identify a subcontractor to provide the research services, but shall retain responsibility for managing research projects on behalf of the Lottery. Contractor may be required to work with specified subcontractors to continue research in progress at initiation of Contract.
  - 2.4.4. The Lottery will take ownership of all research results, materials, and databases generated on behalf of the Lottery.
- 2.5. **Creative Services**
  - 2.5.1. Under the direction of the Lottery, the Contractor shall be responsible for the creation and production of effective advertising materials including, but not limited to: television, radio, interactive/web, point of sale (POS), print, direct mail, outdoor, and promotions.
  - 2.5.2. The Contractor shall develop multimedia campaigns in support of the initiatives and promotions identified in the Lottery's Marketing Plan. On occasion, the

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Contractor may also be required to assist the Lottery in developing game names, instant ticket designs, game logos, trade characters, and art for other uses.

- 2.5.3. The Contractor shall offer alternative campaign concepts rather than only one creative solution to a particular game or promotion. At least three different creative concepts shall be offered when the Contractor is making any initial creative presentation to the Lottery. Each shall reflect a distinctly different tone, approach, and style.
- 2.5.4. The Contractor shall provide the Lottery with a timely response to its advertising needs and schedules for all projects. Sufficient timelines will be established and approved by the Lottery for developing, presenting, and refining at least three creative concepts, editing and revising the selected option per the Lottery request, obtaining final approval from the Lottery staff and other Lottery designees, producing the final product, and distributing the finished product according to the Lottery specifications.
- 2.5.5. Obtain competitive bids and prepare cost estimates for all advertising and related production purchased by the vendor for the Lottery against approved plans and budgets. All purchases including aggregate purchases from the same vendor that would amount to \$5,000 or more in a year will have at least 3 competitive bids submitted with the estimates for approval. Ensure that total invoices rendered to the state do not exceed approved estimates. In case of emergency, time constraints, or when competition is impracticable, a letter of explaining the details and the attempt to provide the most competition that was practicable must be submitted to the Sales and Marketing Director.
- 2.5.6. The Contractor shall obtain written approval from the Lottery prior to producing any advertisement or related material. When producing any creative work, the Contractor shall not vary from approved scripts, storyboards, or print layouts without Lottery approval. Failure to adhere to approved scripts, storyboards, or layouts may void the Lottery's approval of the estimate for the project. The Contractor shall be liable for all costs if advertisements or collateral materials are executed in a manner not consistent with the Lottery's approval. The Lottery will not approve the payment of overtime on any project if the overtime is required by the failure of the third-party vendor to perform.
- 2.5.7. The contractor shall direct casting and selection of talent for all production, with talent to be reflective of the population of Arizona as a whole. Arizona-based talent should be used whenever possible.
- 2.5.8. The Contractor shall obtain the most cost-effective talent and usage agreements involving Screen Actors Guild (SAG) or American Federation of Radio and Television Artists (AFTRA) talent as appropriate and recommend extended talent cycles and buyouts in cases when additional uses of advertisements and their components are anticipated and approved in advance by the Lottery. For any talent contracts not covered by collective bargaining agreements, the Contractor shall negotiate the best possible rate for talent and provide written justification as to why the negotiated compensation package is reasonable.
- 2.5.9. Oversee and supervise all aspects of the broadcast production process by third party production services. Arizona-based contractors will be utilized whenever possible.

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- 2.5.10. The Contractor shall hold regularly scheduled creative meetings (with the creative director and creative team present) with the Lottery. During these meetings, there will be discussions regarding scheduling and planning, concept approvals, pre-production of advertisements, POS, or other Contractor-produced materials. Additional meetings shall be held with Lottery personnel as required by the Lottery.
- 2.6. Public Relations**
- 2.6.1. The Contractor shall provide comprehensive public relations/communications consultation, advice, and recommendations to the Lottery and will assist in the development of strategic communications plans, media relations counsel, media/presentation training, crisis communication planning, winner awareness programs, responsible gaming/problem gambling education and awareness, corporate/community outreach planning, trade outreach, beneficiary communications, event and promotion support for product awareness, corporate and community outreach, and interactive & social media strategy.
- 2.6.2. The Public Relations component includes Product Support to include at a minimum: consultation, advice and recommendations for the Lottery; on-going, strategic product/initiative Public Relations and promotions planning and execution; Product and Initiative launch campaigns and support for publicity, special events, promotions, and media-outreach and relations.
- 2.6.3. The Public Relations component includes Corporate Communications Support to include at a minimum: development of a short-term and long-term strategic communications plan; public relations and media relations counsel; crisis communications planning and counsel; design and support of Media Relations proposals; design and support of state-wide winner awareness plan; jackpot winner and other press conferences; earned media strategy and on-going execution (i.e. pitching); media management and fulfillment of all opportunities; Talking Points and Media Training for Lottery staff; serve as Spokesperson on behalf of the Lottery upon request (English & Spanish); design and support of beneficiary communications proposals; design and support of corporate and community outreach plans; development of annual outreach plan to include trade media; collateral creation and development including press kits, releases, brochures, flyers, and broadcast segment outlines; assist with media during high-volume media events, e.g., Powerball jackpots; Public Service Awareness outreach plan and distribution / placement of materials; and responsible gaming/problem gambling initiatives as determined by the lottery.
- 2.6.4. All Public Relations initiatives & activities to include post-initiative analysis to include impressions, summary of media hits, and any other relevant analysis.
- 2.7. Media Services**
- 2.7.1. The Contractor shall be responsible for developing and updating an annual integrated statewide Media Plan as required by the Lottery, in conjunction with the Advertising Plan. Plans should support strategic direction, achieve specific objectives, and provide measurable results.
- 2.7.2. Development of all media plans (both overall master plan and individual plans) should include detailed rationale, time frames, budgets, and in-depth analysis and recommendations.

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- 2.7.3. Communicate with vendors on behalf of the Lottery and evaluate all potential opportunities for media and integrated sponsorships. If the Lottery is contacted by a company offering media or promotional opportunities, the Lottery shall direct the inquiring party to the Contractor. For viable requests, the Contractor shall review the information and provide a written ROI value analysis evaluating the media or promotional opportunity and providing a recommendation based on proposed cost versus actual value in context with Lottery objectives and strategies.
- 2.7.4. The Contractor shall be responsible for the negotiation, purchase, instruction, and delivery of materials for the placement of media time and space. The Contractor shall explain the process of selecting media outlets to the Lottery. The Contractor shall not commit the Lottery to any such purchase, without prior written approval from the Lottery. In negotiating media purchases, the Contractor shall make the Lottery aware of any cost savings that might be achieved through long-term commitments or other special programs. Any such commitments shall be approved by the Lottery and any savings shall be passed on to the Lottery.
- 2.7.5. Negotiation, execution, and management of nightly winning numbers broadcast contracts with winning numbers television draw partners to include jackpot trigger advertising, and other value added media buys and promotions.
- 2.7.6. Contractor shall establish a goal for bonus spots, and /or added value promotions from all radio and TV stations based on estimated spending over each contract quarter, and provide a quarterly recap to the Lottery regarding the number and value of bonus spots achieved through negotiations.
- 2.7.7. Any bonus spots provided by participating stations must be identified in the summary of the media buy, and the value must be calculated as a savings to the Lottery.
- 2.7.8. The Contractor shall implement a system to ensure that all media was run or published according to any contracts or placement instructions. Affidavits, tear sheets, or other documentation shall be provided.
- 2.7.9. The Contractor shall notify the Lottery before approving any make goods for any ads that did not run as scheduled. All such materials shall be maintained by the Contractor and shall be available for inspection by the Lottery or authorized Lottery representatives.
- 2.7.10. The Lottery may at any time cancel, at no cost, any space or time previously authorized for publication or broadcast provided the publisher or other owner of said space or time will accept such cancellation without financial penalty. The Lottery may also cancel any space or other time previously authorized for which there is a cancellation penalty, but such penalty shall be paid by the Lottery.
- 2.7.11. Contractor to proactively perform on-going real time sales analysis utilizing data provided by the Lottery. Recommendations and adjustments to be made by Contractor.
- 2.7.12. Conduct post-buy analysis within 30 days focusing on the effectiveness of media buys in terms of cost, reach, frequency, continuity, and overall message

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effectiveness. Use findings to refine and modify current and future media plans, including recommendations regarding proposed changes in media expenditures as applicable. Measure sales levels achieved.

- 2.7.13. Review, evaluate, and provide recommendations for sponsorship opportunities available to the Lottery via media outlets, sports organizations/arenas, special events, concert venues, etc. As part of the evaluation, provide an estimated value of the elements proposed against the requested sponsorship fee.
- 2.7.14. All approved sponsorships and promotions will require post analysis summary.
- 2.7.15. Review, evaluate, and provide recommendations for electronic jackpot boards and other Outdoor media contracts. Upon Lottery approval, execute, and manage outdoor strategies and contracts.

**2.8 Web-Based Interactive Media / Services**

- 2.8.1 The Contractor shall be responsible for activities related to the internet that may include, but are not limited to:
  - 2.8.1.1 Creative development of the Lottery website, to include banners, graphics, and promotional elements;
  - 2.8.1.2 Player retention and new player acquisition strategies and plans;
  - 2.8.1.3 Management of Email program with a third-party vendor to include strategy, creative development, database acquisition, and post-activity analysis;
  - 2.8.1.4 Social Media strategy and planning;
  - 2.8.1.5 Gain knowledge regarding user behavior via research and web-based surveys. Use findings to make recommendations and strategy shifts; and
  - 2.8.1.6 Provide co-promotional opportunities with retailers, beneficiaries, and sponsor-affiliated websites.
- 2.8.2 The Contractor shall be responsible for developing and updating an annual integrated statewide interactive media plan for Lottery products and promotions as required by the Lottery, in conjunction with the Advertising Plan. Plans should support strategic direction, achieve specific objectives, and provide measurable results including a mixture of paid advertising, SEO, key word, and social media marketing.
  - 2.8.2.1 Development of all interactive plans (both overall master plan and individual plans) should include detailed rationale, time frames, budgets, and in-depth analysis and specific creative recommendations.
- 2.8.3 Communicate with vendors on behalf of the Lottery and evaluate all potential opportunities. If the Lottery is contacted by a company offering interactive opportunities, the Lottery shall direct the inquiring party to the Contractor. For viable requests, the Contractor shall review the information and provide a written ROI value analysis evaluating the media or promotional opportunity and providing a recommendation based on proposed cost versus actual value in context with Lottery objectives and strategies.

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- 2.8.4 The Contractor shall be responsible for the negotiation, purchase, instruction, and delivery of materials for the placement of interactive media time and space. The Contractor shall explain the process of selecting interactive media outlets to the Lottery. The Contractor shall not commit the Lottery to any such purchase, without prior written approval from the Lottery. In negotiating interactive purchases, the Contractor shall make the Lottery aware of any cost savings that might be achieved through long-term commitments or other special programs. Any such commitments shall be approved by the Lottery and any savings shall be passed on to the Lottery.
- 2.8.5 Contractor shall establish a goal for bonus spots, and/or added value promotions based on estimated spending over each contract quarter, and provide a quarterly recap to the Lottery regarding the number and value of bonus spots achieved through negotiations.
- 2.8.5.1 Any bonus spots/banners/value added must be identified in the summary of the interactive buy, and the value must be calculated as a savings to the Lottery.
- 2.8.6 The Contractor shall implement a system to ensure that all web-based media was run/executed according to any contracts or placement instructions. Appropriate documentation shall be provided.
- 2.8.7 The Lottery may at any time cancel, at no cost, any space or time previously authorized for publication or broadcast provided the publisher or other owner of said space or time will accept such cancellation without financial penalty. The Lottery may also cancel any space or other time previously authorized for which there is a cancellation penalty, but such penalty shall be paid by the Lottery.
- 2.8.8 Conduct post-buy analysis within 30 days focusing on the effectiveness of interactive media buys in terms of cost, reach, frequency, continuity, and overall message effectiveness. Use findings to refine and modify current and future media plans, including recommendations regarding proposed changes in expenditures as applicable. Measure sales levels achieved.

**2.9 Public Service Announcements**

- 2.9.1 The Contractor shall be required to develop informational materials to be provided to media outlets as public service announcements to run at no charge to the Lottery.
- 2.9.2 The Contractor shall develop a plan to achieve media acceptance of these materials, propose low-cost production of these materials, and provide the Lottery with a periodic report on the reported usage of such materials.

**2.10 Sponsorships, Promotions, and Special Events**

- 2.10.1 Identify opportunities, planning, development, and execution of tasks necessary to develop retailer and consumer sponsorships, promotions, and special events, including but not limited to pricing, staffing, collateral development and production, in tandem with third party vendors.
- 2.10.2 Review, evaluate, and provide recommendations opportunities selected by the Contractor. As part of the evaluation, the Contractor shall provide the Lottery with the estimated value of the elements provided within the package, evaluated against the requested fee. Contractor will negotiate on behalf of the Lottery to secure the lowest available rate that will best achieve Lottery objectives. Once the promotion has been

# **SCOPE OF WORK**

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defined and approved, Contractor shall ensure that all elements are activated in accordance with the agreed upon contract.

- 2.10.3 The Contractor shall provide through Contractor's staff and/or with the Lottery's expenditure approval, a third party promotions team. Promotions team will be responsible for the coordination, production, and staffing of functions at retailers, community and special events, sponsorships, and other promotions. These currently contracted special and community events include, but are not limited to: the Arizona State Fair, major sporting events, Pima County Fair, Arizona Food Marketing Alliance organizational events, Governor's Rural Development Conference, Tucson Rodeo, and other contracted events in which the Lottery participates.
- 2.10.4 Solicit and develop joint promotional and cross-promotional opportunities leveraging existing networks, relationships, and sponsorships. Contractor to develop an overview of any potential sponsorship which outlines the overall activity, and associated costs and benefits. Contractor to agree to negotiate and oversee an agreed-upon number of corporate cross-promotional programs each year.
- 2.10.5 The Contractor shall be reimbursed for actual expenses incurred as a result of the Contractor's performance of the services when written approval of expenditures is secured prior to the event and itemized invoices are submitted according to billing and procurement requirements.

#### **2.11 Retailer Strategy**

- 2.11.1 Be thoroughly familiar with the Lottery's current position within the retail landscape.
- 2.11.2 Develop strong retailer optimization strategy and associated tactics to ensure lottery is maximizing exposure and merchandising potential with retailers.
- 2.11.3 Design and produce integrated POS materials for Lottery games and promotions.
- 2.11.4 Develop and maintain a POS retailer calendar and library to ensure all available tools are being utilized.
- 2.11.5 Keep abreast of retail / POS trends and best practices from other state Lotteries. Present new ideas and opportunities to the Lottery on a quarterly basis.
- 2.11.6 Develop retailer communication pieces including but not limited to: newsletters, brochures, new player folders, check presentation folders, premium items, sales kits, how to play guides, new product info / sell-in sheets, interactive tutorials, etc.
- 2.11.7 Upon approval by the Lottery, sub-contract with a third party to provide retailer relationship strategic guidance, along with specialized corporate account development & support.

#### **2.12 Other Services**

- 2.12.1 Merchandising - The Contractor shall be responsible for the design, production, and delivery of promotional items approved and as required by the Lottery. The promotional items that will be required by the Lottery include, but are not limited to: t-shirts, key chains, hats, etc., that can be used as retailer or consumer premiums.

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- 2.12.2 Promotional equipment, materials, signage, and services (i.e. banners, transportation, storage, assembly and disassembly of items) including all materials needed for special events and promotions.
- 2.12.3 Cooperative Advertising - The Contractor shall develop programs for Lottery approval that will provide for cooperative advertising with third-party retailers (including individual retailers or groups of retailers), media, or other products or services (e.g., co-promotions consumer products or compatible pairings).
- 2.12.4 Items not specifically identified but within the Scope of Work and of a nature similar to those identified may also be procured or provided by the Contractor at the Lottery's request. The services may include, but are not limited to: educational courses and training, subscriptions to industry trade publications, consultative services for public affairs, crisis management, and production assistance. Costs for these additional services will be billed directly to the Lottery without mark-up.

<p><b>PRICE SHEET</b>  <b>SOLICITATION NO. AL10-02</b></p>
----------------------------------------------------------------

**1. Payments**

Upon receipt of a valid invoice and required documentation, the Lottery shall reimburse the Contractor monthly in accordance with the Contract Uniform Terms and Conditions, paragraph 4. Costs and Payments will be made for actual, allowable costs incurred in the delivery of services identified in the Contract and the Contractor's fee.

**2. Explanation of Reimbursement Formula**

The Contractor's payment shall be based on the formulas and definitions as follows:

**General Public Advertising:**

$$\text{Sales Target}^1 \times (\text{State Advertising Budget Appropriation}^2 \div \text{Sales Target}) \times \text{General Public Contractor Allocation Rate}^3 \times \text{Contractor's Percentage}^4 = \text{Contractor's estimated annual fee}^5$$

**Multicultural Advertising:**

$$\text{Sales Target}^1 \times (\text{State Advertising Budget Appropriation}^2 \div \text{Sales Target}) \times \text{Multicultural Public Contractor Allocation Rate}^3 \times \text{Contractor's Percentage}^4 = \text{Contractor's estimated annual fee}^5$$

**Definitions:**

1. SALES TARGET: Goal set annually by the Lottery for sales revenue from all products.
2. STATE ADVERTISING BUDGET APPROPRIATION: Advertising spending authority for the Lottery by the State set each fiscal year, subject to intra-year adjustments.
3. PUBLIC ADVERTISING CONTRACTOR ALLOCATION RATES:
 

GENERAL PUBLIC ADVERTISING CONTRACTOR ALLOCATION RATE: Percentage of State advertising budget appropriation allocated annually to contractor for general public advertising and contractor fees.

MULTICULTURAL PUBLIC ADVERTISING CONTRACTOR ALLOCATION RATE: Percentage of State advertising budget appropriation allocated annually to contractor for multicultural public advertising and contractor fees.
4. Contractor's Percentage – The competitive percentage submitted by the Contractor that represents compensation for all internal contractor services.
5. The estimated Contractor fee.

General Public Advertising:

EXAMPLE: \$510 MILLION x (16 ÷ 510) x 65% x 10% = \$1,040,000

Multicultural Public Advertising:

EXAMPLE: \$510 MILLION x (16 ÷ 510) x 22.5% x 10% = \$360,000

**Contractor's Percentage:** Indicate the Contractor's Percentage in the box below:

Contractor's Percentage	%
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# **SPECIAL TERMS AND CONDITIONS**

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## **1. Headings**

Captions and headings used in the Contract are for information and organization purposes and do not, in any way, define or limit the requirements or terms of this contract.

## **2. Definition of Terms**

- 2.1. Shall, Must – Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
- 2.2. Should – Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the Lottery may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.
- 2.3. Important – Indicates the requirement is of great importance to the Lottery's evaluation of the Offeror's Proposal, but the Lottery does not intend to disqualify a Proposal if the requirement is not met.
- 2.4. May – Indicates something that is not mandatory but permissible.
- 2.5. Administrative/Management or Key Personnel – Means the individuals listed in the Offeror's Personnel Qualifications Questionnaire.

## **3. Arizona Lottery Contacts**

- 3.1. The Executive Director or designee is the Lottery's authorized representative, empowered to accept and approve or reject the services furnished by the Contractor.
- 3.2. The Contractor shall address all notices relative to this Contract to the attention of:

Executive Director  
Arizona Lottery  
4740 E. University Drive  
Phoenix, AZ 85034

## **4. Terms Of Contract**

- 4.1. This Contract shall commence on July 1, 2010.
- 4.2. The Contract shall remain in effect for two years.
- 4.3. The Lottery shall have the right, at its sole option, to renew the Contract for three one-year periods or a portion thereof. If the Lottery exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the exception of price, which is controlled under A.R.S. § 41-2543 and the rules thereunder. The Lottery may extend the term of the Contract by written amendment to the Contractor on or before the date of Contract expiration.

## **5. Cancellation**

- 5.1. The Lottery reserves the right to cancel the whole or any part of the Contract due to failure of the Contractor to carry out any term, promise, or condition of the Contract.

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- 5.2. This Contract may be terminated at any time by the Contractor with mutual consent of both the Contractor and the Lottery. However, the Contractor must provide the Lottery with at least one year written notice of said termination.
- 5.3. The Contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance by giving 90 days notice.

## **6. Contract Type**

This is a Firm Fixed Price Contract.

## **7. Offer Acceptance**

In order to allow for an adequate evaluation, the Lottery requires an offer in response to this solicitation to be valid and irrevocable for 180 days after the opening date and time.

## **8. Contractor's Employees and Subcontractors**

- 8.1. The Contractor agrees and understands that the Lottery's agreement to the contract is predicated, in part and among other considerations, on the utilization of the specific individual(s) and personnel qualification(s) as identified or described in the Contractor's proposal. The Contractor agrees that no substitution of such specified individuals shall be made without the prior written approval of the Lottery.
- 8.2. The Contractor agrees that any substitution of personnel made pursuant to this paragraph must be equal or better than originally proposed and that the Lottery's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential.
- 8.3. The Lottery agrees that an approval of a substitution will not be unreasonably withheld.
- 8.4. The Contractor agrees to reveal its staffing levels by function, including resumes and time devoted to this contract upon request by the Lottery at any time during the contract.
- 8.5. A request for the removal or diversion of administrative/management or key personnel from the Contract shall be submitted 14 calendar days in advance of the anticipated change, and include the name of the proposed replacement employee, a work history, and a completed OFFEROR'S PERSONNEL QUALIFICATIONS QUESTIONNAIRE. Before the Contractor's personnel are assigned to tasks specified herein, the Lottery shall have the right to review the qualifications and experience of all personnel and to conduct personnel interviews. Notwithstanding anything contained in this Contract to the contrary, the Contractor shall have the right to remove key personnel for cause immediately. The removal for cause and the grounds therefore will be reported to the Lottery within 24 hours of removal.
- 8.6. The Contractor shall comply with a verbal request from the Lottery's authorized representative to remove/replace any key personnel considered unsuited for tasks to be performed hereunder. If a replacement is requested, the Contractor will provide an OFFEROR'S PERSONNEL QUALIFICATIONS QUESTIONNAIRE. If for any reason any of the Contractor's personnel are removed from the tasks assigned to them, the Contractor shall replace said personnel within 24 hours of such removal unless otherwise directed by the Lottery.

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- 8.7. The Lottery reserves the right to conduct a security background check on key personnel. The Contractor agrees to cooperate with such requests.
- 8.8. The Contractor's personnel (including partners, temporary employees, subcontractors, and consultants) involved in the performance of this Contract, including members of the households, shall be prohibited from purchasing any Arizona Lottery tickets, including on-line games and/or entering any Lottery promotions during the term of this Contract. No Lottery prize shall be paid to any of the above persons. The Contractor shall ensure that this requirement is made known to all personnel involved in the performance of this Contract.
- 8.9. Federal Immigration and Nationality Act: The Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal Immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance, and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification form (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV.
  - 8.9.1. The Contractor warrants compliance with all Federal Immigration Laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
  - 8.9.2. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.
  - 8.9.3. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.
  - 8.9.4. The Lottery retains the legal rights to inspect the papers of any employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1.
  - 8.9.5. The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.
- 8.10. The Contractor shall give the Lottery immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or contractor in which in the opinion of the Contractor may result in litigation related in any way to the Contract with the Lottery.

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- 8.11. The Contractor shall actively and directly supervise all staff consistent with the terms of the Contract.
- 8.12. The Lottery shall have final determination of resource sufficiency and may require the Contractor to provide additional staffing to meet agreed-upon production schedules. In the event the Contractor is unable to provide sufficient resources, the Lottery reserves the right to obtain these services from another source. The Contractor shall be responsible for all costs associated with the Lottery's acquisition of these services.

## **9. Licenses**

The Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

## **10. Contractor Cooperation**

- 10.1. The Contractor and the Lottery agree to cooperate fully, to work in good faith and mutually assist each other in the performance of the Contract. All parties will meet to resolve problems associated with the Contract. Neither party will unreasonably withhold its approval of any act or request of the other to which approval is necessary or desirable.
- 10.2. Should the Lottery award parts of this contract to another Contractor, all Contractors are, required to cooperate with each other and to meet jointly with the Lottery on a regular agreed-upon basis.
- 10.3. Upon termination or other expiration of this Contract, Contractor will assist the Lottery in its orderly termination and the transfer of all Contract-related assets, tangible and intangible, as may facilitate the orderly, non-disrupted business operations of the Lottery. Contractor must continue to cooperate fully and work in good faith to provide and support goods and services pursuant to this Contract until migration to a replacement Contract with a new Contractor is complete.

## **11. Payments/Method of Compensation**

The Contractor will be reimbursed based on the rates established by the approved Pricing Sheet contained herein. Upon receipt of a valid invoice and any required reporting documents, the Lottery shall reimburse the Contractor in accordance with the Contract Uniform Terms and Conditions, Paragraph 4.

## **12. Changes, Fixed Price**

- 12.1. The Lottery Procurement Officer, at any time, by written order, and without notice to the sureties, if any, may make changes within the general scope of this Contract in any one or more of the following:
  - 12.1.1. Description of services to be performed;
  - 12.1.2. Time of performance; or
  - 12.1.3. Place of performance of services.
- 12.2. Failure to agree to any adjustment shall be a dispute. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

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## **13. Adjustments to Payment**

- 13.1. If the Contractor defaults in the performance of any obligation under this Contract, the Lottery may, at its option and in addition to other remedies, adjust or withhold payment until satisfactory resolution of the default.
- 13.2. The Contractor shall have the right to written notice of the Lottery's action in adjusting or withholding payment.
- 13.3. Under no circumstances shall the Lottery authorize payment to the Contractor that exceeds the amount specified in this Contract without an approved written amendment to this Contract.
- 13.4. The Lottery may, at its option, withhold all payment for any task order under this Contract until it has received all final reports and deliverables required by the task order.

## **14. Confidentiality of Records**

- 14.1 The Contractor shall establish and maintain procedures and controls approved by the Lottery for the purpose of ensuring that no information contained in its records or obtained from the Lottery or from others in carrying out its functions under the Contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties. Persons requesting such information should be referred to the Lottery.

## **15. Records Retention**

- 15.1. The Contractor shall maintain an archive of historical books, records, documents and other evidence pertaining to the brand to include costs and expenses of the Contract, hereinafter collectively called the "records", to the extent and in such detail as shall properly reflect all net costs, direct or indirect, of labor, materials/artwork, equipment, supplies and services, and other costs and expenses of whatever nature for which payment is made under the Contract.
- 15.2. The Contractor shall agree to make available at the office of the Contractor at all reasonable times during the period, as set forth below, any of the records for inspection, audit or reproduction by any authorized representative of the State of Arizona.
- 15.3. The Contractor shall preserve and make available the records for a period of five years from the date of final payment under the Contract and for such period, if any, as is required by applicable statute, by any other paragraph of the Contract as stated below:
  - 15.3.1. If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.
  - 15.3.2. Records which relate to appeals, litigation or the settlement of claims arising out of the performance of the Contract, or cost and expenses of the Contract as to which exception has been taken by the Lottery, shall be retained by the Contractor until such appeals, litigation, claims or exceptions have been resolved. The provisions of this section shall be applicable to and included in each subcontract hereunder.

## **16. Indemnification Clause**

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, the Arizona Lottery,

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and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

## 17. Insurance Requirements

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

- 17.1. Minimum Scope and Limits of Insurance: Contractor shall provide coverage with limits of liability not less than those stated below.

### **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.”***

The policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

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**Umbrella/Excess Liability** in the minimum amount of \$10,000,000 excess of Commercial General Liability, Automobile Liability and Employers' Liability.

The policy shall be endorsed to include the following additional insured language: "***The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.***"

The policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: "***The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor.***"

### **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory Employers' Liability
• Each Accident	\$ 500,000
• Disease – Each Employee	\$ 500,000
• Disease – Policy Limit	\$1,000,000

The policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

### **Professional Liability (Errors and Omissions Liability)**

Each Claim	\$5,000,000
Annual Aggregate	\$5,000,000

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning at the time work under this Contract is completed.

The policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

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The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

- 17.2. Additional Insurance Requirements: The policies shall include, or be endorsed to include the following provisions:
- 17.2.1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
  - 17.2.2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
  - 17.2.3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- 17.3. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to: *Earl Payne, Chief Procurement Officer, Arizona Lottery, 4740 East University Drive, Phoenix, AZ 85034* and shall be sent by certified mail, return receipt requested.
- 17.4. Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- 17.5. Verification of Coverage: The Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to: *Earl Payne, Chief Procurement Officer, Arizona Lottery, 4740 East University Drive, Phoenix, AZ 85034*. The State of Arizona project/contract number and description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

**DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

- 17.6. Subcontractors: The Contractor's certificate(s) shall include all subcontractor as insureds under its policies or Contractor shall furnish to the Lottery separate certificates and

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endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

- 17.7. Approval: Any modification or variation from the *Insurance Requirements* in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- 17.8. Exceptions: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

## 18. Change in Financial Condition

If Contractor experiences a material change in its financial condition, it must notify the Lottery within 30 days. "Material Change" is defined as any event which, following generally accepted accounting practices, would require a disclosure in the annual report of a publicly traded United States corporation. Failure to notify the Lottery may subject the Contractor to termination of its contract.

## 19. Inclusive Offeror

The Contractor is encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority owned business enterprises. Contractors who are committing a portion of their work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning your organization's utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.

## 20. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, all services under this Contract shall be performed within the borders of the United States. Any services that are described in the specifications of Scope of Work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the Contract. This provision applies to work performed by subcontractors at all tiers.

## 21. Intellectual Property

- 21.1. **Ownership of Material:** Unless otherwise provided, all materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Lottery. The Lottery shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title and interest in the materials, including all intellectual property rights, to the Lottery effective from the moment of creation of such materials.

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- 21.2. **Patents, Copyrights, Trademarks, Trade Secrets, and Other Intellectual Property:** The Contractor represents and warrants that its performance under the contract will not infringe on any patent, copyright, trademark, service mark or other intellectual property rights of any other person or entity and that it will not constitute the unauthorized use of any trade secret of any other person or entity. The Contractor also warrants that it will not disclose any trade secrets or confidential information of the Lottery that it may come to possess in the course of this contract to any third party without prior written consent of the Lottery but shall hold such confidential information in confidence.
- 21.3. **Intellectual Property Indemnification:** The Contractor shall indemnify and hold harmless the Lottery, its officers, commissioners, agents, retailers, employees, and the State of Arizona, from and against any and all allegations or claims, liabilities, losses, damages, judgments, costs or expenses of any nature or kind, including, without limitations, court costs and attorney fees, arising out of, in connection with, or arising out of the development, possession, license, modifications or use of any copyrighted or non-copyrighted composition, trademark, service mark, secure process, invention, trade secret, article or appliance furnished or used in the performance of the Contract.
- 21.4. **Notice and Defense:** The Contractor agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against the Lottery or any of its subsidiaries, agents, or vendees, hereinafter for purposes of this section collectively referred to as the Lottery, for alleged patent, trademark, service mark, or copyright infringement or trade secret misappropriation, as well as for the alleged unfair competition resulting from similarity in design, trademark, or appearance of goods by reason of the use or sales of any goods furnished under this contract. The Lottery may be represented by and actively participate through its own counsel in any such suit or proceedings, if it so desires. The Contractor obligations hereunder shall survive acceptance of the goods and payment therefore by the Lottery.

## 22. Contract Defined

- 22.1. The contract between the Lottery and the Contractor shall consist of (1) Request for Proposal (RFP) and any amendments and clarifications thereto, and (2) the proposal submitted by the Contractor in response to the RFP including its appendices and attachments and clarifications, and approved Subcontracts.
- 22.2. In the event of a conflict in language between the two sets of documents referenced above, the provisions and requirements set forth or referenced in the Request for Proposal and related documents shall govern. However, the Lottery reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the Contractor's proposal.
- 22.3. No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract shall be waived except by the written agreement of the parties. Any forbearance or indulgence in any form must be in writing.
- 22.4. The Contract shall be construed according to the laws of the State of Arizona.
- 22.5. The Contract does not require the state to make a minimum number of purchases nor a minimum dollar value on purchases.

## 23. Liquidated Damages

- 23.1. **Liquidated Damages, General** – The parties to this Contract understand and agree that upon excessive billing errors, the Lottery will have the option to initiate liquidated damages.

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Prior to invoking liquidated damages, the Lottery will consult with the contractor and try to resolve billing issues. If unresolved, the Lottery will advise Contractor of the start date of liquidated damages.

- 23.1.1. The Arizona Lottery has formal, highly detailed procedures for budget management and expenditure requirements, including specific billing documentation, estimate approval, bid award justification, media affidavits, and timely submission of bills and invoices for payment;
  - 23.1.2. Any delay or breach in billing compliance by the Contractor will disrupt the Lottery's operations and may lead to damages;
  - 23.1.3. Proving those damages will be extremely impractical and difficult;
  - 23.1.4. The parties will use established liquidated damages formulae to resolve issues of inaccurate, delayed, incomplete or inadequate documentation for the billing;
  - 23.1.5. The parties agree that actions that are attributable to subcontractors' performance will not excuse liability for liquidated damages; and
  - 23.1.6. The parties agree that the liquidated damages established by this section are fair and reasonable.
- 23.2. Rights Reserved to the Lottery – The Lottery reserves the right, at its sole discretion:
- 23.2.1. To determine the existence of any factors relevant to the assessment of liquidated damages;
  - 23.2.2. To assess liquidated damages under each section applicable to any breach, and to calculate any liquidated damages assessment based on the cumulative effect of two or more damages categories;
  - 23.2.3. To offset the contractual liquidated damages owed to the Arizona Lottery with specialized services or equipment offered by the Contractor of equal value;
  - 23.2.4. To waive any liquidated damages as determined by the Lottery, but the waiver of any liquidated damages due the Lottery shall constitute a waiver only as to current liquidated damages and not a waiver of any future liquidated damages;
  - 23.2.5. The assessment of liquidated damages will be in addition to, and not in lieu of, such other remedies as may be available to the Lottery.
- 23.3. Notification of Liquidated Damages – Upon determination that liquidated damages are to be assessed, the Lottery shall notify the Contractor of the assessment in writing.
- 23.4. Severability of Liquidated Damages Clauses – If any clause of this provision is determined to be unenforceable, the remainder of the provision will remain in effect.
- 23.5. Assessment of Liquidated Damages – Contractor must audit its invoice for accuracy of amounts and completeness of the documentation prior to sending it to the Lottery. The assessment for failure to audit the invoice for accuracy and completeness is as follows:
- 23.5.1. Bids on subcontracts. Contractor fails to get bids on subcontracts, or fails to provide a written explanation of the facts used to make the determination that

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subcontractor that was not the lowest bidder was the best value for the Lottery. The assessment for such incident shall be \$1,000.

- 23.5.2. Failure to audit for accuracy of items or amounts. The assessment for such incidents shall be \$100 per invoice.
  - 23.5.3. Failure to attach the Lottery approved estimate for an invoiced item. The assessment for such incidents shall be \$100 per item capped at \$500 per billing.
  - 23.5.4. Failure to attach accurate media affidavits for each invoiced item. The assessment for such incidents shall be \$100 per invoice, capped at \$500 per billing.
- 23.6. Payment of Liquidated Damages
- 23.6.1. All assessed liquidated damages will be deducted from any monies owed the Contractor by the Lottery. In the event the amount due the Contractor is not sufficient to satisfy the amount of the liquidated damages, the Contractor shall pay the balance to the Lottery within 30 calendar days of written notification.
  - 23.6.2. If the amount due is not paid in full, the balance will be deducted from subsequent payments to the Contractor. At the Lottery's sole option, the Lottery may obtain payment of assessed liquidated damages through one or more claims upon the Performance Bond or by acceptance of materials or services of an amount equal in value to the assessed liquidated damages.
24. Lottery Sunset Review
- 24.1 Parties to this contract are aware that the Lottery is scheduled for review and possible termination under the Sunset provisions of A.R.S. §§ 41-2955 and 41-3012.16. Further, the parties are aware that for the Lottery to continue to operate and require the services of Contractor, legislation or a referendum requiring a vote of the Legislature or the people will be required. Although these votes have continued the Lottery in the past by a large majority vote of the people, no guarantee of the outcome can be assured as to the continuation of the Lottery. If the Lottery is not continued, the provisions of section 8.2 of the Uniform Terms and Conditions will be used to give notice of the phasing out of services until all services and obligations under the contract are terminated.

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**1. Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. "Attachment" means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. "Contractor" means any person who has a Contract with the State.
- 1.5. "Days" means calendar days unless otherwise specified.
- 1.6. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. "State" means the State of Arizona and the Arizona Lottery.
- 1.13. "State Fiscal Year" means the period beginning with July 1 and ending June 30.

## **2. Contract Interpretation**

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona, Arizona Revised Statutes A.R.S. §§ 41-2501 through 41-2573 and its implementing rules, Arizona Administrative Code (A.A.C.) R2-7-101 through R2-7-1301.

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- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
  - 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### **3. Contract administration and operation.**

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final

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acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of the contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

#### 4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
  - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

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- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
  - 4.5.1. Accept a decrease in price offered by the, contractor
  - 4.5.2. Cancel the Contract
  - 4.5.3. Cancel the contract and re-solicit the requirements.

## 5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

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## 6. Risk and Liability

- 6.1. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
- 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.
- 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.
- 6.4.1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- 6.4.2. Force Majeure shall not include the following occurrences:
- a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

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- b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
  - c. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.4.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7. Warranties

- 7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
  - 7.2.2. Fit for the intended purposes for which the materials are used;
  - 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
  - 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
  - 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

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## 7.5. Year 2000.

7.5.1. Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2. Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

7.6. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

## 7.7. Survival of Rights and Obligations after Contract Expiration or Termination.

7.7.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.7.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the

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Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

## 8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. Contract Termination

9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the

# UNIFORM TERMS AND CONDITIONS

SOLICITATION NO.: AL10-02

- Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5. Termination for Default.
- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

## 10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. §§ 41-2611 through 41-2617 the rules hereunder A.C.C. R2-7-B901 through R2-7-B905.

# **UNIFORM TERMS AND CONDITIONS**

**SOLICITATION NO.: AL10-02**

## **11. Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518, except as may be required by other applicable statutes.

## **12. Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15<sup>th</sup> Avenue, Suite 104, Phoenix, Arizona, 85007.

# SPECIAL INSTRUCTIONS TO OFFERORS

SOLICITATION NO.: AL10-02

## 1. Pre-Offer Conference

Prospective Offerors are invited and encouraged to attend a Pre-Offer Conference. The date, time and location of this conference are indicated on the cover page of this solicitation. You are not required to attend the Pre-Offer conference, but if you have any questions, this conference may be helpful. We suggest that you send your questions to the Lottery at least five days before the conference and the Lottery will try to cover the questions both orally and in writing. All answers to submitted questions will be distributed to everyone who registers an intent to bid with the procurement officer, Earl Payne at [epayne@azlottery.gov](mailto:epayne@azlottery.gov). Written questions from prospective bidders will be accepted anytime up to 5:00 p.m. on December 11, 2009. Written answers will be issued by the Lottery as soon as possible after the Lottery receives a question but all will be answered by 5:00 p.m. December 16, 2009. Oral statements or instructions will not constitute an amendment to this Request for Proposals.

If you discover any conflict, discrepancy, ambiguity, omission, or other error in the RFP, you must request clarification or protest prior to the date the RFP response is due. Arizona Administrative Code R2A-7-901(C) provides that "[i]f the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time."

This section does not limit or restrict an Offeror from asking questions or seeking clarification before or after the Pre-Offer Conference.

## 2. Solicitation Inquires

Offerors may only contact the Procurement Officer listed on the cover sheet of this RFP, with questions regarding the solicitation.

## 3. Proposal Format

3.1. The Instructions to Offerors and terms and conditions should be reviewed and understood before preparing a response.

3.2. The Offeror shall provide one (1) original and eight (8) copies of each proposal. Proposals shall be submitted on the forms and in the format specified in the RFP. The original copy of the proposal should be clearly labeled "ORIGINAL." The material should be in the sequence listed below and related to the RFP. Proposals shall be contained in loose-leaf binders, with section tabs and/or sections separated. Proposals should not be spiral bound or held together with rubber bands or binder clips. To aid in future file management and copying, all pages specific to the proposal shall be printed on 8.5" x 11" paper. Offerors are discouraged from printing in landscape or using fold-out pages. A copy of the proposal on CD or flash drive must accompany the original. Creative art, brochures and sample documents do not have to conform to this format.

3.3. Each proposal should be prepared simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the solicitation. Emphasis should be on completeness and clarity of content. Proposals that are of excessive length or contain a preponderance of boilerplate text are discouraged. It is important to a favorable evaluation to provide appropriate information or material that directly responds to each stated requirement or request for information.

3.4. The proposal shall be presented in the following order:

3.4.1. Offer and Acceptance form;

# SPECIAL INSTRUCTIONS TO OFFERORS

SOLICITATION NO.: AL10-02

- 3.4.2. Methodology and documents that best exhibit Offeror's ability to meet each of the required objectives in the Scope of Work through demonstration of past experience, solutions, prior art and measured results;
  - 3.4.3. Price Sheet;
  - 3.4.4. Questionnaires and responses to questions;
  - 3.4.5. Proposed Subcontracts and description of selection process, if applicable;
  - 3.4.6. Audited Financial Statement; and
  - 3.4.7. Signed Solicitation Amendment(s), if applicable.
- 3.5. The Lottery will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.
- 3.6. Please Note, as indicated in the Uniform Instructions, paragraph D.1, Submission of Offer, each Offer shall be submitted to the submittal location identified in this solicitation, in a sealed envelope or container that clearly identifies its contents as an Offer, with the Offeror's name and the solicitation number.

## 4. Instructions for Providing the Information Requested

- 4.1. Offer and Acceptance Form - The Offeror shall submit two (2) signed originals of the Offer and Acceptance form. If the Offeror's proposal is accepted, the second page will be signed by the Lottery and one original will be returned to the Offeror, thereafter known as the Contractor.
- 4.2. Instructions for Methodology - The Scope of Work defines the services that the Contractor shall provide.
- 4.2.1. The offer must submit its methodology and documents that best exhibit Offeror's ability to meet each of the required objectives in the Scope of Work through demonstration of past experience, solutions, prior art, and measured results.
  - 4.2.2. VAGUE DESCRIPTIONS OR SIMPLE CONFIRMATIONS THAT THE OFFER MEETS THE OBJECTIVE WILL BE LOOKED UPON NEGATIVELY.
- 4.3. Price Sheet – Offerors must submit a Price Sheet with their initial proposal. The required Price Sheet must be placed in a sealed envelope. The price sheet will not be opened until after the evaluation of Offeror's response.
- 4.4. Financial Soundness
- 4.4.1. The Offeror must submit its latest audited financial statement and any other financial description that will adequately provide factual documentation of the financial stability of the Offeror. The Offeror must provide the Lottery with adequate information to permit an evaluation of its financial capabilities to undertake and satisfactorily complete any contract awarded pursuant to the RFP.
  - 4.4.2. If the Offeror is a subsidiary of another corporation, the above information must also be supplied for the parent corporation. The Lottery reserves the right to require any additional information necessary to determine the financial integrity and responsibility of the Offeror.
  - 4.4.3. If the Offeror experiences substantial change in its financial condition during the

# SPECIAL INSTRUCTIONS TO OFFERORS

## SOLICITATION NO.: AL10-02

period prior to the award of any contract pursuant to the RFP, or if an Offeror experiences a substantial change during the term of the contract, the Lottery must be notified of the change in writing at the time the change occurs or is identified.

- 4.5. If the Offeror intends to subcontract for any services, the Offeror shall provide copies of existing contracts or sample contracts it will use. The Offeror shall provide justification for why these subcontractors will be used and a description of the selection process.
- 4.6. Signed Solicitation Amendment(s), if applicable – Completed as needed for the amendment submitted.

### 5. Evaluation Process

- 5.1. Evaluation Criteria – In accordance with A.A.C. R2-7-C316, competitive sealed proposal awards shall be awarded to the responsible Offeror(s) whose proposal(s) is (are) determined in writing to be the most advantageous to the Lottery based upon the evaluation criteria listed below.
  - 5.1.1. Experience/Expertise/Reliability and Qualifications;
  - 5.1.2. Creative Presentation of Case Study
  - 5.1.3. Methodology; and
  - 5.1.4. Cost.
- 5.2. Discussions for Clarification – In accordance with A.A.C. R2-7-C313 after the initial receipt of proposals, the Lottery reserve the option to conduct discussions for clarification. Offerors determined by the Lottery to be reasonably susceptible of being selected for award may be asked to make a presentation to the Lottery evaluation panel at the Lottery offices.
- 5.3. The evaluation process will occur in two stages. The first phase is a review of the written proposal where the Offeror provides its methodology, general information, experience and qualifications.
  - 5.3.1 After an initial review, the Offerors whose proposals are determined to be susceptible of award by the Lottery will be notified in writing and offered the opportunity to make an oral presentation of a marketing case study.
  - 5.3.2 The case study will be provided only to those Offerors whose proposals are considered to be within the competitive range in comparison to other offers based on the criteria in this RFP, and therefore are susceptible of award as defined under A.A.C. R2-7-C311. All Offers will be notified in writing of the award(s). Evaluation documentation regarding the initial review and the final selection shall not be subject to public inspection until after Contract award.
  - 5.3.3 The Offerors selected to make presentations will be given as much notice as possible to provide them with time to adequately prepare their material(s).
- 5.4. Site visits may also be requested at the Lottery's discretion. Both the presentation, and the site visits, if requested, will be at the expense of the Offeror.
- 5.5. Responsibility and Susceptibility - The Lottery will, at a minimum, consider the following in

# **SPECIAL INSTRUCTIONS TO OFFERORS**

## **SOLICITATION NO.: AL10-02**

determining Offeror's responsibility as well as the susceptibility of its proposal:

- 5.5.1. Offeror fails to substantially meet one or more of the mandatory requirements of the solicitation.
- 5.5.2. Offeror has been debarred from the practice of a profession that would otherwise be necessary in the provision of goods and services under any resulting contract.
- 5.5.3. Offeror's record of frequent or reoccurring failure to satisfy terms of the Offeror's agreements and contractual relationships with any party. Factual evidence may consist of any documented vendor performance reports, customer complaints or negative references.
- 5.5.4. Offeror's financial, business, personnel, or other resources, including subcontractors; whether the Offeror is legally qualified to contract with the State; and whether the Offeror promptly supplied all requested information concerning its responsibility.
- 5.5.5. Offer's proposal was not sufficient to evaluate in accordance with the factors identified in the Solicitation. Necessary components include: an indication of the intent to be bound, reasonable or acceptable methodology and approach to perform the Scope of Work, experience, signed Solicitation amendments, and/or references, or other data specifically requested in the Solicitation.
- 5.5.6. Offer limits the rights of the Lottery or the State; the Offer materially changes the RFP, which includes the Scope of Work, Terms and Conditions.
- 5.5.7. Offeror provides misleading or inaccurate information.

### **6. Final Proposal Revision**

- 6.1.1 At the Lottery's discretion, negotiations may be conducted with Offerors who have completed phase II presentations that may be reasonably susceptible of being selected for award and that fall within the competitive range. The Lottery will issue a written request for Final Proposal Revision.
- 6.1.2 The request for Final Proposal Revision will inform Offerors, that if the Offeror does not submit a Final Proposal Revision, the Offeror's immediate previous written proposed proposal revision will be considered as the Offeror's final proposal revision.

### **7. Lottery's Rights**

- 7.1. Notwithstanding any other provision of the RFP, the Lottery expressly reserves the right to:
- 7.2. Waive any immaterial defect or informality; or
- 7.3. Reject any or all proposals, or portions thereof or;
- 7.4. Reissue the RFP

# **SPECIAL INSTRUCTIONS TO OFFERORS**

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## **8. Multiple Award**

The Lottery reserves the right to award multiple contracts if the Procurement Officer determines it is in the best interest of the State.

## **9. Confidentiality**

- 9.1. If the Offeror includes any information that it considers confidential, such information shall be clearly marked as "CONFIDENTIAL" at the beginning of the confidential portion and clearly marked "END OF CONFIDENTIAL" at the conclusion of the confidential portion. The Offeror shall provide an index as an attachment to the proposal that indicates where confidential information is located. An entire page or paragraph in which such information appears should not be marked confidential unless the entire page or paragraph consists of such confidential information. Only the confidential portion(s) should be so identified and marked. The Lottery will make all determinations as to the confidentiality of information.
- 9.2. Financial statements, tax returns and other financial information submitted in connection with this RFP are public records and cannot be made confidential unless the Offeror so requests. The Lottery will make all final determinations as to the confidentiality of information.

# UNIFORM INSTRUCTIONS TO OFFERORS

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**A. Definition of Terms.** As used in these Instructions, the terms listed below are defined as follows:

1. *"Attachment"* means any item the Solicitation requires an Offeror to submit as part of the Offer.
2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
4. *"Contractor"* means any person who has a Contract with the State.
5. *"Days"* means calendar days unless otherwise specified.
6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
7. *"Offer"* means bid, proposal or quotation.
8. *"Offeror"* means a vendor who responds to a Solicitation.
9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
10. *"Solicitation"* means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
11. *"Solicitation Amendment"* means a written document that is signed by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
12. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
13. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

## **B. Inquiries**

1. **Duty to Examine.** It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its' Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.
2. **Solicitation Contact Person.** Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
3. **Submission of Inquiries.** The Procurement Officer or the person identified in the Solicitation as

# UNIFORM INSTRUCTIONS TO OFFERORS

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the contact for inquiries except at the Pre-Offer Conference, require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer and not be opened until after the Offer due date and time. The State shall consider the relevancy of the inquiry but is not required to respond in writing.

4. **Timeliness.** Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
5. **No Right to Rely on Verbal Responses.** An offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.
6. **Solicitation Amendments.** The Solicitation shall only be modified by a Solicitation Amendment.
7. **Pre-Offer Conference.** If a pre-Offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Offerors should raise any questions about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.
8. **Persons with Disabilities.** Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

## **C. Offer Preparation**

1. **Forms: No Facsimile, Telegraphic or Electronic Mail Offers.** An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms, unless the solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids.
2. **Typed or Ink; Corrections.** The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
3. **Evidence of Intent to be Bound.** The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, shall result in rejection of the Offer.
4. **Exceptions to Terms and Conditions.** All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.

# UNIFORM INSTRUCTIONS TO OFFERORS

## SOLICITATION NO.: AL10-02

- i. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
  - ii. Request for Proposals. All exceptions that are contained in the Offer may negatively affect the State's proposal evaluation based on the evaluation criteria stated in the Solicitation or result in rejection of the Offer. An offer that takes exception to any material requirement of the solicitation may be rejected.
5. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
6. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
7. Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a Solicitation Amendment may result in rejection of the Offer.
8. Federal Excise Tax. The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
9. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.
- 9.1 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the Department for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this contract. If the federal identifier of the offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials.

This submission is mandatory under 26 U.S.C. § 6041A.

10. Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be included in the pricing offered in the solicitation. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the contractor.
11. Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
12. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:
  - 12.1 Special Terms and Conditions;
  - 12.2 Uniform Terms and Conditions;
  - 12.3 Statement or Scope of Work;
  - 12.4 Specifications;

# UNIFORM INSTRUCTIONS TO OFFERORS

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- 12.5 Attachments;
- 12.6 Exhibits;
- 12.7 Special Instructions to Offerors;
- 12.8 Uniform Instructions to Offerors.
- 12.9 Other documents referenced or included in the Solicitation.

13. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

## **D. Submission of Offer**

1. Sealed Envelope or Package. Each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.
2. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
3. Public Record. All Offers submitted and opened are public records and must be retained by the State. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the State.

If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential the specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The State shall determine whether the identified information is confidential pursuant to the Arizona Procurement Code.

4. Non-collusion, Employment, and Services. By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
  - i. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
  - ii. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

## **E. Evaluation**

1. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
2. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the offer for the purposes of evaluating that price.
3. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
4. Disqualification. A Offeror (including each of its' principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.
5. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its

# UNIFORM INSTRUCTIONS TO OFFERORS

SOLICITATION NO.: AL10-02

Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred-twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred-twenty (120) days from the Best and Final Offer due date.

5.6 Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:

- 5.6.1 Waive any minor informality;
- 5.6.2 Reject any and all Offers or portions thereof; or
- 5.6.3 Cancel the Solicitation.

## F. Award

1. Number or Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State. If the Procurement Officer determines that an aggregate award to one Offeror is not in the State's best interest, "all or none" Offers shall be rejected.
2. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
3. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

## G. Protests

A protest shall comply with and be resolved according to Arizona Revised Statutes A.R.S. §§ 41-2501 through 41-2573 the rules adopted thereunder, Arizona Administrative Code (A.A.C.) R2-7-101 through R2-7-1301 Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- 1.1 The name, address and telephone number of the protester;
- 1.2 The signature of the protester or its representative;
- 1.3 Identification of the purchasing agency and the Solicitation or Contract number;
- 1.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- 1.5 The form of relief requested.

## H. Comments Welcome

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona, 85007.

**Exhibit A**  
**OFFEROR'S ORGANIZATION QUESTIONNAIRE**  
**SOLICITATION NO. AL10-02**

Instructions: Complete each item, using attachments where necessary. Attachments shall indicate the item number and heading being referenced as it appears below. Failure to make full and complete disclosure may result in the rejection of your proposal as unresponsive.

1. Organization's Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ FAX: \_\_\_\_\_ Email: \_\_\_\_\_

2. The Offeror is (check appropriate box):

<input type="checkbox"/>	Individual	<input type="checkbox"/>	Corporation - For Profit	<input type="checkbox"/>	Government Entity
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Corporation - Not For Profit	<input type="checkbox"/>	Limited Liability Corporation

3. Authorized Signatories.

A. \_\_\_\_\_  
 (Name and Title of Authorized Signatory) is the signatory to this Contract on behalf of the Contractor and is responsible for the delivery of Contract Services during the term of this Contract.

B. In the absence of the principal authorized signatory named above,  
 \_\_\_\_\_  
 (Name, Title) is authorized to sign this Contract and any amendments thereto on behalf of the Contractor.

C. \_\_\_\_\_  
 (Name, Title) is the Contractor's authorized representative, responsible for overall management of Contract services. The Lottery shall address all notices relative to this Contract to the attention of same.

	YES	NO
4. Has any Federal or State agency ever made a finding of noncompliance with any relevant civil rights requirements with respect to your business activities? If YES, please attach an explanation.		
5. Has the Offeror, any subsidiary or intermediary company, any parent company, any holding company or any partnership in which the Offeror was a general partner or any of entity employee, owner, director, general partner, officer, or any person who owns 10% or more of the entity's stocks been indicted, convicted, or been a subject of a criminal investigation involving a state, federal or foreign felony or a crime of moral turpitude? If YES, please provide a detailed description of the matter.		
6. Does the Offeror have sufficient funds to meet obligations on time under the Contract while awaiting reimbursement from Lottery? If NO, please attach an explanation.		
7. In the last five years has the Offeror, any subsidiary or intermediary company, any parent company, any holding company or any partnership in which the Offeror was a general partner had a license denied, revoked, suspended or provisionally issued? If YES, fully describe the circumstances, including the other party's name, address and telephone number.		
8. In the last five years has the Offeror, any subsidiary or intermediary company, any parent company, any holding company or any partnership in which the Offeror was a general partner had a contract terminated for default or for cause, or had a contract that was not renewed when additional years were available for renewal? If YES, fully describe the circumstances, including the other party's name, address and telephone number.		

**Exhibit A**  
**OFFEROR'S ORGANIZATION QUESTIONNAIRE**  
**SOLICITATION NO. AL10-02**

9. In the last five years, has the Offeror, any subsidiary or intermediary company, any parent company, any holding company or any partnership in which the Offeror was a general partner been assessed any fine, penalty, claim against insurance, or performance bond penalties? If YES, fully describe the circumstances, including the other party's name, address and telephone number.		
10. In the last five years, has the Offeror, any subsidiary or intermediary company, any parent company, any holding company or any partnership in which the Offeror was a general partner been designated a defendant in a lawsuit in any state, federal or foreign court involving advertising, marketing, promotional or other agency services? If YES, fully describe the circumstances, including the other party's name, address and telephone number.		
11. Do you, your staff, any of your relatives, or voting members of your Board of Directors maintain any ownerships, employments, public and private affiliations or relationships which may have substantial interest (as defined in A.R.S. §38-502, Conflict of Interest) in any contract, sale, purchase, or service involving the Lottery, other than any current contracts that the Offeror may have with the Lottery? If YES, please attach an explanation.		
12. Has your organization ever gone through bankruptcy, any State insolvency legal proceeding, or has a receiver, fiscal agent or similar officer appointed by the court for the business? If YES, when? Include the State, District and case number.		

Instructions- Address the following questions on a separate attachment labeled "Offeror's Qualifications Questionnaire." Indicate the question number that is being addressed.

1. Describe the company's experience and expertise in providing the services requested under the Scope of Work of this Solicitation. The response is limited to 10 pages, with one-inch margins and 12 font.

For each person in an administrative/management or key personnel position that is responsible for services to be provided under this Contract, provide the following information:

- a. Name;
  - b. Specific contribution to any exhibits or materials submitted in regards to a Scope of Work required objective;
  - c. Position currently held in company and the proposed position for the Contract service or if Contractor will be bringing in a new employee, the position that person currently holds;
  - d. Number of years with company and number of years' experience in the area for which the person will be providing services under this Contract;
  - e. A listing of the primary services this person will be providing under this Contract; and
  - f. The person's resume.
2. Please submit an organization chart showing the structure of the organization and where the Administrative/Management and Key personnel identified above are positioned within the organization.
  3. Clients
    - a. Provide your current client list of those who receive goods and services such as those being requested under the Scope of Work of this Solicitation. Indicate which services you provide to each client and how long you have been working with each one;

**Exhibit A**  
**OFFEROR'S ORGANIZATION QUESTIONNAIRE**  
**SOLICITATION NO. AL10-02**

- b. List accounts you have gained over the past three years;
- c. List accounts you have lost or resigned over the past three years. Provide an explanation of why your agency lost or resigned these accounts; and
- d. Provide contact information for the accounts mentioned in the above three categories. The Lottery may use the information to contact account representatives at our discretion.

**Exhibit B**  
**OFFEROR'S PERSONNEL QUALIFICATIONS QUESTIONNAIRE**  
SOLICITATION NO.: AL10-02

Instructions: Complete a separate questionnaire for each person in an **administrative/management or key personnel** position that will be associated with the execution of this contract. If attachments are used, indicate the item number and heading being referenced as it appears below. Attach to each questionnaire the person's resume (limited to 3 pages), current job description, or job description for the position(s) for which the person is proposed:

1. Name of person: \_\_\_\_\_
2. Proposed position for Contract service: \_\_\_\_\_
3. Position currently held in company: \_\_\_\_\_
4. Number of years with company: \_\_\_\_\_ 5. Number of years experience in requested service: \_\_\_\_\_
6. Describe any related job training: \_\_\_\_\_

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7. Identify the primary function(s) of this person in terms of providing services under this Contract:

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8. What percentage of time will this person be assigned to work on this Contract: \_\_\_\_\_

9. During the last 5 years have any of the following events occurred for this person:

9.1 A petition under the Bankruptcy Code or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer appointed by a court for the business or property of such person, or any Partnership in which the person was a general partner during or within two (2) years preceding the time of such filing, or any corporation or business association of which the person was an executive officer during or within two (2) years preceding the time of such filing.

9.2 Person was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation (excluding traffic violations and other minor offenses, except gambling offenses).

9.3 Person was the subject of any order, judgment or decree of any court permanently or temporarily enjoining such person from engaging in any type of professional or business practice or activity.

9.4. Person was the subject of any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of such person to engage in any professional or business practice or activity.

**If yes to any of the above, on an attachment, provide a detailed explanation.**



# OFFER AND ACCEPTANCE

Solicitation NO.: AL10-02

**ARIZONA LOTTERY**  
 4740 E. University Dr.  
 Phoenix, AZ 85034  
 Phone:(480) 921-4400  
 Fax:(480) 921-4425

**TO THE STATE OF ARIZONA AND THE ARIZONA LOTTERY:**

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 99.4 or A.R.S. §§41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulation required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the below referenced organization \_\_\_IS/\_\_\_IS NOT a small business with less than 100 employees or has gross revenues of \$4 million or less.
5. In accordance with A.R.S § 35-397, the Offeror hereby certifies that the Offeror does not have scrutinized business operation in Iran.
6. In accordance with A.R.S § 35-397, the Offeror hereby certifies that the Offeror does not have scrutinized business operation in Sudan.

	For clarification of this Offer, contact:
Company Name	Name: _____
Address Line	Phone #: _____
City, State, Zip Code	Fax #: _____
Federal Employer Identification Number: _____	Signature of Person Authorized to Sign Offer
Arizona Transaction (Sales) Privilege Tax License Number: _____	Date
	Printed Name
	Title



# OFFER AND ACCEPTANCE

Solicitation NO.: AL10-02

**ARIZONA LOTTERY**  
4740 E. University Dr.  
Phoenix, AZ 85034  
Phone:(480) 921-4400  
Fax:(480) 921-4425

## OFFER ACCEPTANCE AND CONTRACT AWARD (For State of Arizona Use Only)

Your Offer is hereby accepted. The Contractor is now bound to perform based upon the Solicitation and the Contractor's Offer as accepted by the State and approved by the Lottery Commission.

**The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this Contract until the Contractor receives an executed purchase order or contract release document or written notice to proceed, if applicable.**

This Contract shall henceforth be referred to as Contract Number: **AL10-02**

Accepted:

\_\_\_\_\_  
EARL PAYNE, Chief Procurement Officer  
Or Authorized Representative

\_\_\_\_\_  
DATE