



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: August 2, 2016

or Procurement Director Award

Contractor/Vendor Name (DBA): Transact Commercial Furnishings, LLC

Project Title/Description:
Transact Furniture Products

Purpose:

Amendment of Award: Master Agreement No. MA-PO-12-192. Extend term through 02/28/2017. No additional funding required. Administering Department: Facilities Management.

Procurement Method:

Pursuant to Pima County Procurement Code 11.24.010, Cooperative Procurement, on 11/09/2011, the Procurement Director approved an award of contract No. MA 12-192 to Transact Commercial Furnishings, LLC in an annual amount of \$100,000.00 for a five (5) year term. The award was founded on a cooperative purchasing agreement: Maricopa County Community College District Contract No. 3036-2 (MCCCD).

This Amendment of Award is required to extend the contract term three and one-half (3-1/2) months beyond the awarded five (5) year term to allow MCCCD and the State of Arizona to complete their procurement processes to establish new cooperative contracts. Pima County intends to award new furniture contracts using the cooperative procurement process. The extended term will allow Procurement the opportunity to evaluate these and other cooperative contracts to secure the most economical savings for Pima County.

Attachment: Master Agreement No. MA-PO-12-192.

Program Goals/Predicted Outcomes:

To purchase quality furniture at the lowest possible cost.

Public Benefit:

To maximize use of public funds by leveraging volume discounts through cooperative purchase.

Metrics Available to Measure Performance:

Timelines and metrics as stipulated in delivery orders.

Retroactive:

No.

Original Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Effective Date: _____ Termination Date: _____ Prior Contract Number (Synergen/CMS): _____
 Expense Amount: \$ _____ Revenue Amount: \$ _____
Funding Source(s): _____

Cost to Pima County General Fund: _____

Contract is fully or partially funded with Federal Funds? Yes No Not Applicable to Grant Awards
Were insurance or indemnity clauses modified? Yes No Not Applicable to Grant Awards
Vendor is using a Social Security Number? Yes No Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 12-192
Amendment No.: N/A AMS Version No.: 10
Effective Date: N/A New Termination Date: 02/28/2017
 Expense Revenue Increase Decrease Amount This Amendment: \$0.00
Funding Source(s): General Fund

Cost to Pima County General Fund: \$0.00

Contact: Julie K McWilliams, Commodity Contracts Officer *Julie K. McWilliams 6/22/16 Release 6-23-16*
Department: Procurement *Mary Jo Boyd 6-24-16* Telephone: 724-3718
Department Director Signature/Date: *[Signature] 6/23/16*
Deputy County Administrator Signature/Date: *Jon Burke 7-6-16*
County Administrator Signature/Date: *C. K. DeLoach 7/7/16*
(Required for Board Agenda/Addendum Items)



MASTER AGREEMENT

PIMA COUNTY, ARIZONA

THIS IS NOT AN ORDER - TRANSMISSION CONSTITUTES CONTRACT EXECUTION

Master Agreement No: 1200000000000000192

MA Version: 10

Page: 1

Description: TRANSACT Furniture Products 11044 FACILITIES ONLY

| | |
|----------------------------|---|
| I S S U E R | Pima County Procurement Department 130 W. Congress St. 3rd Fl Tucson AZ 85701 |
| | Issued By: JULIE MCWILLIAMS |
| | Phone: 5207243718 |
| | Email: julie.mcwilliams@pima.gov |
| | |

| | |
|-----------------------|-----------------------------|
| T E R M S | Initiation Date: 11-10-2011 |
| | Expiration Date: 02-28-2017 |
| | NTE Amount: \$500,000.00 |
| | Used Amount: \$10,213.80 |
| | |

| | | |
|----------------------------|-------------------------------------|------------------------------------|
| V E N D O R | TRANSACT COMMERCIAL FURNISHINGS LLC | Contact: STEPHEN HALL |
| | 4600 E WASHINGTON STE 100 | Phone: 602-251-3838 |
| | PHOENIX AZ 85034 | Email: SHALL@TRANSACTFURNITURE.COM |
| | | Terms: 0.0000 % |
| | | Days: 30 |

| | |
|----------------------------|----------------------------|
| Shipping Method: | |
| Delivery Type: | STANDARD GROUND |
| FOB: | |
| Modification Reason | |
| | Extend through 02/28/2017. |

This Master Agreement incorporates the attached documents, and by reference all instructions, Standard Terms and Conditions, Special Terms and Conditions, and requirements that are included in or referenced by the solicitation documents used to establish this agreement. All Transactions and conduct are required to conform to these documents.



MASTER AGREEMENT DETAILS

Master Agreement No: 12000000000000000192

MA Version: 10

Page: 2

| Line | Description | | | |
|------|---|--|--------------|------------|
| 1 | TRANSACT Furniture Service FACILITIES ONLY | | | |
| | Service Contract Amt | | Service From | Service To |
| | \$0.00 | | 11-10-2011 | 02-28-2017 |
| 2 | TRANSACT Furniture Products FACILITIES ONLY | | | |
| | Service Contract Amt | | Service From | Service To |
| | \$0.00 | | 11-10-2011 | 02-28-2017 |

OFFER AGREEMENT

Solicitation #: 11044 Title: Transact Commercial Furnishings MCCCDC Awarded Furniture Page 1 of 17

1. INTENT:

This document is intended to establish a "As Required" indefinite delivery/indefinite quantity (IDIQ) "Master" purchase agreement contract to provide Pima County ("County") with such quantities of furniture as the County may order from time to time by issue of purchase orders pursuant to a resulting executed and effective agreement. As defined by the attached Pima County Standard terms and Conditions (STC) this agreement is non-exclusive and may be terminated for any reason without penalty or cost to Pima County. County will execute an agreement for the purchase of goods and services as specified herein, and Contractor will receive compensation when goods and services are provided as per the terms of purchase order(s) issued against the agreement.

This agreement is established pursuant to Cooperative Agreement with Maricopa County Community College District (MCCCDC) and their solicitation RFP # 3036-2 Titled Furniture.

All Goods and Services offered or provided pursuant to the resulting executed and effective agreement shall conform to the requirements defined by or referred to by the solicitation documents including *Standard Terms and Conditions* and this *Offer Agreement* all of which are incorporated herein.

It is the intent of all parties to this agreement that this document, including all attachments and documents incorporated by reference, constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

Throughout this agreement and referenced documents the terms Blanket Contract and Master Agreement, Purchase Order and Delivery Order are used interchangeably and considered to have identical meaning.

2. AGREEMENT TERM EXTENSIONS-RENEWALS & REVISIONS:

The term of the agreement will be for a five-year period. Full term is expected, however will only occur through successful annual review. Revisions that may be exercised upon the written agreement of the parties as follows:

Proposed revisions to the contract shall be made through the issuance by County to Contractor of a revised Blanket Contract-Master Agreement, Purchase or Delivery Order document setting forth the requested changes. Failure by Contractor to object in writing to the proposed revisions, terms, conditions and/or specifications within ten (10) calendar days of issuance by County shall signify acceptance by Contractor and the amendment shall be binding upon the parties, effective on the date of issuance.

3. SUPPLIER MINIMUM QUALIFICATIONS:

The Supplier certifies that they are competent, willing and responsible for performing the services or providing the products in accordance with all requirements of the solicitation and this Offer Agreement. The Supplier further stipulates that they possess license required by the laws and rules of the United States and the State of Arizona to perform the scope of services set forth in this Offer Agreement throughout the term of this agreement including any renewals. The Supplier agrees to provide notification of any change in licensure status or sanctions taken against the Supplier during the contract period.

The Supplier certifies that they will support Pima County BOS Resolution 2007-84, Sustainability Initiative. The following are Specifications for BOS Resolution 2007-84 and Supplier is to include, but not be limited to: recycling of paper, glass and cans; efforts to conserve energy in offices and work areas; utilization of alternative fuels for vehicles and production equipment.

Other areas of conservation should include:

- Supplier should dispose of chemicals appropriately so as not to disrupt the ecology of the soil, water, or air in the area.
- Supplier shall recycle as many items as possible including office paper, corrugated paperboard (aka cardboard) boxes and sheet, chip board boxes and sheet, plastics, aluminum and steel cans/containers, etc.
- Supplier should use as many environmentally preferable items as possible, ie. Items that do not impact the environment such as 30-100% post-consumer recycled content, processed chlorine free (PCF) paper; Energy Star equipment and appliances; remanufactured, low air emission paint; low volatile organic compound (VOC) water based adhesives and paint; zero formaldehyde emitting composite wood products; odorless and non-toxic water based markers, etc. the company's daily operations.
- Supplier should provide to the consumer as many environmentally preferable products as possible.
- Supplier should modify business practices to decrease air, water and ground pollution.
- Supplier should modify business practices to conserve energy and water use,

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- Supplier/Contractor should purchase eco-friendly supplies whenever possible including office supplies.

4. PRODUCT OR SERVICE SPECIFICATIONS & SCOPE:

See Exhibit A: Scope of Services.

5. OFFER ACCEPTANCE AND ORDER RELEASES:

Offer will be accepted and executed by the County by issue of a Blanket Contract and effective on the document's date of issue without further action by either party. Blanket Contract and Contract documents will document the term of the agreement.

Order(s) for products or services pursuant to the executed agreement will be made by COUNTY by issue of Purchase Order documents. Order documents will be furnished to Supplier via facsimile, e-mail or telephone. If the order is given verbally, the County Department that issued the order will transmit a confirming order document to the Supplier within five workdays of the date the verbal order is given.

Supplier is prohibited from supplying materials or services pursuant to the resulting agreement that are not documented or authorized by a Purchase Order at the time of provision. The Supplier agrees that the County accepts no responsibility regarding this agreement for control or payment for materials or services not documented by a COUNTY Purchase Order.

The Supplier agrees to establish, monitor, and manage an effective agreement administration process that assures compliance with all requirements of the agreement. In particular, the respondent agrees that they shall not provide goods or services in excess of the executed agreement items, item quantity, item amount, or agreement amount without prior written authorization by agreement revision properly executed and issued by the County. Any items provided in excess of that stated in the agreement shall be at the Respondent's own risk. Respondents shall decline verbal requests to deliver items in excess of the agreement and shall report all such requests in writing to the COUNTY Procurement Department within one(1) workday of the request. The report shall include the name of the requesting individual and the nature of the request.

6. ACCEPTANCE OF SERVICES AND PRODUCTS:

Acceptance of the goods and services shall be made by the County Department designated on the issued Order in accordance with this agreement. Acceptance is required prior to commencement of Payment terms.

7. COMPENSATION & PAYMENT:

All pricing shall satisfy and conform to Pima County's Living Wage ordinance if applicable including required annual adjustments of the wage.

Supplier shall submit Request(s) for Payment/Invoices to the location and entity defined by the County's Order document.

All Invoice documents shall reference the County's Purchase Order or Contract number under which the services or products were ordered. **ALL** Invoice line items shall utilize the item description, precise unit price and unit of measure defined by the County's Order or Contract document. Invoices that include line items or unit prices that do not match those documented by the County's order or contract may be returned to the Supplier unprocessed for correction.

Standard payment terms are net 30 from the date of valid invoice document and shall not commence until receipt of goods into payment system by the receiving Department and Supplier's Invoice is received and verified by County Financial Operations.

OPTIONAL EARLY PAYMENT DISCOUNT TERM: Pima County Administrative Procedure No. 22-35 section II.B.4 defines the County's practice regarding discounts for early payment. Supplier hereby offers the following discounts to those prices to be used for all orders issued pursuant to this agreement. County will utilize the existing payment code that best matches that offered and does not exceed the offered discount percentage. Payment days cannot be less than ten calendar days. Supplier shall submit valid invoice document consistent with the associated purchase order to County Finance Department at least seven (7) calendar days prior to the date on which the discounted payment is due. If desired, for any order issued pursuant with this agreement, the Supplier may offer early payment discounts that exceed this Standard Early Payment Discount.

Standard Early Payment Discount Percent: 0 % if payment tendered within 0 Days as above

The blanket contract or purchase order issued to accept Supplier offer will define the not to exceed amount of the agreement. Supplier shall not accept orders, or provide services or products that cumulatively exceed that amount.

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Unit Pricing may be negotiated and established as per all requirements of the agreement for items included in the scope of the agreement and for which unit pricing has not been previously defined provided that the item and unit price are offered in writing by the Supplier.

Unless otherwise stipulated by this agreement or the County's order, all pricing shall be *F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination")*, delivered to and unloaded at the destination(s) defined by the Delivery article of this agreement or accepted *Order* for services or products and all freight cost shall be included in the offered Unit Price.

Although State and City sales tax are paid when applicable and invoiced, taxes should not be included in the unit price.

Price Warranty: Seller shall give Pima County benefit of any price reduction before actual time of shipment. Sellers agree that all pricing given includes all costs required to conduct aggressive and active cost control and reduction activities.

Price Escalation: It is agreed that all Unit Prices include compensation for the Seller to implement and actively conduct cost and price control activities. Any request for reasonable price adjustments must be submitted sixty (60) days prior for evaluation. Requests for adjustments in cost of labor and/or materials must be supported by appropriate documentation. Upon agreement by County to the adjusted price terms, County shall issue a revised Exhibit B: Unit Prices. Seller shall not change any Unit Prices prior to the revised Exhibit B.

Quantities referred to are estimated quantities. Pima County reserves the right to increase or decrease the quantities and amounts. No guarantee is made regarding actual orders issued for items or quantities during the term of the agreement. Pima County shall not be responsible for Supplier inventory or order commitment.

Unit Prices offered shall include all incidentals and associated costs required to comply with and satisfy all requirements referred to or included in this solicitation which includes the *Instructions to Bidders, Standard Terms and Conditions* and Offer Agreement. No payments will be made for items not included in the agreement.

UNIT PRICES (Net 30 day Payment Terms) : See **Exhibit B: Unit Prices**

8. DELIVERY:

As defined by the Standard Terms "On-Time" delivery is an essential part of the consideration to be given to the COUNTY under the agreement. Delivery will be made in accordance with the Instructions to Bidders, Standard Terms and Conditions and to the location(s) referenced on the Purchase Order or Contract.

Delivery locations: Pima County, Arizona

Supplier guarantees delivery of product or service shall be in compliance of agreed upon schedule between Supplier and Pima County Facilities Management Project Manager. If required to satisfy the guaranteed delivery interval Supplier will utilize premium freight method at no additional cost to the County.

9. TAXES, FEES, EXPENSES:

Articles sold to Pima County are exempt from federal excise taxes. The County is subject to State and City sales tax. Posada Del Sol is exempt from all taxes as provided in A.R.S. 42-5159 and Arizona State Revenue Code #R-15-5-2320. Pima County will furnish an exemption certificate upon request. No separate charges for delivery, drayage, express, parcel post, packing, insurance, license fees, permits, costs of bonds, surcharges, or bid preparation, will be paid by Pima County, unless expressly included and itemized by the solicitation documents.

10. OTHER DOCUMENTS

Supplier and County in entering into this agreement have relied upon information provided or referenced by Pima County Standard Terms and Conditions, MCCCDC RFP # 3036-2, MCCCDC award letter and proposal submitted by Supplier in response to MCCCDC's RFP. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this contract.

11. INSURANCE:

Supplier shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

- a) Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage. COUNTY is to be named as an additional insured for all operations performed within the scope of the Contract between COUNTY and CONTRACTOR;

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- b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage;
- c) If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00; and,
- d) If required by law, workers' compensation coverage including employees' liability coverage.

Supplier shall provide COUNTY with current executed certificates of insurance. All certificates of insurance shall guarantee the provision of thirty (30) days prior written notice to the COUNTY of cancellation, non-renewal or material change. The additional insured shall be endorsed by an underwriter.

Supplier's certificate(s) shall include all subcontractors as additional insureds under its policies or Supplier shall furnish to the County, upon request, separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

12. PERFORMANCE BOND:

None

13. ACKNOWLEDGEMENT of SOLICITATION ADDENDA:

N/A

14. SCRUTINIZED BUSINESS OPERATIONS

Pursuant to A.R.S. §§ 35-391.06 and 393.06, contractor hereby certifies that it does not have scrutinized business operations in Iran or Sudan. The submission of a false certification by contractor may result in action up to and including termination of this contract.

15. SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION:

N/A

(The Remainder of This Page is Intentionally Left Blank)

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16. BID/OFFER CERTIFICATION:

SUPPLIER LEGAL NAME: TRANSACT COMMERCIAL FURNISHINGS

BUSINESS ALSO KNOWN AS: TRANSACT

MAILING ADDRESS: 4600 E WASHINGTON, STE 100

CITY/STATE/ZIP: PHOENIX AZ 85034

REMIT TO ADDRESS: SAME AS ABOVE ADDRESS

CITY/STATE/ZIP: _____

CONTACT PERSON NAME/TITLE: STEPHEN M. HALL, SR. BUSINESS DEVELOPMENT

PHONE: 480-323-0537 FAX: 602-251-3833

CONTACT PERSON EMAIL ADDRESS: SHALL@TRANSACTFURNITURE.COM

EMAIL ADDRESS TO WHICH ORDERS & CONTRACTS SHALL BE TRANSMITTED:

SHALL@TRANSACTFURNITURE.COM

CORPORATE HEADQUARTERS LOCATION:

STREET ADDRESS CITY, STATE, ZIP: 4600 E. WASHINGTON, STE. 100

PHOENIX, AZ 85034

By signing and submitting these Offer Agreement documents, the undersigned certifies that they are legally authorized to represent and bind the "Supplier" to legal agreements, that all information submitted is accurate and complete, that the firm has reviewed the Procurement website for solicitation addenda and incorporated to their offer, that the firm is qualified and willing to provide the items requested, and that the firm will comply with all requirements of the solicitation. The Unit Pricing includes all costs incidental to the provision of the items in compliance with the above documents; no additional payment will be made. Conditional offers that modify the solicitation requirements may be deemed not 'responsive' and may not be evaluated. Offeror's submission of a signed offer agreement shall constitute a firm offer and upon the issuance of a blanket contract or purchase order document signed by the Pima County Procurement Director or authorized designate a binding contract is formed that shall require the Offeror to provide the services and materials described in this solicitation. The undersigned hereby offers to furnish the material or service in compliance with all terms, conditions, specifications, defined or referenced by the solicitation, which includes Pima County Standard Terms & Conditions, this Offer Agreement and other documents listed in this Offer Agreement's Other Documents article.

SIGNATURE: [Signature] DATE: 11-9-11

STEPHEN M. HALL, SR. BUSINESS DEVELOPMENT
PRINTED NAME & TITLE OF AUTHORIZED SUPPLIER REPRESENTATIVE EXECUTING OFFER

PHONE AND E-MAIL: 480-323-0537, shall@TRANSACTFURNITURE.COM

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EXHIBIT A: SCOPE OF SERVICES

For smaller projects or where appropriate, COUNTY may modify the Scope of Services requirements.

1. Contractor shall be financially responsible for obtaining all required permits, licenses, and bonding to comply with pertinent municipal, county, state and federal laws, and assume liability for all applicable taxes including but not restricted to sales, and personal property.
2. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in relating to, and arising out of, the Contractor's work or service performed for the County. Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury, or loss to:
 - 2.1 All employees on the work site and all other persons who may be affected.
 - 2.2 All of the work, materials, and equipment to be incorporated therein, whether in the work site, storage or of the work site.
3. Contractor shall comply with all applicable laws, ordinances, rules and regulations of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain, as required by existing and future conditions of the scope of work or service, all necessary safeguards for safety and protection, including posting danger signs and other warning against hazards and promulgating safety regulations. Contractor shall comply with all OSHA standards as they apply to the Contractor's scope of work and service.
4. Contractor shall measure carefully and check all dimensions and other conditions in the field to insure proper fit in the areas designated. Contractor shall be totally responsible for the accuracy of their measurements. Contractor shall not request additional material or installation costs to the County because of measurement or takeoff errors by the Contractor.
5. Contractor shall provide a Project Manager as the primary contact and a knowledgeable back-up person. Any change in Contractor personnel during the project is subject to review and approval by County.
6. Contractor shall provide an estimated progress schedule and delivery/installation date after discussion with County. The progress schedule shall indicate the proposed starting and completion of the phases of the Work, including dates for production, shipment, delivery and installation. It shall include any other critical dates, such as deadlines for approval of shop/installation drawings, selections of finishes, fabrics and/or materials, changes, delays or cancellations.
7. Contractor shall immediately notify the County representative or designer of any delays with custom materials, which could delay production so that materials may be re-selected at the County's option.
8. Contractor shall verify all manufacturer acknowledgments within the manufacturer's time frame and notify the manufacturer immediately of corrections and/or changes. Contractor shall revise ship dates as acknowledgments and schedule updates are received and notify the County representative of any schedule changes and follow up with any necessary coordination to ensure schedules are met. Once the installation schedule has been finalized, acceptance of changes to the schedule is at the sole discretion of County.
9. Contractor shall provide drawings and project data specified herein in accordance with the following requirements:
 - 9.1 Drawings and other required information should be submitted to the County representative. Sufficient time shall be allowed so that no delay occurs due to the required lead-time in ordering or delivery to the job site.
 - 9.2 The Work required by the drawings shall not be executed until confirmation of review is obtained from County.
 - 9.3 Contractor shall prepare installation layouts or coordinating drawings, when required to solve tight field condition. Such drawings shall consist of dimensioned plans and elevations and must give complete information, particularly as to structural interferences. Drawings shall be coordinated in the field by the Contractor for proper relationship to the Work of other trades, based on field conditions, and shall be checked and approved by them before submission to the County representative for final review. Changes

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to previously approved shop drawings and submittals required by installation or coordination drawings produced at a later time must be brought to the County representative in writing as soon as the change becomes know.

- 9.4 The submission of shop drawings (in either original submission or when resubmitted with corrections) shall constitute evidence that the Contractor has checked all information thereon, and that the Contractor accepts and is willing to perform the work as shown. No claim for an extra charge shall be based on work shown on shop drawings.
- 9.5 The cost for any changes in construction due to improper checking and coordination by the Contractor shall be paid by Contractor, and the Contractor shall be responsible for all additional costs, including coordination.
- 9.6 Drawings shall clearly show the following information:
 - A. Interior Designer's name (if applicable), County project name and address.
 - B. Drawing title, number, date and scale.
 - C. Working and erection dimensions.
 - D. Necessary details, including complete information for making connections with other work.
 - E. Types of materials and finishes.
- 9.7 Drawing review by the County representative will be general. It shall not relieve the Contractor of responsibility for accuracy of such drawings, nor proper fitting, construction of work, furnishing of materials that are not indicated on drawings.
- 9.8 Review of drawings and schedules shall not relieve the Contractor from responsibility for any violation indicated on such drawings or schedules of local, county, state, or federal laws, ordinances, or rules and regulations of commissions, boards or other authorities or utilities having jurisdiction.
- 9.9 In project area, Contractor shall provide daily cleaning and trash removal of items related to the work. Disposal of trash is the CONTRACTOR's responsibility. This must also include clean-up of all floors and/or which may have been soiled or littered during the installation. **CONTRACTOR is not permitted to use COUNTY's dumpsters.**
10. Contractor shall be responsible for any damages to the building or to other installed product that is a result of the performance of the job order.
11. Sample Mock-Up Submittals (when required by the COUNTY or interior designer)
 - 11.1 Samples and mock-ups shall be of sufficient size and quantity to clearly illustrate the functional characteristics of the furnishing product and the full range of color, texture fabric and pattern.
 - 11.2 The approval or acceptance of samples will not preclude the rejection of any material upon the discovery of defects in same prior to the final acceptance of the completed work.
 - 11.3 After a material has been approved, no change in brand, make or material will be permitted unless satisfactory written evidence is presented to and approved by COUNTY that the manufacturer cannot make the scheduled delivery date of approved material, that material delivered has been rejected and substitution of suitable material is an urgent necessity, or that other conditions are apparent which indicate approval of such substitute materials to be in the best interest of COUNTY.
 - 11.4 All samples shall be shipped prepaid.
 - 11.5 Each sample shall be labeled to indicate the project name and manufacturer.
 - 11.6 Samples which are rejected by COUNTY must be resubmitted as soon as possible after notification of rejection, and shall be marked "resubmitted sample" in addition to the other information required.
 - 11.7 COUNTY reserves the right to retain samples for comparison purposes until completion of work.

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11.8 Samples will be returned or may be used in the work unless otherwise specified.

11.9 Contractor shall pay all costs of furnishing or constructing and removing mock-ups and samples.

12. Pre-Performance Meetings

12.1 At COUNTY's request, CONTRACTOR will participate in an initial pre-performance meeting. It shall be attended by the authorized representative(s) of CONTRACTOR, an authorized representative of COUNTY and other interested parties.

12.2 The following items will be covered in the meeting:

A. Project schedule. CONTRACTOR shall provide a critical path schedule and revisions as required for maintaining an accurate schedule.

B. Review contract documents.

C. Processing of Installation Drawings and other data submitted to COUNTY for review, if applicable.

13. Pre-Installation Meeting

13.1 Pre-installation will be held on a periodic basis in order to review the work as it progresses. At COUNTY's request, the CONTRACTOR will participate in pre-installation meetings as required throughout the construction period.

13.2 The person designated by the CONTRACTOR to attend and participate in the pre-installation meetings shall have the required authority to commit the CONTRACTOR to solutions agreed upon during the meetings.

13.3 Agenda:

A. Review, revises as necessary, and approves minutes of the previous meeting

B. Review progress of the Work including status of submittals for approval.

C. Present and discuss the Contractor's updated schedule.

D. Identify problems, which impede planned progress.

E. Develop corrective measures.

F. Discuss changes in the Work.

14. Receiving of Products/Installation:

14.1 CONTRACTOR shall provide a Project Manager to oversee the installation (on a daily basis) at all times installation work is in progress, from the start of the installation through the final punch list walk-through.

14.2 CONTRACTOR shall notify the COUNTY representative, in advance of the installation, of any obstacles or conditions which might reasonably impede the CONTRACTOR during delivery and installation.

14.3 CONTRACTOR shall note to the COUNTY representative any pre-existing damage in the building, room and/or adjacent work surfaces prior to work being performed. Beginning of installation constitutes acceptance of existing conditions.

14.4 With the COUNTY, the CONTRACTOR shall establish a staging area at Project site in a location designated by the authorized COUNTY representative.

14.5 CONTRACTOR shall deliver materials to the Project site and transport to the designated staging area. CONTRACTOR shall give receipts to the COUNTY representative for the items delivered. **Signing off on the delivery ticket does not indicate that the product is approved and accepted. It only indicates receipt of product. Product is not approved and accepted until installation (all furniture is placed and prepared for use) and punch list is completed.**

14.6 CONTRACTOR shall provide hard surface coverings as necessary, such as hardboard, over carpet floors and other surfaces to protect from damage while work is being performed.

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- 14.7 CONTRACTOR shall not rest panels or other components against walls or other vertical surfaces unless the walls and surfaces are fully protected from marring.
- 14.8 CONTRACTOR shall provide pads and finish surfaces in elevator and remove such protection at completion of the Work.
- 14.9 CONTRACTOR shall provide a set of approved installation drawings at the job site.
- 14.10 CONTRACTOR must notify COUNTY of damage, errors, or omissions. CONTRACTOR shall file all claims and follow-up until missing items are received in good condition and the installation is complete.
- 14.11 CONTRACTOR shall replace damaged product, unless damage is minor and easily repairable. Abraded or damaged surfaces shall be carefully repaired to an acceptable finish, or shall be replaced with new, undamaged product to the satisfaction of COUNTY.
- 14.12 CONTRACTOR shall deliver and unload products to designated locations and set in place where indicated on approved installation drawings; be responsible for the proper installation of product; verify dimensions, take special field measurements when required and coordinate the work with the COUNTY representative so as to achieve the design intent.
- 14.13 Installation services shall include removal of all packing materials and labels from the site. The furniture shall be polished, cleaned, adjusted, leveled, and ready for use. CONTRACTOR shall repair any scratches and dents or replace to the satisfaction of COUNTY.
- 14.14 It is intended that the product be delivered to the job site and installed immediately in accordance with the Project Schedule and drawings. If delays in the construction or other unforeseen circumstances occur, the CONTRACTOR may be required to store some or all of the products. No storage facilities will be provided at the site. **In the event of an unforeseen delay in the building construction, CONTRACTOR shall be responsible to make arrangements for the local warehousing of the materials prior to the delivery to the Project site. Warehousing shall be provided at no cost for thirty (30) calendar days. The timetable for payment terms will begin upon the 31st day of warehousing.** The COUNTY will notify the CONTRACTOR of any changes in the completion or occupancy schedule as soon as those delays become known to the COUNTY.

15. Delayed/Damaged Product

It is agreed by the CONTRACTOR that COUNTY will sustain damages if there is a delay in the completion of the project, the COUNTY and CONTRACTOR may jointly agree to leave the incorrect or damaged product in place and allow its use by the COUNTY, without penalty or obligation, until the correct or new product is delivered and installed in place. Items provided on loan (which may be required as determined by the COUNTY due to late or delayed delivery of specified or ordered products) shall be at no additional cost to COUNTY. All costs associated with installation and removal of loaned items shall be the responsibility of CONTRACTOR

16. Product Protection

In the event products are stolen or misplaced prior to their installation, it will be the responsibility of the CONTRACTOR to replace, at the CONTRACTORs expense, those items which are missing. Products damaged shall be repaired or replaced as directed by COUNTY.

17. Final Acceptance

17.1 Before COUNTY gives final acceptance, the installation shall be inspected by representatives of COUNTY and the CONTRACTOR. A "punch list" of unsatisfactory items, if any, will be agreed upon. CONTRACTOR shall be responsible for the correction of all items on punch list within ten (10) working days after the punch list walk-through or on a schedule agreeable to the COUNTY.

17.2 Before COUNTY gives final acceptance, the CONTRACTOR shall have performed the following:

- A. All damaged product must be replaced or repaired; or exceptions agreed by COUNTY and noted on the punch list.

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- B. All items must be in working condition and completely assembled; or exceptions agreed by COUNTY and noted on the punch list.
 - C. Each item must be clean and free of dust, packing marks, tags, labels, etc.
- 17.3. Upon completion of each area, the COUNTY representative, the CONTRACTOR Project Manager and other interested parties shall review the final placement of all items and inspect for damage, quality, assembly and functioning order to determine that all product is delivered and installed in accordance with Contract Documents. CONTRACTOR shall be responsible for the correction of all items on the punch list. COUNTY shall conduct as many inspections as may be required until COUNTY agrees that the work is acceptable under the Contract Documents and the contract is fully performed.
- 17.4. When the work is found to be acceptable and the contract fully performed, the CONTRACTOR will send their invoice to COUNTY with a copy to the designated COUNTY Project Manager.

END OF EXHIBIT A

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EXHIBIT B: UNIT PRICES

TRANSACT COMMERCIAL FURNISHING MCCCDC CONTRACT #3036-2 PRICING (7 PAGES)

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PIMA COUNTY STANDARD TERMS AND CONDITIONS (12/20/10)

1. OPENING:

Responses will be publicly opened and respondent's name, and if a Bid the amount, will be read on the date and at the location defined in the *Invitation for Bid (IFB)* or *Request For Proposals (RFP)*. Proposals shall be opened so as to avoid disclosure of the contents of any proposal to competing Offerors during the process of negotiation. All interested parties are invited to attend.

2. EVALUATION:

Responses shall be evaluated to determine which response is most advantageous to the COUNTY considering evaluation criteria, conformity to the specifications and other factors.

If an award is made, the Pima County (COUNTY) will enter into an agreement with the one or multiple respondent(s) that submitted the lowest bid(s) and determined responsible for supplying the required goods or services. Unless otherwise specified on the Bid/Offer document determination of the low/lowest bids will be made considering the total bid amount.

The COUNTY reserves the following rights: 1) to waive informalities in the bid or bid procedure; 2) to reject the response of any persons or corporations that have previously defaulted on any contract with COUNTY or who have engaged in conduct that constitutes a cause for debarment or suspension as set forth in COUNTY Code section 11.32; 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 on the basis of price and other factors, including but not limited to such factors as delivery time, quality, uniformity of product, suitability for the intended task, and bidder's ability to supply; 7) to increase or decrease the quantity herein specified. Pricing evaluations will be based on pre-tax pricing offered by vendor.

3. AWARD NOTICE:

A *Notice of Recommendation for Award* for IFB or RFP will be posted on the Procurement website and available for review by interested parties. A tabulation of responses will be maintained at the Procurement Department.

4. AWARD:

Awards shall be made by either the Procurement Director or the Board of Supervisors in accordance with the Pima County Procurement Code. COUNTY reserves the right to reject any or all offers, bids or proposals or to waive irregularities and informalities if it is deemed in the best interest of the COUNTY. Unless expressly agreed otherwise, resulting agreements are not exclusive, are for the sole convenience of COUNTY, and COUNTY reserves the right to obtain like goods or services from other sources.

5. WAIVER:

Each respondent, by submission of an offer, bid or proposal proclaims and agrees and does waive any and all claims for damages against COUNTY or its officers or employees when any of the rights reserved by COUNTY may be exercised.

6. ACKNOWLEDGEMENT AND ACCEPTANCE:

If Contractor's terms of sale are inconsistent with the terms of the resultant agreement, the terms herein shall govern, unless Contractor's terms are accepted in writing by COUNTY. No oral agreement or understanding shall in any way modify this order or the terms and conditions herein. Contractor's acceptance, delivery or performance called for herein shall constitute unqualified acceptance of the terms and conditions of the resultant agreement.

7. INTERPRETATION and APPLICABLE LAW:

The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of Arizona. If any of Contractors' terms or conditions is not in agreement with County's terms and conditions as set forth herein, COUNTY's shall govern. This Agreement incorporates the complete agreement of the parties with respect to the subject matter of this Agreement. No oral agreement or other understanding shall in any way modify these terms and conditions.

8. WARRANTY:

Contractor warrants goods or services to be satisfactory and free from defects.

9. QUANTITY:

The quantity of goods ordered shall not be exceeded or reduced without written permission in the form of a properly executed blanket contract, purchase order or contract revision or amendment as required by COUNTY Procurement Code except in conformity with acknowledged industry tolerances. All quantities are estimates and no guarantee regarding actual usage is provided.

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10. PACKING:

No extra charges shall be made for packaging or packing material. Contractor shall be responsible for safe packaging conforming to carrier's requirements. All packages shall bear the content(s) quantity, product identification, purchase order number, and destination address plainly marked in indelible ink on the exterior of each package.

11. DELIVERY:

On-time delivery of goods and services is an essential part of the consideration to be received by COUNTY.

A guaranteed delivery date, or interval period from order release date to delivery, must be given if requested by the Price offer document. Upon receipt of notification of delivery delay, COUNTY at its sole option and at no cost to the COUNTY may cancel the order or extend delivery times. Such extension of delivery times will not be valid unless extended in writing by an authorized representative of the COUNTY.

To mitigate or prevent damages caused by delayed delivery, COUNTY may require Contractor to deliver additional quantity utilizing express modes of transport, and or overtime, all costs to be Contractor responsibility. COUNTY reserves the right to cancel any delinquent order, procure from alternate source, and/or refuse receipt of or return delayed deliveries, at no cost to COUNTY. COUNTY reserves the right to cancel any order and/or refuse delivery upon default by Contractor concerning time, cost, or manner of delivery.

Contractor will not be held responsible for unforeseen delays caused by fires, strikes, acts of God, or other causes beyond Contractor's control, provided that Contractor provide immediate notice of delay.

12. SPECIFICATION CHANGES:

COUNTY shall have the right to make changes in the specifications, services, or terms and conditions of an order. If such changes cause an increase or decrease in the amount due under an order or in time required for performance, an acceptable adjustment shall be made and the order shall be modified in writing. Any agreement for adjustment must be made in writing. Nothing in this clause shall reduce Contractor's responsibility to proceed without delay in the delivery or performance of an order.

13. INSPECTION:

All goods and services are subject to inspection and testing at place of manufacture, the destination, or both, by COUNTY. Goods failing to meet specifications of the order or contract shall be held at Contractor's risk and may be returned to Contractor with costs for transportation, unpacking, inspection, repacking, reshipping, restocking or other like expenses to be the responsibility of Contractor. In lieu of return of nonconforming supplies, COUNTY, at its sole discretion and without prejudice to COUNTY's rights, may waive any nonconformity, receive the delivery, and treat the defect(s) as a warranty item, but waiver of any condition shall not be considered a waiver of that condition for subsequent shipments or deliveries.

14. SHIPPING TERMS:

Unless stated otherwise by the agreement documents, delivery terms are to be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination") are to be included in the Unit Price offered by Contractor and accepted by the COUNTY.

15. PAYMENT TERMS:

Payment terms are net 30, unless otherwise specified by the agreement documents.

16. ACCEPTANCE OF MATERIALS AND SERVICES:

COUNTY will not execute an acceptance or authorize payment for any service, equipment or component prior to delivery and verification that all specification requirements have been met.

17. RIGHTS AND REMEDIES OF PIMA COUNTY FOR DEFAULT:

In the event any item furnished by the Contractor in the performance of the agreement should fail to conform to the specifications thereof, or to the sample submitted by the Contractor, COUNTY may reject same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same, without expense to COUNTY, and immediately replace all such rejected items with others conforming to the specifications or samples. Should the Contractor fail, neglect, or refuse immediately to do so, COUNTY, shall have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any monies due or that may become due to the Contractor the difference between the price named in the contract or purchase order and actual cost to COUNTY.

In the event the Contractor shall fail to make prompt delivery as specified of any item, the same conditions as to the rights of COUNTY to Purchase in the open market and invoke the reimbursement condition above shall apply, except when delivery is delayed by fire, strike, freight embargo, or acts of god or of the government. In the event of cancellation of the

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contract or purchase order, either in whole or in part, by reason of the default or breach by the Contractor, any loss or damage sustained by COUNTY in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of COUNTY provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

18. FRAUD AND COLLUSION:

Each Contractor, by submission of a bid, proclaims and agrees that no officer or employee of COUNTY or of any subdivision thereof has: 1) aided or assisted the Contractor in securing or attempting to secure a contract to furnish labor, materials or supplies at a higher price than that proposed by any other Contractor; 2) favored one Contractor 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) any direct or indirect financial interest in the offer or resulting agreement. Additionally, during the conduct of business with COUNTY, the Contractor will not knowingly certify, or induce others to 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. If at any time it shall be found that the awardee(s) has in presenting any offer(s) colluded with any other party or parties for the purpose of preventing any other offer being made, then the agreement so awarded shall be terminated and that person or entity shall be liable for all damages sustained by COUNTY.

19. COOPERATIVE USE OF RESULTING AGREEMENT:

As allowed by law, the COUNTY has entered into cooperative procurement agreements that enable other Public Agencies to utilize procurement agreements developed by the COUNTY. The Contractor may be contacted by participating agencies and requested to provide services and products pursuant to the pricing, terms and conditions defined by the COUNTY blanket contract, purchase order or contract. Minor adjustments are allowed subject to agreement by both Contractor and Requesting Party to accommodate additional cost or other factors not present in the COUNTY agreement and required to satisfy particular Public Agency code or functional requirements and are within the intended scope of the solicitation and resulting agreement. Any such usage shall be in accordance with State, COUNTY and other Public Agency procurement rules, regulations and requirements and shall be transacted by blanket contract purchase order or contract between the requesting party and Contractor. Contractor shall hold harmless COUNTY, its officers, employees, and agents from and against all liability, including without limitation payment and performance associated with such use. A list of agencies that are authorized to use COUNTY agreements can be viewed at the Procurement Department Internet home page: <http://www.pima.gov/procure> by selecting the link titled *Authorized Use of COUNTY Agreements*.

20. PATENT INDEMNITY:

Contractor shall hold COUNTY, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the blanket contract purchase order or contract. Contractor may be required to furnish a bond or other indemnification to COUNTY against any and all loss, damage, costs, expenses, claims and liability for patent or copyright infringement.

21. INDEMNIFICATION:

Contractor shall indemnify, defend, and hold harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the Contractor, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of the blanket contract, purchase order or contract. Contractor warrants that all products and services provided under this contract are non-infringing. Contractor will indemnify, defend and hold COUNTY harmless from any claim of infringement arising from services provided under this contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.

22. UNFAIR COMPETITION AND OTHER LAWS:

Responses shall be in accordance with Arizona trade and commerce laws (Title 44 A.R.S.) and all other applicable COUNTY, State, and Federal laws and regulations.

23. COMPLIANCE WITH LAWS:

Contractor shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. The laws and regulations of the State of Arizona shall govern the rights, performance and disputes of and between the parties. Any action relating to this Contract shall be brought in a court of the State of Arizona in COUNTY.

Any changes in the governing laws, rules, and regulations during an agreement shall apply, but do not require an amendment/revisions.

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24. ASSIGNMENT:

Contractor shall not assign its rights to the resultant agreement, in whole or in part, without prior written approval of the COUNTY. Approval may be withheld at the sole discretion of COUNTY, provided that such approval shall not be unreasonably withheld.

25. CONFLICT OF INTEREST:

All agreements are subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated into and made part of all resultant contracts or purchase orders as if set forth in full herein.

26. NON-DISCRIMINATION:

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, CONTRACTOR shall 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.

27. NON-APPROPRIATION OF FUNDS:

Pursuant to the provisions of A.R.S. § 11-251, sub-section 42, this agreement may be canceled if for any reason the COUNTY Board of Supervisors does not appropriate funds for the stated purpose of maintaining any agreement. In the event of such cancellation, COUNTY shall have no further obligation, other than for services or goods that have already been received.

28. PUBLIC INFORMATION:

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any records submitted in response to this solicitation that Contractor reasonably believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by Contractor prior to the close of the solicitation.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., COUNTY shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the Contractor of the request for release, unless Contractor has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. Contractor shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

COUNTY shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall COUNTY be in any way financially responsible for any costs associated with securing such an order.

29. CUSTOM TOOLING, DOCUMENTATION AND TRANSITIONAL SUPPORT:

Costs to develop all tooling and documentation, such as and not limited to dies, molds, jigs, fixtures, artwork, film, patterns, digital files, work instructions, drawings, etc. necessary to provide the contracted services or products and are unique to the services or products supplied to COUNTY are included in the agreed upon Unit Price unless specifically stated otherwise in the agreement. It is agreed that such tools and documentation are the property of COUNTY and shall be marked, as is practical, as the "Property of Pima County" and if requested by COUNTY a copy of the tooling and documentation shall be delivered to COUNTY within twenty days of acceptance by the COUNTY of the first article sample, or not later than ten days of termination of the agreement associated with their development, without additional cost to COUNTY. The Contractor also agrees to act in good faith to facilitate the transition of work to a subsequent Contractor if and as reasonably requested by COUNTY at no additional cost.

Should exceptional circumstances be present that may justify an additional charge, the Contractor may submit said justification and proposed cost and negotiate an agreement acceptable to both Contractor and COUNTY, but Contractor may not withhold any requested tooling, document or support as defined above that would delay the orderly, efficient and prompt transition of work. Should conduct by the Contractor result in additional costs to the COUNTY the Contractor

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agrees to reimburse the COUNTY for said actual and incremental costs provided that the COUNTY had given the Contractor reasonable time to respond to the COUNTY's requests for support.

30. AMERICANS WITH DISABILITIES ACT:

Contractor 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.

31. NON-EXCLUSIVE:

Agreements resulting from this solicitation are non-exclusive and are for the sole convenience of Pima County which reserves the right to obtain like goods and services from other sources for any reason.

32. PROTESTS:

An interested party may file a protest regarding any aspect of a solicitation, evaluation, or recommendation for award. Protests must be filed in accordance with the Pima County Procurement Code, Section 11.20.010.

33. TERMINATION:

COUNTY reserves the right to terminate any blanket contract, purchase order, contract or award, in whole or in part, at anytime, without penalty or recourse when in the best interests of the COUNTY, Upon receipt of written notice, Contractor shall immediately cease all work as directed by the notice, notify all sub-Contractor of the effective date of termination and take appropriate actions to minimize further costs to the COUNTY. 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 promptly delivered to the COUNTY. 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 defined by A.A.C. R2-7-701 shall apply.

34. ORDER OF PRECEDENCE-CONFLICTING DOCUMENTS:

In the event that there are inconsistencies between agreement documents, following is the order of precedence, superior to subordinate, that shall be applied to resolve the inconsistency: blanket contract; purchase order; offer agreement or contract attached to a blanket contract or purchase order; standard terms and conditions; other solicitation documents.

35. INDEPENDENT CONTRACTOR:

The status of the Contractor shall be that of an independent Contractor. Neither Contractor nor Contractor officer's agents or employees shall be considered an employee of COUNTY or be entitled to receive any employment-related fringe benefits under the COUNTY Merit System. Contractor shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of Contractor's failure to pay such taxes. Contractor shall be solely responsible for program development and operation.

36. BOOKS AND RECORDS:

Contractor shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY. In addition, Contractor shall retain all records relating to this contract at least 5 years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

37. COUNTERPARTS:

The blanket contract, purchase order or contract awarded pursuant to this solicitation may be executed in any number of counterparts and each counterpart shall be deemed an original, and together such counterparts shall constitute one and the same instrument. For the purposes of the blanket contract, purchase order or contract, the signed offer of Respondent and the signed acceptance of COUNTY shall each be deemed an original and together shall constitute a binding blanket contract, purchase order or contract, if all other requirements for execution have been met.

38. AUTHORITY TO CONTRACT:

Contractor warrants its right and power to enter into the blanket contract, purchase order or contract. If any court or administrative agency determines that COUNTY does not have authority to enter into the blanket contract, purchase order or contract, COUNTY shall not be liable to Contractor or any third party by reason of such determination or by reason of the blanket contract, purchase order or contract.

39. FULL AND COMPLETE PERFORMANCE:

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of the blanket contract, purchase order or contract 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

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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.

40. SUBCONTRACTOR:

CONTRACTOR shall be 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 CONTRACTOR 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 contract shall create 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.

41. SEVERABILITY:

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

42. LEGAL ARIZONA WORKERS ACT COMPLIANCE:

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

COUNTY shall have 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.

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, shall be deemed to be 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 shall 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.

CONTRACTOR shall advise each subcontractor of COUNTY's rights, and the subcontractor's obligations, under this Article 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 will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of CONTRACTOR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONTRACTOR's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which CONTRACTOR shall be entitled to an extension of time, but not costs.

43. CONTROL OF DATA PROVIDED BY PIMA COUNTY:

For those projects and contracts where Pima County has provided data to enable the Contractor to provide contracted services or products, unless otherwise specified and agreed to in writing by Pima County, Contractor shall treat, control and limit access to said information as confidential and under no circumstances release any data provided by County during the term of this agreement and thereafter, including but not limited to personal identifying information as defined by A.R.S. § 44-1373, and is further prohibited from selling such data directly or through a third party. Upon termination of the associated agreement or completion of the required contractual intent whichever occurs sooner, Contractor shall either return all data to County or shall destroy such data and confirm destruction in writing in a timely manner not to exceed 60 calendar days.

END OF PIMA COUNTY STANDARD TERMS AND CONDITIONS