

MODIFICATION

State of Maine**Master Agreement****Effective Date:** 11/01/14**Expiration Date:** 10/31/18**Master Agreement Description:** Forensics Imaging and Secure Storage**Buyer Information**

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

Issuer Information

JOAN BOLDUC 207-624-9904 ext. JOAN.BOLDUC@MAINE.GOV

Requestor Information

Nick Marquis 207-624-7776 ext. nicholas.marquis@maine.gov

Authorized Departments

18B BUREAU OF INFORMATION SERVICES

Vendor Information**Vendor Line #: 1****Vendor ID**

VC1000095676

Vendor Name

BitSec Forensics

Alias/DBA**Vendor Address Information**

112 Parkwood Dr

Augusta, ME 04330

US

Vendor Contact Information

Eric Austin

207-512-5420 ext. 101

eric@bitsecforensics.com

Commodity Information

Vendor Line #: 1

Vendor Name: BitSec Forensics

Commodity Line #: 1

Commodity Code: 89846

Commodity Description: Forensics Imaging and Secure Storage

Commodity Specifications: Please see contract attached.

Commodity Extended Description:

Quantity	UOM	Unit Price
0.00000		\$0.00
Delivery Days	Free on Board	
Contract Amount	Service Start Date	Service End Date
\$0.00	11/01/14	10/31/18
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
Agreement to Purchase Services

THIS AGREEMENT, made this 10th day of October, 2014, is by and between the State of Maine, Department of Administrative and Financial Services, hereinafter called "Department," and BitSec Forensics, Inc., located at 112 Parkwood Drive Augusta, ME 04330 Augusta, ME 0433, telephone number 207-358-7004 hereinafter called "Provider", for the period of November 1, 2014 to October 31, 2016..

The AdvantageME Vendor/Customer number of the Provider is VC1000095676

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

Rider A - Specifications of Work to be Performed
Rider B - Payment and Other Provisions
Rider C - Exceptions to Rider B
Rider D, E, and/or F - (At Department's Discretion)
Rider G - Identification of Country in Which Contracted Work will be Performed

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in 3 original copies.

**DEPARTMENT OF ADMINISTRATIVE AND
FINANCIAL SERVICES**

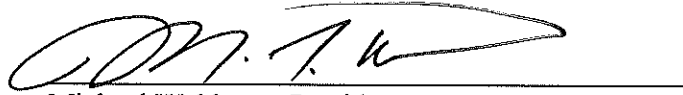
By:


James Smith, Chief Information Officer

and

BITSEC FORENSICS, INC.

By:


Michael Webber, President

Total Agreement Amount: \$ Master Agreement unencumbered, Agencies use on an as-needed basis

Approved: _____
Chair, State Purchases Review Committee
BP54 (Rev 1/12)

The use of this standard form of agreement is controlled by and subject to revision by the Division of Purchases. The current version of this form is available at the Division website (<http://www.maine.gov/purchases/info/forms.shtml>), or at 9 State House Station, Augusta, Maine 04333-0009.

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AdvantageME ACCOUNT CODING

[illegible]

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

Service to be Performed:

Services are performed on an as-needed basis by the Department requesting services:

- Forensic imaging (preservation) and secure storage of hard disks and other electronic storage media
- Forensic analysis of electronic data
- Expert opinion and testimony related to computer forensics and electronic discovery
- Forensic identification, recovery, and production of electronic mail and other electronic data requested through Freedom of Access Requests, court order, or subpoena.

Contractor Personnel

The State shall retain the right to reject any of the Contractor's and/or Subcontractor's employees whose qualifications, in the State's judgment, do not meet the standards established by the State as necessary for the performance of the services. In considering the Contractor's employee's qualifications, the State will act reasonably and in good faith

Dispute Resolution

In the event of any dispute arising during the term of the Contract concerning performance of the Contract, either party shall serve notice of such dispute on the other party and the dispute shall be decided by the State Contract Administrator who shall reduce his decision to writing and serve a copy on the Contractor. The decision of the State Contract Administrator shall be final and conclusive. The State Contract Administrator's decision in the event of any written notice of dispute shall be final subject to the Contractor's right to relief under applicable law.

Confidentiality of Information

It is the responsibility of the Contractor to safeguard and protect all State data during the life of this Contract. All materials and information provided to the Contractor by the State or acquired by the Contractor on behalf of the State whether verbal, written, magnetic media, or otherwise shall be regarded as confidential information in accordance with the provisions of Federal and State law and ethical standards, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with Federal and State law and ethical standards.

Invoicing and Payments

Invoices should be sent to the Agency requesting the service. Payment will be made at the proposed rate of \$240 per hour plus miscellaneous expenses that are pre-approved by the Department for the task detailed in Rider A. Payments will only be made for invoices approved and accepted in writing by the Requesting Agency.

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ Master Agreement

2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

\$ 240.00 per hour for Computer Forensic Services provided. Miscellaneous other charges must be pre-approved by the department requesting services

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Nick Marquis
Title: Client Technologies Director
Address: 145 State House Station
51 Commerce Drive
Augusta, ME 04333-0145

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be

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in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

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e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the

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personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

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RIDER C
EXCEPTIONS TO RIDER B

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RIDER D

Not Required: For use at Department's Discretion

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RIDER E

Not Required: For use at Department's Discretion

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RIDER F

Not Required: For use at Department's Discretion

STATE OF MAINE
Department of Administrative & Financial Services
Office of Information Technology
CONTRACT FOR SPECIAL SERVICES - AMENDMENT

BY AGREEMENT of both parties this 29th day of September, 2016, the Contract for Special Services between the State of Maine, Department of Administrative & Financial Services, Office of Information Technology hereinafter called "Department," and BitSec Forensics, Inc. , hereinafter called "Provider," is hereby amended as follows:

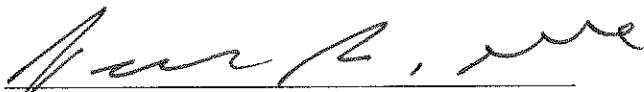
1. The termination date is extended from October 31, 2016 to October 31, 2017.

Reason: Contract extension authorized by RFP#201407792. Extended contract end date 12 months to continue forensic services.

All other terms and conditions of the original contract dated October 10, 2014 remain in full force and effect.

IN WITNESS WHEREOF, the Department and Prvoider, by their duly authorized representatives, have executed this amendment in two (2) originals as of the day and year first above written.

OFFICE OF INFORMATION TECHNOLOGY

By: 
JAMES R. SMITH, CIO

and

BITSEC FORENSICS, INC.

By: 
Mike Webber, President

Approved, State Purchases Review Committee: _____ Date: _____

(note: this section must be completed by using agency)

Contract Number (CT #): MA 18P 20141105*0096 Vendor Code: VC1000095676

Old Contract Amount: \$0 (based on usage) Account Codes: N/A

Amount of Increase: N/A

New Contract Amount: \$0 (no change) New Termination Date: 10/31/2017

State of Maine Competitive Award Authorization Form

Form Instructions: Please provide the information requested in the form below. This form must accompany contracts being proposed for approval that are the direct result of a competitive Request for Proposals (RFP), a subsequent contract renewal that was anticipated in the RFP or when Competitive Quotes are obtained. If the renewals allowable under the original RFP have been exhausted, another competitive RFP should be conducted.

Contract Administrator:	Nick Marquis/Joan Bolduc	Office/Division/Program	DAFS/OIT/ CLIENT TECHNOLOGIES and OPERATIONS MANAGEMENT
Contract Amount:	\$0.00	Contract (CT) Number:	MA 18P 141105*96
Start Date:	10/20/14	End Date:	10/31/2018
Selected Bidder's Name, City and State:	BitSec Forensics, Inc. Mike Webber 112 Parkwood Drive Augusta, ME 04330		
Short Description of Service:	Computer forensic services		

1. Information on the Competitive Process Used

If a RFP process was used:

RFP#: 201407792

☐ Initial contract. ☐ First renewal. ☒ Second renewal. ☐ Third renewal.

If this is a first, second, or third renewal after an RFP, you need not complete the remainder of section 1 nor sections 2, 3 and 4. Simply enter the original RFP number, check the appropriate box, sign and date the form and send it with the contract.

If competitive quotes were obtained:

☐ This contract award is the result of obtaining Competitive Quotes.

The RFP process can be used for any contract award, but please note that as an alternative to the RFP process, Competitive Quotes can be used in determining awards for contracts if both of the following criteria apply:

- A. The total contract amount is \$10,000 or less; and*
- B. If the services sought are straightforward in nature, such that price, availability and pass/fail criteria are the determining factors in the award decision (i.e. no subjective evaluation factors needed to be used).*

**Renewals are not allowed for Competitive Quote awards. Once a contract expires that was the result of obtaining Competitive Quotes, new quotes are to be sought if the need for the services continues.*

2. Identify All Bidders

- A. For **RFPs**, please list all bidders who submitted proposals before the stated Proposal Submission Deadline.
- B. For contracts where **Competitive Quotes** were obtained, the following needs to be included in this section:
 - 1) List all vendors who were contacted for quotes;
 - 2) List all vendors who responded and the quoted amounts for each and;
 - 3) Clearly identify the selected vendor (place in bold).

*Please note, in accordance with 5 M.R.S. §1825-A(3), competitive bidding must be conducted with a **minimum of three** vendors, unless three vendors are not available. If three are not available, please mention below how this was determined. If more than three are available, it is **HIGHLY RECOMMENDED** to contact all vendors to seek as many quotes as possible.*

3. Review and Scoring Process.

- A. For contract awards based on an **RFP**, describe the process that was followed in reviewing and scoring the proposals. A consensus approach is encouraged, but not required. Be sure to retain copies of all scoring documentation, in accordance with your Department's archiving requirements.

State of Maine Competitive Award Authorization Form

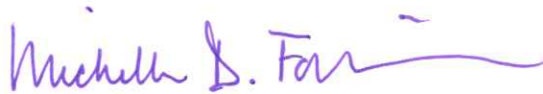
- B. If this contract award is the result of obtaining **Competitive Quotes**, then please specify below that the quote with the lowest price was selected from among the bidders that met the State's requirements.
Please attach to this document all Competitive Quotes received (not RFP proposals).

4. Reminder regarding Award Notification Letters.

Award notification letters should be sent out to bidders following all competitive processes. If you are not already aware, please note that award notification letters must state that the award is conditional, pending SPRC Approval and negotiation of a mutually agreeable contract. The letters must also include a notification of all bidders' right to appeal the decision. Please be sure to use the template on the Division of Procurement Services website:

http://www.maine.gov/purchases/files/Sample_Award_Notification_Letter.doc

**Signature of requesting
Department's Contract
Administrator (or other
relevant stakeholder):**



Printed Name:

Michelle D. Fournier, OIT, Vendor Management Office

Date:

11/16/2017

GENERAL TERMS AND CONDITIONS OF STATE OF MAINE BUYER PURCHASE ORDER

1. WARRANTY: Contractor warrants:

- a. That all articles and services to be supplied by it under this agreement are fit and sufficient for the purpose intended, and
- b. That all articles and services covered by this contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and
- c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
- d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
- e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within 1 year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

2. TAXES: Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state or local sales, or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

3. PACKING AND SHIPMENT: Deliveries shall be made as specified without charge for boxing, carting or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. DELIVERY: Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, The Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

5. INSPECTION: All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. Division of Purchases at its option may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.

GENERAL TERMS AND CONDITIONS OF STATE OF MAINE BUYER PURCHASE ORDER

6. **INVOICE:** The original and duplicate invoices covering each and every shipment made against this order showing purchase order number, vendor number and other essential particulars, must be forwarded promptly to the ordering agency concerned by the vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.

7. **ALTERATIONS:** The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreements, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this agreement because of the inability of the parties to agree on an adjustment or adjustments.

8. **DEFAULT:** The Division may terminate the whole or any part of this agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency.

In the event that the Division terminates this agreement in whole or in part pursuant to this paragraph, the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

9. **COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

10. **INTERPRETATION:** This agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

11. **DISPUTES:** The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this agreement and the fulfillment of this agreement on the part of the contractor.

12. **ASSIGNMENT:** None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this agreement.

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13. **HOLD HARMLESS:** The Contractor agrees to indemnify, defend and save harmless the Bureau of General Services, its divisions, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this agreement.

14. **SOLICITATION:** The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the contractor to solicit or secure this agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

15. **WAIVER:** The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of contractor with respect to such future performance shall continue in full force and effect.

16. **MSDS:** All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current material safety data sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

17. **COMPETITION:** By accepting this Purchase Order, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.