
STATE OF ILLINOIS

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES



CONTRACT FOR PURCHASE OF SUPPLIES

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STATE OF ILLINOIS - DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

CONTRACT FOR PURCHASE OF SUPPLIES

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CONTRACT FOR PURCHASE OF SUPPLIES

CMS 12-30-2004

**STATE OF ILLINOIS – DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
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CONTRACT FOR PURCHASE OF SUPPLIES

The following pages, including any attachments or amendments, will constitute the binding and enforceable contract between the Agency/Buyer and the Vendor based upon any negotiations. The Contract is arranged as follows:

1. **DEFINITIONS**
2. **AGENCY/BUYER AND VENDOR CONTACT PAGE:** This section provides for the Agency/Buyer and Vendor to specify contact people for the Contract.
3. **SPECIFICATIONS (PURCHASE DESCRIPTION):** The Agency/Buyer will detail the specific requirements and needs for which the Contract is to address.
4. **CONTRACT PRICING:** This section will detail pricing requirements with at least the following categories of information: (1) Price or Rate, (2) Expenses, (3) Payment Terms and Conditions, (4) Discounts, (5) Tax Exemption.
5. **TERMS AND CONDITIONS:** This section contains the State's terms and conditions for this Contract.
6. **AGENCY/BUYER SUPPLEMENTAL TERMS AND CONDITIONS:** This section indicates whether or not any supplemental terms and conditions are attached and applicable to this Contract.
7. **STATE FORMS REQUIRED OF THE VENDOR:** This section includes all State Forms that are required to be included in the Contract.
8. **SIGNATURE PAGE: CONTRACT FOR SUPPLIES:** This section provides for the Agency/Buyer and Vendor to sign and execute the Contract.

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- 1.11 Order:** any written request from CMS or an Agency/Buyer for services and/or products and/or equipment pursuant to this Contract.
- 1.12 Parties:** the State of Illinois and the Vendor.
- 1.13 Performance Guarantee:** the Vendor's commitment to place some or all of its fee at risk contingent upon the Agency/Buyer's satisfaction with the work to be performed.
- 1.14 Qualified Products List:** an approved list of Supplies described by model or catalog numbers that the State has determined will meet the applicable specification requirements.
- 1.16 Specifications:** any description of the physical, functional, or performance characteristics, or of the nature of a supply or service. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply or service item for delivery. Unless the context provides otherwise, the terms "specification" and "purchase description" are used interchangeably.
- 1.17 State:** the State of Illinois, as represented through any agency, department, board, or commission.
- 1.18 Supplies:** the equipment, supplies, goods, or commodities defined as the subject matter of the Contract, and includes related transportation, installation, warranty, insurance, financing, or maintenance related to such supplies.
- 1.19 Third Party:** any entity other than the Agency/Buyer, Vendor(s), or any of their respective Affiliates.

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2. AGENCY/BUYER AND VENDOR CONTACT PAGE

System Evaluation & Analysis Group, Inc.

Department of Human Services

Name: Thomas H. Morris

Name: John Power

Title: President

Title: Procurement Manager

Date: February 18, 2005

Date: 01-12-05

Address: 925 S. Spring

Address: 100 S. Grand Ave. East

Springfield, IL

1st Floor

62704

Springfield, IL 62762

Phone: 217-523-1717

Phone: (217) 782-1433

TDD: _____

TDD: _____

Fax: 217-523-1791

Fax: (217) 557-3443

E-mail: tmorris@seagr.com

E-mail: dhsa904a@dhs.state.il.us

(fill out below fields if additional contact information is necessary)

Name: Michael Brida

Name: _____

Title: Cabling Manager

Title: _____

Date: February 18, 2005

Date: _____

Address: 925 S. Spring

Address: _____

Springfield, IL

62704

Phone: 217-523-1717

Phone: _____

TDD: _____

TDD: _____

Fax: 217-523-1791

Fax: _____

E-mail: mbrida@seagxp.com

E-mail: _____

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3. SPECIFICATIONS (PURCHASE DESCRIPTION)

- 3.1. Agency/Buyer's Needs For Supplies:** To upgrade and replace the current fiber, copper and switch infrastructure at the Illinois School for the Visually Impaired.
- 3.2. Agency/Buyer's Goals and Objectives:** Replacement and expansion of the Illinois School for Visually Impaired fiber, copper and switch infrastructure.
- 3.3. Supplies Required:** The Vendor shall furnish and deliver each of the following described items:

Item Description	Quantity	Unit Price	Total Price
Innerduct 1" Pyramid # GP100T #217241	2,000 feet	\$0.50	\$1,000.00
Innerduct 1 ½ " Pyramid #GP150T #217244	1,000 feet	\$0.74	\$740.00
Avaya – 5100-012A-WRBK Indoor/Outdoor Singlemode Fiber Optic –12 Strand #370538-WRBK-12	5,000 feet	\$1.17	\$5,850.00
Avaya – P6001B-Z-125 SC Singlemode Connector #266837	192	\$10.95	\$2102.40
Avaya – LST IU – 144/9 Fiber Termination Shelf #172178	1	\$349.94	\$349.94
Avaya – 2200 SC1-DPLX Panels for LST#194371	8	\$13.02	\$104.16
Avaya – 600 B2 Fiber Termination Shelf #179387	5	\$26.10	\$130.50
Avaya – 12SC1 – Duplex Coupler Panel for 600 B #178260	5	\$96.62	\$483.10
Avaya C6060A-4 SC Duplex SM Adapter #149482	78	\$8.58	\$669.24
Avaya – 200A – LIU Wall Mount Enclosure #128828	3	\$100.64	\$301.92
Avaya – 10PSC-SM 6 Port Panel for LIU #215408	6	\$41.14	\$246.84
Avaya – PPCWSCSC32-RP005 5' Duplex Jumper Cord #273366	10	\$34.83	\$348.30
Avaya – PPCWSCSC32-RF010 10' Duplex Jumper Cord #273368	10	\$36.48	\$364.80
Wiremold – V2003 Support Clip #232540	128 pkgs	\$7.96	\$1,018.88

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Wiremold – V2006 Cover Clip #232542	128 pkgs	\$6.34	\$811.52
Wiremold – V2001 Coupler #232541	32 pkgs	\$3.87	\$123.84
Wiremold – V2011 90 Degree Flat Elbow #232547	20	\$2.98	\$59.60
Wiremold – 2017TC Internal Corner #232551	2 pkgs	\$12.00	\$24.00
Wiremold – V2018C External Elbow #232554	20	\$2.34	\$46.80
Wiremold – V2015 Tees #232549	20	\$7.80	\$156.00
Wiremold – V2000BC Two-piece Raceway 5' #232536	642	\$7.32	\$4,699.44
Wiremold – V2048 Single-gang Surface box #232555	375	\$5.39	\$2,021.25
Avaya – 2081 GigSpeed XL8 Plenum #CMP-00424MAXE-7-06	100,000	\$0.54	\$54,000.00
Avaya – MGS-400-246 Mod Jacks Gaga Speed #246747	375	\$6.66	\$2,497.50
Avaya – M12-L-246 Duplex Face Plate #197603	375	\$1.41	\$528.75
Avaya – PM-GS3-24 24 Port Patch Panel #246722	19	\$205.18	\$3898.42
Avaya – CPC33122-02F014 14' CAT-6 Patch Cord #MM14-AV7E-06	300	\$8.89	\$2,667.00
Avaya – CPC3312-02F004 4' CAT-6 Patch Cord #MM04-AV7E-06	450	\$6.37	\$2,866.50
Wiremold – 25DTP-4 Power Pole 10' 5" #124001	1	\$87.58	\$87.58
Avaya – M14-L 4 Port Face Plate #197612	2	\$1.41	\$2.82
Cisco Catalyst 6509 Chassis, 9-slot, 15 RU, No Power Supply, No Fan Tray, # WS-C6509	1	\$6,169.80	\$6,169.80
Cisco Catalyst 6K Supervisor 2 Module with 256MB DRAM on Sup2 and MSFC2, # WS-X6K-S2U-MSFC2	1	\$17,398.50	\$17,398.50

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Cisco Catalyst 6500 Supervisor 2, ATA Type-1 Flash Memory Card, 64 MB Spare, # MEM-C6K-ATA-1-64M	1	\$260.00	\$260.00
Cisco Catalyst 6000 16-Port Gig-Ethernet Module, Spare, # WS-X6416-GBIC	1	\$13,000.00	\$13,000.00
Cisco Catalyst 6500 48-Port 10/100, In-line Power, RJ-45, # WS-X6148-RJ-45V	5	\$4,868.00	\$24,340.00
Cisco Catalyst 6000 Fan Tray for 9-Slot Systems, Spare, # WS-C6K9SLOT-FAN	1	\$322.00	\$322.00
Cisco Catalyst 6000 1300W AC Power Supply, Spare, # WS-CAC-1300W	2	\$2,595.00	\$5,190.00
Cisco AC Power Cord, North America, # CAB-7513AC	2	\$0.00	\$0.00
Cisco Catalyst 6000 Supervisor 2 Flash Image w/SSH, Rel 8.2, # SC6K-SUP2K9-8.2	1	\$0.00	\$0.00
Cisco Catalyst 6000 MSFC2 IOS Enterprise W/VIP, # S6MSF2AV-12120E	1	\$5,195.00	\$5,195.00
Cisco 24x7x4 OS Service, Catalyst 6509, # CON-OSP-WS-C6509	1	\$8,725.00	\$8,725.00
Cisco Catalyst 4500 Chassis (6-Slot), fan, no p/s, # WS-C4506	1	\$3,245.00	\$3,245.00
Cisco Catalyst 4500 1300W AC Power Supply with Inline Power, # PWR-C45-1300ACV	1	\$972.00	\$972.00
Cisco Catalyst 4500 1300W AC Power Supply with Inline Power, # PWR-C45-1300ACV/2	1	\$972.00	\$972.00
Cisco AC POWER CORD NORTH AMERICA (110V), # CAB-7513AC	2	\$0.00	\$0.00
Cisco Catalyst 4500 Supervisor II-Plus (IOS), 2GE, Console (RJ-45), # WS-X4013+	1	\$3,895.00	\$3,895.00
Cisco IOS BASIC L3 Cat4500 SUP 2+3/4 (RIP, St. Routes, IPX, AT), # S4KL3-12119EW	1	\$195.00	\$195.00
Cisco Catalyst 4500 Inline Power 10/100, 48-Ports (RJ45), # WS-X4148-RJ45V	1	\$3,895.00	\$3,895.00
Cisco Catalyst 4500 Inline Power 10/100, 48-Ports (RJ45) 2pack, # WS-X4148-RJ45V-2P	1	\$6,495.00	\$6,495.00

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Cisco 24x7x4 Onsite Service for Catalyst 4506R Series Modular Switch, # CON-OSP-WS-C4506	1	\$2,302.00	\$2,302.00
Cisco Catalyst 4503 Bundle, # WS-C4503-S2+48V	2	\$3,245.00	\$6,490.00
Cisco Catalyst 4500 1300W AC Power Supply with Inline Power. # PWR-C45-1300ACV/2	2	\$972.00	\$1,944.00
Cisco AC POWER CORD NORTH AMERICA (110V), # CAB-7513AC	4	\$0.00	\$0.00
Cisco IOS BASIC L3 Cat4500 SUP 2+/3/4 (RIP, St. Routes, IPX, AT), # S4KL3-12119EW	2	\$195.00	\$390.00
Cisco Cat. 4500 Sup II-Plus/III/IV Compact Flash, 64MB Option 1, # MEM-C4K-FLD64M	2	\$195.00	\$390.00
Cisco Catalyst 4500 Inline Power 10/100, 48-Ports (RJ45), # WS-X4148-RJ45V	2	\$3,895.00	\$7,790.00
Cisco 24x7x4 Onsite Service Catalyst 4503R Series Modular Switch, # CON-OSP-WSC4503	2	\$2,302.00	\$4,604.00
Cisco 24-10/100 inline power + 2 GBIC ports: SMI, # WS-C3550-24PWR-SMI	5	\$2,270.00	\$11,350.00
Cisco Power Cord, 110V, # CAB-AC	5	\$0.00	\$0.00
Cisco ONSITE 24X7X4 24-10/100 inline pwr, 2 GBIC ports: SMI, # CON-OSP-C35650SMI	5	\$368.00	\$1,840.00
Cisco 1000BaseLX GBIC, # WS-G5486	18	\$640.00	\$11,520.00
Cisco 1000BaseSX GBIC, # WS-G5484	4	\$321.00	\$1,284.00
Installation, termination, and testing of all fiber and copper related materials as listed in sections 3.3. (Supplies Required) to meet industry standards.	1	\$86,430.00	\$86,430.00
		Total Bid	\$324,804.40
		Less 90% Discount	\$32,480.44

3.4. Delivery Specifications (Including Schedules and Guarantees): Vendor shall complete all delivery and installation no later that June 30, 2005.

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- 3.5. Where Supplies are to be Delivered:**
Illinois Department of Human Services
5020 Industrial Drive
Springfield, Illinois 62762
Attn: John R. Allen, OMIS Warehouse Manager
- 3.6. Other Specifications:** None.
- 3.7. Term of Contract:** Contract execution through 6/30/05.

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4. CONTRACT PRICING

4.1. **Price or rate:** For Supplies under this Contract, the State will pay for all relevant Supplies either:

4.1.1 Price per item _____

4.1.2 Other Fixed Price - \$32,480.44

Prices quoted are net after deducting all trade or quantity discounts. Delivery specifications must be as specified in the Contract with all transportation and handling included and paid by the Vendor.

4.2. **Expenses:** Expenses to be included in the price described above unless separately stated below.

None.

4.3. **Payment Terms and Conditions (including when paid, frequency and retainage):** Payment will be made after completion of the Contract unless otherwise specified below.

None.

4.4. **Discounts:** _____% discount for payment within _____ days of delivery.

4.5. **Tax Exemption:** The ordering Agency/Buyer's Illinois tax exemption number is E9984-0987-03. Federal tax exemption information is available upon request to the ordering Agency/Buyer.

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5. TERMS AND CONDITIONS

This section contains the State's standard terms and conditions for all contracts. These terms and conditions will govern this contractual relationship and the Vendor is bound by them and is responsible for reading and understanding them. The State reserves the right to amend these terms and conditions when and where needed and to supplement them with any appropriate addendum, as noted herein.

5.1 BILLING AND PAYMENT

5.1.1 BILLING: The Agency/Buyer's billing practices are set out as follows and Vendor is presumed to have read and understands the following procedures:

5.1.1.1 Vendor shall submit invoices to the address, on the schedule and with the detail required by the ordering Agency/Buyer. Invoices for equipment and/or supplies purchased and/or services performed and expenses incurred prior to July 1st must be presented to the Agency/Buyer no later than July 31; otherwise Vendor may have to seek payment of such invoices through the Illinois Court of Claims (30 ILCS 105/25). Billings shall be made to conform to State fiscal year requirements, including prorating if necessary, notwithstanding any contrary provision in this Contract or order.

5.1.1.2 Vendor shall not bill for any taxes unless a statement is attached to the bill identifying the tax and showing why it is legally chargeable to the State. The State does not warrant the interest component of any payment, including installment payments, are exempt from income tax liability.

5.1.1.3 By submitting an invoice Vendor certifies that the equipment, supplies and/or services provided meet all requirements of the Contract, and the amount billed and expenses incurred are as allowed in the Contract.

5.1.2 PAYMENT:

5.1.2.1 Late payment charges, if any, shall not exceed the formula established in the State "Prompt Payment" Act (30 ILCS 540/1) and rules (74 Ill. Adm. Code 900). Payments delayed at the beginning of the State's fiscal year (July and August payments) because of the appropriation process shall not be considered a breach.

5.1.2.2 The Agency/Buyer shall not be liable to pay for any equipment and/or supplies provided and/or services rendered, including related expenses subject of this Contract incurred prior to the beginning of the term of this Contract. Any Contract or order labeled "subject to financing" or words to similar effect is subject to the Agency/Buyer obtaining suitable financing.

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- 5.1.2.3 The approved invoice amount will be paid less any retainage and previous partial payments. Final payment shall be made upon determination by the Agency/Buyer that all requirements under this Contract have been completed; such determination shall not be unreasonably withheld. The final payment will be made subject to adjustment after completion of an audit of vendor's records as provided for in this Contract.
- 5.1.2.4 Any contract or order requiring payment of financing interest is subject to the interest rate limitation set by law of the greater of 9% or 125% of the G.O. Bond Index (30 ILCS 305/1).
- 5.1.2.5 As a condition of payment, Vendor must pay its employees prevailing wages when required by law (e.g., public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resources services, security guard and food service), and must pay its suppliers and subcontractors providing lien waivers on request (30 ILCS 500/25-60(b)). We have the authority to request certified payrolls. Any stipulation made by Vendor to pay prevailing wages shall be deemed to be incorporated in the project specifications as if specifically set forth therein (820 ILCS 130/4(a)).
- 5.1.3 **DELAY OF PAYMENT DUE TO VENDOR FAILURE:** If the Agency/Buyer in good faith determines that the Vendor has failed to deliver any Supplies as required by this Contract, the Vendor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Agency/Buyer may withhold that portion of the Vendor's compensation, which represents payment for service or product that was not performed or delivered.
- 5.1.4 **SET-OFF AGAINST SUMS OWED TO THE VENDOR:** The State may set off any sum owed to the Vendor on account of any debt owed to the State, unless otherwise required by law, in accordance with the State Comptroller Act (15 ILCS 405). The Vendor agrees that this provision constitutes proper and timely notice under the law of setoff.
- 5.1.5 **AVAILABILITY OF APPROPRIATIONS (30 ILCS 500/20-60):** Agency/Buyer shall use its best efforts to secure sufficient appropriations to fund this CONTRACT. However, the Agency/Buyer's obligations hereunder shall cease immediately, without penalty or further payment being required, if: (a) the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation; (b) adequate funds are not appropriated or granted the Agency/Buyer by the Illinois General Assembly or the federal funding source, to allow the Agency/Buyer to operate as required and to fulfill its obligations under the Contract; or (c) funds appropriated are de-appropriated or not allocated, or if funds needed by the Agency/Buyer, at the Agency/Buyer's sole discretion, are insufficient for

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any reason. Agency/Buyer shall give Vendor notice of insufficient funding as soon as practicable. Vendor's obligation to perform shall cease upon receipt of the notice.

5.2 DELIVERY

5.2.1 MINIMUM ORDER: It is required that the minimum order be as specified in the Contract. If the bidder's minimum order requirement is less than that specified in the Contract, that minimum shall become the minimum order if a Contract is awarded to the Vendor.

5.2.2 DELIVERY POINT: Unless otherwise specified in Section 4 of the Contract, "Contract Pricing," all Supplies to be provided under this Contract will be delivered, at Vendor's expense, to locations specified by the State, and title and risk of loss to said Supplies will pass to the State at the time of delivery to such locations.

5.2.3 PACKAGING: The pack sizes indicated in the Contract, if any, represent the sizes currently used by the industry. The Vendor is requested to provide packaging that most closely meets these packaging sizes. However, Vendors can submit alternates. The State reserves the right of final approval on packaging offered by the Vendor. Packaging and containers, etc. shall be in accordance with supplier's commercial practice and shall meet the requirements of the Department of Transportation (D.O.T.) and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

5.2.4 PALLETIZING: Unless specified otherwise in the Contract or elsewhere within the Bid document, shipments shall be palletized whenever possible and shall conform to the following:

5.2.4.1 Manufacturers' standard 4-way shipping pallets are acceptable.

5.2.4.2 Maximum Height: 5/6, including pallet.

5.2.4.3 Maximum Weight: 3500 pounds, including pallet.

5.2.4.4 Pallets are to be securely banded or shrink-wrapped.

5.2.4.5 The cost of palletizing must be included in the unit price.

5.3 QUALITY ASSURANCE

5.3.1. INSPECTION: All Supplies are subject to inspection and testing. In the event Supplies are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the State shall have the right to reject the Supplies or retain the Supplies and correct the defects. The Vendor shall pay the State for expenses incurred in correcting defects. Rejected Supplies will be held for 45 days after delivery. The Vendor must arrange for the return of said Supplies, including paying for handling, packing, and transportation costs. The State also has the authority to dispose of the Supplies without further liability to the State in the event the Vendor fails to make arrangements within the specified time.

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5.4 VENDOR PERFORMANCE AND RESPONSIBILITIES

5.4.1 CONSULTATION: Vendor shall keep the Agency/Buyer fully informed as to the progress of matters covered by this Contract. Where time permits and Vendor is not otherwise prohibited from so doing, Vendor shall offer the Agency/Buyer the opportunity to review relevant documents prior to filing with any public body or adversarial party.

5.4.2 PERFORMANCE REVIEWS:

5.4.2.1 The State or Agency/Buyer may conduct a post performance review of the Vendor's performance under the Contract. The Vendor shall cooperate with the State or Agency/Buyer in this review, which may require that the Vendor provide records of its performance and billing. Vendor shall provide any required information within 30 days of the Agency/Buyer's request. This post performance review may be used by any State agency in determining whether to enter into other contractual relationships with the Vendor.

5.4.2.2 Vendor shall have and maintain, during the term of this contract, internal procedures and processes to monitor performance to ensure full compliance with the contract. Vendor shall disclose such procedures and processes to the State upon request.

5.4.2.3 At the direction of the State, Vendor and State shall work together to develop a performance scorecard to record relevant facts related to performance as well as establishing conditions, milestones, requirements or timetables that must be met before additional steps may be taken or payment is due.

5.4.3 AUDIT/RETENTION OF RECORDS (30 ILCS 500/20-65): Vendor and its subcontractors shall maintain books and records relating to performance of the Contract or subcontract and necessary to support amounts charged to the State under the Contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of 3 years from the later of the date of final payment under the Contract or completion of the Contract, and by the subcontractor for a period of 3 years from the later of the date of final payment under the subcontract or completion of the subcontract. The 3-year period shall be extended for the duration of any audit in progress during the term. Books and records required to be maintained under this section shall be available for review or audit by representatives of the Auditor General, the Agency/Buyer, the Inspector General and other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit. Failure to maintain books and records required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the Contract for which adequate books and records are not available to support the purported disbursement. The Vendor shall not impose a charge for audit or examination of the Vendor's books and records. If federal funds are used

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to pay contract costs, the Vendor must retain its records for five years. If only state funds are involved, three years is sufficient.

5.4.4 SCHEDULE OF WORK: Any work performed on State premises shall be done during the hours designated by the State and shall in any event be performed so as to minimize inconvenience to the State and its personnel and minimize interference with the State's operations.

5.4.5 RESPONSIBILITY FOR AGENTS AND EMPLOYEES: Vendor shall be responsible for the negligent acts and omissions of its agents, employees and subcontractors in their performance of Vendor's duties under this CONTRACT. Vendor represents that it shall utilize the services of individuals skilled in the profession for which they will be used in performing services hereunder. In the event that the Agency/Buyer determines that any individual performing services for Vendor hereunder is not providing such skilled services, it shall promptly so notify Vendor and Vendor shall replace that individual.

5.4.6 ASSIGNMENT AND DELEGATION:

5.4.6.1 This Contract may not be assigned, transferred or conveyed in whole or in part by the Vendor without the prior written consent of the State. For the purpose of construing this clause, a transfer of a controlling interest in the Vendor shall be considered an assignment.

5.4.6.2 After notice, the Agency/Buyer may transfer the Contract or payment responsibility to another State Agency, or assign the Contract to a third-party for financing purposes.

5.4.7 USE OF THIRD PARTIES:

5.4.7.1 The Agency/Buyer acknowledges that the Vendor may contract with third parties for the performance of any of the Vendor's obligations under this Contract. However, all subcontracts shall be subject to prior approval by the Agency/Buyer, so the Vendor must obtain the Agency/Buyer's prior written consent before allowing any Third Party to perform any of the Vendor's obligations under this Contract.

5.4.7.2 A Vendor who obtains the Agency/Buyer's prior written consent and subsequently enters into a contract with a Third Party for performance of any of the Vendor's obligations under this Contract remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Vendor under this Contract shall also apply fully and completely to subcontractors. This includes requiring all subcontractors to submit certifications and disclosures to Agency/Buyer for review and approval upon request. The Agency/Buyer shall have the right to request the removal of a subcontractor from the Contract for good cause.

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- 5.4.7.3 If Vendor is unable to secure or maintain key personnel named in the Contract to render the services, Vendor shall not be relieved of its obligations to complete performance. Agency/Buyer shall have the option to accept a substitute or to terminate the Contract.
- 5.4.8 **LICENSE:** Vendor, directly or through its employees, shall have and maintain any required license. With written consent of the Agency/Buyer, Vendor may meet the license requirement through a subcontractor.
- 5.4.9 **MAINTENANCE ASSURANCE:**
- 5.4.9.1 The Agency/Buyer reserves the right to maintain any equipment purchased under this Contract using Agency/Buyer personnel or third-party maintainers. In such case, Vendor shall provide the Agency/Buyer or its maintenance provider with such services, documentation, materials and parts under reasonable terms and conditions and at reasonable costs. The Agency/Buyer reserves the right to return to Vendor's maintenance following written certification by Vendor that the equipment is eligible for Vendor's maintenance. Vendor's standard charges for the certification inspection, plus any applicable charges required to bring the equipment into eligibility for Vendor's maintenance shall apply. Exercise of these rights by the Agency/Buyer shall be without penalty or sanction by Vendor.
- 5.4.9.2 If Vendor discontinues service or maintenance of equipment or software provided under this Contract, Vendor shall provide to the Agency/Buyer, at no cost, adequate documentation and access to specialized or proprietary tools to allow the Agency/Buyer or a subcontractor to maintain the equipment or software. This provision shall not apply if Vendor arranges for continued service and maintenance through another vendor and at a price acceptable to the Agency/Buyer.
- 5.4.10 **SOLICITATION AND EMPLOYMENT:** Vendor shall not employ any person employed by the Agency/Buyer during the term of this Contract to perform any work required by the terms of this Contract. As a condition of this Contract, the Vendor shall give notice immediately to the Agency/Buyer's director if Vendor solicits or intends to solicit for employment any of the Agency/Buyer's employees during the term of this Contract. Agency/Buyer has no authority to contractually refuse to hire Vendor's employees who apply to the State for employment.
- 5.4.11 **FORCE MAJEURE:** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.

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5.4.12 TAX COMPLIANCE: Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.

5.4.13 COMPLIANCE WITH THE LAW: The Vendor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Vendor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

5.4.14 ANTITRUST ASSIGNMENT: Vendor hereby assigns, sells and transfers to the State of Illinois all right, title and interest in and to any claims and causes of action arising under antitrust laws of Illinois or the United States relating to the subject matter of the Contract.

5.5 CONFIDENTIALITY AND WORK PRODUCT

5.5.1 CONFIDENTIALITY: Vendor's employees, agents and subcontractors may have access to confidential data maintained by the Agency/Buyer to the extent necessary to carry out its responsibilities under the Contract. As such, the following applies unless agreed to otherwise in writing:

5.5.1.1 Vendor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Agency/Buyer;

5.5.1.2 Vendor shall provide to the Agency/Buyer a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

5.5.1.3 Vendor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Vendor in connection with the performance of the Contract;

5.5.1.4 Vendor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract;

5.5.1.5 The private or confidential data shall remain the property of the Agency/Buyer at all times.

5.5.2 CONFIDENTIAL INFORMATION MAY NOT BE DISSEMINATED: No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Agency/Buyer, either during the period of the Contract or thereafter. Any data supplied to or created by the Vendor shall be considered the property of the Agency/Buyer. The Vendor must return any and all data collected, maintained, created or

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used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Agency/Buyer.

- 5.5.3 SUBPOENA:** In the event that a subpoena or other legal process is served upon the Vendor for records containing confidential information, the Vendor shall promptly notify the Agency/Buyer and cooperate with the Agency/Buyer in any lawful effort to protect the confidential information.
- 5.5.4 REPORTING UNAUTHORIZED DISCLOSURES:** The Vendor shall immediately report to the Agency/Buyer any unauthorized disclosure of confidential information.
- 5.5.5 SURVIVES TERMINATION:** Vendor's obligations regarding Confidential Information and Work Product Usage under this Contract shall survive termination of this Contract.

5.6 INDEMNIFICATION AND LIABILITY

- 5.6.1 BY THE VENDOR:** The Vendor agrees to indemnify and hold harmless the State of Illinois and the Agency/Buyer, its officers, employees and agents (appointed and elected) and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Illinois or the Agency/Buyer, related to or arising from:
- 5.6.1.1 Any breach of this Contract;
 - 5.6.1.2 Any negligent, intentional or wrongful act or omission of the Vendor or any agent or subcontractor utilized or employed by the Vendor;
 - 5.6.1.3 The Vendor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Vendor;
 - 5.6.1.4 Any failure by the Vendor to fulfill the Compliance with the Law provision of this Contract;
 - 5.6.1.5 Any failure by the Vendor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Illinois;
 - 5.6.1.6 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
 - 5.6.1.7 Any failure by the Vendor to adhere to the confidentiality provisions of this Contract.
- 5.6.2 SURVIVES TERMINATION:** Indemnification obligation of the parties shall survive termination of this Contract.

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- 5.6.3 LIABILITY:** Vendor agrees to assume, without limitation, all risk of loss and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, relating to bodily injuries to persons (including death) and for loss of, damage to, or destruction of real and/or tangible personal property (including property of the State) resulting from the negligence or misconduct of Vendor, its employees, agents, or subcontractors in the performance of the Contract. Vendor shall assume risk of loss until delivery to the Agency/Buyer's facility. Vendor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction, or damage to State property, and shall at the State's request and expense, furnish to the State reasonable assistance and cooperation, including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the State in obtaining recovery. Neither party shall be liable for incidental, special or consequential damages.
- 5.6.4 LEGISLATIVE CHANGES:** The Vendor herein expressly acknowledges that the Contract and its subject matter are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the terms or subject matter of this Contract, the Vendor shall not hold the Agency/Buyer liable in any manner for the resulting changes. The Agency/Buyer shall use best efforts to provide thirty (30) days' written notice to the Vendor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Agency/Buyer's right to terminate the Contract pursuant to the termination provisions.
- 5.6.5 JOINT AND SEVERAL LIABILITY:** If the Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

5.7 WARRANTIES

- 5.7.1 CONSTRUCTION OF WARRANTIES EXPRESSED IN THE CONTRACT WITH WARRANTIES IMPLIED BY LAW:** All warranties made by the Vendor in all provisions of this Contract, whether or not this Contract specifically denominates the Vendor's promise as a warranty or whether the warranty is created only by the Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Agency/Buyer, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

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The provisions of this section apply during the term of this Contract and any extensions or renewals thereof.

- 5.7.2 CONCEPTS, MATERIALS AND WORKS PRODUCED:** Vendor represents and warrants that all the concepts, materials and works produced, or provided to the Agency/Buyer pursuant to the terms of this Contract shall be wholly original with the Vendor or that the Vendor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Vendor represents and warrants that the concepts, materials and works and the Agency/Buyer's use of same and the exercise by the Agency/Buyer of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to the Vendor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Vendor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Vendor and any other materials, works and methodologies used in connection with providing the services contemplated by this Contract
- 5.7.3 CONFORMITY WITH CONTRACTUAL REQUIREMENTS:** The Vendor represents and warrants that the goods or services will appear and operate in conformance with the terms and conditions of this Contract.
- 5.7.4 AUTHORITY TO ENTER INTO CONTRACT:** The Vendor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Agency/Buyer.
- 5.7.5 OBLIGATIONS OWED TO THIRD PARTIES:** The Vendor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Contract are or will be fully satisfied by the Vendor so that the Agency/Buyer will not have any obligations with respect thereto.
- 5.7.6 TITLE TO PROPERTY AND EQUIPMENT:** The Vendor represents and warrants that title to any property assigned, conveyed or licensed to the Agency/Buyer is good and that transfer of title or license to the Agency/Buyer is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Vendor further warrants that it has title to, or the right to allow the State to use, the equipment, supplies and/or services being provided and that the State may use same without suit, trouble or hindrance from Vendor or third parties.
- 5.7.7 EQUIPMENT AND SUPPLIES QUALITY:** Unless otherwise agreed, Vendor warrants that all equipment and/or supplies shall be new, unused, of most current manufacture and not discontinued, shall be free of defects in

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materials and workmanship, shall be provided in accordance with manufacturer's standard warranty and shall perform in accordance with manufacturer's published specifications.

- 5.7.8 INDUSTRY STANDARDS:** The Vendor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the relevant industry in the performance of this Contract.
- 5.7.9 TECHNOLOGY UPDATES:** The Vendor represents warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.
- 5.7.10 SOLICITATION:** The Vendor warrants that no person or selling Agency/Buyer has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

5.8 INSURANCE

- 5.8.1 INSURANCE:** Vendor shall maintain public liability, casualty and auto insurance in sufficient amount to protect the State from liability for acts of Vendor and risks and indemnities assumed by Vendor. If Vendor does not have minimum coverage (for bodily injury of \$250,000 per person/\$500,000 per occurrence, and for property damage, \$100,000 per occurrence) Vendor must inform the Agency/Buyer and seek written permission for lesser coverage. Vendor shall carry Workers' Compensation Insurance in amount required by law. Upon request, Vendor shall provide and maintain any bond required by law or the Agency/Buyer. Vendor shall provide copies of certificates of insurance evidencing the coverage described in this paragraph.

5.9 VENDOR STATUS AND QUALIFICATIONS

- 5.9.1 BACKGROUND CHECK:** The State may conduct criminal and driver history background checks of Vendor's officers, employees or agents who would directly supervise or physically perform any of the Contract requirements at State facilities. Any officer, employee or agent deemed unsuitable by the State must be replaced immediately.
- 5.9.2 LEGAL ABILITY TO CONTRACT:** Vendor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:
- 5.9.2.1 Vendor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.
- 5.9.2.2 Vendor is not in default on an educational loan (5 ILCS 385/3).
- 5.9.2.3 Vendor has informed the director of the Agency/Buyer in writing if he/she was formerly employed by that agency and

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has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, **40 ILCS 5/14-108.3** and **40 ILCS 5/16-133.3**, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive in or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, **40 ILCS 5/14-108.3** and **40 ILCS 5/16-133.3**, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items (**30 ILCS 105/15a**).

- 5.9.2.4 Vendor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has made an admission on the record of having so bribed or attempted to bribe (**30 ILCS 500/50-5**).
- 5.9.2.5 If Vendor has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (**30 ILCS 500/50-10**).
- 5.9.2.6 If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least 5 years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the contracting State Agency/Buyer shall declare the contract void if this certification is false (**30 ILCS 500/50-10.5**).
- 5.9.2.7 Vendor and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the contracting State Agency/Buyer may declare the contract void if this certification is false (**30 ILCS 500/50-11**) or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (**30 ILCS 500/50-60**).
- 5.9.2.8 Vendor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (**30 ILCS 500/50-12**) and acknowledge that failure to comply can result in the contract being declared void.
- 5.9.2.9 Vendor certifies that it has not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five (5) years, and is

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- therefore not barred from being awarded a contract. If the State later determines that this certification was falsely made by the Vendor, the Vendor acknowledges that the contracting State Agency/Buyer may declare the contract void. (30 ILCS 500/50-14)
- 5.9.2.10 Vendor has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
- 5.9.2.11 Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
- 5.9.2.12 Vendor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, 50-45, 50-50).
- 5.9.2.13 Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace, and if an individual shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the Contract. This certification applies to contracts of \$5000 or more with: individuals; and to entities with twenty-five (25) or more employees (30 ILCS 580).
- 5.9.2.14 Neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (30 ILCS 582).
- 5.9.2.15 Vendor has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any State or of the United States (720 ILCS 5/33E-3, 5/33E-4).
- 5.9.2.16 Vendor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- 5.9.2.17 Vendor does not pay dues to, or reimburse or subsidize payments by its employees for, any dues or fees to any "discriminatory club" (775 ILCS 25/2).
- 5.9.2.18 Vendor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction (PA 93-0307).
- 5.9.3 CONFLICTS OF INTEREST:** Vendor has disclosed, and agrees it is under a continuing obligation to disclose to the Agency/Buyer, financial or

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other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Vendor from having or continuing the Contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force Fee Prohibition" section of the State Finance Act (30 ILCS 105/18.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or those which may conflict in any manner with the Vendor's obligation under this Contract. Vendor shall not employ any person with a conflict to perform under this Contract. If any conflict under Section 50-13 exists no contract may be issued without an exemption from the Governor pursuant to Section 50-20 of the Illinois Procurement Code. An exemption is necessary if:

- 5.9.3.1 the person intending to contract with the State, their spouse or child: (i) holds an elective office in Illinois; (ii) holds a seat in the Illinois General Assembly; (iii) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor (currently \$90,414.60). (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.);
- 5.9.3.2 the contract is with a firm, partnership, association or corporation in which a person referenced in item 5.9.3.1 above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (currently \$150,691.00).
- 5.9.3.3 the contract is with a firm, partnership, association or corporation in which a person referenced in item 5.9.3.1 above, together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (currently \$301,382.00) from the firm, partnership, association or corporation.
- 5.9.4 **INDEPENDENT CONTRACTOR:** The Vendor shall be an independent contractor. Equipment and/or supplies provided and/or services performed pursuant to this Contract are not rendered as an employee of the Agency/Buyer or of the State of Illinois. Amounts paid pursuant to this Contract do not constitute compensation paid to an employee.
- 5.9.5 **NOT A JOINT VENTURE:** Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create