



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 1

CONTRACT #: AR1910

Starting Date: 01/01/2016

Expiration Date: 12/31/2020

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and DOMINON VOTING SYSTEMS INC. (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

The State will no longer be paying the full software licensing fee on behalf of individual counties.

Dominion Voting Systems will invoice individual counties for their software licensing based on active registered voters as 01/03/2018 and the exact number of machines, to be provided by each county upon Dominion's request. Pricing will be based on Attachment C: Recurring Fees per year.

Effective Date of Amendment: 01/03/2018

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

1/8/2018

Contractor's Signature

Date

John Poulos

Contractor's Name (Print)

President & CEO

Title (Print)

STATE OF UTAH

Kent Beers Director
State of Utah Division of Purchasing

1/8/18

Date

Purchasing Agent

Phone #

e-mail

Contract #

Windy Aphayrath

801 538 3097

waphayrath@utah.gov

AR1910

Contract # AR1910**STATE OF UTAH CONTRACT COOPERATIVE CONTRACT**

1. **CONTRACTING PARTIES:** This contract is between the Division of Purchasing and the following Contractor:

Dominion Voting Systems Inc.

Name

1201 18th Street Suite 210

Address

Denver

CO

80202

City

State

Zip

LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

Contact Person Dana LaTour Phone #775-223-7230 Email dana.latour@dominionvoting.com
 Vendor #VC0000163742 Commodity Code #93690000000

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide: voting Equipment Software, Training
3. **PROCUREMENT:** This contract is entered into as a result of the procurement process on FY____, Bid#____, a pre-approved sole source authorization (from the Division of Purchasing) # SSVB16264SS, or other method: _____.
4. **CONTRACT PERIOD:** Effective Date: 01/01/2016 Termination Date: 12/31/2020 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): None.
5. **Payment:** Prompt Payment Discount (if any): _____.
6. **ATTACHMENT A:** State of Utah Standard Terms and Conditions for ☐ Goods ☐ Services, or ☒ IT
ATTACHMENT B: Scope of Work
ATTACHMENT C: Pricing
ATTACHMENT D: N/A
Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.
7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
 a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 b. Utah State Procurement Code, Procurement Rules, and Contractor's response to Bid #____ dated _____.
8. Each signatory below represents that he or she has the requisite authority to enter into this contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR**STATE**

Contractor's signature

Date

Director, Division of Purchasing

Date

Type or Print Name and Title

Terri O'Toole

Division of Purchasing Contact Person

801-538-3147

Telephone Number

801-538-3882

Fax Number

totoole@utah.gov

Email

(Revision 14 October 2015)

ATTACHMENT A: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS
STATE OF UTAH COOPERATIVE INFORMATION TECHNOLOGY CONTRACT

This is a State Cooperative Contract for information technology products and services meaning all computerized and auxiliary automated information handling, including: (a) systems design and analysis; (b) acquisition, storage, and conversion of data; (c) computer programming; (d) information storage and retrieval; (e) voice, radio, video, and data communications; (f) requisite systems controls; (g) simulation; and (h) all related interactions between people and machines.

1. DEFINITIONS:

- a. "Access to Secure Public Facilities, Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah or an Eligible User; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by the State of Utah or an Eligible User; or (C) have access to or receive any Public Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access Public Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Confidential Information" means information that is deemed as confidential under applicable record laws. The State of Utah and the Eligible Users reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws by Contractor.
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. This Contract may include any purchase orders that result from the parties entering into this Contract.
- e. "Contract Signature Page(s)" means the cover page that Division and Contractor sign.
- f. "Contractor" means the individual or entity delivering the Goods, Custom Deliverables, or performing the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, partners, and/or any other person or entity for which Contractor may be liable under federal, state, or local laws.
- g. "Custom Deliverable" means the Work Product that Contractor is required to deliver to Eligible Users under this Contract.
- h. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of Public Data and compromises the security, confidentiality, or integrity of Public Data. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- i. "Division" means the State of Utah Division of Purchasing.
- j. "DTS" means the Department of Technology Services.
- k. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract.
- l. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- m. "Good" means any deliverable not classified as a Custom Deliverable or Service that Contractor is required to deliver to the Eligible Users under this Contract.
- n. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
- o. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- p. "Proposal" means Contractor's response documents, including attachments, to the Division's Solicitation.
- q. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- r. "Security Incident" means the potentially unauthorized access by non-authorized persons to Public Data that Contractor believes could reasonably result in the use, disclosure or theft of Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- s. "Services" means the furnishing of labor, time, or effort by Contractor as set forth in this Contract, including but not limited to installation, configuration, implementation, technical support, warranty maintenance, and other support services.

- t. "Solicitation" means the documents used by the Division to solicit Contractor's Proposal for the Goods, Custom Deliverables, or Services identified in this Contract.
 - u. "Public Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah or an Eligible User whether such data or output is stored on the State of Utah's or an Eligible User's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Eligible User, or by Contractor. Public Data includes any federal data, that the State of Utah or an Eligible User controls or maintains, that is protected under federal laws, statutes, and regulations.
 - v. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - w. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or anyone else for whom the Contractor may be liable, at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - x. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the ordering Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. All the Goods delivered or licensed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements, as of the effective date of the Contract.
4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
5. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by an Eligible User to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah and federal auditors, and the Division access to all such records.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
- (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - (2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
 - (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
 - (4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made to the Division.
8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith will all conflict of interest and ethic laws.
9. **INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or

implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the Division, the Eligible Users, or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.

- 10. CONTRACTOR ACCESS TO SECURE PUBLIC FACILITIES, PUBLIC DATA, AND TECHNOLOGY:** An employee of Contractor or a Subcontractor may be required to complete a Federal Criminal Background Check, if said employee of Contractor or a Subcontractor will have Access to Secure Public Facilities, Public Data, and Technology. Contractor shall provide the Eligible User with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at the Eligible User's expense. The Eligible User will also provide Contractor with a Disclosure Form and Confidentiality Agreement which must be filled out by Contractor and returned to the Eligible User. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure Public Facilities, Public Data, and Technology, will be scheduled by the Eligible User to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. The Eligible User is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided. The Eligible User may use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years and reserves the right to revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor agrees to notify the Eligible User if an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure Public Facilities, Public Data and Technology occurs during this Contract. Contractor, in executing any duty or exercising any right under this Contract, shall not cause or permit any of its employees or employees of a Subcontractor (if any) who have been convicted of a felony or misdemeanor to have Access to Secure Public Facilities, Public Data, and Technology. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.
- 11. DRUG-FREE WORKPLACE:** Contractor agrees to abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
- 12. CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
- 13. INDEMNITY CLAUSE:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Division, the Eligible User, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
- 14. EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
- 15. SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
- 16. AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.
- 17. DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
- 18. TERMINATION:** Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given fourteen (14) calendar days after notification to correct and cease the violations, after which this Contract may be terminated for cause at any time. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) calendar days prior written notice being given the other party. The parties may also agree to terminate this Contract prior to the expiration of this Contract by written agreement.

If Services apply to this Contract, then Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible Users, or the State of Utah is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

- 19. SUSPENSION OF WORK:** Should circumstances arise which would cause the Division to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Division.
- 20. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division or an Eligible User, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.
- If a written notice is delivered under this section, the Eligible User will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
- 21. SALES TAX EXEMPTION:** The Goods, Custom Deliverables, or Services being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.
- 22. TITLE AND OWNERSHIP WARRANTY:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered to the Eligible Users under this Contract. Contractor fully indemnifies the Eligible Users for any loss, damages or actions arising from a breach of this warranty without limitation.
- 23. HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells under this Contract, for a period of one (1) year. Contractor acknowledges that all warranties granted to the Division and Eligible Users by the Uniform Commercial Code of the State of Utah apply to this Contract. Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that the Division has relied on Contractor's skill or judgment to consider when it advised the Division about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems.
- 24. SOFTWARE WARRANTY:** Contractor warrants that for a period of ninety (90) days from the date of Acceptance that the software portions of the Goods and Custom Deliverables, that Contractor licenses, contracts, or sells to the Eligible Users under this Contract, will: (a) perform in accordance with the specific claims provided in the Proposal; (b) be suitable for the ordinary purposes for which such Goods and Custom Deliverables are used; (c) be suitable for any special purposes that the Eligible User has relied on Contractor's skill or judgment to consider when it advised the Eligible User about the Goods or Custom Deliverables in its Proposal; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems. Contractor agrees to provide the Eligible Users with bug fixes, including informing the Eligible Users of any known software bugs or software defects that may affect the Eligible User's use of the software during the Contract.
- 25. WARRANTY REMEDIES:** Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to the Eligible Users) the Goods or Custom Deliverables whose nonconformance is discovered and made known to Contractor. If the repaired and/or replaced products prove to be inadequate, or fail to meet the performance of its essential purpose, Contractor will refund the full amount of any payments that have been made for the failing products. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity.
- 26. UPDATES AND UPGRADES:** Contractor grants to the Eligible Users a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. The Eligible Users shall download, distribute, and install all updates as released by Contractor during this Contract, and Contractor strongly suggests that the Eligible Users also download, distribute, and install all upgrades as released by Contractor during this Contract.
- 27. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With an Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems, subject to Contractor's obligation of this Contract. In the event that an Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of this Contract.
- 28. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond, in a reasonable time, when technical support or maintenance requests regarding the Goods or Custom Deliverables are made to Contractor.
- 29. SECURE PROTECTION AND HANDLING OF PUBLIC DATA:** If Contractor is given Public Data as part of this Contract, the protection of Public Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Public Data. To the extent that Contractor is given Public Data, Contractor shall safeguard the confidentiality, integrity and availability of the Public Data and comply with the following conditions:
- 1. Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:

(1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);

(2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or

(3) Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.

2. **Public Data Security:** Contractor agrees to protect and maintain the security of Public Data with protection that is at least as good as or better than that maintained by the State of Utah. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification).

3. **Public Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the Eligible Users and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).

4. **Public Data Storage:** Contractor agrees that all Public Data will be stored and maintained in data centers in the United States. Contractor agrees that no Public Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-Public Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

5. **Public Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key.

6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the Eligible Users or State of Utah networks, or stores any Public Data is equipped with strong and secure password protection.

7. **Public Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no Public Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the Eligible Users.

8. **Public Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all Public Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. It is understood by the parties that the Eligible User's written directive may request that certain data be preserved in accordance with applicable law.

9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the Services related to Public Data that it provides to the Eligible Users will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.

30. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform an Eligible User of any Security Incident or Data Breach.

1. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.

2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to the Eligible User immediately if Contractor reasonably believes there has been a Security Incident.

3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Public Data that is subject to applicable data breach notification law, Contractor shall: (a) promptly notify the Eligible User within 24 hours or sooner, unless shorter time is required by applicable law; (b) take commercially reasonable measures to address the Data Breach in a timely manner; and (c) be responsible for its Data Breach responsibilities, as provided in the next Section.

31. **DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor shall be responsible for all notification and remedial costs and damages.

32. **CHANGE MANAGEMENT:** If Contractor develops software for the State of Utah then the following paragraphs apply:

1. Contractor agrees to comply with DTS Policy 4000-0003, Software Development Life Cycle Policy. The Software Development Life Cycle Policy requires any Contractor developing software for the State of Utah to work with DTS in implementing a

Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance. Upon request, the Division agrees to provide Contractor with a copy of the latest version of the Software Development Life Cycle Policy.

2. Contractor agrees to comply with DTS Policy 4000-0004, Change Management Policy. Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify Eligible User's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. The Eligible User will notify Contractor if this change control requirement is applicable. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with the Eligible User's instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach. Upon request, the Division agrees to provide Contractor with a copy of the latest version of the DTS Change Management Policy 4000-0004.
33. **PUBLIC INFORMATION:** Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.
36. **DELIVERY:** Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User unless otherwise specified in this Contract. Invoices listing freight charges that were not identified in the quote prior to shipment, unless otherwise specified in this Contract, will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Eligible Users except as to latent defects, fraud, and Contractor's warranty obligations.
37. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to Eligible Users or provide any Good and Custom Deliverable for download from the Internet, if approved in writing by the Eligible Users. Contractor should take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to the Eligible Users under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes Public Data that Contractor processes or stores must be delivered within the specifications of this Contract.
38. **ACCEPTANCE PERIOD:** A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation ("Defects"), the Eligible Users shall within thirty (30) calendar days of the delivery date ("Acceptance Period") to notify Contractor in writing of the Defects. Contractor agrees that upon receiving such notice, it shall use reasonable efforts to correct the Defects within fifteen (15) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period.

If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the products returned pursuant to this section. No products shall be accepted and no charges shall be paid until acceptance is met. The warranty period will begin upon the end of the Acceptance Period.
39. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible Users will be those prices listed in this Contract. The Eligible Users have the right to adjust or return any invoice reflecting incorrect pricing.
40. **PROMPT PAYMENT DISCOUNT:** Contractor may quote a prompt payment discount based upon early payment. Contractor shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received.
41. **PAYMENT:**
 1. Payments will be made within thirty (30) days from a correct invoice is received, whichever is later. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.
 2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.
 3. The acceptance by Contractor of final payment without a written protest filed with the Eligible User within ten (10) working days of receipt of final payment shall release the Eligible User, the Division, and the State of Utah from all claims and all liability to Contractor for fees and costs pursuant to this Contract.

4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible Users any such overpayments.

42. INDEMNIFICATION – INTELLECTUAL PROPERTY: Contractor warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not, to Contractor's knowledge, infringe any third party copyrights, patents, trade secrets, and/or other proprietary rights that exist on the effective date of this Contract and/or that arise or are enforceable under the law of the United States of America.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right of any third party, Contractor agrees to indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action without relieving Contractor of any obligation hereunder. The parties agree that if there are any limitations of liability, including a limitation of liability clause in this Contract, such limitations of liability will not apply to this Section.

43. OWNERSHIP IN INTELLECTUAL PROPERTY: The parties each recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, or intellectual property owned or licensed by the other. Each agree that, without prior written consent of the other or as described in this Contract, it shall not use the name, any logo, or intellectual property owned or licensed by the other.

44. OWNERSHIP IN CUSTOM DELIVERABLES: In the event that Contractor provides Custom Deliverables to the Eligible Users, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for Eligible Users and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible Users, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible Users any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,

2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and

3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible Users (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible Users.

Contractor agrees to grant to the Eligible Users a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible Users and the State of Utah to use the Custom Deliverables. The Eligible Users reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's internal business operation under this Contract. The Eligible User and the Division may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

45. OWNERSHIP, PROTECTION AND USE OF RECORDS: Except for confidential medical records held by direct care providers, the Eligible Users shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the Eligible User. Contractor agrees to maintain the confidentiality of records it holds for the Eligible Users as required by applicable federal, state, or local laws.

46. PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract.

- 47. PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by this Contract will be the property of the Eligible Users, and must be delivered to the Eligible Users within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. The costs for returning documents and data to the Eligible Users are included in this Contract.
- 48. CONFIDENTIALITY:** Confidential Information may be disclosed to the Contractor under the terms of this Contract. If Confidential Information is disclosed to Contractor then Contractor agrees to adhere to the following:
- Contractor will: (a) limit disclosure of any Confidential Information to Authorized Persons who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the Confidential Information and of the obligations set forth in this Contract and require such Authorized Persons to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise agreed to in writing by the Eligible Users. Contractor will promptly notify the Eligible Users of any misuse or misappropriation of Confidential Information that comes to Contractor's attention.
- Contractor shall be responsible for any breach of this duty of confidentiality contract by any of their officers, agents, subcontractors at any tier, and any of their respective representatives, including any required remedies and/or notifications under applicable law (Utah Code Section 13-44-101 thru 301 et al). Contractor shall indemnify, hold harmless, and defend the Division, the Eligible Users, and State of Utah from claims related to a breach of these confidentiality requirements by Contractor or anyone for whom the Contractor is liable. This duty of confidentiality shall be ongoing and survive the term of this Contract.
- 49. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.
- 50. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (a) nonperformance of contractual requirements or (b) a material breach of any term or condition of this Contract. The Division will issue a written notice of default providing a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (a) exercise any remedy provided by law; (b) terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend Contractor from receiving future solicitations; or (e) request a full refund of the Goods, Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed under this Contract.
- 51. TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, the Division may procure or otherwise obtain, upon such terms and conditions as the Division deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages arising therefrom, including attorneys' fees, excess costs and fees, and cost of cover together with incidental or consequential damages, incurred by the Division in obtaining similar Goods, Custom Deliverables, or Services.
- 52. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Division and the Eligible Users may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.
- 53. PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
- 54. WORKERS' COMPENSATION:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any subcontractor employees related to this Contract. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Subcontractors must submit proof of certificate of insurance that meets the above requirements.
- 55. LIABILITY INSURANCE:** Contractor agrees to provide and to maintain during the performance of this Contract, at its sole expense, a policy of general liability insurance. The limits of the policy shall be no less than \$1,000,000.00 for each occurrence and \$3,000,000.00 aggregate. It shall be the responsibility of Contractor to require any of their Subcontractor(s) to secure the same insurance coverage as prescribed herein for the Contractor.
- Contractor must provide proof of insurance to the Division and must add the State of Utah as an additional insured with notice of cancellation. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Contractor's Subcontractors must submit proof of certificate of insurance that meets the above requirements. Failure to provide proof of insurance, as required, could result in this Contract being terminated for cause.
- 56. CONFLICT OF TERMS:** Contractor terms and conditions that apply must be in writing and attached to this Contract. No other terms and conditions will apply to this Contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, purchase orders, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: (a) this Attachment A; (b) Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including,

limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.

- 57. ENTIRE AGREEMENT:** This Contract shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- 58. SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of Public Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this contract.
- 59. WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.
- 60. CONTRACT INFORMATION:** During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
- 61. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractors must also adhere to Utah Administrative rule R895-14-1-3-3, which states that vendors developing new websites or applications are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency; and Rule R895-14-1-4-2, which states that vendors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents. Contractor acknowledges that all Goods and Custom Deliverables that it licenses, contracts, or sells to DTS under this contract are accessible to people with disabilities.
- 62. RIGHT TO AUDIT:** Contractor agrees to, upon written request, permit Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. In addition, upon request, Contractor shall provide the Division with the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.
- 63. LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 64. ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
- 65. INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
- 66. QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
- 67. ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
- 68. REPORTS AND FEES:**
- 1. Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 - 2. Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
 - 3. Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>
March 31
June 30

<u>Reports Due</u>
April 30
July 31

September 30
December 31

October 31
January 31

4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

If Services are applicable to this Contract, the following terms and conditions apply to this Contract:

69. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.
70. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
71. **ADDITIONAL INSURANCE REQUIREMENTS:**
 1. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
 2. Any other insurance policies described or referenced in the Solicitation for this Contract.
 3. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, state, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
 4. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.
72. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
73. **STATE REVIEWS, LIMITATIONS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.
74. **LIMITATION OF LIABILITY.** Contractor's total aggregate liability for any loss, damage, costs or expenses under or in connection with this Agreement, howsoever arising, including without limitation, loss, damage, costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the total dollar amount of this Contract. Neither party shall be liable for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental, punitive, special or consequential loss or damage whatsoever, howsoever arising, incurred by the other party or any third party, whether in an action in contract, negligence or other tort, even if the parties or their representatives have been advised of the possibility of such damages.

(Revision Date: 30 December 2015)

Attachment B: Scope of Work

1. Definitions

- 1.1. "Software" means the GEMS Software and Third-Party Software, that is EAC certified and State of Utah certified
- 1.2. "Specifications" means descriptions and data regarding the features, functions and performance of the GEMS as set forth in user manuals or other applicable documentation.
- 1.3. "Third-Party Software" means software obtained from third-party manufacturers or distributors and provided by Contractor hereunder.
- 1.4. "Warranty Period" means the period beginning on the Effective Date and ending on December 31, 2021, unless contract is canceled before then.

2. **Effective Dates.** This contract is effective as of the effective date and, unless earlier terminated under Section 18 of terms and conditions, expires on December 31, 2021, with no renewal options.

3. Limited Warranties.

- 3.1. Warranty Duration. The following warranties will apply to all Contractor Software during Warranty Period.
- 3.2. Contractor Software. Contractor warrants that Contractor Software will perform free of defects that would prevent the System from operation in in conformity in all material respects with its Specifications, so long as Contractor Software is operated with Hardware provided by Contractor or with third-party products approved by Contractor for use with such Contractor Software.
- 3.3. Third-Party Warranties. The warranties in Section 3.1 and 3.2 do not apply to any Third-Party Software, except that:
 - 3.3.1. Contractor warrants that all components of the Contractor Software will interface and function properly with the Third-Party Software so long as such Third-Party Software operates in compliance with all applicable manufacturers' warranties. Contractor will cooperate with Customer in seeking Third-Party provider compliance with Third-Party Software warranties, if needed.

4. **Payment.** State Entity shall pay Contractor the amounts specified in **Exhibit A** yearly until contract end date of December 31, 2020. In the event the contract is terminated before December 31, 2020, the price will be prorated to the termination date in given year of termination.

5. **Training.** Contractor will provide GEMS software training scheduled no later than April 30, 2016 with thirty days advance notice to the Contractor. This will include up to 5 days that will include GEMS Software training, and also optional training on the central tabulation and networking of multiple AccuVote OS units. The training will include no more than 2 locations at a time.

Attachment C

Recurring Fees per year

Annual Software License and Maintenance Fees (Mandatory)	Quantity	Unit Fee	Total Annual Amount
All Certified GEMS Software Versions	1	\$93,500	\$93,500
Security Enhancement Application Software (Key Card Tool)	1	\$1800	\$1800
AVTSX Application Software	7500	\$5	\$37,500
ACOS Application Software	63	\$5	\$315
Total			\$133,115

SOLE SOURCE REQUEST FORM

ALL SOLE SOURCE REQUESTS OVER \$1,000 MUST BE PRE-APPROVED BY STATE PURCHASING, UNLESS R33-4-104 OF THE ADMINISTRATIVE RULES APPLIES TO THE PROCUREMENT.

- Email this completed form along with a copy of the total cost from the vendor to purchasingsolesource@utah.gov prior to contract creation or negotiation.
- A Sole Source Procurement is appropriate if the State Purchasing determines in writing that: (a) there is only one source for the procurement item; (b) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item; or (c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.
- An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of sole source procurement.
- Complete each section and provide as much information as needed to fully respond. Please click on the grey fields to insert your information. Use your tab key to advance to the next field. Please complete all fields below.
- Requests missing information will be rejected and returned to requestor for completion.
- Please provide a copy of the terms and conditions you provided to the vendor to State Purchasing, if any.

The first two pages will not be posted; however, all of the subsequently numbered pages may be posted, as is, for public notice and comment. Please be complete in your answers and use correct grammar and spelling.

For Technology Contracts or Purchase Orders Only:

All Information Technology (IT) Sole Source procurements must be submitted to the Department of Technology Services for initial review. DTS will send the sole source to State Purchasing. "Information Technology" is defined in Utah Code 63F-1-102 as meaning all computerized and auxiliary automated information handling including: (a) systems design and analysis; (b) acquisition, storage, and conversion of data; (c) computer programming; (d) information storage and retrieval; (e) voice, radio, video, and data communications; (f) requisite systems controls; (g) simulation; and (h) all related interactions between people and machines.

- IT Sole Sources resulting in a contract must be sent to dtscontracts@utah.gov
- IT Sole Sources resulting in a purchase orders must be sent to dtsprocurement@utah.gov

Vendor Name:	Dominion Voting Systems Inc
Vendor Contact Person:	Dana LaTour
Vendor E-mail Address:	dana.latour@dominionvoting.com
Vendor Telephone Number:	(775) 223-7230
Vendor Fax Number:	(720) 2249508
Vendor Ordering Address:	1201 18 th Street Suite 210, Denver CO 80202
Vendor Remittance Address:	1201 18th Street Suite 210, Denver CO 80202
FINET Vendor Number (if available):	AR1910- VC163742 py
<i>All items in the above section are required.</i>	

Complete the following if no FINET number exists

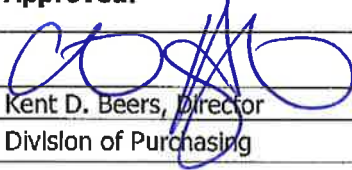
Vendor Federal Tax ID# (TIN): (9 Digits)	27-0565149
Type of Vendor	For-Profit Corporation

Conducting Procurement Unit Contact Information:

Department/Division Name:	Governor's Office/ Lt. Governor's Office
Contact Person and Title:	Mark Thomas, Director of Elections / Chief Deputy
E-mail Address:	mjthomas@utah.gov
Telephone Number:	801-538-1041
DTS Contact (Required for Information Technology SS):	Alan Carlsen dts exemption form attached

<input checked="" type="checkbox"/>	Agency Contract	1. Insert requested term of contract: <u>5 year and renewal options: 0</u> (The standard contract term for executive branch procurement units is five years. See Utah Administrative Code R33-12-404. If renewals are requested, written justification is required. A trial use or testing of a procurement item under a trial use contract may not exceed 18 months. See Utah Code 63G-6a-802) 2. Earliest date that the Conducting Procurement Unit may make the sole source procurement: <u>01/01/2016</u> (Cannot be prior to the date this sole source form is signed by the Division of Purchasing. The Division of Purchasing will enter in the date.)
<input type="checkbox"/>	Purchase Order	1. Insert the RQS Number: _____ 2. Earliest date that the Conducting Procurement Unit may make the sole source procurement: _____. (Cannot be prior to the date this sole source form is signed by the Division of Purchasing. The Division of Purchasing will enter in the date.)

When submitted by email, type requestor's name on the signature line. The requestor must have signature authority for this purchase. The email will constitute the electronic signature.

Requested by:		Approved:	
Mark Thomas	11/23/2015		12/2/15
Authorized Agency Signature	Date	Kent D. Beers, Director	Date
Title:	Dir. Elections/ Chief Deputy	Division of Purchasing	

To Be Filled Out By Division of Purchasing:

For Division of Purchasing Use Before the Public Posting Period		Agent:
The public notice period shall be (Check the box that applies):		
a.	At least seven days before the acquisition of the sole source procurement item for sole source procurements over \$50,000.00. <input checked="" type="checkbox"/>	
b.	Sole source procurements under \$50,000.00 are not required to be published, but may be published at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority. Published: <input type="checkbox"/> Not Published: <input type="checkbox"/>	
c.	Publication is not required for a sole source procurement pursuant to a trial use contract. <input type="checkbox"/>	
d.	Publication is waived for a sole source procurement: <input type="checkbox"/> For public utility services; <input type="checkbox"/> For award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item; <input type="checkbox"/> For other circumstances as determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.	

The Terms and Conditions that will be attached to the awarded agency contract/purchase order:

Agency Contract:	<input checked="" type="checkbox"/> Goods <input checked="" type="checkbox"/> Services <input type="checkbox"/> IT for DTS only <input type="checkbox"/> Business Associate Agreement <input type="checkbox"/> Other, please provide a copy to the Division of Purchasing <input checked="" type="checkbox"/> Att. B IT Non-DTS (include DTS Exception Form, if applicable)
Purchase Order:	<input type="checkbox"/> Goods <input type="checkbox"/> Services <input type="checkbox"/> IT for DTS only <input type="checkbox"/> Other, please provide a copy to the Division of Purchasing <input type="checkbox"/> Att. B IT-Non DTS (include DTS Exception Form, if applicable)

For Division of Purchasing Use After the Public Posting Period		Agent: <u>VINESSA</u>
Sole Source Notice#:	<u>VB1626455</u>	
Commodity Code(s):	<u>20080</u>	
# of Vendors Sent To:	<u>7803</u>	
Additional Research:	<u>Proprietary License Renewal</u>	
Summary of Contest(s) Received & Determination:	<u>NO objections received</u>	
Recommendation:	<u>Award</u>	



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES
Division of Purchasing & General Services
3150 State Office Building, Capitol Hill, Salt Lake City Utah 84114-1061
Phone: 801-538-3026 Fax: 801-538-3882 www.purchasing.utah.gov

Solicitation #:	(Filled in by the Division of Purchasing)
Public Notice Period:	(Filled In by the Division of Purchasing)
Issuing Procurement Unit:	Division of Purchasing
Conducting Procurement Unit:	

This is not a competitive procurement solicitation

Section 63G-6a-802 of the Utah Procurement Code provides that the Division of Purchasing may award a contract for a procurement item without competition if the Division of Purchasing determines in writing that: (a) there is only one source for the procurement item; (b) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item; or (c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.

The Division of Purchasing created this sole source request form as a determination that a sole source contract should be awarded to the vendor identified herein. This sole source request form is only for comments regarding the proposed sole source procurement identified herein. It is not a request for quotes, bids, or proposals. DO NOT submit questions, bids, quotes, proposals, or other information in BidSync. Please read the justification very carefully.

Pursuant to the Utah Procurement Code Section 63G-6a-406(3)(a), unless exempt from publication under the Utah Procurement Code or applicable rules of the Utah Administrative Code, this sole source procurement notice shall be published for at least seven days before the acquisition of the sole source procurement item, unless the Division of Purchasing reduces the seven-day period.

A person may contest this sole source request prior to the closing of the public notice period by submitting the following information in writing to the Division of Purchasing: (a) the name of the contesting person; and (b) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item. Do not respond through the BidSync system; instead, please refer to the contact information in the Bid Comments section on BidSync. **DO NOT CONTACT THE CONDUCTING PROCUREMENT UNIT.** All request information regarding this sole source procurement, including obtaining additional information, can be obtained through the Division of Purchasing. No action is required if you agree this proposed purchase is a valid sole source request.

It is anticipated that this sole source procurement will result in a: (Check one and fill in the appropriate fields for an agency contract or the RQS number for a PO)

	RESULT	ACTION
<input checked="" type="checkbox"/>	Agency Contract	1. The term of this contract will be: <u>5 year</u> and renewal options: <u>0</u> . 2. Earliest date that the Conducting Procurement Unit may make the sole source procurement: <u>01/01/2016</u> .
<input type="checkbox"/>	Purchase Order	Earliest date that the Conducting Procurement Unit may make the sole source procurement: _____ (Cannot be prior to the date this sole source form is signed by the Division of Purchasing. The Division of Purchasing will enter in the date.)

Description of Product / Service to be Purchased:	Voting machine software to be used statewide for general elections
Total Cost (Include cost for all renewal periods, if any):	\$133,115.00 1 yr.
Freight Cost (F.O.B. Destination, Freight Prepaid):	\$0.00
Vendor Name:	Dominion Voting Systems Inc

Explain in detail the service or product to be procured:

Software renewal license for voting machines used statewide.

Define why there is only one source by checking all that apply below and completing the corresponding action at the right.

<input checked="" type="checkbox"/>	There is only one source for the procurement item.	Complete section A
<input type="checkbox"/>	Procurement of public utility services.	Complete section A
<input checked="" type="checkbox"/>	Compatibility of equipment, technology, software, accessories, replacement parts, or service, including professional services, is the paramount consideration.	Complete sections A and B
<input checked="" type="checkbox"/>	Transitional costs are unreasonable or cost prohibitive.	Complete sections A and B
<input type="checkbox"/>	The award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item.	Complete section C
<input type="checkbox"/>	A procurement item is needed for trial use or testing to determine whether the procurement item will benefit the agency.	Complete section D
<input type="checkbox"/>	Leasing of personal property (not real property).	Refer to section E

Section A: GENERAL INFORMATION

1.	What is unique about this product/service to justify a sole source? (Explain in detail why the service or product is only available from a single supplier.)
	No other vendor can license the current software used by the voting machines, unless we purchase new software.
2.	Could the product/service be reasonably modified to allow for competition?
	No, new hardware would have to be purchased in order to accommodate this request.
3.	Explain the market research performed to make the sole source recommendation?
	The Federal Election Commission certifies companies who are able to provide voting software and hardware to our state. As of 4/6/2015 there are only two companies who are FEC certified to use the current voting software used by the state of Utah, however, since the hardware is solely designed to use a specific software licensed to Dominion, there is no practical way to offer this contract out to other vendors for RFP.
4.	List the names of other similar vendors contacted, contact person, and a summary of their response, if there is only one source for the procurement item.
	ES&S, Ryan Mack, a similar vendor, but they do not have rights to the current software license in the voting machines.
5.	Complete disclosure must be included with this request if the requestor has any personal, financial, or fiduciary relationship with the recommended vendor. (Please Attach)

Section B: COMPATIBILITY OF EQUIPMENT/TRANSITIONAL COSTS

1.	Describe the existing equipment, technology, software, accessories, replacement parts, or service, hereafter referred to as equipment, with which this purchase must be compatible; include the original purchase price and date of purchase for the existing equipment.
	Please see existing contract for specifics.
2.	Please supply the following:
	a. Procurement method was used to purchase the existing equipment? (IFB, RFP, Sole Source).
	b. Solicitation number, RQS number, or sole source number for the existing equipment
	c. Contract number for the existing equipment
3.	What is the actual or estimated remaining life expectancy of the existing equipment?
	1 to 5 years.

4.	What are the transitional costs for moving to new equipment, including professional services?
	N/A

Section C: THE AWARD TO A SPECIFIC SUPPLIER, SERVICE PROVIDER, OR CONTRACTOR IS A CONDITION OF A DONATION THAT WILL FUND THE FULL COST OF THE SUPPLY, SERVICE, OR CONSTRUCTION ITEM

1.	Is the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item?
2.	Who made the donation?
3.	Documentation and terms pertaining to the donation is attached. <input type="checkbox"/>

Section D: A PROCUREMENT ITEM IS NEEDED FOR TRIAL USE OR TESTING TO DETERMINE WHETHER THE PROCUREMENT ITEM WILL BENEFIT THE AGENCY

1.	Why is the trial use or testing necessary? (Explain the purpose of the trial use or testing of the procurement item.)
2.	What is the anticipated end result of the trial or test?
3.	Do any other similar vendors provide this product or service?
a.	If yes, list the company names:
b.	Will their products be tested?
4.	What criteria were used to choose this vendor?
5.	What is the scope, size, and location of test or trial?
6.	Contracts for trial and testing must follow the criteria listed in UCA 63G-6a-802 (6). <input type="checkbox"/>
7.	The period for a trial use or testing of a procurement item under a trial use contract may not exceed 18 months, unless the procurement officer provides a written exception documenting the reason for a longer period. <input type="checkbox"/>

Section E: LEASING PERSONAL PROPERTY (Not Real Property)

Lease sole source requests must include an approved *FI 9 State of Utah Lease Obligation Record* form from the Division of Finance. The *FI 9 State of Utah Lease Obligation Record* form can be found on the Division of Finance website finance.utah.gov under Forms. The Finance policy *FIACCT 09-21.00 Fixed Assets – Leases* can be found on the Division of Finance website under Accounting Policies and Procedures.

☐ Approved FI 9 attached.

Contact information to contest or obtain additional information relating to this sole source procurement. (To be filled out by the Division of Purchasing):

Name:	
Phone Number:	
E-mail Address:	

Approved As To Form

By: Asst. Attorney General
Date: 02/06/2015

63G-6a-802. Award of contract without competition -- Notice -- Extension of contract without engaging in standard procurement process.

- (1) As used in this section:
- (a) "Transitional costs" mean the costs of changing from an existing provider of, or type of, a procurement item to another provider of, or type of, procurement item.
 - (b) "Transitional costs" include:
 - (i) training costs;
 - (ii) conversion costs;
 - (iii) compatibility costs;
 - (iv) system downtime;
 - (v) disruption of service;
 - (vi) staff time necessary to put the transition into effect;
 - (vii) installation costs; and
 - (viii) ancillary software, hardware, equipment, or construction costs.
 - (c) "Transitional costs" do not include:
 - (i) the costs of preparing for or engaging in a procurement process; or
 - (ii) contract negotiation or contract drafting costs.
 - (d) "Trial use contract" means a contract between a procurement unit and a vendor for a procurement item that the procurement unit acquires for trial use or testing to determine whether the procurement item will benefit the procurement unit.
- (2) The division or a procurement unit with independent procurement authority may award a contract for a procurement item without competition if the procurement officer, the head of the procurement unit, or a designee of either who is senior to the procurement officer or the head of the procurement unit, determines in writing that:
- (a) there is only one source for the procurement item;
 - (b) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item; or
 - (c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.
- (3) Circumstances under which there is only one source for a procurement item may include:
- (a) where the most important consideration in obtaining a procurement item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;
 - (b) where transitional costs are unreasonable or cost prohibitive; or
 - (c) procurement of public utility services.
- (4) (a) Subject to Subsection (4)(b), the applicable rulemaking authority shall make rules regarding the publication of notice for a sole source procurement that, at a minimum, require publication of notice of a sole source procurement, in accordance with Section 63G-6a-406, if the cost of the procurement exceeds \$50,000.
- (b) Publication of notice under Section 63G-6a-406 is not required for:
- (i) the procurement of public utility services pursuant to a sole source contract; or
 - (ii) other sole source procurements provided by rule.
- (5) The division or a procurement unit with independent procurement authority who awards a sole source contract on behalf of another procurement unit shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the procurement unit.
- (6) (a) The period of trial use or testing of a procurement item under a trial use contract may not exceed 18 months, unless the procurement officer provides a written exception documenting the reason for a longer period.
- (b) A trial use contract shall:
- (i) state that the purpose of the contract is strictly for the purpose of the trial use or testing of a procurement item;
 - (ii) state that the contract terminates upon completion of the trial use or testing period;
 - (iii) state that, after the trial use or testing period, the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;
 - (iv) state that any purchase of the procurement item beyond the terms of the trial use contract will be made in accordance with this chapter; and
 - (v) include, as applicable:
 - (A) test schedules;
 - (B) deadlines and a termination date;
 - (C) measures that will be used to evaluate the performance of the procurement item;

- (D) any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;
- (E) the obligations of the procurement unit and vendor;
- (F) provisions regarding the ownership of the procurement item during and after the trial use or testing period;
- (G) an explanation of the grounds upon which the contract may be terminated;
- (H) a limitation of liability;
- (I) a consequential damage waiver provision;
- (J) a statement regarding the confidentiality or nondisclosure of information;
- (K) a provision relating to any required bond or security deposit; and
- (L) other requirements unique to the procurement item for trial use or testing.

(c) Publication of notice under Section 63G-6a-406 is not required for a procurement pursuant to a trial use contract.

(7) The division or a procurement unit with independent procurement authority may extend a contract for a reasonable period of time without engaging in a standard procurement process, if:

- (a) the award of a new contract for the procurement item is delayed due to a protest or appeal;
- (b) the standard procurement process is delayed due to unintentional error;
- (c) changes in industry standards require significant changes to specifications for the procurement item;
- (d) the extension is necessary to prevent the loss of federal funds;
- (e) the extension is necessary to address a circumstance where the appropriation of state or federal funds has been delayed;
- (f) the extension covers the period of time during which contract negotiations with a new provider are being conducted; or
- (g) the extension is necessary to avoid a lapse in critical governmental services that may negatively impact public health, safety, or welfare.

Amended by Chapter 196, 2014 General Session

R33-8-101. Sole Source - Award of Contract Without Competition.

(1) Sole source procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-802, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and should be used in conjunction with the Procurement Code.

(2) A sole source procurement may be conducted if:

- (a) there is only one source for the procurement item;
- (b) the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or
- (c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.

(3) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a sole source procurement.

(4) Requests for a procurement to be conducted as a sole source shall be submitted in writing to the chief procurement officer or head of a procurement unit with independent procurement authority for approval.

(5) The sole source request shall be submitted to the chief procurement officer or the head of a procurement unit with independent procurement authority and shall include:

- (a) a description of the procurement item;
- (b) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;
- (c) the duration of the proposed sole source contract;
- (d) an authorized signature of the conducting procurement unit;
- (e) unless the sole source procurement is conducted under Rule R33-8-101-2(b) or (c), research completed by the conducting procurement unit documenting that there are no other competing sources for the procurement item;
- (f) any other information requested by the chief procurement officer or the head of a procurement unit with independent procurement authority; and

(6) a sole source request form containing all of the requirements of Rule R33-8-101(5) shall be available on the division's website.

(7) Except as provided in (b), sole source procurements over \$50,000 shall be published in accordance with Section 63G-6a-406.

- (a) Sole source procurements under \$50,000 are not required to be published but may be published at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority.
- (b) The requirement for publication of notice for a sole source procurement is waived:

(i) for public utility services;

(ii) if the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or

(iii) for other circumstances as determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.

(8) A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-406 by submitting the following information in writing to the chief procurement officer or head of a procurement unit with independent procurement authority:

(a) the name of the contesting person; and

(b) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.

(9) Upon receipt of information contesting a sole source procurement, the chief procurement officer or head of a procurement unit with independent procurement authority shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

R33-8-201. Trial Use or Testing of a Procurement Item, Including New Technology.

The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802, Utah Procurement Code.

Date of Enactment or Last Substantive Amendment
July 8, 2014