



ATTACHMENT I
Offeror Response Form
Contract # AG16-0040

Office of the Attorney General

1275 W Washington
 Phoenix, AZ
 85007-2926



OFFER AND ACCEPTANCE

State of Arizona
 Office of the
 Attorney General
 Procurement Section
 1275 W Washington ST
 Phoenix, Arizona 85007
 (602) 542-8030

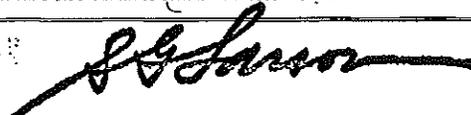
Contract #AG16-0040

OFFER

TO THE STATE OF ARIZONA:

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

Larson O'Brien LLP



Company Name

Signature of Person Authorized to Sign Offer

555 South Flower Street, Suite 4400

Stephen G. Larson

Address

Printed Name

Los Angeles CA 90071

Partner

City State Zip

Title

slarson@larsonobrienlaw.com

213.436.4888

Contact E-Mail Address

Contact Telephone Number

Contact Fax Number

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization IS/ IS NOT a small business with less than 100 employees or has gross revenues of \$4 million or less.

ACCEPTANCE OF OFFER (For Arizona State Use Only)

Your offer is hereby accepted:

The Contractor is now bound to sell the materials, services or construction listed by the attached contract based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the Office of the Attorney General.

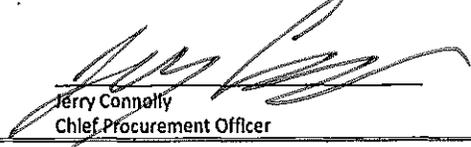
This Contract shall henceforth be referred to as Contract No. AG16-0040.

The effective date of the Contract is March 10, 2016.

The Contractor is hereby cautioned not to commence any billable work or provide any material or service under this contract until the Contractor receives a purchase order, contract release document or written notice to proceed.

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

Awarded this 10th day of March, 2016



Jerry Connolly
 Chief Procurement Officer



NOTICE OF REQUEST FOR PROPOSAL

SOLICITATION NO: **AG16-0040**

**Office of the Attorney
General**

1275 W Washington
Phoenix, AZ
85007-2926

CONTRACT NUMBER: AG16-0040

**DESCRIPTION: Outside Counsel Services - Consumer Fraud Action
related to Volkswagen Group's Vehicle Emissions Fraud**

Contract Contact Person:

Jerry Connolly, Procurement Manager
Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007
Telephone Number: (602) 542-8030
Facsimile Number: (602) 251-2285
E-mail: jerry.connolly@azag.gov



I. SCOPE OF WORK

SOLICITATION NO: **AG16-0040**

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A. PURPOSE

The purpose of this contract is to retain outside counsel (Counsel) to aid the Arizona Attorney General (AGO) in commencing legal action against Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. and/or its related entities and others (collectively, VW) for violations of the Arizona Consumer Fraud Act arising out of VW's multitude of violations that occurred during many years in the sale, leasing, and repair of cars that contained emissions-related fraudulent software designed to mask the amount of noxious emissions emitted by VW's diesel engines. Counsel will represent the State of Arizona (the State) on a contingency fee basis per the terms set forth in this Request for Proposal.

B. BACKGROUND

On September 18, 2015, the United States Environmental Protection Agency (EPA) issued a notice of violation of the Clean Air Act to VW, after it was found that the car maker had intentionally programmed turbocharged direct injection (TDI) diesel engines to activate certain emissions controls only during laboratory emissions testing. The programming caused the vehicles' nitrogen oxide (NOx) output to meet US standards during regulatory testing, but emit up to 40 times more NOx in real-world driving. VW put this programming in about eleven million cars worldwide and in 500,000 in the United States, during model years 2009 through 2015. Formal acknowledgement of the deception was made by VW executives in Germany and the United States to EPA and California officials during a September 3, 2015 conference call, during which VW executives discussed written materials provided to the participants demonstrating how VW's diesel engine software circumvented US emissions tests.

C. GOALS

Litigation in this matter would be brought under the Arizona Consumer Fraud Act, A.R.S. § 44-1521 to 44-1534, on behalf of the State. Such litigation would seek to recover civil penalties, disgorgement, restitution, attorneys' fees, costs, potential injunctive relief and other equitable relief, and any other appropriate relief, after consultation with the AGO. The Attorney General will consider seeking all or any combination of these remedies.

D. HIERARCHY

The retention of Counsel is intended to aid the Attorney General in representing the State in this matter. The Attorney General will be actively involved in all stages of this matter and will decide all material issues, including whether and when to file suit, whom to sue, approval of all proposed asserted claims, and whether and on what terms to settle or proceed to trial. The Attorney General retains veto power over any decisions made by Counsel. The AGO shall be co-counsel of record in the litigation.

E. SCOPE OF WORK TASKS

Counsel shall be responsible for the following tasks and shall perform these tasks in accordance with the Method of Approach prepared by Counsel in responding to this Request for Proposal and as accepted by the



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AGO.

- a. Evaluation of legality of practices;
- b. Decision process;
- c. Pre-litigation activities;
- d. Litigation, including all appeals;
- e. Litigation support;
- f. All document reviews; and
- g. Post-litigation support

F. REPORTING

Counsel shall prepare and submit monthly reports to the AGO summarizing activities from the previous month and detailing the hours, rates, and costs incurred. Counsel shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one tenth of one hour and shall promptly provide these records to the AGO on request. When expenses are disbursed, time is spent, or costs are incurred by Counsel which also benefit other clients of Counsel in other, similar litigation, only the portion of such expenses, fees, and costs exclusively allocable to this litigation shall be claimed as reasonable expenses, fees, and costs of prosecuting this litigation. The report shall also include activities planned for the upcoming month and budgetary costs associated with these activities. The report shall be due by the seventh day of each month. Reports shall be prepared in a format and of a quality approved by the Attorney General.



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1. CONTRACT

This Contract is issued for the AGO in accordance with A.R.S. §41-2538.

2. CONTRACT TYPE/COMPENSATION

2.1 Contingency

Neither the AGO nor the State is liable under this agreement to pay compensation to Counsel, other than from a specific fund of monies that is recovered on behalf of the State or its agencies as a result of settlement or judgment obtained against the named defendants in the litigation.

2.2 Compensation

It is agreed that the fixed fee (fee) to be charged by Counsel shall be contingent so that if no recovery is obtained or collected, no fee will be charged by Counsel for the representation described in this agreement.

If there is a collected recovery, the fee will be based on the contingent fee percentages set forth in A.R.S. § 41-4803, which percentages shall be applied to the gross amount received by settlement, at trial, or on appeal. The contingent fee shall be calculated based upon the recovery and collection of civil penalties and/or disgorged amounts only, and shall not be calculated based upon any amounts agreed upon as, awarded, recovered, received, and/or collected as consumer restitution.

The fee does not include costs. Counsel shall pay for all document review fees and document hosting fees. All other costs and expenses, including, but not limited to, court costs and fees of expert witnesses, incurred in the litigation shall be paid by the State as follows. Counsel shall advance all costs and expenses, including, but not limited to, court costs and fees of expert witnesses, on behalf of the State. Counsel shall not submit to the AGO or the State an invoice for such costs and expenses on an interim basis. In the event of and to the extent of any recovery, the State agrees that Counsel shall pay for such costs and expenses from the State's share of the recovery. In the event the litigation is dismissed, or the State recovers an amount that does not exceed the costs and disbursements in the litigation, or the State recovers nothing, or Counsel is terminated without cause, the AGO agrees to seek a legislative appropriation to reimburse reasonable costs. Counsel understands and acknowledges that the AGO's obligation to pay for such costs and expenses under said circumstances is subject to appropriation and Counsel may seek a recovery for such costs and expenses only from any specifically appropriated funds. The State will, however, be responsible for and pay any costs or expenses directly assessed against the State by the court such as jury fees and taxable costs of the opposing party.

Notwithstanding the above, the State shall not be responsible for sanctions entered against Counsel. The State shall also not be responsible for any costs related to internal litigation-related expenses of Counsel, including, but not limited to costs related to: copies, office supplies, document hosting, document analysis,



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document storage, the development or acquisition of work product, database access, legal research costs, or any similar expenses.

2.3 Basis of Compensation

2.3.1 If there is a recovery and collection of disgorged profits or penalties for the State and subject to judicial approval for reasonableness of attorneys' fees, the amount of compensation due to Counsel shall be paid in an amount no greater than the percentages set forth in A.R.S. §41-4803 and the limitations set forth in the statute shall not be exceeded. The contingent fee shall not be applied to any amount recovered as restitution for consumers.

2.3.2 A defendant who is "settling" is a defendant who has entered into a written settlement agreement with the State. The settlement agreement shall determine the compensation as per paragraph 2.6 below.

2.3.3 If Counsel represents any other governmental entity in this type of litigation and agrees to represent such entity for a contingency fee lower than that set forth in A.R.S. §41-4803, the contingency fee herein shall be reduced to meet that lower percentage. It is the intent of Counsel to provide the State with the best price it offers for its services.

2.3.4 The State reserves the right to petition any court or the State Bar of Arizona before payment to determine reasonableness of attorneys' fees outlined in this agreement.

2.4 Challenge to Contingency Fee Arrangements

The AGO and Counsel agree that the contingent fee provisions set forth in A.R.S. §§ 41-4801 to 41-4805 are valid and govern any contract that may result from this Request for Proposal. The AGO and Counsel agree that the percentage limitations of A.R.S. § 41-4803 properly apply to the special circumstances of this solicitation. The AGO and Counsel further agree that the percentages set forth in A.R.S. § 41-4803 are reasonable and in the public interest.

The AGO and Counsel are aware that defendants may challenge and seek to invalidate or limit this contingency fee arrangement. Any such challenge shall not excuse Counsel's performance under this agreement. The AGO agrees to join Counsel in opposing any challenge to this contingency fee arrangement. In the event of a successful challenge to this contingency fee agreement, the AGO agrees to join Counsel in arguing to the Court that the contingency fee percentages set forth in A.R.S. § 41-4803 are fair and reasonable for purposes of compensation and a formal attorneys' fees application, and in the event such argument is not successful, then Counsel agrees to and shall continue its representation of the State in the litigation at the following maximum hourly billing rates: for partners, not to exceed \$400 per hour; for associates, not to exceed \$250 per hour; for paralegals, not to exceed \$125 per hour. In such



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event, these hourly fees shall be contingent upon and payable solely out of any recovery obtained in the litigation. If there is no recovery, Counsel will not be paid for such hourly work. If the recovery is insufficient to pay for such hourly work in full, then any excess remainder hourly fees will not be paid. Counsel shall not submit to the AGO or the State an invoice for such hourly fees on an interim basis. Neither the AGO nor the State is liable under this agreement to pay compensation of any kind to Counsel, other than from a specific fund of monies that may be recovered on behalf of the State or its agencies as a result of settlement or judgment obtained against the named defendants in the litigation. In the alternative, in the event of a successful challenge to this contingency fee agreement, the AGO or the State, in their sole discretion, may terminate this contract and discharge Counsel from any further representation of the State in the litigation.

Notwithstanding anything to the contrary in this paragraph, in the event the litigation is dismissed, or the State recovers an amount that does not exceed the hourly billings of Counsel, or Counsel is terminated without cause, the AGO, in its sole discretion, may seek a legislative appropriation to reimburse the hourly billings of Counsel. Counsel understands and acknowledges that the AGO's ability to pay for such hourly billings under these circumstances is contingent upon and subject to a specific appropriation for the payment of Counsel in this case, and that Counsel may seek a recovery for such hourly billings only from any appropriated funds.

Furthermore, in no event shall the State be required to pay a contingent fee or hourly fee that is unreasonable under the circumstances.

2.5 Court Awarded Attorney Fees

The State intends to seek an award from the court of fees and costs for prosecution of the case. Counsel shall keep time records in a format sufficient to allow an attorneys' fees award based on those records, including specific and detailed itemized billing necessary to support an attorneys' fees application in Arizona courts with no block billing for time increments of more than one hour.

Should the court award attorney fees and costs to the State, such amounts will be retained by the State to offset some or all of the fees paid to Counsel under this agreement.

2.6 Settlement

This compensation agreement applies to any partial or total settlement of the litigation. In addition, in the event the AGO enters into a partial settlement against the advice of Counsel, Counsel agrees to and shall continue its representation of the State in the litigation against the remaining defendants and to be compensated in accordance with paragraphs 2.2 and 2.3 and 2.4 above. In the event, the AGO enters into a settlement against the advice of Counsel, and such settlement completely resolves the litigation,



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Counsel agrees to and will be compensated in accordance with paragraphs 2.2 and 2.3 and 2.4 above.

2.7 Advance Payment Prohibited

No payment in advance or in anticipation of services or supplies under this contract shall be made by the Office of the Attorney General.

3. TERM OF CONTRACT

The term of the Contract shall extend from the date of appointment through the term of the litigation unless terminated pursuant to the terms and conditions of this agreement.

3.1 Termination Without Cause

The AGO may terminate this agreement without cause and without penalty upon at least thirty (30) days written notice to Counsel. At the conclusion of the litigation, counsel terminated without cause will be entitled to be reimbursed for reasonable out-of-pocket costs in accordance with paragraph 2.2 above. In any contract with substitute counsel, the AGO will require substitute counsel to share on a pro-rata basis with counsel terminated without cause any attorneys' fees recovered, according to each counsel's reasonable percentage of time and work spent on the litigation, or as otherwise agreed to by substitute counsel and terminated counsel. Substitute counsel's obligation to share fees with Counsel will only arise at the conclusion of the litigation if there is a recovery by settlement or judgment.

3.2 Termination With Cause

The AGO may terminate this agreement for cause if Counsel breaches any material terms or conditions of this agreement or fails to perform or fulfill any material obligation under this agreement or negligently pursues the litigation so as to cause harm to the State. Counsel shall be provided written notice of termination. If Counsel is terminated for cause, Counsel shall not be entitled to compensation or reimbursement of any kind under this agreement.

4. DOCUMENTS INCORPORATED BY REFERENCE

The State's Uniform Instructions to Offerors (Rev 7-2013) and Uniform Terms and Conditions (V9 - Rev 7-1-2013) are incorporated into this Contract and included as Exhibit I and Exhibit II.

5. ESTIMATED USAGE

Any Contract resulting from this Solicitation shall be used on an as needed, if needed basis. The State makes no guarantee as to the amount of work that may be performed under any resulting Contract.

6. OWNERSHIP OF MATERIALS

All materials, documents, deliverables and/or other products of the Contract (including but not limited to e.g., work



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plans, reports, etc.) shall be the sole, absolute and exclusive property of the State and the Attorney General's Office, free from any claim or retention of right on the part of Counsel, its agents, Co-Counsel, subcontractors, officers or employees.

7. COUNSEL RESPONSIBILITIES

7.1 Counsel

A "team arrangement" or "multiple firm arrangement" may be proposed, but must be proposed as a Counsel/Co-Counsel relationship. A firm must be designated as Counsel. Counsel shall be responsible for all contractual obligations and the management of all "Co-Counsel". Counsel shall also be responsible for and agrees to be liable for any acts or omissions of Co-Counsel in the carrying out of its duties on behalf of the State. The AGO will not become part of any negotiations between Counsel and Co-Counsel or accept any invoices from Co-Counsel. Any agreement between Counsel and Co-Counsel shall include provisions indicating that the AGO and the State are not third-party beneficiaries of such agreement and that Co-Counsel is not a third-party beneficiary of this agreement. A Proposal that reflects a teaming arrangement designating more than one entity as a cosigner of the proposal will not be accepted.

7.2 Key Personnel

It is essential that Counsel provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. Counsel must assign specific individuals to key positions. Counsel agrees and understands that this agreement is predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified and/or described in Counsel's proposal. Therefore, Counsel agrees that no substitution of such specified individual(s) and/or personnel qualifications shall be made without the prior written approval of the AGO. Counsel further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the AGO's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The AGO agrees that an approval of a substitution will not be unreasonably withheld. Counsel shall bear all transitional expenses incurred for any costs associated with removing or replacing Key Personnel who are performing work under this Contract. Counsel agrees to reveal its staffing levels by function, including resumes, upon request by the AGO at any time during the performance of this Contract.

7.3 Lead Counsel

Counsel shall name an individual as the Lead Counsel for the outside counsel team. This individual shall be considered a Key Personnel as defined in this contract. Counsel shall provide the Lead Counsel's complete address, e-mail address and telephone and Fax numbers. The Lead Counsel shall be the company representative to whom all correspondence, official notices, and requests related to the project shall be addressed. If a firm joins together with another firm or firms, the firms shall name only one Lead



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Counsel. The Lead Counsel must become admitted to practice law in Arizona State Court for the purposes of the contemplated litigation.

7.4 Other Key Personnel

Counsel shall provide the name of any other individual who will perform duties to directly support the person offered as the Lead Counsel. The role and crucial duties this individual will perform shall be identified.

7.5 Removal of Counsel's Employees

The AGO may require Counsel to remove from an assignment employees who endanger persons, property or whose continued employment under this Contract is inconsistent with the interests of the AGO.

7.6 Availability of Counsel

Counsel shall be available immediately upon receipt of the Notice to Proceed and remain available to the AGO throughout the period of performance as stated in the Contract.

7.7 Submission of Electronic Deliverables

At the request of the AGO, Counsel shall submit electronic deliverables. All electronic deliverables shall be in format compatible with AGO software. The AGO currently uses the MS Office 2010 suite of products (e.g. docx, xlsx, and pptx) and Adobe Acrobat Pro X (e.g. pdf) software, other formats may be considered. Electronic Deliverables shall be treated with confidentiality and provided through encrypted e-mail, the AGO file share website (<https://agfileshare.azag.gov>), encrypted hard drive, or encrypted flash drive.

8. OVERSIGHT AND DRAFT DOCUMENT REVIEW

8.1 Oversight

The retention of Counsel is intended to aid the Attorney General in representing the State in a major matter. The Attorney General will be actively involved in all stages of this matter and deciding all major issues, including whether to file suit, when to file suit, who to file suit against, approval of the asserted claim or claims and whether and on what basis to settle or proceed to trial. Counsel shall regularly communicate with the Attorney General about all matters related to the case. Counsel shall acknowledge and defer to the Attorney General for direction and decisions.

8.2 Review of Services

The Attorney General reserves the right to review all and every part of the Services during performance or after completion as the Attorney General may see fit. If the Services or any part thereof have not been performed in accordance with this Agreement to the satisfaction of the Attorney General, the Attorney General may order that no further services be performed and may reject and refuse to pay for any improperly performed services and shall fully comply with all the requirements set forth in A.R.S. § 41-



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4803(C) and elsewhere.

8.3 Draft Document Review

Prior review of all documents is required to assure the AGO approval of the information, content and completeness. Documents for prior review shall include all pleadings, petitions, findings, letters to other counsel, filings, and any other document produced in the pursuit of this matter. All draft deliverables and other materials developed by Counsel as part of this project shall be reviewed and approved in writing by the AGO prior to finalizing the material. Counsel shall promptly provide, in final form, the designated assistant attorney general with copies of all pleadings, discovery requests and responses, and relevant correspondence related to the Litigation.

8.4 Settlements/Compromises

All offers of compromise shall be promptly transmitted to the Attorney General together with Counsel's recommendation.

8.5 Depositions

Notices of depositions shall not be issued by Counsel without prior written authorization from the Attorney General. Notices of depositions of State employees filed by any party must be submitted to the Attorney General immediately upon Counsel's receipt to make necessary arrangements for their testimony. Summaries of all depositions will be supplied by the assigned Counsel on conclusion of the deposition. Ordinarily only one attorney should attend depositions, although, upon AGO prior approval, Counsel may have more than one attorney attend a deposition. The Attorney General may request the presence of a State employee at one or more depositions.

8.6 Testimony

Should Counsel be required to testify at any judicial, legislative or administrative hearing concerning matters in any way related to the Services performed under this Agreement, Counsel shall immediately supply to the Attorney General or his designated representative in writing all information likely to be disclosed at said hearing as well as Counsel's position thereon. Should Counsel be required by a third party to testify at any judicial, legislative or administrative hearing not specified in this Agreement but concerning the subject matter of this Agreement, Counsel shall immediately notify the Attorney General or his designated representative to enable State representatives to attend and participate.

8.7 Media

Should Counsel be asked to give a statement related to the matter for which it is providing Services under this agreement, Counsel shall immediately refer the inquiry to the Attorney General, unless otherwise directed in writing by the Attorney General or his designated representative.

8.8 Privileged Communications

All confidential communications between the Attorney General, any State officer, employee or agent and



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Counsel, whether oral or written, and all Documentation, whether prepared by Counsel or supplied by the State, shall be considered privileged communications and shall not, except as required by law, be communicated by Counsel to any public agency, insurance company, rating organization, contractor, vendor, counsel, or any other third party or entity whether or not connected in any manner with the State or Counsel, without the prior written consent of the Attorney General. If such communications are approved, or if such communications are required to be disclosed by law, Counsel shall immediately provide the Attorney General with two (2) copies of each written communication and/or two (2) copies of summaries of each oral communication. If such communication is required by law, Counsel shall immediately provide the Attorney General written notice as to the time, place, and manner of such disclosure as well as a written summary of any information likely to be disclosed by such disclosure, and Counsel's position thereon.

9. RECORDS

Pursuant to A.R.S. §§ 35-214, 35-215, and 41-4803, Counsel shall retain and shall contractually require each Subcontractor to retain books, records, documents and other evidence pertaining to the acquisition and performance of the Contract, hereinafter collectively called the "records," to the extent and in such detail as will properly reflect all net expenses, disbursements, charges, credits, receipts, invoices, and costs, direct or indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which payment is made under the Contract. Counsel shall agree to make available at the office of Counsel at all reasonable times during the period, as set forth below, any of the records for inspection, audit or reproduction by any authorized representative of the State or AGO. In coordination with the AGO, Counsel shall preserve and make available the records for a period of five years from the date of final payment under the Contract and for such period, if any, as is required by applicable statute. If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

10. PROFESSIONAL RESPONSIBILITY

10.1 General

Counsel shall use Best Efforts to perform and complete the Services in accordance with the provisions of this Agreement. Best Efforts shall be considered those efforts which a skilled, competent, experienced and prudent legal professional would use to perform and complete the requirements of this Agreement in a timely manner, exercising the degree of skill, care, competence, and prudence customarily imposed on a legal professional performing similar work.

10.2 Conflict of Interest/Litigation against the State

10.2.1 Conflicts



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Counsel shall advise the Attorney General of any perceived conflict. This duty shall extend throughout the performance of this contract when a conflict or perceived conflict becomes known to Counsel. Whether the conflict is remote or disqualifying will be the Attorney General's decision, to be made in his sole discretion.

10.2.2 Litigation against the State

Counsel is retained only for the purposes and to the extent set forth in this Agreement. Counsel shall be free to dispose of such portion of his entire time, energy and skill not required to be devoted to the State in such manner as he sees fit and to such persons, firms or corporations as he deems advisable, but shall not engage in private litigation against the State at the same time counsel accepts appointments representing the State pursuant to this Agreement unless such litigation does not present an ethical conflict of interest, and a written waiver is first obtained from the Attorney General. Counsel shall disclose to the State, in the proposal, all litigation, claims and matters in which counsel represents parties adverse to the State. If Counsel is selected to contract with the State pursuant to the Agreement, Counsel shall have a continuing duty to disclose such information.

10.2.3 Ethical Rules

Counsel shall be bound by the Rules of Professional Conduct as adopted by the Arizona Supreme Court, i.e., Ariz. R. Sup. Ct. 42.

11. INDEMNIFICATION

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

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State.



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12. INSURANCE REQUIREMENTS

12.1 General Requirements

- 12.1.1 Counsel, Co-Counsel and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with the performance of the work hereunder by Counsel, his agents, representatives, employees, Co-Counsel or subcontractors.
- 12.1.2 The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect Counsel from liabilities that arise out of the performance of the work under this contract by Counsel, its agents, representatives, employees, Co-Counsel or subcontractors, and Counsel is free to purchase additional insurance.

12.2 Minimum Scope and Limits of Insurance

Counsel shall provide coverage with limits of liability not less than those stated below.

12.2.1 Commercial General Liability (CGL) – Occurrence Form

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

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$ 50,000
Each Occurrence	\$1,000,000

12.2.2 The policy shall be endorsed, as required by this written agreement, to include the Arizona Attorney General's Office and the State and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Counsel.

12.2.3 Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Counsel.

12.3 Business Automobile Liability



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claims-made basis, Counsel warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

12.5.4 The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

12.6 Additional Insurance Requirements

The policies shall include, or be endorsed to include, the following provisions:

12.6.1 Counsel's policies, as applicable, shall stipulate that the insurance afforded the Counsel shall be primary and that any insurance carried by the State its agents, officials, employees or the State shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

12.6.2 Insurance provided by the Counsel shall not limit Counsel's liability assumed under the indemnification provisions of this Contract.

12.7 Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Counsel's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State. Within two (2) business days of receipt, Counsel must provide notice to the State if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to Jerry Connolly, Office of the Arizona Attorney General, 1275 West Washington Street, Phoenix, AZ 85007 or procurement@azag.gov or fax 602-251-2285. The notice shall be mailed, emailed, hand delivered or sent by facsimile transmission.

12.8 Acceptability of Insurers

Counsel's insurance shall be placed with companies licensed in the State or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect Counsel from potential insurer insolvency.

12.9 Verification of Coverage

Counsel shall furnish the State with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Counsel has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

12.9.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy



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endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

12.9.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

12.9.3 All certificates required by this Contract shall be sent directly to the State. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete copies of all insurance policies required by this Contract at any time.

12.10 Co-Counsel/Subcontractors

Counsel's certificate(s) shall include all Co-Counsel and subcontractors as insureds under its policies or Counsel shall be responsible for ensuring and/or verifying that all Co-Counsel and subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for Co-Counsel and subcontractors shall be subject to the minimum Insurance Requirements identified above. The State reserves the right to require, at any time throughout the life of this contract, proof from Counsel that its Co-Counsel and subcontractors have the required coverage.

12.11 Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

12.12 Exceptions

In the event the Counsel or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Counsel or subcontractor(s) is/are a State agency, board, commission, or university, none of the above shall apply.

13. NOTICES, CORRESPONDENCE AND INVOICES

Notices, Correspondence and Invoices from Counsel to AGO shall be sent to:

Paul Watkins, Division Chief
Civil Litigation Division
Arizona Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85007
Telephone: 602-542-8958
E-mail: paul.watkins@azag.gov

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1. SOLICITATION INQUIRIES

1.1 Issuing Office Solicitation Contact Person

The AGO Procurement Office Solicitation Contact Person identified on the cover page of this RFP shall be the sole point of contact for purposes of the preparation and submittal of proposals to this Solicitation.

1.2 Solicitation Clarifications

All inquiries, questions or clarification requests regarding this Solicitation should be submitted no later than seven (7) days before the Solicitation due date. The Offeror should direct such inquiries, questions or requests to the attention of the Solicitation Contact Person via e-mail (preferred), facsimile or mail, or through ProcureAZ. All Solicitation Inquiries will be handled in accordance with the Uniform Instructions to Offerors. If any inquiries, questions or clarifications result in a change to the Solicitation, a written Solicitation Amendment will be issued prior to the Solicitation due date.

1.3 Solicitation Amendments

The Offeror should acknowledge receipt of a Solicitation Amendment by signing and attaching a copy of the Solicitation Amendment to their proposal. If submitting the proposal using ProcureAZ, the Offeror should follow the instructions provided in the Uniform Instructions.

2. SOLICITATION SUBMISSION GUIDELINES

2.1 Solicitation Response

An Offeror responding to this solicitation may do so in ProcureAZ located at <https://procure.az.gov> or by delivering/mailling your proposal to:

Office of the Arizona Attorney General
 1275 West Washington Street
 Phoenix, AZ 85007
 Attention: Jerry Connolly
 Solicitation #AAGO13-00003156

Offeror is expected to only use one method of submitting a proposal. If you have questions please contact Jerry Connolly at 602-542-8030 or jerry.connolly@azag.gov.

2.2 Late Proposals

All proposals must be received by the Solicitation due date and time specified. Any response received after the Solicitation due date and time specified will not be considered. Proposals are to be delivered to the Issuing Office, as indicated on the front page of this solicitation, and clearly designated as a Proposal for this specific Solicitation. Proposals delivered to any other location will not be considered "received" until they arrive at the location specified on the cover page. AGO will not waive delay in delivery resulting from need to transport a proposal from another location, or error or delay on the part of the carrier.

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2.3 Mailing of Proposals

Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Issuing Office. Proposals arriving after the due date and time will not be considered.

2.4 Proposals delivered in ProcureAZ

Offerors should download from and use Attachment I in ProcureAZ located at <https://procure.az.gov> to prepare their proposal. Once their proposal is complete Offeror should attach their proposal in ProcureAZ. Proposal must be submitted before the Solicitation opening date and time.

3. FAMILIARIZATION WITH SCOPE OF WORK

The Offeror should carefully review the requirements of the Solicitation and familiarize itself with the Scope of Work, laws, regulations and other factors so to satisfy itself as to the expense and difficulties of the work to be performed. The signing of the Offer and Contract Award form will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than provided by the Contract, for lack of such familiarization.

4. COMPONENTS OF A COMPLETE PROPOSAL

4.1 Offer Submittal:

4.1.1 Submittal via ProcureAZ

Offerors submitting their proposal via ProcureAZ should complete their proposal, sign the Offer and Acceptance form, scan the complete proposal and attach it into ProcureAZ.

OR

17.1.2 Submittal via Mail, Delivery Service or Delivered

Offerors delivering or mailing proposals should submit their Offer as **One (1) original unbound set; three (3) bound copies**. The original copy of the proposal should be clearly labeled "**ORIGINAL**". The material should contain a table of contents, be in the sequence listed in section 18 below, and be related to the Request for Proposal. The State will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP.

4.2 Conformance to the RFP

The Offeror should use the provided forms and formats or forms and formats substantially similar. Failure to include the requested information, providing incomplete information or adding irrelevant information may result in lower evaluation scores and may have a negative impact on the evaluation of the Offeror's proposal.

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5. PROPOSAL FORMAT

The following information should be submitted with each proposal and in this order. This format provides a layout for the proposal and pricing sections. Failure to include all of the requested information may result in a proposal being rejected.

5.1 Offer and Contract Award Form

Offeror should complete the top half of the Offer and Acceptance Form (see Offeror Response Form at Attachment I) and should include the signature of a person authorized to bind the Offeror.

5.2 Solicitation Amendments

Offeror should acknowledge receipt of Solicitations Amendments by including signed copies of all Solicitation Amendments.

5.3 Exceptions to the RFP

An Offeror who takes exception to any portion of the Solicitation must do so pursuant to the Uniform Instructions to Offeror and must include the exceptions in a separate section in the proposal titled "Exceptions". Exceptions to the terms and conditions should provide sufficient justification to detail the reason the exception is advantageous to the State of Arizona.

5.4 Confidential Information

If an Offeror believes that information in its Offer should remain confidential, the Offeror shall designate a special section labeled "Confidential Information" and include any information the Offeror indicates as confidential along with a statement detailing the reasons that the information should not be disclosed. Such request for confidentiality shall be handled in accordance with the Uniform Instructions to Offeror.

5.5 Suspension or Debarment Status

An Offeror who has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any Federal, State or local government shall include a letter with its proposal setting forth the disclosures and explanations required by the Uniform Instructions to Offerors.

5.6 Insurance

The Offeror should provide a Certificate of Insurance or a letter from the Offeror's Insurance Provider demonstrating the Offeror is able to provide insurance in accordance with the Special Terms and Conditions Section of this RFP.

5.7 Similar Cases

The Offeror should provide a brief description of at least 3 cases, similar to a project of this nature, that the firm has worked on (see Offeror Response Form at Attachment I).



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5.8 Executive Summary of Firm's Qualification

The Offeror should provide an executive summary of the firm's unique qualifications for this case (see Offeror Response Form at Attachment I).

5.9 References

The Offeror should provide a list of three references where the services provided were similar to those described in this RFP (see Offeror Response Form at Attachment I).

5.10 Key Personnel Resumes

The Offeror should provide resumes of the Key Personnel who would work on this case (see Offeror Response Form at Attachment I).

5.11 Method of Approach

The Offeror should provide a brief description of its proposed approach to this case and provide answers to the Method of Approach questions identified in the Offeror Response Form at Attachment I.

6. REGISTERING IN PROCUREAZ

The Offeror should register in ProcureAZ. This is the State of Arizona Electronic Procurement System. Registering makes payment of any invoice easier and provides the Offeror an opportunity for notice of any future solicitation. The address for ProcureAZ is <https://procure.az.gov>. The Help desk for ProcureAZ can be reached at 602-542-7600 or procure@azdoa.gov.

7. PROPOSAL OPENING

Proposals shall be opened at the Solicitation Due Date and Time cited on the cover page of the Solicitation. The name of each Offeror shall be publicly read and recorded in the presence of at least one witness. Prices shall not be read.

8. OFFER AND ACCEPTANCE PERIOD

In order to allow for an adequate evaluation, AGO requires an Offer in response to this Solicitation to be valid and irrevocable for 120 days after the opening due date.

9. EVALUATION CRITERIA

Awards shall be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation criteria are listed in relative order of importance.

22.1 Capacity of the firm;

22.2 Experience and expertise of the firm and of key personnel;

22.3 Method of Approach;

22.4 Cost.

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10. DISCUSSIONS

After the initial receipt and evaluation of proposals, the AGO may conduct discussions with Offerors whose proposals are deemed to be reasonably susceptible to award. Notwithstanding this section, proposals should be submitted initially complete and on most favorable terms. In the event discussions are conducted, the AGO shall issue a written request for Best and Final Offers.

11. BEST AND FINAL OFFER

The request for Best and Final Offer shall inform Offerors that if they do not submit a Best and Final Offer or a notice of withdrawal, their immediate previous Offer will be considered as their Best and Final Offer. The Offeror's "immediate previous Offer" will consist of the Offeror's original proposal submission and any documents submitted by the Offeror during discussions.

12. DEFINITIONS OF KEY WORDS USED IN THE RFP

12.1 AGO, Attorney General's Office, Office of the Attorney General

Office of the Attorney General, Attorney General's Office or AGO shall all refer to the Arizona Office of the Attorney General.

12.2 Co-Counsel

Co-Counsel shall refer to a firm or firms that separately contract with Counsel to provide services related to this agreement.

12.3 Counsel, Contractor

Counselor or Contractor shall refer to the firm or firms awarded a contract by the AGO through this Request for Proposal (RFP) process.

12.4 Deliverable

Deliverable shall refer to any report or other work product produced by Counsel for the AGO.

12.5 Documents

Documents shall include all correspondence, evaluations, depositions, interrogatories, reports, pleadings, memoranda, briefs, information and any other similar documents or material prepared or used in connection with Services in the pursuit of this matter.

12.6 May

May indicates something that is not mandatory but permissible.



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12.7 Shall, Must

Shall or must indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.

12.8 Should, Will

Should or will indicates something that is recommended but not mandatory.

25.8 Subcontractor

Subcontractor means a person or firm that separately contracts with Counsel to provide materials or services required for the performance of this contract.



ADDENDUM I

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**Standard Contract Addendum for All Office of the Arizona Attorney General Contingency Fee Contracts
As Per A.R.S. §41-4803**

(This addendum is added as a part of this contract in accordance with A.R.S. §41-4803. These requirements are minimum and may be superseded by other statutory requirements listed within this agreement.)

A. This state may not enter into a contingency fee contract that provides for this state's private attorney to receive a contingency fee from this state's portion of the recovery in excess of an aggregate of all of the following:

1. Twenty-five per cent of the initial recovery of less than ten million dollars.
2. Twenty per cent of that portion of any recovery of ten million dollars or more but less than fifteen million dollars.
3. Fifteen per cent of that portion of any recovery of fifteen million dollars or more but less than twenty million dollars.
4. Ten per cent of that portion of any recovery of twenty million dollars or more but less than twenty-five million dollars.
5. Five per cent of any recovery of twenty-five million dollars or more.

B. The contingency fee received by this state's private attorney shall not exceed fifty million dollars, except for reasonable costs and expenses and regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

C. The state shall not enter into a contract for contingency fee attorney services unless the following requirements are met throughout the contract period and any extensions of the contract:

1. A government attorney retains ultimate control over the course and conduct of the case.
2. A government attorney with supervisory authority is personally involved in overseeing the litigation.
3. A government attorney retains veto power over any decisions made by the private attorney.
4. Any defendant's attorney that is the subject of the litigation may contact the lead government attorney directly without having to confer with the private attorney.
5. A government attorney with supervisory authority for the case attends all settlement conferences. For the purposes of this paragraph, "attends" includes attendance by phone, teleconferencing or similar electronic devices.
6. Decisions regarding settlement of the case may not be delegated to this state's private attorney.

D. The attorney general shall develop a standard addendum to every contract for contingent fee attorney services that the attorney general must use in all cases, describing in detail what is expected of both the contracted private attorney and this state, including the requirements prescribed in subsection C.

E. The attorney general shall post copies of any executed contingency fee contract and the attorney general's written determination to enter into a contingency fee contract with the private attorney on the attorney general's website for public inspection within five business days after the date the contract is executed, which shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments of the contract, unless the attorney general determines that the posting may cause damage to the reputation of any business or person. Notwithstanding the requirements of this subsection, posting on the website shall be made no later than when a lawsuit is filed. The attorney general shall post any payment of contingency fees on the attorney

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general's website within fifteen days after the payment of the contingency fees to the private attorney, which shall remain posted on the website for at least three hundred sixty-five days thereafter.

F. Any private attorney under contract to provide services to this state on a contingency fee basis, from the inception of the contract until at least four years after the contract expires or is terminated, shall maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices and other financial transactions that concern the provision of the attorney services. The private attorney shall make all the records available for inspection and copying on request pursuant to title 39, chapter 1, article 2. The private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one tenth of one hour and shall promptly provide these records to the attorney general on request.

G. This chapter does not apply to any contingent fee contract in which this state hires a private attorney to pursue debt collection and restitution cases for this state.



EXHIBIT I

State of Arizona Uniform Instructions to Offerors

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UNIFORM INSTRUCTIONS TO OFFERORS

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

1. "*Attachment*" means any item the Solicitation requires an Offeror to submit as part of the Offer.
2. "*Best and Final Offer*" means a revision to an Offer submitted after negotiations are completed that contains the Offeror's most favorable terms for price, service, and products to be delivered. Sometimes referred to as a Final Proposal Revision.
3. "*Contract*" means the combination of the Solicitation, including the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer, any Clarifications, and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
4. "*Contract Amendment*" means a written document signed by the Procurement Officer issued for the purpose of making changes in the Contract.
5. "*Contractor*" means any person who has a Contract with a state governmental unit.
6. "*Day*" means calendar days unless otherwise specified.
7. "*eProcurement (Electronic Procurement)*" means conducting all or some of the procurement function over the Internet. Point, click, buy and ship Internet technology is replacing paper-based procurement and supply management business processes. Elements of eProcurement also include Invitation for Bids, Request for Proposals, and Request for Quotations.
8. "*Exhibit*" means any document or object labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
9. "*Offer*" means a response to a solicitation.
10. "*Offeror*" means a person who responds to a Solicitation.
11. "*Person*" means any corporation, business, individual, union, committee, club, or other organization or group of individuals.
12. "*Procurement Officer*" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
13. "*Solicitation*" means an Invitation for Bids ("IFB"), a Request for Technical Offers, a Request for Proposals ("RFP"), a Request for Quotations ("RFQ"), or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
14. "*Solicitation Amendment*" means a change to the Solicitation issued by the Procurement Officer.
15. "*Subcontract*" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
16. "*State*" means the State of Arizona and Department or Agency of the State that executes the Contract.



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B. Inquiries

1. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.
2. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Procurement Officer.
3. Submission of Inquiries. All inquiries related to the Solicitation are required to be submitted in the State's eProcurement system. All responses to inquiries will be answered in the State's eProcurement system. Any inquiry related to the Solicitation should reference the appropriate Solicitation page and paragraph number. Offerors are prohibited from contacting any State employee other than the Procurement Officer concerning the procurement while the solicitation and evaluation are in process.
4. Timeliness. Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
5. No Right to Rely on Verbal or Electronic Mail Responses. An Offeror shall not rely on verbal or electronic mail responses to inquiries. A verbal or electronic mail reply to an inquiry does not constitute a modification of the solicitation.
6. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
7. Pre-Offer Conference. If a pre-Offer conference has been scheduled under the Solicitation, the date, time and location shall appear in the State's eProcurement system. Offerors should raise any questions about the Solicitation at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a Solicitation Amendment.
8. Persons With Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer. Requests shall be made as early as possible to allow time to arrange the accommodation.

C. Offer Preparation

1. Electronic Documents. The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission to the State's eProcurement system. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. Offerors' electronic files shall be submitted in a format acceptable to the State. Acceptable formats include .doc and .docx (Microsoft Word), .xls and .xlsx (Microsoft Excel), .ppt and .pptx (Microsoft PowerPoint) and .pdf (Adobe Acrobat). Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.
2. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer in the State's eProcurement system and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as a signature, shall result in rejection of the Offer.



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3. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in the State's eProcurement system in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
 - 3.1. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
 - 3.2. Request for Proposals. All exceptions that are contained in the Offer may negatively impact an Offeror's susceptibility for award. An offer that takes exception to any material requirement of the solicitation may be rejected.
4. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
5. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
6. Federal Excise Tax. The State is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
7. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.
 - 7.1 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. §6041A.
8. Identification of Taxes in Offer. The State is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the Solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.
9. Disclosure. If the person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall set forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
10. Federal Immigration and Nationality Act. By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion, require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have five days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the Offer not being considered for contract award.



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11. Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the Offer.

D. Submission of Offer

1. Offer Submission, Due Date and Time. Offerors responding to a Solicitation must submit the Offer electronically through the State's eProcurement system. Offers shall be received before the due date and time stated in the solicitation. Offers submitted outside of the State's eProcurement system or those that are received after the due date and time shall be rejected.
2. Offer and Acceptance. Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted in the State's eProcurement system with the Offer no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.
3. Solicitation Amendments. A Solicitation Amendment shall be acknowledged in the State's eProcurement system no later than the Offer due date and time. Failure to acknowledge a Solicitation Amendment may result in rejection of the Offer.
4. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
5. Confidential Information. If an Offeror believes that any portion of an Offer, protest, or correspondence contains a trade secret or other proprietary information, the Offeror shall clearly designate the trade secret and other proprietary information, using the term "confidential." An Offeror shall provide a statement detailing the reasons why the information should not be disclosed including the specific harm or prejudice that may arise upon disclosure. The Procurement Officer shall review all requests for confidentiality and provide a written determination. Until a written determination is made, a Procurement Officer shall not disclose information designated as confidential except to those individuals deemed to have a legitimate State interest. In the event the Procurement Officer denies the request for confidentiality, the Offeror may appeal the determination to the State Procurement Administrator within the time specified in the written determination. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information.
6. Public Record. All Offers submitted and opened are public records and must be retained by the State for six years. Offers shall be open and available to public inspection through the State's eProcurement system after Contract award, except for such Offers deemed to be confidential by the State.
7. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or other official contract form, the Offeror certifies that:
 - 7.1. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
 - 7.2. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

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E. Evaluation

1. Taxes. If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the Offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.
2. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
3. Disqualifications. An Offeror (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.
4. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred twenty (120) days from the Best and Final Offer due date.
5. Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:
 - 5.1 Waive any minor informality;
 - 5.2 Reject any and all Offers or portions thereof; or
 - 5.3 Cancel the Solicitation.

F. Award

1. Number of Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State.
2. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
3. Effective Date. The effective date of the Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

G. Protests

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the Procurement Officer makes the procurement file available for public inspection. A protest shall include:

1. The name, address, email address and telephone number of the interested party;
2. The signature of the interested party or its representative;

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3. Identification of the purchasing agency and the Solicitation or Contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

H. Comments Welcome

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.



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UNIFORM TERMS AND CONDITIONS Version 9

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

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

2. Contract Interpretation

- 2.1. Arizona Law. Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.



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

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. §35-214 and §35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to A.R.S. §35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.



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- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements. In accordance with A.R.S. §41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. §23-214, Subsection A.



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- 3.11 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Applicable Taxes.

- 4.1.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.1.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.1.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.1.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

- 4.2. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

- 4.3. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason or these goods or services are not otherwise funded, the State may take any of the following actions:

- 4.3.1. Accept a decrease in price offered by the contractor;
- 4.3.2. Cancel the Contract; or
- 4.3.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Procurement Officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments, shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.



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- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractors' proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Indemnification

6.1.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions, shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions, shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.1.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorneys' fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

6.2. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. §41-621 and §35-154, this section shall not apply.

6.3. Force Majeure.

6.3.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions- intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.3.2. Force Majeure shall not include the following occurrences:

6.3.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;



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

7. Warranties

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



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7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. §12-510, except as provided in A.R.S. §12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. **State's Contractual Remedies**

- 8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Stop Work Order.
- 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.



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9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. §38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. §38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

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

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.



ATTACHMENT I

Offeror Response Form

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1. Questionnaire

This section requests information about the Counsel. Please follow the format outlined in this section when responding. Do not provide a standard boilerplate for this information or make reference to a brochure or report as part of your response.

A. LARSON O'BRIEN, LLP:

1. Business Name, Address and Primary Phone Number: Larson O'Brien LLP 555 South Flower Street, Suite 4400 Los Angeles, CA 90071	2. Submittal is for: <input checked="" type="checkbox"/> Parent Company <input type="checkbox"/> Branch or Subsidiary Office <input type="checkbox"/> Individual Counsel	3. Year Submitting Entity was Established: 2016					
	4. Name of Parent Company, if any:	5. Year Parent Company Established:					
6. Is this a U.S. Corporation? If not provide the Country. U.S. LLP	7. State of Incorporation, If U.S. Corporation. CA	8. Location of Corporate Headquarters Los Angeles, CA					
9. Names of not more than two Principals to contact:							
	Name	Title	Telephone Number	Fax Number			
a.	Stephen G. Larson	Partner	909-436-4868				
		E-Mail Address:	slarson@larsonobrienlaw.com				
b.	Robert C. O'Brien	Partner	909-436-4865				
		E-Mail Address:	robrien@larsonobrienlaw.com				
10. Number of Personnel by Discipline: (Count each person only once, by primary function)							
8	Attorneys	2	Principals	1	Paralegals	1	Documentation Staff
1	Administrative Staff	N/A	Other, Specify: [Description]				
11. Business Focus, by Profile, or Firm's Relevant Project Experience							
	Profile of Business Focus	Percentage of Revenue		Profile of Business Focus	Percentage of Revenue		
a.	Complex Civil Litigation	50%	d.	Complex Domestic and International Arbitration	20%		
b.	White Collar Investigation and Litigation	20%	e.				
c.	Appeals	10%	f.				



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B. McCUNEWRIGHT, LLP:

1. Business Name, Address and Primary Phone Number: McCuneWright, LLP 2068 Orange Tree Lane, Ste. 216 Redlands, CA 92374		2. Submittal is for: <input checked="" type="checkbox"/> Parent Company <input type="checkbox"/> Branch or Subsidiary Office <input type="checkbox"/> Individual Counsel		3. Year Submitting Entity was Established: 2007			
		4. Name of Parent Company, if any:		5. Year Parent Company Established:			
6. Is this a U.S. Corporation? If not provide the Country. U.S. LLP		7. State of Incorporation, if U.S. Corporation. CA		8. Location of Corporate Headquarters Redlands, CA			
9. Names of not more than two Principals to contact:							
	Name	Title	Telephone Number	Fax Number			
a.	Richard D. McCune	Partner	909-557-1260	909-557-1275			
		E-Mail Address:	rdm@mccunewright.com				
b.	David C. Wright	Partner	909-557-1270	909-557-1275			
		E-Mail Address:	dcw@mccunewright.com				
10. Number of Personnel by Discipline: (Count each person only once, by primary function)							
9	Attorneys	2	Principals	3	Paralegals	3	Documentation Staff
2	Administrative Staff	N/A	Other, Specify: [Description]				
11. Business Focus, by Profile, or Firm's Relevant Project Experience							
	Profile of Business Focus	Percentage of Revenue		Profile of Business Focus	Percentage of Revenue		
a.	Antitrust	0%	d.	Securities/Individual Civil Litigation	15%		
b.	Drug/Pharmaceuticals	10%	e.				
c.	Consumer Protection	75%	f.				



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- 2. Qualifications and Experience of your Organization.** Provide a brief description of at least 3 cases (additional relevant cases may be provided), similar to a project of this nature, that your firm has worked on. Include the role of your firm.

A. LARSON O'BRIEN, LLP:

Stephen G. Larson served as United States Magistrate Judge and a United States District Court Judge for the Central District of California. During that time, Mr. Larson also served by designation on the Ninth Circuit Court of Appeals on seven occasions. Prior to that, Mr. Larson served as Chief of the Los Angeles Organized Crime Strike Force as an Assistant United States Attorney for the Central District of California

Mr. Larson returned to private practice in 2009, first at Girardi & Keese LLP and, for the past four years, at the national law firm of Arent Fox LLP, where Mr. Larson was chair of the firm's national litigation practice and a member of the Executive Committee.

Mr. Larson has a unique perspective on complex cases of this size, having heard them as a federal judge and tried them in private practice. As a judge, Mr. Larson presided over cases such as *United States v. Nazario*, a landmark Military Extraterritoriality Jurisdiction Act case involving U.S. Marines accused of manslaughter during the Battle of Fallujah in Iraq, and *United States v. Duro*, involving the U.S. Bureau of Indian Affairs' decade long effort to close down and expel a major migrant worker camp on the Torres Martinez Indian Reservation in the Coachella Valley. Mr. Larson also negotiated, approved, and supervised the consent decree entered into by the County of San Bernardino in *John Doe v. County of San Bernardino*, which resulted in systematic reform of educational and therapeutic services for disabled youths within the county juvenile hall system. Mr. Larson also presided over high-profile and complex civil trials including the determination of the ownership of the copyrights to the iconic comic strip *Superman* in *Siegel v. Warner Bros. Entertainment, Inc.* and a three-month trial in *Mattel, Inc. v. MGA Entertainment, et. al.*

In private practice, Mr. Larson has assisted in litigating several complex class action litigations, including *In Re: Fresh and Process Potatoes Antitrust Litigation*, 4:10-md-02186-BLW-CWD (D. Idaho) presided over by the Honorable B. Lynn Winmill; *O'Bannon, Jr. v. National Collegiate Athletic Association*, Case No. 4:09-cv-03329-CW (N.D. Cal.) presided over by the Honorable Claudia Wilken; *In re Optical Disk Drive Products Antitrust Litigation*, Case No. 3:10-md-2143 RS (N.D. Cal.) presided over by the Honorable Richard Seeborg; and *In Re TFT-LCD (Flat Panel) Antitrust Litigation*, Case No. 3:07-MD-1827 SI (N.D. Cal.), presided over by the Honorable Susan Illston.



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In his nearly 25-year career, Robert C. O'Brien has tried numerous cases to verdict in state and federal courts in both jury and bench trials as well as in domestic and international arbitral proceedings. In addition, he has been appointed as an arbitrator in over 25 domestic and international arbitrations. Mr. O'Brien has been a federal court-appointed discovery master in several of the largest recent cases in the Central District of California, including *MGA v. Mattel* ("Barbie v. Bratz") and *United States v. Standard & Poors*. He has been named one of the top 100 lawyers in California by the Daily Journal. Mr. O'Brien was one of the founding partners of Arent Fox's Los Angeles office, where he served as California Managing Partner from its inception until his departure earlier this month.

In January 2016, Mr. Larson and Mr. O'Brien, left Arent Fox LLP with several attorneys to form the law firm Larson O'Brien LLP. Larson O'Brien is a boutique litigation firm in Los Angeles specializing in complex civil litigation, white collar investigation and defense, international arbitration, and high-stakes appeals.

This case is uniquely within Larson O'Brien's core competencies. Larson O'Brien and its attorneys are highly-skilled litigators, well-versed in complex litigation of every kind. Larson O'Brien is also well-equipped to handle internal and external investigations. Mr. Larson and Mr. O'Brien have overseen many such investigations over the course of their careers, and Larson O'Brien employs two former Assistant U.S. Attorneys with formidable experience in this area in their own right. Given Volkswagen's German domicile, Larson O'Brien's experience in international matters is notable. As Chief of the Los Angeles Organized Crime Strike Force, Mr. Larson worked with foreign law enforcement agencies conducting joint training exercises and investigations in Russia, Kazakhstan, Estonia, Latvia, Poland, the Ukraine, and South Korea. Both Mr. Larson and Mr. O'Brien were founders of the U.S. Department of State's Public-Private Partnership for Justice Reform in Afghanistan, conducting training for Afghan judges, prosecutors, and defense lawyers in the United States and Afghanistan. Both Mr. Larson and Mr. O'Brien have represented many international clients, and are familiar with the challenges of international litigation. Mr. O'Brien has particular familiarity to the German legal system, having worked closely with a German law firm for several years in international matters.



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B. McCUNEWRIGHT, LLP:

1. *In re: Hyundai and Kia Fuel Economy Litigation*, MDL 2424, Case No.: 2:13-ml-2424.

In January 2012, McCuneWright, LLP filed a class action against Hyundai on behalf of Hyundai Elantra purchases, who had been promised by the Monroney sticker and in disclosures that the Elantra obtained 40 MPG during highway driving. The case was *Espinosa v. Hyundai* filed in the Central District of California, ML-13-02424-GW (FFMx). From January 2012 through October 2012, McCuneWright actively litigated the case including overcoming a motion to dismiss, conducting discovery, reviewing and coding a large document production, and working with both a MPG/emissions control testing expert, marketing expert and an economist with specialized experience on the effect of MPG to the value of the vehicle. The emission control expert performed emission and MPG testing on the class representative vehicle demonstrating a significantly lower MPG than was advertised. The marketing expert established that the MGP was important to the class members. The economist established that inflated MPG resulted in an inflated purchase/lease price of the class member vehicles.

A class certification motion was then filed, and shortly after that filing (November 2, 2012), Hyundai came forward and publicly announced that there had been an "error" in the miles-per-gallon calculations for the Elantra and other models, and provided a restated and lower MPG for the vehicles.

Thereafter, dozens of lawsuits were filed against Hyundai and Kia building on the work performed by McCuneWright. Following the filing, a MDL was formed and the case was assigned to Judge George Wu in the Central District of California, who had overseen the work by McCuneWright in *Espinosa v. Hyundai*. McCuneWright was co-lead counsel, and Richard McCune took the lead in deposing the top executives of Hyundai and Kia, including the President of Hyundai of America, and flew to Seoul, South Korea and took the lead in deposing the engineers who had made in the "error" resulting in the inflated MPG. Following those depositions and further document review, Hyundai and Kia settled the case. McCuneWright was co-lead and class counsel in the case at all times. The settlement value was over \$400 million.



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2. , *In re: Ford Fusion and C-Max Fuel Economy Litigation*, MDL No. 2450, Case No.: SACV-12-02232-DOC(JPRx)

In January 2013, McCuneWright, LLP filed the first class action against Ford Motor Company on behalf of C-Max purchasers, who had been promised on the Monroney sticker and advertising material that the C-Max obtained 47 miles-per-gallon in highway and city driving and were receiving significantly less MPG in real-world driving. The case was filed in the Eastern District of California, Case No.: 12-02973 KJM (DAD).

In August, 2013 Ford announced that the MPG was indeed inflated and reduced the MGP for the C-Max and Fusion models. Thereafter, there were a number of lawsuits filed. McCuneWright is on the leadership of this active MDL case formed as a result of the multiple filings. McCuneWright has been intimately involved in all aspects of the case, including drafting the consolidated complaint, overcoming the motion to dismiss, reviewing thousands of documents, and vetting, retaining and working with the same experts as it had worked with in the *Espinosa* litigation. For each of those tasks, McCuneWright has been either lead or co-lead on the project.

This case is ongoing, and McCuneWright will be in the leadership in working with the emission testing by the expert. It will also be involved in working with the same marketing expert and economist related to the diminished value of the vehicles. McCuneWright will also be a leading firm in the discovery, document review and coding, class certification, expert discovery and trial/settlement.



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3. *Boren v. Correct Craft*, Case No. 07AS01600

Richard McCune began representing victims of carbon monoxide behind ski boats in 2000. In five wrongful death cases, he engaged experts in the issue of emissions of motor vehicle engines and the effect of those emissions on humans. That work resulted in the settlement of a number of cases.

However, the boat companies, including industry leader Correct Craft, continued to sell boats that emitted high levels of carbon monoxide that placed occupants in danger zones for exposure of carbon monoxide. As a result, in 2006, McCuneWright filed a class action against Correct Craft in the County of Sacramento, State of California, in a case entitled *Boren v. Correct Craft*, Case No. 07AS01600. That case involved significant emissions testing and expert testimony on the effect of emission to the atmosphere and to humans. The case went to trial in 2011 and McCuneWright obtained a Plaintiff verdict that has resulted in full compensation to the class, a change of practice from both Correct Craft and the industry as a whole.



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3. Executive Summary of Firm's Qualification.

A. LARSON O'BRIEN, LLP:

Larson O'Brien, led by two of the most prominent trial lawyers in California, represents business, public entity and individual plaintiffs and defendants in complex litigation matters in federal and state court, including antitrust, environmental and water rights, oil and gas, intellectual property, entertainment, breach of contract and business torts, civil rights, and class actions. The firm's principals, Mr. Larson and Mr. O'Brien, have a combined 50 years of litigation experience, have tried over 60 cases before federal and state juries and judges, and many more before administrative tribunals and both domestic and international arbitration panels. Clients include leading corporations, such as Chevron, Walt Disney, 21st Century Fox and F. Korbel & Bros; significant public entities, such as the Los Angeles County Employee Retirement Association, the Orange County Water District and Riverside County; prominent individuals and public officials.



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B. McCUNEWRIGHT, LLP:

McCuneWright, LLP, is a California headquartered trial law firm with a long-standing practice in representing individual and class plaintiffs in auto product fraud and defect litigation throughout the United States. It has been involved in important class action and individual cases against most of the major automobile manufacturers. Its team is led by Richard D. McCune, an AV rated attorney who has concentrated his practice for the last twenty years in auto product liability and David Wright, a former Assistant United States Attorney in the Major Crimes Section of the United States Attorney's Office for the Central District of California who has concentrated his practice in auto product defect litigation for the last fifteen years. McCuneWright has prosecuted automobile class action cases against Volkswagen, Ford, General Motors, Hyundai, Kia, Mazda, BMW, Honda, Subaru, and Toyota. In individual catastrophic injury or wrongful death automobile product liability cases, over the last twenty years McCuneWright's attorneys have litigated dozens of cases against most of the major of automobile manufacturers.

McCuneWright has special experience in forcing regulatory changes, industry changes, and victim compensation in emissions and miles-per-gallon vehicle cases. It changed the emissions practices in the ski boat industry when it brought a series of individual and class action cases against the ski boat industry in response to a large number of deaths from carbon monoxide poisoning associated with the use of ski boats. As a direct result of that litigation, and work with the regulators, new legislation was enacted and the ski boat industry was forced to install catalytic converters on all new ski boats. McCuneWright was also able to force manufacturers to compensate the families who lost children behind their ski boats.

McCuneWright also led the litigation that forced first Hyundai Motors of America, and then Ford Motor Company, to admit that they cheated on the EPA miles-per-gallon testing of their vehicles used on the Monroney sticker and in advertisements to market their vehicles. That litigation, especially the litigation with Hyundai Motors of America litigation, provided McCuneWright with the background and experience to understand the technical issues involved in the VW fraud case.

The Courts have recognized McCuneWright's role in this high profile and important litigation. McCuneWright has been appointed in leadership positions in high profile multi district litigation cases by Judge James V. Selna in MDL No. 2151, *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*; by Judge George H. Wu in MDL No. 2424, *In re: Hyundai and Kia Fuel Economy Litigation*; Judge Kenneth M. Karas in MDL No. 2450, *In re: Ford Fusion and C-Max Fuel Economy Litigation*; and by Judge Bruce Howe Hendricks in MDL 2613 - *In re: TD Bank Debit Card Overdraft Fee Litigation*.

More generally, McCuneWright's partners have been appointed as class counsel in numerous state and federal class actions, including serving as class counsel and co-trial counsel in a \$203 million dollar trial verdict that also provided injunctive relief on behalf of a class of Wells Fargo Bank, N.A., customers in 2010, and serving as trial class counsel in a consumer class action case that resulted in a Plaintiffs' verdict on behalf of a class of California Correct Craft, Inc., boat owners in 2011. McCuneWright has been appointed by both state and Federal courts as class counsel in certified class actions in a number of other consumer fraud class actions.



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McCuneWright has experience is handling large document intensive class actions. It has the personnel and systems background to handle the management of massive document production. For example, it is co-lead counsel in MDL 2613 - *In re: TD Bank Debit Card Overdraft Fee Litigation* in which over one million documents have been produced and are being reviewed and coded. It has in place experienced and vetted contract counsel to assist in document review and coding in significant productions. In addition, in connection with document production of foreign national automobile manufacturers, McCuneWright has experience with the unique requirements of obtaining document production in foreign countries.



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4. References

A. LARSON O'BRIEN, LLP:

Name	Title	Address	Telephone	Email
The Honorable David Carter	District Court Judge	United States District Court 411 West Fourth Street Santa Ana, CA 92701	(949) 683-2644	dcarter799@aol.com
Wylie Aitken	Partner	Aitken, Aitken & Cohn 3 MacArthur Place, Suite 800, P.O. Box 2555 Santa Ana, CA 92707	(714) 434-1424	wylie@aitkenlaw.com
Joseph Allerhand	Partner	Weil, Gotschal & Manges LLP 767 Fifth Avenue, New York, NY 10153-0119	(212) 310-8725	joseph.allerhand@weil.com
Joseph Alioto	Partner	Alioto Law Firm One Sansome Street, 35th Floor San Francisco, CA 94104	(415) 434-8900	josephalioto@mac.com
Thor Hearne	Partner	Arent Fox LLP 1050 Connecticut Avenue, NW Washington, DC 20036-5339	(202) 828-3447	thor@arentfox.com
Matthew Hess	Partner	Hess Lawyers 1801 Century Park E, 24th Floor Los Angeles, CA 90067	(310) 751-7544	matthew.hess@hesslawyers.com
Alan Jackson	Partner	Werksman Jackson 888 West Sixth Street, Suite 400 Los Angeles, CA 90017	(213) 688-0460	ajackson@werksmanjackson.com
George Newhouse	Partner	Dentons LLP 601 S. Figueroa Street Suite 2500 Los Angeles, CA 90017-5704	(213) 892-2846	george.newhouse@dentons.com
Scott Palmer	Partner	Palmer Lombardi & Donohue LLP	(213) 688-0430	spalmer@pldlawyers.com
Robert J. Prata	Partner	Prata & Daley 515 South Figueroa, Suite 1515 Los Angeles, CA 90071	(213) 622-9040	rprata@pratadaley.com



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B. McCUNEWRIGHT, LLP:

Judges

Judge Michael Sachs, Superior Court Judge, County of San Bernardino, State of California.

Judge Sharon J. Waters, Superior Court Judge, County of Riverside, State of California.

Judge George H Wu, District Court Judge, Central District of California.

Plaintiff Co-Counsel in Consumer Class Cases

Mitchell Breit,
Simmons Hanly Conroy
112 Madison Avenue
New York, NY 10016
212-784-6400,
mbreit@simmonsfirm.com.

Taras Kick
The Kick Law Firm
201 Wilshire Blvd, Ste. 350
Santa Monica, CA 90401
301-395-2988
Taras@Kicklawfirm.com

John Yanchunis
Morgan & Morgan
201 North Franklin Street, 7th Floor
Tampa, FL 33602
813-223-5505
jyanchunis@forthepeople.com

Defense Counsel in Consumer Class Cases

Stuart Richter
Katten Muchin Rosenman, LLP
2029 Century Park East, Suite 2600
Los Angeles, CA. 90067
310-788-4582
stuart.richter@kattenlaw.com

Ralph Robinson
Wilson Elser
525 Market Street, 17th Floor
San Francisco, CA. 94105
415-625-9400
ralph.robinson@wilsonelser.com



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Banking

Brent Coats

Pacific Western Bank

218 E. State Street

Redlands, CA. 92373

909-798-3611

bcoats@pacificwesternbank.com



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5. Key Personnel Resumes. Provide the names of the attorneys who would be principally responsible for conducting and coordinating this project. Include a description of their practice areas, a list of cases with appropriate citations, and any other litigation experience relevant to this project. Full resumes may be added as an attachment.

A. LARSON O'BRIEN, LLP:

1. Name of Individual Stephen G. Larson		2. Title Partner	
3. Area(s) of Expertise Complex litigation, white collar investigations, arbitrations, appeals		4. Proposed Project Role Co-lead counsel	
5. Education Georgetown University School of Foreign Services, B.S.F.S. 1986 University of Southern California Gould School of Law, J.D., 1989			
6. Employment History			
	Firm Name	Start Date	End Date
1.	Magistrate and District Court Judge of Central District of California		
2.	Girardi & Keese LLP		
3.	Arent Fox LLP		
7. Executive Summary describing this individual's suitability for a project of this nature. Include similar cases the individual was involved in and his/her role.			
See previous sections.			

1. Name of Individual Robert C. O'Brien		2. Title Partner	
3. Area(s) of Expertise Complex Civil Litigation, International Law, Appeals, Arbitrations		4. Proposed Project Role Co-Lead Counsel	
5. Education University of California, Los Angeles, B.A. University of California, Boalt Hall School of Law, J.D.			
6. Employment History			
	Firm Name	Start Date	End Date
1.	Skadden Arps Slate Meagher & Flom	1991	1996



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2.	United Nations Security Council (Compensation Committee)	1996	1998
3.	O'Brien Abeles LLP	1999	2007
4.	Arent Fox LLP	2007	2016
5.	Larson O'Brien LLP	2016	Present

7. Executive Summary describing this individual's suitability for a project of this nature. Include similar cases the individual was involved in and his/her role.

See sections above



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B. McCUNEWRIGHT, LLP:

1. Name of Individual Richard D. McCune, McCune Wright LLP	2. Title Partner																
3. Area(s) of Expertise Complex litigation, class actions, auto product liability and business fraud.	4. Proposed Project Role Co-lead counsel																
5. Education Loma Linda University, B.S., 1987 University of Southern California Gould School of Law, J.D., 1987																	
6. Employment History <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 60%;">Firm Name</th> <th style="width: 15%;">Start Date</th> <th style="width: 20%;">End Date</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Kinkle, Rodiger and Spriggs</td> <td style="text-align: center;">12/1/1987</td> <td style="text-align: center;">7/30/1990</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>Welebir & McCune</td> <td style="text-align: center;">8/1/1990</td> <td style="text-align: center;">6/30/2007</td> </tr> <tr> <td style="text-align: center;">3.</td> <td>McCuneWright, LLP</td> <td style="text-align: center;">7/1/2007</td> <td style="text-align: center;">Present</td> </tr> </tbody> </table>			Firm Name	Start Date	End Date	1.	Kinkle, Rodiger and Spriggs	12/1/1987	7/30/1990	2.	Welebir & McCune	8/1/1990	6/30/2007	3.	McCuneWright, LLP	7/1/2007	Present
	Firm Name	Start Date	End Date														
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2.	Welebir & McCune	8/1/1990	6/30/2007														
3.	McCuneWright, LLP	7/1/2007	Present														
7. Executive Summary describing this individual's suitability for a project of this nature. Include similar cases the individual was involved in and his/her role. Richard McCune has been lead or co-lead in each of the cases and projects identified in Section 2 and 3 to Attachment I																	

1. Name of Individual David C. Wright, McCune Wright LLP	2. Title Partner																								
3. Area(s) of Expertise Auto Product Liability.	4. Proposed Project Role Supervising Counsel																								
5. Education Atlantic Union College, B.S, 1991 Pepperdine School of Law, J.D. 1994																									
6. Employment History <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 60%;">Firm Name</th> <th style="width: 15%;">Start Date</th> <th style="width: 20%;">End Date</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Morrison & Foerster</td> <td style="text-align: center;">1995</td> <td style="text-align: center;">1997</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>Clerk for Judge Stephen S. Trott, Ninth Cir. Court of Appeals</td> <td style="text-align: center;">1994</td> <td style="text-align: center;">1995</td> </tr> <tr> <td style="text-align: center;">3.</td> <td>U.S. Attorney's Office – Central District of California</td> <td style="text-align: center;">1997</td> <td style="text-align: center;">2001</td> </tr> <tr> <td style="text-align: center;">4.</td> <td>Welebir & McCune, APLC</td> <td style="text-align: center;">2001</td> <td style="text-align: center;">2007</td> </tr> <tr> <td style="text-align: center;">5.</td> <td>McCuneWright, LLP</td> <td style="text-align: center;">2007</td> <td style="text-align: center;">Present</td> </tr> </tbody> </table>			Firm Name	Start Date	End Date	1.	Morrison & Foerster	1995	1997	2.	Clerk for Judge Stephen S. Trott, Ninth Cir. Court of Appeals	1994	1995	3.	U.S. Attorney's Office – Central District of California	1997	2001	4.	Welebir & McCune, APLC	2001	2007	5.	McCuneWright, LLP	2007	Present
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5.	McCuneWright, LLP	2007	Present																						



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7. Executive Summary describing this individual's suitability for a project of this nature. Include similar cases the individual was involved in and his/her role.

David Wright has been supervising attorney in each auto product liability case in, Section 2 and 3 to Attachment I



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6. Method of Approach. Provide the requested information and a brief description of your proposed approach to this case.

1. Designate the lead counsel and indicate that individual's availability to undertake the proposed litigation.

Stephen G. Larson of Larson O'Brien, LLP, and Richard D. McCune of McCune Wright LLP. Both are available to undertake this matter on behalf of the State of Arizona. Both counsel are personally available to devote whatever time is required to properly represent the State of Arizona. Both counsel would also be available to the Attorney General's Office for reports and in-person discussions whenever requested and required.

2. Name the Attorneys who will be principally responsible for this case.

Stephen G. Larson, Robert O'Brien and Steven Haskins of Larson O'Brien LLP; Richard D. McCune, David C. Wright, and Elaine S. Kusel of McCune Wright LLP.

3. Show the levels of support staff required for this project.

In addition to the Attorneys listed above, Larson O'Brien LLP and McCune Wright, LLP employ other attorneys, paralegals, and administrative support staff who will be used as needed. In addition to the attorneys listed above, the firms anticipate devoting a minimum of two full time staff to the representation. Should the representation require additional staff, both firms have additional staff that can be deployed for the representation. Should the work exceed the number of attorneys and staff employed by the firms, each firm is prepared and has in place contract relationships to handle whatever scale is necessary on coding and indexing documents by using established arrangements with experienced and skilled coders.

4. Develop an organizational chart along with a description of how you would staff this project. Include all resources required, both internal and external to your Office.

Stephen G. Larson and Richard D. McCune would jointly implement legal strategy developed in concert with the Attorney General's Office. Each would be responsible for case oversight, day-to-day litigation management, court appearances, liaising with the AGO, and settlement negotiations. Steven Haskins of Larson O'Brien and David C. Wright and Jae K. (Eddie) Kim of McCune Wright LLP would assist in the day-to-day aspects, including pleadings and discovery, and working with expert witnesses. Document review would be carried out by these lawyers, associates in the firms, and contract lawyers who have been vetted and utilized in other litigation.

5. Indicate the financial capacity of your firm to initiate and maintain to conclusion litigation of this size and scope.

Both firms have in place adequate cash reserves and supporting lines of credit, if necessary, to initiate and maintain the action to conclusion.

6. Identify and describe any type of matter, litigation and otherwise, in which firm is involved with against the State of Arizona or any of its agencies and a concise statement of how your firm proposes to resolve any conflicts of interest with the State of Arizona.

Neither Larson O'Brien LLP nor McCuneWright LLP are currently involved in any type of matter against the State of Arizona or any of its agencies.

7. Provide an outline of the litigation plan, with estimates of the amount of time projected for each stage of the litigation. The plan should address each task listed in the Scope of Work of this Request for Proposal.

- a. **Evaluation of Legality of Practices.** There is no question that the practices engaged in by the Defendants are illegal
- b. **Decision Process.** We would review Arizona-specific issues and then brief the AGO, make recommendations, and execute on the strategy decided by the AGO



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- c. **Pre-Litigation Activities.** We are monitoring, and will continue to monitor, the activities in the other litigation occurring against Volkswagen from other state agencies, the U.S. Department of Justice and private litigants. We would develop state-specific data on class vehicles, impact on the conduct on the brand for those vehicles owned by Arizona consumers, investigate and estimate the effect of the conduct on the dealerships' repair efforts and other ancillary harms caused by Volkswagen's conduct. This phase would occur after filing and is not a prerequisite to filing. As it stands, we have amassed ample evidence of consumer protection violations by Volkswagen.
- d. **Litigation, including all appeals.** The amount of time to be expended in this category is highly variable depending on the course of developments in the litigation.
- e. **Litigation Support.** See response to (3) above.
- f. **Post-Litigation Support.** Not applicable.

8. Indicate the potential remedies to be sought in the lawsuit.

All statutory penalties available to the State, restitution to the consumers, punitive damages, costs of suit and investigation, attorney's fees, and any other available remedies and relief based on the evidence. Primarily, this matter is about recovering and assessing the proper civil penalty for the multitude of violations that occurred during many years in the sale, leasing, and repair of cars that contained the emissions-related fraudulent software designed to mask the amount of noxious emissions emitted by Volkswagen's diesel engines.

9. Provide any additional information about your firm you feel we should consider to select a firm for this project.



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Contingency Fee Compensation

The contingency fee received by this state's private attorney shall not exceed fifty million dollars, except for reasonable costs and expenses and regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

Item #	Description	Percentage Offered ,
1	Not to exceed Twenty-five percent of the initial recovery of less than ten million dollars.	25%
2	Not to exceed Twenty percent of that portion of any recovery of ten million dollars or more but less than fifteen million dollars.	20%
3	Not to exceed Fifteen percent of that portion of any recovery of fifteen million dollars or more but less than twenty million dollars.	15%
4	Not to exceed Ten percent of that portion of any recovery of twenty million dollars or more but less than twenty-five million dollars.	10%
5	Not to exceed Five percent of any recovery of twenty-five million dollars or more.	5%



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Hourly Rate Schedule

While this is a contingency contract, the hourly rate schedule relevant to any prevailing party attorney fee petition is as follows.

Item	Description	Hourly Rate (Not to Exceed Rate)
1	Partner	\$750
2	Associate	\$500
3	Paralegal	\$225