



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 4/4/2023

* - Mandatory, information must be provided

or Procurement Director Award:

***Contractor/Vendor Name/Grantor (DBA):**

International Business Machines Corporation dba IBM Corporation (Headquarters: Armonk, NY)

***Project Title/Description:**

Maximo Upgrade and Workday Integration

***Purpose:**

Award: Master Agreement No. MA-PO-23-127. This Master Agreement is effective April 4, 2023 to June 15, 2024 in the not-to-exceed contract amount of \$2,200,000.00. This contract is for the professional services required to upgrade our version of Maximo to the current, cloud-based version and integrate the upgraded Maximo system with the Workday Enterprise Resource Planning system. These costs do not include the software licensing or hosting costs; a five year agreement with a total value of \$1.7 million will be brought to the Board of Supervisors at a later date for approval. Administering Department: Information Technology.

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.020, Competitive sealed proposals, on 02/03/2023, the Board of Supervisors approved the purchase of the Enterprise Resource Planning (ERP) system to IBM Corporation (implementer) and Workday, Inc. (software), as the highest-ranking proposal for Solicitation Number RFP-PO-2200005. The option to upgrade the County's current version of Maximo and integrate it into the Workday system was included in that proposal.

PRCUID: 425287

Attachment: IBM Professional Services Contract.

***Program Goals/Predicted Outcomes:**

Maximo currently provides Pima County asset and work management tools, and this implementation will update and increase functionality of that software to better integrate with the new ERP System. This will increase County efficiency and interoperability through the implementation of an integrated ERP system.

***Public Benefit:**

As the systems being replaced are vital to the operations of the County, a more fully integrated ERP system will allow County departments to more efficiently perform their duties, thereby permitting the County to better serve its constituents in a more cost-effective environment.

***Metrics Available to Measure Performance:**

Standard project management measurements to track progress of the project and validate implementation success. Analysis of life-long costs and support metrics during the life of the ERP system.

***Retroactive:**

No.

TO: COB 03-17-2023

PGS: 38

VERS: 1

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 23-127
Commencement Date: 04/04/23 Termination Date: 06/04/24 06/15/24 Prior Contract Number (Synergen/CMS): N/A
Expense Amount \$ 2,200,000.00 * Revenue Amount: \$ N/A

*Funding Source(s) required: Non-Bond Projects Fund

Funding from General Fund? Yes No If Yes \$ N/A % N/A
Contract is fully or partially funded with Federal Funds? Yes No
If Yes, is the Contract to a vendor or subrecipient?
Were insurance or indemnity clauses modified? Yes No
If Yes, attach Risk's approval.
Vendor is using a Social Security Number? Yes No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):
Amendment No.: AMS Version No.:
Commencement Date: New Termination Date:
Prior Contract No. (Synergen/CMS):
Expense Revenue Increase Decrease Amount This Amendment: \$
Is there revenue included? Yes No If Yes \$
*Funding Source(s) required:
Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards)

Document Type: Department Code: Grant Number (i.e., 15-123):
Commencement Date: Termination Date: Amendment Number:
Match Amount: \$ Revenue Amount: \$
*All Funding Source(s) required:

*Match funding from General Fund? Yes No If Yes \$ %
*Match funding from other sources? Yes No If Yes \$ %
*Funding Source:

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Procurement Officer, Troy McMaster Digitally signed by Troy McMaster Date: 2023.03.16 14:29:07 -07'00'
Department: Procurement Director, Terri Spencer Digitally signed by Terri Spencer Date: 2023.03.17 08:23:20 -07'00'
Division Manager, Ana Wilber Digitally signed by Ana Wilber Date: 2023.03.16 15:04:28 -07'00'
Telephone: 520.724.8728
Department Director Signature: Javier Baca
Deputy County Administrator Signature:
County Administrator Signature:

Date:
Date: 3/17/2023
Date: 17 March 2023

Pima County Procurement Department

Administering Department: Information Technology

Project: Maximo Upgrade and Workday Integration

Contractor: International Business Machines Corporation dba IBM Corporation

1 Orchard Road

Armonk, NY 10504

Amount: \$2,200,000.00

Contract No.: MA-PO-23-127

Funding: Non-Bond Projects Fund

PROFESSIONAL SERVICES AGREEMENT

1. PARTIES, BACKGROUND AND PURPOSE.

- 1.1. Parties. This Contract is between Pima County, a political subdivision of the State of Arizona ("County"), and International Business Machines Corporation dba IBM Corporation ("Contractor").
- 1.2. Purpose. Provide County with the services required to upgrade Maximo and integrate with County's Workday Enterprise Resource Planning ("ERP") system.
- 1.3. Authority. County selected Contractor pursuant to and consistent with County's Procurement Code 11.12.020 Competitive Sealed Proposals.
- 1.4. Solicitation. County previously issued Solicitation No. RFP-PO-2200005 for certain services (the "Solicitation"). Requirements and specifications contained in the Solicitation, all documents included in the Solicitation, and any information and documentation submitted by Contractor in response to the Solicitation, as those requirements, specifications and documents relate to the Maximo upgrade and integration with the ERP system, are incorporated into this Contract by reference.
- 1.5. Contractor's Response. Contractor submitted the most advantageous proposal to the Solicitation.

2. TERM.

This Contract commences on April 4, 2023 and will terminate on June 15, 2024 (the "Term"). If the commencement date of the Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.

3. SCOPE OF SERVICES.

As directed by County, Contractor will assist County with the upgrade of its Maximo system and that system's integration with the ERP system (the "Services"). The Services, further described in **Exhibit A: IBM Statement of Work for Maximo Upgrade and Workday Integration** (25 pages).

4. KEY PERSONNEL.

Contractor will employ suitably trained and skilled professional personnel to perform all services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, Contractor will obtain the approval of County. The key personnel must include, but is not limited to, any identified in **Exhibit A**.

5. COMPENSATION AND PAYMENT.

- 5.1. Payment Terms. This is a Fixed-Price Contract. County will pay Contractor at the amounts and at times set Section 11 of Exhibit A. The Fixed-Price rates in **Exhibit A** will remain in effect for the duration of the Contract, unless altered via a written amendment signed by both Parties. Delivery Orders (DO) will be issued, and all invoices must reference the DO number. Payment must be made upon receipt of original invoice(s) in accordance and in conformity with payment dates for bills and claims as established by County (payment terms are net 30). Prior to payment, Contractor must submit an original, dated and itemized invoice of services rendered (photographs or facsimiles of invoices will not be accepted). Any reimbursement for expenses, as allowed in the Contract and that are included in the invoice(s), must be supported with attached original billings for such expenses.
- 5.1.1. Payment Currency. All payments will be made in US dollars.
- 5.1.2. Payment Basis. Payments will only be made on a deliverable completion basis, meaning County will pay only when the Contractor has satisfactorily completed mutually agreed upon payment deliverables, as defined in **Exhibit A**.
- 5.1.3. Expenses. All contract related travel plans and arrangements must be prior-approved by the County's Project Manager. County will pay Contractor reasonable travel and accommodation expenses, as follows. Lodging, per diem and incidental expenses incurred must be reimbursed based on based current U.S. General Services Administration (GSA) domestic per diem rates for Tucson, Arizona. Contractors must access the following internet site to determine rates (no exceptions): www.gsa.gov. Reasonable accommodation will consist of a compact rental car.
- 5.2. Not-To-Exceed ("NTE") Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$2,200,000.00 (the "NTE Amount"). The NTE Amount can only be changed by a formal amendment executed by the Parties pursuant to Section 31. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.
- 5.3. Sales Taxes. The payment amounts or rates in **Exhibit A** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.
- 5.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in **Exhibit A**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.
- 5.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.
- 5.6. Invoice Submittal. Invoices are to be sent to:
- Pima County Finance & Risk Management – Accounts Payable
P.O. Box 791
Tucson, AZ 85701
- 5.7. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 23 below, question any payment under this Contract. If County raises a

question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment.

6. INSURANCE.

The Insurance Requirements (“Required Insurance”) specified here in this Section 6. INSURANCE are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Contractor’s insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an “A.M. Best” rating of not less than A- VII, unless otherwise approved by County. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

6.1. Minimum Scope and Limits of Insurance. Contractor will procure and maintain at its own expense, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County’s Insurance Requirements.

6.1.1. Commercial General Liability (CGL). Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

6.1.2. Business Automobile Liability. Bodily Injury and Property Damage for any owned, leased, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 Each Accident.

6.1.3. Workers’ Compensation (WC) and Employers’ Liability. Statutory requirements and benefits for Workers’ Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers’ Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each person - disease.

6.1.4. Professional Liability (E&O) Insurance. This insurance is required when the Professional Liability or any other coverage is excluded from the above CGL policy. This insurance cover actual or alleged breach of duty, neglect, error, misstatement, misleading statements or omission, solely for acts or omissions committed by Contractor in providing professional services under this Contract, with a minimum per claim limit of USD \$2,000,000. Coverage includes network security and privacy liability.

6.1.4.1. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under “Additional Insurance Requirements – Claims-Made Coverage” section.

6.1.5. Reserved.

6.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.

6.2.1. Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

- 6.2.2. Additional Insured Endorsement. The General Liability and Business Automobile Liability policies must each be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to vicarious liability arising out of the activities performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.
- 6.2.3. Subrogation Endorsement. The General Liability, Business Automobile Liability, and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor. However, waiver of subrogation does not apply in instances of gross negligence on the part of County, where gross negligence is defined to mean carelessness that is reckless disregard for the safety of others and/or a failure to use the slightest degree of care.
- 6.2.4. Primary Insurance Endorsement. For Commercial General Liability Insurance and Automobile Liability Insurance, the Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).
- 6.2.5. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 6.2.6. Subcontractors. Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.
- 6.3. Notice of Cancellation. Contractor will continue the specified insurance coverages for the term of the contract and two years after the contract expiration as long as such coverage remains commercially available in the market place. Should any of the specified policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Contractor will provide County with 30 days' prior written notice of cancellation.
- 6.4. Verification of Coverage. Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by this Contract. An authorized representative of the insurer shall sign the certificates. Each certificate must include.
 - 6.4.1. The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate.
 - 6.4.2. Reserved.
 - 6.4.3. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.
- 6.5. All certificates and endorsements, as required by this written agreement, are to be received and approved by County before, and be in effect not less than 15 days prior to, commencement of work. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation

endorsements. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

6.6. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the County project or contract number and project description on the certificate.

6.7. Reserved.

7. INDEMNIFICATION.

7.1. General Indemnity. The Contractor agrees to indemnify and hold harmless County, its officers, agents and employees against any and all third party claims, actions, liabilities, losses, and expenses for damages on account of bodily injury (including death), or damage to real property or tangible personal property for which Contractor is legally liable to that third party that are caused by, arise out of, or result from any negligent act or omission of the Contractor in the performance or failure to perform within the contract or the negligent acts or omission of any direct employees of the Contractor by paying costs, damages and legal fees that a court finally awards or that are included in a settlement approved by Contractor, provided that County shall promptly notify Contractor in writing of the claim, and will reasonably cooperate with the Contractor in the defense and any related settlement negotiations. The indemnification obligations set forth in the contract will survive termination or expiration of the contract.

7.2. Patents and Copyrights Indemnity. If a third party asserts a claim against County that a Contract Products acquired under the Contract infringes a patent or copyright, Contractor will defend County against that claim and pay amounts finally awarded by a court against County or included in a settlement approved by Contractor, provided that County promptly (1) notifies Contractor in writing of the claim; (2) supplies information requested by Contractor; and (3) allows Contractor to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

Contractor has no responsibility for claims based on Non-Contractor Products, items not provided by Contractor, or any violation of law or third party rights caused by Content, or any County materials, designs, specifications, or use of a non-current version or release of an Contractor Product when an infringement claim could have been avoided by using a current version or release.

County agrees to provide Contractor with prompt notice of any such claim or action and to permit Contractor to defend any claim or action, and that County will cooperate fully in such defense. County retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

8. LAWS AND REGULATIONS.

8.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

8.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.

8.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in a court of competent jurisdiction in Pima County, AZ.

9. INDEPENDENT CONTRACTOR.

Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any

employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

10. SUBCONTRACTORS.

Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any 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 its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

11. ASSIGNMENT.

Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County prior written approval. County may withhold approval at its sole discretion. Assignment of Contractor rights to receive payments and by Contractor in conjunction with the sale of the portion of Contractor's business that includes the product or service is not restricted.

12. NON-DISCRIMINATION.

Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

13. AMERICANS WITH DISABILITIES ACT.

Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

14. AUTHORITY TO CONTRACT.

Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

15. FULL AND COMPLETE PERFORMANCE.

The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, 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 is not an accord and satisfaction.

16. CANCELLATION FOR CONFLICT OF INTEREST.

This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

17. TERMINATION BY COUNTY.

17.1. Without Cause. County may terminate this Contract at any time, without cause, by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the

event of such termination, County only obligation to Contractor will be payment for services rendered prior to the date of termination.

- 17.2. With Cause. County may terminate this Contract for cause by giving the Contractor a written notice of breach. Upon receipt of written notice, Contractor shall submit a plan of action to cure, to include a timeline to cure such breach, for County's written approval. If County does not receive Contractor's plan of action within thirty (30) calendar days from the date of County's notice of breach to cure and if the breach has not been cured to County's satisfaction, or if Contractor fails to perform as stipulated in the approved plan of action, County may terminate the Contract anytime thereafter upon providing the Contractor written notice. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of written notice of breach.

Either party may terminate this Contract if a material breach concerning the service is not remedied within a reasonable time. Non-payment by County is a material breach.

- 17.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

18. NOTICE.

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

County:
Terri Spencer, Procurement Director
Pima County Procurement
150 W Congress, 5th Floor
Tucson, AZ 85701
520.724.3722
terri.spencer@pima.gov

Contractor:
Randall Serak, Associate Partner
IBM Consulting
1535 Julia Ct
Palm Springs, CA 92262
805.455.6041
rserak@us.ibm.com

19. NON-EXCLUSIVE CONTRACT.

Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

20. REMEDIES.

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

21. SEVERABILITY.

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

22. USE OF COUNTY DATA.

Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement.

Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).

23. BOOKS AND RECORDS.

Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

24. PUBLIC RECORDS.

24.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents related to this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

24.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

25. LEGAL ARIZONA WORKERS ACT COMPLIANCE.

25.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.

25.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

25.3. Remedies for Breach of Warranty. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay

project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.

- 25.4. Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 25 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

26. RESERVED.

27. CHANGE ORDERS.

County's Executive Steering Committee (ESC) may, at any time and by a written order, make changes within the general scope of the Contract in any of the following: a) specifications or statement of work and b) place of performance or delivery. If these changes cause an increase or decrease in the cost of or the time required for the performance of the Contract, an equitable adjustment must be made a) in the Contract price or time of performance or both and b) in any other provisions of the Contract that may be affected; and the Contract must be modified in writing through a written contract amendment. Contractor must assert any claim for adjustment under this provision within 30 days from the date of receipt by the Contractor of the notification of change. However, the ESC has final authority to determine if the facts justify an adjustment, and the ESC may act upon any claim by the Contractor at any time prior to final payment under the Contract. However, nothing in this provision shall excuse the Contractor from proceeding with the Contract as changed.

28. COUNTERPARTS.

The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.

29. ISRAEL BOYCOTT CERTIFICATION.

Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

30. FORCED LABOR OF ETHNIC UYGHURS.

Pursuant to A.R.S. § 35-394 if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.

31. AMENDMENT.

The Parties may modify, amend, alter or extend this Contract only by a written amendment signed by the Parties.

32. ORDER OF PRECEDENCE.

- 32.1. This Professional Services Contract;
- 32.2. Any DO issued by County against this Contract, and any agreements attached to that DO;
- 32.3. Exhibit A: IBM Statement of Work for Maximo Upgrade and Workday Integration;
- 32.4. The solicitation documents of RFP-PO-2200005, to include its Attachments, and all Amendments issued to that solicitation, and Contractor's response to that solicitation, as they pertain to the Maximo upgrade and integration with the ERP system;
- 32.5. Any other agreement agreed to by the Parties that is incorporated into this Contract, including its exhibits and addendums, and all amendments issued to that agreement.

33. CONTRACTOR'S LIMITATION OF LIABILITY.

- 33.1. Contractor's entire liability for all claims related to the Contract will not exceed the amount of any actual direct damages incurred by County up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. Contractor will not be liable for special, exemplary, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to Contractor, its affiliates, contractors, and suppliers. The definitions of special damages and economic consequential damages exclude attorneys' fees that County may be entitled to recover from a breach of contract claim against Contractor.
- 33.2. The following amounts are not subject to the above cap: (1) third party payments referred to in Section 7.2, and (2) damages that cannot be limited under applicable law, such as.
- 33.3. If a third party asserts a claim against County that a Contractor Product acquired under the Contract infringes a patent or copyright, Contractor will defend County against that claim and pay amounts finally awarded by a court against County or included in a settlement approved by Contractor, provided that County promptly (1) notifies Contractor in writing of the claim; (2) supplies information requested by Contractor; and (3) allows Contractor to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.
- 33.4. Contractor has no responsibility for claims based on Non-Contractor Products, items not provided by Contractor, or any violation of law or third party rights caused by Content, or any County materials, designs, specifications, or use of a non-current version or release of an Contractor Product when an infringement claim could have been avoided by using a current version or release.

County agrees to provide Contractor with prompt notice of any such claim or action and to permit Contractor to defend any claim or action, and that County will cooperate fully in such defense. County retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

34. EUROPEAN GENERAL DATA PROTECTION REGULATIONS.

County agrees that no County personal data that is subject to European General Data Protection Regulations (GDPR) requirements will be provided to Contractor under this Contract.

In the event of a change, County will notify Contractor in writing and a Data Processing Addendum (DPA) agreed to between the parties will apply and supplements the Contract.

35. ENTIRE AGREEMENT.

This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

36. EFFECTIVE DATE.

The Contract will become effective when all Parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, the parties have approved this Cooperative Procurement Agreement and agree to be bound by the terms and conditions of the Contract on the dates written below.

Pima County

Chair, Board of Supervisors

Date

International Business Machines Corporation dba IBM Corporation

e-Signed by Randall Serak

on 2023-03-07

Authorized Officer Signature

Randall Serak, Associate Partner

Printed Name and Title

3/7/2023

Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM



Deputy County Attorney

Rachelle Barr 03/14/2023

Printed DCA Name

CONTRACT
NO. <u>MA-PO-23-127</u>
AMENDMENT NO. <u>0</u>
This number must appear on all invoices, correspondence and documents pertaining to this contract.

The contents of this contract are confidential. Requests for a copy shall be submitted to the Clerk of the Board by completing a Public Records Request pursuant to County Administrative Procedure 4-4. The Public Records Request form can be located at <http://webcms.pima.gov/> under the 'Quick Links' section. Release of confidential contract information involves a process above and beyond the basic Public Records Request process. This process will be performed by the Procurement Department after the Clerk of the Board receives the completed Public Records Request.

If you have any questions, please call (520)724-8161.