



**SUPERIOR COURT IN PIMA COUNTY
NOTICE OF REQUEST FOR QUALIFICATION**

NUMBER AND TITLE: RFQ # 24-041524 – POLYGRAPH EXAMINATION SERVICES

DUE IN AND OPENS: May 24TH 2024 AT 3.00 P.M

RETURN TO: ARIZONA SUPERIOR COURT IN PIMA COUNTY
110 WEST CONGRESS, 9TH FLOOR, RECEPTIONIST
TUCSON, ARIZONA 85701

DESCRIPTION:

THE ARIZONA SUPERIOR COURT IN AND FOR PIMA COUNTY IS SOLICITING PROPOSALS FROM QUALIFIED PROVIDERS AND AGENCIES TO PROVIDE POLYGRAPH EXAMINATION SERVICES, AS LISTED HEREIN.

PROPOSAL RESPONSES (1 ORIGINAL + 3 COPIES) MUST BE SUBMITTED IN A SEALED ENVELOPE/PACKAGE CLEARLY MARKED ON THE OUTSIDE WITH THE RFQ NUMBER, TITLE, DUE DATE AND TIME, AND RESPONDENT'S NAME.

PROPOSALS MUST BE RECEIVED AND TIME STAMPED AT THE ARIZONA SUPERIOR COURT, 9TH FLOOR, 110 W. CONGRESS ON OR BEFORE THE ABOVE SPECIFIED DATE AND TIME. IT IS THE RESPONDENTS' RESPONSIBILITY TO ENSURE PROPOSALS ARE RECEIVED AT THE ABOVE LOCATION BY THE SPECIFIED TIME. LATE PROPOSALS WILL NOT BE ACCEPTED. PROPOSALS RECEIVED WILL BE OPENED AND THE RESPONDENT'S NAME ANNOUNCED. ALL INTERESTED PARTIES ARE INVITED TO ATTEND.

PROPOSALS MAY NOT BE WITHDRAWN FOR 30 DAYS AFTER OPENING TO ALLOW ADEQUATE TIME FOR EVALUATION AND AWARD.

THE AWARD SHALL BE MADE ON THE PROPOSAL MOST ADVANTAGEOUS TO THE COURT IN THE FOLLOWING MANNER:

ITEM BY ITEM BY GROUP MULTIPLE AWARD SINGLE AWARD

YOU MAY DOWNLOAD FULL COPY OF THIS PROPOSAL AT WWW.SC.PIMA.GOV AND CLICK ON PROCUREMENT, THEN ON THE RFQ NUMBER. YOU MAY ALSO PICK UP A COPY AT OUR OFFICE AT THE ADDRESS LISTED ABOVE. QUESTIONS CONCERNING THE INVITATION FOR BIDS SHOULD BE DIRECTED TO THE FOLLOWING:

ADAM REDDING
AREDDING@SC.PIMA.GOV
PHONE: (520) 724-4218

PUBLISH: THE DAILY TERRITORIAL APRIL 30 TO MAY 1, 2024

INSTRUCTIONS AND INFORMATION

PREPARATION OF RFQ RESPONSES:

All prices and notations must be printed in ink or typewritten. No erasures are permitted. Errors should be crossed out and corrections printed in ink or typewritten adjacent to error and shall be initialed in ink by person signing RFQ. Price each item separately. In case of error in extension of prices, unit prices shall govern. Delivery time if stated as a number of days shall mean "Calendar" days. Pima County Superior Court in Pima County reserves the right to question and correct obvious errors.

SUBMISSION OF RESPONSES:

RFQ's must be signed by an authorized agent of the respondent and submitted in a sealed envelope. Proposals and modifications received after the closing time specified will not be accepted. Facsimiles of proposals will not be accepted.

INQUIRIES:

Results of this procurement will not be given in response to telephone inquiries. Interested parties are invited to attend the public opening at the time and date stated in this solicitation. Following evaluation and award, all vendors responding are notified of results.

No oral interpretations or clarifications will be made to any respondent as to the meaning of any of the RFQ documents. If a vendor believes any provisions of the RFQ documents are needlessly restrictive, unfair, or unclear; the respondent should notify the Buyer for Arizona Superior Court Adam Redding at aredding@sc.pima.gov prior to the closing time set for receipt of RFQ's. Response from the Court will be made by written addendum and posted on the Superior Court website, <http://www.sc.pima.gov/courtdepartments/finance/procurement>.

AWARD OF CONTRACTS:

Contracts and purchases shall be made or entered into with the best responsible respondent except as required or otherwise authorized by law. The Arizona Superior Court in Pima County reserves the following rights: 1) To waive informalities in any bid or the bidding procedure, 2) To reject the response of any persons or corporations who have previously defaulted on any contract with the Court or who have engaged in conduct that constitutes a cause for debarment or suspension as set forth in Pima County Code Section 5.12.040, 3) To reject any and all responses, 4) To re-advertise for bids previously rejected, 5) To otherwise provide for the purchase of such equipment, supplies, materials and services as may be required herein, 6) To award the contract on the basis of the best response, including but not limited to such factors as delivery time, prices, quality, uniformity of product, suitability for an intended task and bidder's ability to supply, 7) To increase or decrease the quantity herein specified, 8) The Court makes no guarantee as to the value of this contract and makes no representation or warranty that it will refer a specific number of clients to the agency for services.

WAIVER:

Each bidder, by submission of their bid, proclaims and agrees and does waive any and all claims for damages against the Court or its officers or employees when any of the rights reserved by the Court may be exercised.

PUBLIC INFORMATION:

All information submitted to the Court becomes public information and upon request, is subject to release and/or review by the general public.

AMERICANS WITH DISABILITIES ACT:

Bidders shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 USC 12101-12213) and all applicable federal regulations under the Act, including 28 CFR parts 35 and 36.

FRAUD AND COLLUSION:

Each bidder by submission of a proposal, proclaims and agrees that no employee of the Court or of any subdivision thereof has 1) Aided or assisted the bidder in securing or attempting to secure a contract to furnish labor, materials or supplies at a higher price than that proposed by any other bidder, 2) Favored one bidder over another by giving or withholding information or by willfully misleading the bidder in regard to the character of the material or supplies called for or the conditions under which the proposed work is to be done, 3) will knowingly accept materials or supplies of a quality inferior to those called for by any contract, 4) will knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies that has been actually received, 5) any direct or indirect financial interest in the proposal. If any time it shall be found that the person or entity to whom a contract has been awarded has, in presenting any proposal, or proposals, colluded with any other party or parties for the purpose of preventing any other proposal being made, then the contract so awarded shall be terminated and that person or entity shall be liable for all damages sustained by the Court.

CONFLICT OF INTEREST:

All agreements are subject to the provisions of A.R.S. §38-511 which provides in pertinent part: “The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.”

NON-DISCRIMINATION:

During the performance of any contract with the Arizona Superior Court in Pima County, Contractor shall not discriminate against any employee, or applicant for employment, in violation of Federal Executive Order 11246 and State Executive Order No. 99-4 and A.R.S. 41-1461 et seq. The Contractor will not discriminate, and shall require that any subcontractor not discriminate, in the provision of program services on the basis of race, age, creed, color, religion, sex, condition of disability, or national origin.

NON-APPROPRIATIONS OF FUNDS:

Each payment obligation of the Court created hereby is conditioned upon the availability of funds which are appropriated for the payment of such an obligation. If funds are not available for the continuance of the contract services, the contract period for the services may be terminated by the Court at the end of the period for which funds are available. The Court shall notify contractor at the earliest possible time which services will or may be affected by a shortage of funds. No penalty shall accrue to the Court in the event this provision is exercised, and the Court shall not be obligated or liable for any future payments due for any damages as a result of the termination under this article. This provision shall not be construed so as to permit the Court to terminate this Agreement or any service in order to acquire a similar service from another provider.

RFQ EVALUATION AND AWARD:

Award will be made to the provider whose proposal is most advantageous to the Court with regard to provider qualifications and experience, response to RFQ questions, references, cost and ability to meet requirements as established in the RFQ. In addition, the Court will consider the provider’s ability to meet time deadlines. As part of the evaluation process, some proposers may be asked to make a presentation on their proposal.

PAYMENT TERMS:

Payment terms are NET 30, unless otherwise specified in the RFQ.

OTHER PARTICIPATING AGENCIES:

In order to conserve resources, reduce procurement costs and improve the timely acquisition and cost of supplies, equipment, and services the vendor(s) to whom this solicitation will be awarded, may be requested by other parties to extend to them the right to purchase supplies, equipment, and services under this solicitation award, pursuant to the terms and conditions stated herein.

POLYGRAPH EXAMINATION SERVICES

INTRODUCTION:

The Arizona Superior Court in Pima County on behalf of its Adult Probation Department is seeking proposals from qualified providers/agencies to provide post-sentence clinical and maintenance polygraph examinations for Adult Probationers, as described herein. Term will be for a two (2) year period with the option to extend up to three (3) additional one-year periods.

BACKGROUND/DEFINITIONS:

Clinical Polygraph Examination means the employment of any instrumentation used for the purpose of detecting deception or verifying the truth of statements of any person under supervision and/or treatment for the commission of sex offenses. Clinical polygraph examinations are specifically intended to assist in the treatment and supervision of sex offenders. ***Sex Offenses*** meaning is as defined in A.R.S. §§13-1401 et seq., 13-3206, 13-3212, 13-3552, 13-3553, 13-3554, and 13-3560.

SCOPE:

This service provides examinations in conjunction with treatment and/or assessments as authorized and directed by a Superior Court Probation Officer. The type of test administered is at the discretion of the Probation Officer/Adult Probation Department as determined in collaboration with treatment team. Polygraph testing and scheduling will be conducted on an as-needed basis.

For identification, treatment and management of sexual abusers, the vendor shall provide the following services:

Clinical Polygraph Examination and Report is a diagnostic instrument and procedure which includes a report designed to assist in the treatment and supervision of persons by detecting deception or verifying the truth of their statements. Two types of polygraph examinations shall be administered under this category:

- 1) **Sexual History Examination:** examines a person’s lifetime sexual history, including victim selection, and identification of sexual deviancy, sexual compulsivity and sexual preoccupation behaviors. May be included as part of a sex offense-specific evaluation.
- 2) **Instant Offense Examination:** examines additional or unreported offense behaviors in the context of the instant offense.

Maintenance Examination: shall be conducted periodically to investigate a person’s honesty with community supervision and/or treatment. Such examination shall cover a wide variety of sexual behaviors and compliance issues that may be related to victim selection, preparatory behaviors, deviant activities or high-risk behaviors. Results of such examination shall prioritize the investigation and monitoring of the person’s involvement in any noncompliance, high-risk and deviant behaviors that may change over time and would signal a level of escalating risk prior to re-offending. Maintenance examinations are conducted an average of between six to twelve months, at the discretion of the Probation Officer/Adult Probation Department. These examinations are conducted throughout the period of probation.

Records/Results: Polygraph examiners will provide a typewritten detailed report to the client within 72 business hours of testing. The report can be mailed or delivered via approved electronic medium. Reports will include:

- Name of examinee
- Name of referring officer
- Date and time of examination
- Reason for examination/test type
- Case background (instant offense)
- Any pertinent collateral information obtained outside the examination
- Statement attesting to the examinee's suitability for testing (medical, psychiatric, developmental)
- List of examinee's medications
- Date of last post-conviction examination (if known)
- Summary of pre- and post-test interviews, including disclosures or other relevant information provided by the examinee
- Relevant examination questions and answers
- Examination results
- Reasons for inability to complete examination (if applicable)
- Any additional information deemed relevant by the examiner (e.g., behavioral observations, verbal statements)
- Identification of the equipment used for administration of the examination

All polygraph examinations shall be audio- and videotaped in their entirety and are subject to quality review. Examiners shall submit complete records for independent quality review upon request of the Adult Probation Department.

Testing Schedules: Testing will be scheduled by the Adult Probation Department. It is the responsibility of the Court to notify probationer of the date, time, and location of testing. If the probationer is unable to participate in testing as scheduled, the probation officer or Court representative will notify the examiner not less than eight hours prior to the scheduled time.

Examiners shall notify the probation officer or designee immediately, but no later than 24 hours, if the scheduled examinee fails to report for testing, conduct violating a condition of supervision occurs, new third-party risk issues arise, or any factors that are identified which increase general risk of additional sexual offending.

If the examinee refuses to submit to testing based on a Fifth Amendment concern, testing shall be discontinued immediately, and guidance sought from the probation officer or designee.

POLYGRAPH EXAMINER QUALIFICATIONS:

The examiner shall meet the following minimum standards and conduct examinations in accordance with the following:

- Shall be a graduate of a basic polygraph school accredited by the American Polygraph Association (APA)
- Shall have a Baccalaureate degree from a four-year college or university OR five (5) years' experience as a private investigator or law enforcement officer.
- Shall have completed a minimum of 40 hours of Post-Conviction Sex Offender Testing (PCSOT) specialized training, beyond the basic polygraph examiner training, as approved by the APA
- Shall be a member of a professional organization that provides regular training on research and case management of sex offenders
- Shall complete a minimum of 30 continuing education hours every two years in coursework related to the field of polygraphy
- Shall have at least two years of experience working with adult offenders in the criminal justice system

- Shall have conducted at least 150 criminal specific issue examinations, including a minimum of 50 clinical sex offender polygraph examinations, which may include maintenance examinations
- Shall be bonded and insured

Please provide documentation for the above-listed items and attach copies of current licenses, certifications, professional associations, and training documentation for all examiners that will be providing services pursuant to this RFQ. This documentation must be submitted with your response to this RFQ.

ADDITIONAL RESPONSE REQUIREMENTS:

1. Proof of insurance for both business and property. Specific insurance requirements pursuant to this RFQ shall be required once respondent is notified of award.
2. Description of all polygraph hardware/instruments used by you/your agency.
3. Example of a post-polygraph report you would submit to the Court.
4. Any polygraph questionnaires and/or other forms you/your agency uses when conducting a polygraph examination.
5. Three (3) letters of recommendation from individuals/agencies familiar with your polygraph work.
6. Documentation of how many maintenance polygraphs and sexual history polygraphs your agency conducted in the last calendar year. We want to see the numbers for each polygraph conducted.

STANDARDS OF PRACTICE FOR SEX OFFENDER CLINICAL POLYGRAPH EXAMINERS:

1. Examiners must adhere to the established ethics, standards, and practices of the American Polygraph Association (APA), demonstrate competency pursuant to APA standards, and conduct all examinations in a manner that is consistent with the accepted standards and practice.
2. Examiners shall use a recognized Control Question Technique (CQT), plus a Searching Peak of Tension test, when necessary.
3. Examiners must use a validated state-of-the-art computerized polygraph system, at minimum a five-channel polygraph instrument, that will simultaneously record the physiological phenomena of respiration, galvanic skin response, and cardiovascular system. A seat activity sensor shall be used to detect movement.
4. A recognized scoring software must be used (e.g., the Johns Hopkins Applied Physics Laboratory scoring algorithm, Probability Analysis), or OSS, specifically OSS-3, that is designed to enhance the validity of PCSOT examinations.
5. Examiners shall not conduct more than three (3) separate clinical sessions per year on the same client. A re-examination of issues where no opinion was formed is not considered a separate session.
6. The duration of each examination (including pre-test, in-test, and post-test phases) shall be a minimum of ninety (90) minutes. Time begins when the examinee enters the examination room with the examiner and ends when the examinee departs after the conclusion of the polygraph examination.
7. Examiners shall adhere to the following testing protocols:

- a. The client shall sign a standard waiver/release statement. The language of the statement should be agreed upon by the Court and polygrapher prior to the polygraph examination. After contract award, a copy of the waiver form will be made available.
- b. Prior to testing, the examiner shall obtain the informed consent of the examinee. Informed consent should be obtained after an overview of the polygraph process, including polygraph instrumentation and sensors, use of video/audio recording, issues to be discussed, requirements for cooperation during testing, and the need to report information and results to the referring professionals.
- c. Prior to testing, the examiner also shall dedicate sufficient time to identify and discuss the examination issues and potential problem areas.
- d. The examiner shall review all test questions prior to recording the physiological responses of the examinee.
- e. Surprise or trick questions are forbidden during the administration of primary test charts.
- f. All test questions must be formulated to allow only yes or no answers.
- g. An optional acquaintance/practice test may be run.
- h. The examiner shall elicit relevant biographical and medical history information from the client prior to administering the examination and make reasonable efforts to determine the suitability of a candidate for testing,
- i. The examiner shall conduct the examination in a neutral manner and shall not display or express any bias regarding the truthfulness of the examinee prior to the completion of testing.
- j. The examiner should review the initial test results with the examinee, advise the examinee of any significant responses to any of the test questions, and provide the examinee an opportunity to explain or resolve any reactions or inconsistencies. The post-test interview may be done in collaboration with other treatment and supervision professionals.
- k. Examiners shall issue a written report containing a factual and objective account of all pertinent information developed during the examination, including case background information, test questions, answers, results, and statements made by the examinee during the pre-test and post-test interviews.
- l. The examiner's professional conclusion shall be based on the analysis of the polygraph charts and the information obtained during the examination process.
- m. Examiners shall use an effective quality control process that allows for periodic independent review of all documentation, polygraph charts, and reports.
- n. Examiners will be subject to periodic peer review. Numerical chart analysis, technique and question formulation, and the inspection of instrumentation used in the examination will be evaluated. Review examiners will be chosen by the staff of the Court

CERTIFICATION:

The Certification Page must be completed and signed by the respondent. Failure to complete and sign this page may cause the proposal to be rejected. In the event No is checked for the specifications and/or the terms and conditions, failure to fully explain exceptions taken may cause the proposal to be rejected.

COMPENSATION SCHEDULE

The Court will pay the following fee for the noted service.

SERVICE	FEE
Abel	\$275.00
Instant Offense	\$250.00
Sexual History	\$300.00
Maintenance	\$250.00
Specific Issue	\$250.00
Travel Outside of Pima County (if required)	\$100.00 (per round trip)

The successful respondent(s) will receive a referral that determines the appropriate level of the probationer's co-pay, if applicable, which will offset a portion of the per unit of service fee to the Court.

EVALUATION AND AWARD:

Proposals must contain all required information to be considered responsive experience, compliance with specifications, references, and any other requirement in this proposal. Only proposals determined to be responsive will be evaluated per the following criteria:

	Points Allocated
Experience conducting clinical sex offender polygraph examinations	40 points
Experience working with the criminal justice system	30 points
Ability to accommodate up to 200 referrals per calendar year from Adult Probation	10 points
Ability to conduct polygraphs in Spanish and translate all reports in English	20 points
Total points possible	100 points

INVOICING:

Polygraph examiner’s reimbursement for service shall be pursuant to the contracted rates, less the client/probationer co-payment, if applicable.

Polygraph examiners shall prepare and submit an accurate monthly invoice on an approved financial form, which will be provided to successful respondents. The invoice shall be sent to the following:

Pima County Adult Probation, 150 W. Congress, Tucson, AZ 85701 Attn: Brenda Perez

SUBMITTAL:

Each respondent must submit one (1) original and three (3) copies of the entire bid. Label each accordingly.

CERTIFICATION

This firm certifies that it meets all specifications, terms and conditions in this proposal. Yes ___ No ___

If No respondent must explain any deviations in writing and attach to this proposal.

PROPOSAL MUST BE SIGNED BY AN AUTHORIZED VENDOR REPRESENTATIVE

COMPANY NAME: _____

SIGNATURE: _____

NAME/TITLE: _____
(Please Print/Type)

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE: _____

EMAIL: _____

CONTACT PERSON: _____

STANDARDS FOR SCOPE OF WORK

If the Court enters into an agreement with you/your agency, the following standards are administrative procedures that require a response of approval by your initial next to the standard accepted. If you do not accept this standard in principle, leave it blank but provide an “alternate” standard in writing and submit it with your proposal. Alternate standards may be considered by the Courts.

Polygraph Examiners shall abide by all provisions of the American Polygraph Association (APA) Code of Ethics, and Standards & Principles of Practice.

Standard Accepted _____

Polygraph Examiners will remain in good standing with licensor, certification, training requirements, and any governing bodies related to polygraph examiners.

Standard Accepted _____

Polygraph Examiners will ensure that any polygrapher working for/or sub-contracted with will be licensed and insured pursuant to the Agreement.

Standard Accepted _____

Polygraph Examiners will gain prior approval from Adult Probation if any new examiners are hired and provide contracted services after the initial start of the Agreement with the Court.

Standard Accepted _____

Polygraph Examiners shall remain licensed or certified by the regulatory organization, attend all required continuing education, and submit documentation to the court as acquired.

Standard Accepted _____

Polygraph Examiners shall use and maintain all APA approved instrumentation and validated testing techniques.

Standard Accepted _____

Polygraph Examiners shall use a testing location that is free of distractions and outside noise to allow the examiner and subject the appropriate focus.

Standard Accepted _____

Polygraph Examiners will provide monthly testing availability dates two months prior to the month for which testing is scheduled. Testing will be scheduled by Adult Probation, who is responsible for notifying the examinee of the date, time and location of the exam.

Standard Accepted _____

Polygraph Examiners shall provide a confidential detailed report to the probation officer within 72 business hours after testing.

Standard Accepted _____

Polygraph Examiners shall notify the referring officer of no-shows, lack of cooperation and/or obstructionist behavior by probationer, no later than one working day after occurrence. The Court will not pay for no-shows or any of the above.

Standard Accepted _____

Polygraph Examiners shall attend any court-related telephonic or in-person meetings as requested.

Standard Accepted _____

Polygraph Examiners shall avoid any conflict of interests and compromising relationships with clients, court, and probation staff. Any such relationships shall be reported to the Adult Probation Project Coordinator.

Standard Accepted _____

Polygraph Examiners shall submit to a full and comprehensive criminal history check (at Court's discretion). If a Polygraph Examiner is found to have a criminal history that involves any violent or sexual offenses in their lifetime, a conviction of drunk driving and/or fraud-related cases in the last five years, or is currently under any pending court action, community or court supervision for any offense, the Court will review all issues on a case-by-case basis.

Standard Accepted _____

Polygraph Examiners shall ensure all confidential documentation, data, and recording of each examination be stored, secured and retained for a minimum of five years.

Standard Accepted _____

Polygraph Examiners shall co-sign the Informed Consent, Release of Information, and Duty to Warn forms with the probationer prior to conducting the polygraph.

Standard Accepted _____

Polygraph Examiners who complete examinations in Spanish shall translate report into English prior to submission of detailed report to Probation Officer.

Standard Accepted _____

SAMPLE AGREEMENT:

All successful respondents will enter into an Agreement with the Arizona Superior Court in Pima County. Any language exceptions submitted after the closing of the RFQ will not be considered. The scope of services shall be those listed herein and may include any additional services that result from the successful respondent(s) proposal response. A sample copy of the Agreement is attached for your review.

POLYGRAPH EXAMINATION SERVICES AGREEMENT

THIS AGREEMENT entered into this XX day of XXXXXX, 2024, between the Arizona Superior Court in Pima County, hereinafter called COURT; and XXXXXX, hereinafter called CONTRACTOR.

WITNESSETH

WHEREAS, COURT requires the services of a CONTRACTOR qualified to provide post sentence clinical polygraph maintenance and sexual history examinations for Adult Probationers as ordered by the Court; and

WHEREAS, CONTRACTOR is qualified and willing to provide such services; and

WHEREAS, pursuant to RFQ #23-031523, CONTRACTOR submitted the proposal most advantageous to COURT.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I - TERM

This Agreement shall commence on the xxx day of XXXXX, 2024, and shall terminate on the XX day of XXXXX, 2026, unless sooner terminated or further extended pursuant to this Agreement.

ARTICLE II - SCOPE

To provide the Arizona Superior Court in Pima County on behalf of its Adult Probation Department with post sentence clinical polygraph maintenance and sexual history examinations as requested by the Court. All personnel supplied by CONTRACTOR must be professional and maintain confidentiality associated with their assigned work environment. Services shall be provided in accordance with the proposal submitted in response to RFP #24-041524 and in accordance with the standards and practices of service provider’s profession.

ARTICLE III - PAYMENT

In consideration of the services specified in this Agreement, the COURT agrees to pay CONTRACTOR as provided for on the attached Rate Schedule. Total payment for this Agreement shall not exceed \$XX,XXX.

ARTICLE IV - NON-APPROPRIATION OF FUNDS

Each payment obligation of the COURT created hereby is conditioned upon the availability of funds which are appropriated for the payment of such an obligation. If funds are not available for the continuance of the contract services, the contract period for the services may be terminated by the COURT at the end of the period for which funds are available. The COURT shall notify the CONTRACTOR at the earliest possible time which services will or may be affected by a shortage of funds. No penalty shall accrue to the COURT in the event this provision is exercised, and the COURT shall not be obligated or liable for any future payments due or for any damages as a result of the termination under this section. This provision shall not be construed so as to permit the COURT to terminate this agreement or any service in order to acquire a similar service from another CONTRACTOR.

ARTICLE V - TERMINATION

COURT reserves the right to terminate this Agreement at any time and without cause by serving upon CONTRACTOR at least 30 days advance written notice of such intent to terminate. In the event of such termination, the COURT'S only obligation to CONTRACTOR shall be payment for services rendered prior to the date of termination.

This Agreement may be terminated at any time without advance notice and without further obligation to the COURT when the CONTRACTOR is found to be in default of any provision of this Agreement.

This Agreement may be cancelled without penalty or further obligation pursuant to A.R.S. §§ 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the COURT is or becomes, at any time while the Agreement or any extension for the Agreement is in effect, an employee of, or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement.

ARTICLE VI - EXTENSION

Court shall have the option to extend this agreement for three (3) additional one-year periods. Any modification or extension shall be by formal written amendment and executed by the parties hereto.

ARTICLE VII - APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Arizona, and suits pertaining to this Agreement may be brought only in courts in the State of Arizona.

ARTICLE VIII - COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all City, County, State and Federal laws, ordinances, rules, regulations, and statutes which may be applicable to this Agreement.

Compliance Requirements for A.R.S. §§ 41-4401, Government Procurement: E-Verify Requirement

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.)
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.
3. The State Agency retains the legal right 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.

ARTICLE IX - STATUS OF CONTRACTOR

The status of the CONTRACTOR shall be that of an independent CONTRACTOR and CONTRACTOR shall not be considered an employee of the State of Arizona or the Arizona Superior Court in Pima County and shall not be entitled to receive any of the fringe benefits associated with regular employment, and will not be subject to the provisions of the merit system. CONTRACTOR will be responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONTRACTOR from COURT. CONTRACTOR shall be responsible for program development and operation without supervision by COURT.

ARTICLE X - INDEMNIFICATION

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, 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.

ARTICLE XI - ASSIGNMENT OF INTEREST

No right or interest in this Agreement shall be assigned by CONTRACTOR without prior written permission of the COURT. No delegation of any duty of CONTRACTOR shall be made without prior written permission of the COURT.

ARTICLE XII - NON-DISCRIMINATION

CONTRACTOR shall not discriminate, and shall require that any subcontractor not discriminate, in the provision of program services on the basis of race, age, creed, color, religion, sex, condition of disability or national origin. Contractor and all subcontractors shall comply with Supreme Court Administrative Rule 1-301 (equal employment opportunity policy) and with all applicable court, state and federal laws, rules, regulations and executive orders.

ARTICLE XIII - RECORDS RETENTION

Pursuant to A.R.S. § 35-214, CONTRACTOR shall retain, and shall require all subcontractors to retain, for inspection and audit by the COURT and the Arizona Auditor General, all books, accounts, reports, files and other records relating to the bidding and performance of the Agreement for a period of five years after its completion. Upon request by the COURT or the Auditor General, a legible copy or the original of all such records shall be produced by CONTRACTOR at the administrative office of the Court or the office of the Auditor General.

ARTICLE XIV - OWNERSHIP OF RECORDS

Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of the COURT. 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 COURT.

ARTICLE XV - CONFIDENTIALITY OF INFORMATION

CONTRACTOR shall observe and abide by all applicable State and Federal statutes and regulations regarding use or disclosure of information, including but not limited to information concerning applicants for and recipients of Agreement services. The CONTRACTOR shall release information to the COURT and the Attorney General's Office upon request.

ARTICLE XVI - 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.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. 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

- a. 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”.*
- b. 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.

2. Business 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

- a. 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”.*
- b. Policy shall contain a waiver of subrogation against the State of Arizona, as 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.

3 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

- a. 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.
- b. 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.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

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.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **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 thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **(Arizona Superior Court in Pima County, 9th Floor, Contracts & Procurement, 110 W. Congress, Tucson, AZ 85701)** and shall be sent by certified mail, return receipt requested.

D. **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.

E. **VERIFICATION OF COVERAGE:** 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 **(Arizona Superior Court in Pima County, 9th Floor, Contracts & Procurement, 110 W. Congress, Tucson, AZ 85701)**. The State of Arizona project/contract number and project 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 DIVISION.**

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

- G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.
- H. **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.

ARTICLE XVII - ARBITRATION

This Agreement is subject to arbitration to the extent required by A.R.S. § 12-1518, A.R.S. § 12-133 and Rule 3.9, Pima County Superior Court Local Rules.

ARTICLE XVIII - AMERICANS WITH DISABILITIES ACT

CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

ARTICLE XIX - NON-WAIVER

The failure of COURT to insist in any one or more instances upon the full complete performance of any of the terms and conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

ARTICLE XX - SEVERABILITY

Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

ARTICLE XXI - OVERCHARGES BY ANTITRUST VIOLATIONS

The COURT maintains that in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, CONTRACTOR hereby assigns to the COURT any and all claims for such overcharges as to the goods or services used to fulfill the Agreement.

ARTICLE XXII - SUBCONTRACTOR

CONTRACTOR will be fully responsible for all acts and omissions of its subcontractor(s) and of persons directly or indirectly employed by subcontractor and of persons for whose acts any of them may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this agreement shall create any obligation on the part of COURT to pay or see to the payment of any money due any subcontractor except as may be required by law.

ARTICLE XXIII- OTHER DOCUMENTS

CONTRACTOR and COURT in entering into this Agreement have relied upon information provided in RFQ# and on information provided in the CONTRACTOR'S response to said proposal. These documents are hereby incorporated into and made a part of this Agreement as if set forth in full herein.

ARTICLE XXIV – ACCEPTABLE FORMS OF SIGNATURES

This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument, and a facsimile transmission or electronic delivery of a manual signature shall be deemed to be an original signature.

ARTICLE XXV - REMEDIES

Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.

ARTICLE XXV - NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by delivery or by certified mail upon the other party as follows:

COURT:

Arizona Superior Court Pima County
Contracts & Procurement Officer
110 W. Congress, 9th FL.
Tucson, AZ 85701
520. 740.4218 Phone
520.740.3428 Fax

CONTRACTOR:

ARTICLE XXV - ENTIRE AGREEMENT

This document constitutes the entire Agreement between the parties and shall not be modified, amended, altered or changed except through a written amendment and signed by the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this agreement the date first written above.

ARIZONA SUPERIOR COURT IN PIMA COUNTY CONTRACTOR

Hon. Jeffrey T. Bergin, Presiding Judge

Contractor

Date

Date