



PINAL COUNTY
wide open opportunity

RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

NOTICE OF REQUEST FOR PROPOSAL

Designated Agency: PINAL COUNTY ELECTIONS DEPARTMENT

Material or Service: ELECTIONS EQUIPMENT AND MAINTENANCE

Contract Type: FIRM FIXED PRICE

Contract Period: INITIAL PERIOD: APRIL 23, 2014 –APRIL 22, 2015
FIRST RENEWAL YEAR (OPT): APRIL 23, 2015 – APRIL 22, 2016
SECOND RENEWAL YEAR (OPT): APRIL 23, 2016 – APRIL 22, 2017
THIRD RENEWAL YEAR (OPT): APRIL 23, 2017 – APRIL 22, 2018
FOURTH RENEWAL YEAR (OPT): APRIL 23, 2018 –APRIL 22, 2019

Pre-Submittal Conference: N/A

Question Due Date: APRIL 1, 2014

Solicitation Due Date: **BY 2:00 PM ARIZONA TIME ON APRIL 11, 2014**

Number of Copies Required: **ORIGINAL + 4 COPIES**

Solicitation Opening Date: **BY 2:15 PM ARIZONA TIME ON APRIL 11, 2014**

Solicitation Opening Location: 31 NORTH PINAL STREET
BUILDING A
FLORENCE, AZ 85132

Procurement Officer Contact Name: LORINA GILLETTE , CPPB

Telephone: (520) 866-6639

Fax: (520) 866-2903

E-mail: Lorina.Gillette@pinalcountyz.gov



PINAL COUNTY
wide open opportunity

Table of Contents RFP PC-131219 Elections Equipment and Maintenance

Pinal County
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Florence, AZ 85132

SOLICITATION DOCUMENTS

TABLE OF CONTENTS	p.	2
DEFINITIONS	p.	3
SPECIAL INSTRUCTIONS	p.	4
UNIFORM INSTRUCTIONS	p.	7
STATEMENT OF WORK	p.	11
SPECIAL TERMS AND CONDITIONS	p.	17
UNIFORM TERMS AND CONDITIONS	p.	20
ADDENDUM ACKNOWLEDGEMENT FORM	p.	28
W-9 FORM	p.	29
RESPONDERS CHECKLIST	p.	30
OFFER AND ACCEPTANCE FORM	p.	31

LIST OF EXHIBITS AND ATTACHMENTS

N/A



PINAL COUNTY
wide open opportunity

Definitions RFP PC-131219 Elections Equipment and Maintenance

Pinal County
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The following definitions apply to the entire Solicitation Document:

“Attachment” means any item the Solicitation requires a Responder to submit as part of the Offer.

“Contract” means the combination of the Solicitation, including the Uniform and Special Instructions to Responders, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; any proposed exceptions that are accepted and any Solicitation Addendums or Contract Addendums.

“Contractor” means any person who has a Contract with the County.

“County” means Pinal County and any Department or Office of the County that executes the Contract.

“County Board of Supervisors” means the contracting authority for the County. The County Manager and the Chief Financial Officer are authorized to sign contracts and amendments up to \$250,000 on behalf of the Board of Supervisors.

“Days” means calendar days unless otherwise specified.

“Director” means the Finance Director (Chief Financial Officer) for Pinal County.

“Exhibit” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

“Fiscal Year” means the period beginning with July 1 and ending June 30.

“Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

“Materials” means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

“May” means something that is not mandatory but permissible.

“Office or User Department” means the County elected official’s office or County division responsible for managing the Contract and/or the project.

“Offer” means bid, proposal or quotation.

“Offer Due Date” means the exact date and time offers are due.

“Procurement Officer” means the person, or his or her designee, duly authorized by the County to administer Contracts and make written determinations with respect to the Contract.

“Responder” means a vendor who responds to a Solicitation.

“Services” means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

“Shall, Will, Must” means a mandatory requirement.

“Should” means something that is recommended but not mandatory.

“Solicitation” means an Invitation for Bids (“IFB”), a Request for Proposals (“RFP”), or a Request for Quotations (“RFQ”).

“Solicitation Addendum” means a written document that is issued by the Procurement Officer for the purpose of making changes to the Solicitation.

“Subcontract” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

END OF DEFINITIONS



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1 DEFINITIONS

1.1 The Definitions on page 3 of this Solicitation apply to these Special Instructions.

2 INQUIRIES

2.1 All questions related to this Request for Proposal shall be directed to the Procurement Officer, Lorina Gillette at Lorina.Gillette@pinalcountyaz.gov. Questions should be submitted in writing when time permits. Any correspondence related to a solicitation should refer to the appropriate solicitation number, page and paragraph number.

2.2 Responders may not contact any Elected Officials or County employees other than the Procurement Officer concerning this procurement while the Solicitation and evaluation are in process.

3 OFFER PREPARATION

3.1 Offer and Acceptance. Offers shall include a signed Offer and Acceptance form, as described in section 3.3 of the Uniform Instructions.

The Offer and Acceptance Form shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return an Offer and Acceptance Form may result in rejection of the Offer.

3.2 Acknowledgement of Solicitation Addendums. Offers shall include any/all signed Solicitation Addendum(s), as described in section 3.7 of the Uniform Instructions.

Solicitation Addendums are posted on the Pinal County website at the following address: <http://pinalcountyaz.gov/Departments/Finance/Pages/BidsProposals.aspx>. It is the responsibility of the Responder to periodically check this website for any Solicitation Addendum. Solicitation Addendums shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed (or acknowledgment for electronic submission, when authorized) copy of a Solicitation Addendum may result in rejection of the Offer.

3.3 Estimated Quantities. The county anticipates considerable activity under contract(s) awarded as a result of this solicitation, however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by the contractor. The quantities that may be reflected in the solicitation are estimates only.

3.4 Offer Format. Offers shall follow the following format: The original copy of the Offer shall be clearly labeled "**ORIGINAL**" and shall contain a Title Page that identifies the solicitation number and provides the Responder Name, Address, Telephone Number as well as the Name and Title of the Solicitation Contact Person. The Offer shall be organized into two (2) sections as follows:

3.4.1 Section One. Section One shall contain the Title Page as well as the following forms: Offer & Acceptance Form, Addendum Acknowledgment Form, W-9 Form, Responder's Checklist.

3.4.2 Section Two. Section Two shall contain all Offer Forms as required under Special Instructions, Paragraph 3.5 Offer Forms listed below.

3.5 Response Forms. Offers shall include the following completed Response Forms.

3.5.1 Solicitation PC-131219 Response Form 1

3.5.2 Solicitation PC-131219 Response Form 2 Technical and Functional Requirements

3.5.3 Solicitation PC-131219 Response Form 3 Pricing Sheet

3.6 Additional Special Instructions. Responders shall see the attachments within the Solicitation for Additional Special Instructions associated with this Solicitation.

3.7 Additional Terms and Conditions. Responders shall see the attachments within the Solicitation for Additional Terms and Conditions.



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4 SUBMISSION OF OFFER

- 4.1 Electronic Documents. The Solicitation document is provided in an electronic format. Any unidentified alteration or modification to any Solicitation documents, to any attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. In those instances where modifications are identified, the original document published by the County shall take precedence. As provided in the Solicitation Instructions, Responders are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission to the County.

5 EVALUATION

- 5.1 Evaluation. In accordance with the Pinal County Procurement Code, awards shall be made to the responsible responder(s) whose proposal is determined in writing to be the most advantageous to the County based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.

1. Evidence of Secretary of State Certification by April 21, 2014
- 2a. Responder Method of Approach (see Response Form 1 section 2)
- 2b. Hardware/Software (see Response Form 2 Technical & Functional Requirements)
3. Capacity of Responder (see Response form 1 section 1)
4. Cost
5. Conformance to Terms and Conditions

- 5.2 Clarifications. Upon receipt and opening of proposals submitted in response to this solicitation, the County may request oral or written clarifications, including demonstrations or questions and answers, for the sole purpose of information gathering or of eliminating minor informalities or correcting nonjudgmental mistakes in proposals. Clarifications shall not otherwise afford the Responders the opportunity to alter or change its proposal.

- 5.3 Negotiations. County may conduct negotiations with those Responders who's Offers are determined by the County to be reasonably susceptible of being selected for award. Negotiations may be in writing or in person and may include presentations, site visits or demonstrations.

- 5.4 Responsibility, Responsiveness and Acceptability. In accordance with Pinal County Procurement Code PC1-328(H), County shall consider the following in determining Responder responsibility as well as the responsiveness and acceptability of their Offer.

Responders may not be considered responsible if they have been debarred from the practice of their profession that would otherwise be necessary in the provision of goods and services under any resulting contract. Responders may not be considered responsible if they have had a contract with the County, within the last three-years, that was terminated for cause, due to breach or similar failure to comply with the terms of any such contract. Responders may also not be considered responsible if there is factual evidence of their frequent and reoccurring failure to satisfy the terms of their agreements and contractual relationships, both with the County or other government entities. Factual evidence shall consist of any documented vendor performance reports, customer complaints and/or negative references (including those found outside of the submittal). Other factors that the County may evaluate to determine responsibility include, but are not limited to excessively high or low pricing, compliance with applicable laws, and financial capacity to perform as specified. The County reserves the right to review the qualifications of any key personnel to be assigned to provide services.

Offers may not be considered responsive and/or acceptable if they do not contain information sufficient to evaluate the Offer in accordance with the evaluation criteria identified in the Solicitation including (i) a completed Offer and Acceptance Form; (ii) completed Solicitation Addendums acknowledging any/all changes to the Solicitation; (iii) a response to the County's Statement of Work, (iv) a price proposal; or (v) other certifications or bond sureties required in the Solicitation.

Responder shall include specifications and technical literature sufficient to allow Pinal County to determine that the equipment/services meet(s) all requirements. If a requirement is not addressed in the technical literature, it must be supported by additional documentation and included with the proposal. Responses without sufficient technical documentation may be rejected.



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5.5 Best and Final Offers. If negotiations are conducted, the County shall issue a written request for a Best and Final Offer. The request shall set forth the date, time and place for the submission of the Best and Final Offer. Best and Final Offers shall be requested only once, unless the County makes a determination that it is advantageous to conduct further negotiations or change the solicitation requirements.

6 AWARD

6.1 Contract Document Consolidation. At its sole option, following any contract award(s) the County may consolidate the resulting contract documents. Examples of such consolidation would include (i) reorganizing solicitation documents and components of the Contractor's Offer only pertaining to the Solicitation; (ii) revising the Statement of Work to incorporate the Contractor's response, (iii) revising any terms and conditions to incorporate any changes in the Contractor's Offer; (iv) excluding any components of the Contractor's Offer that were not awarded. Contract document consolidation shall not materially change the Contract.

6.2 Post Award Meeting. The Contractor may be required to attend a post-award meeting with the Using Agency to discuss the terms and conditions of this Contract. This meeting will be coordinated by the Procurement Officer of the Contract.



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1 **DEFINITIONS** - The Definitions on page 3 apply to these Uniform Instructions.

2 **INQUIRIES**

- 2.1 Duty to Examine. It is the responsibility of each Responder to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its' Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.
- 2.2 Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Responder shall not contact or direct inquiries concerning this Solicitation to any other County employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
- 2.3 Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquiries except at the Pre-Offer Conference, require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer and not be opened until after the Offer due date and time. The County shall consider the relevancy of the inquiry but is not required to respond in writing.
- 2.4 Timeliness. Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the County. Failure to do so may result in the inquiry not being considered for a Solicitation Addendum.
- 2.5 No Right to Rely on Verbal Responses. A responder shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.
- 2.6 Solicitation Addendum. The Solicitation shall only be modified by a Solicitation Addendum.
- 2.7 Pre-Offer Conference. If a pre-Offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Responders should raise any questions about the Solicitation or the procurement at that time. A Responder may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Addendum.
- 2.8 Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

3 **OFFER PREPARATION**

- 3.1 Forms: No Facsimile, Telegraphic or Electronic Mail Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms, unless the solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids.
- 3.2 Typed or Ink: Corrections. The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
- 3.3 Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Responder's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, shall result in rejection of the Offer.
- 3.4 Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Responder clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Responder's preprinted or standard terms will not be considered by the County as a part of any resulting Contract.



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- 3.4.1 Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
- 3.4.2 Request for Proposals. All exceptions that are contained in the Offer may negatively affect the County's proposal evaluation based on the evaluation criteria stated in the Solicitation or result in rejection of the Offer. An offer that takes exception to any material requirement of the solicitation may be rejected.
- 3.5 Subcontracts. Responder shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- 3.6 Cost of Offer Preparation. The County will not reimburse any Responder the cost of responding to a Solicitation.
- 3.7 Solicitation Addendum. Each Solicitation Addendum shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a Solicitation Addendum may result in rejection of the Offer.
- 3.8 Federal Excise Tax. The County is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the County.
- 3.9 Provision of Tax Identification Numbers. Responders are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number by attaching a current W-9 Form.
- 3.9.1 Employee Identification. Responder agrees to provide an employee identification number or social security number to the County for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this contract. If the federal identifier of the responder is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate County and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
- 3.10 Identification of Taxes in Offer. The County is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be included in the pricing offered in the solicitation. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the contractor.
- 3.11 Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Responder shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Responder shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
- 3.12 Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:
- 3.12.1 Special Terms and Conditions;
- 3.12.2 Uniform Terms and Conditions;
- 3.12.3 Statement or Scope of Work;
- 3.12.4 Specifications;
- 3.12.5 Attachments;
- 3.12.6 Exhibits;
- 3.12.7 Special Instructions to Responders;
- 3.12.8 Uniform Instructions to Responders; and
- 3.12.9 Other documents referenced or included in the Solicitation.
- 3.13 Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).
- 3.14. Federal Immigration and Nationality Act. By signing of the Offer, the Responder warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of



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their employees. The State may, at its sole discretion require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Responder shall have 5 days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the offer not being considered for contract award.

3.15. Offshore Performance of Work Prohibited

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

4 SUBMISSION OF OFFER

4.1 Sealed Envelope or Package. Each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Responder and Solicitation number. The County may open envelopes or containers to identify contents if the envelope or container is not clearly identified. Responder shall submit one (1) original as well as the amount of copies stated on the Solicitation cover page. Responders may provide an electronic copy of the proposal and/or supplemental materials as a supplemental copy, but not in lieu of physical copies unless otherwise specified in the Scope of Work.

4.2 Offer Due Date. The exact due date and time that offers are due as stated on the Solicitation cover page.

4.3 Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.

4.4 Public Record. All Offers submitted and opened are public records and must be retained by the County. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the County. If a Responder believes that information in its Offer should remain confidential, it shall indicate as confidential the specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The County shall determine whether the identified information is confidential pursuant to the Pinal County Procurement Code.

4.5 Non-collusion, Employment, and Services (Certification). By signing the Offer and Acceptance Form or other official contract form, the Responder certifies that:

4.5.1 The Responder did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and

4.5.2 The Responder does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

4.6 Gratuities Prohibited/Integrity of Offers. The Responder affirms they have not given, nor intend to give at any time hereafter any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor or service to any employee of Pinal County in connection with the submitted Bid or Proposal. After award, the County may cancel this contract by giving written notice to the Contractor if it is found that any gratuity, gift or other prohibited item were offered or given to any County officer or employee. In the event the County cancels this contract pursuant to this provision, they shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Responder the amount of the gratuity.

4.7 Lobbying Prohibited. Responders are hereby advised that lobbying is not permitted with any County personnel or members of the Board of Supervisors related to or involved with this Solicitation until the recommendation for award has been posted in the Procurement Office.

5 EVALUATION

5.1 Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.



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- 5.2 Taxes. If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.
- 5.3 Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the offer for the purposes of evaluating that price.
- 5.4 Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
- 5.5 Disqualification. A Responder (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.
- 5.6 Offer Acceptance Period. A Responder submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred-twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, a Responder shall hold its Offer open for one hundred twenty (120) days from the Best and Final Offer due date.
- 5.7 Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the County reserves the right to:
- 5.7.1 Waive any minor informality;
 - 5.7.2 Reject any and all Offers or portions thereof; or
 - 5.7.3 Cancel the Solicitation.
- 6 AWARD**
- 6.1 Number or Types of Awards. The County reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the County. If the Procurement Officer determines that an aggregate award to one Responder is not in the County's best interest, "all or none" Offers shall be rejected.
- 6.2 Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Responder to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Board of Supervisors, County Manager, Chief Financial Officer, or their designee's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- 6.3 Effective Date. The effective date of this Contract shall be the date that the Board of Supervisors, County Manager, Chief Financial Officer, or their designee signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract or Contract Award.
- 7. Protests**
- 7.1 Protests. A protest shall comply with and be resolved according to the Pinal County Procurement Code Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the Finance Director. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after contract award. A protest shall include:
- 7.1.1 The name, address and telephone number of the protester;
 - 7.1.2 The signature of the protester or its representative;
 - 7.1.3 Identification of the purchasing agency and the Solicitation or Contract number;
 - 7.1.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - 7.1.5 The form of relief requested.



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Statement of Work RFP PC-131219 Elections Equipment and Maintenance

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1. INTRODUCTION & BACKGROUND

Introduction: Pinal County covers 5,386 square miles of south central Arizona. It is located between Maricopa and Pima counties, approximately 60 miles from downtown Phoenix and downtown Tucson. Pinal County's population in 2012 was estimated at 385,000.

The economy is largely based on agriculture and copper mining, with farming predominating in the western half of the county, and mining in the eastern half. Industrial and service jobs are being created in the population centers of Casa Grande, Coolidge, Eloy and Apache Junction. Pinal County has a five-member Board of Supervisors with a Board-Manager form of government.

Background: Pinal County has 102 precincts with 98 polling places; Currently 4 precincts are co-located. For the 2012 Primary and General Elections, Pinal County deployed 98 Accu-Vote TSx Accessible Voting units and 98 Accu-Vote Optical Scan units for Election Day voting. Three Accu-Vote TSx Accessible Voting units were deployed to 3 early voting sites during the early voting period. Pinal County also utilized 3 Accu-Feeders and 3 Accu-Vote Optical Scan units as the Central Count System to process early ballots. GEMS election management system was used for tabulation, ballot layout and results reporting. All equipment and software was manufactured by Diebold Election Systems, Inc. and Premier Election Solutions.

Pinal County has approximately 161,000 registered voters and anticipates that number to increase to over 165,000 by the 2014 Primary and General Elections. Arizona implemented a Permanent Early Voting List (PEVL) in 2008, whereby voters who sign up can automatically receive a ballot by mail for each election for which they qualify. Currently, the number of voters in Pinal County signed up to the PEVL is over 54% of the active registered voters. In addition to the PEVL, another 4% of the voters utilize early in-person voting before Election Day.

Pinal County previously processed and distributed the vote by mail ballots in-house. For the 2014 Primary and General Elections, we will begin outsourcing the distribution of the early vote by mail ballots. Pre-printed paper ballots are mailed to those on the PEVL and distributed to the early voting sites for in-person voting. In the 2012 General Election, just over 109,000 people voted. Of these, 28%, or just over 43,000, voted at the polls on Election Day.

Currently, state law allows elections to occur in March, May, August and November of every year. A Presidential Preference election may occur as early as February in the Presidential Election cycle. For jurisdictional or special elections, Pinal County may conduct either all- mail elections, or polling places elections.

Current System:		Status:
EMS	Premier Global Election Management System 1.18.24 (GEMS)	Replacing
Optical Scanners	Premier AccuVote 1.96.6	Eliminating
Central Count	Premier AccuVote CC 2.0.12 Premier AccuFeeder	Replacing
Accessible Voting Equipment	Premier AccuVote TSx 4.6.4	Replacing
Voter Registration System	ES&S PowerProfile v 12.4	Retaining

Goals: The purpose of this RFP is to replace the current Election Management System (EMS). A review of voting practices within Pinal County indicate that voters are increasingly opting for early voting (both in-person and mailed ballots), with fewer voters going to their respective polling places. With that in mind, Pinal County is exploring a variety of options, and will select the EMS that best fits the County's overall needs. Implementation of this new system should be in place, fully functional and acceptance tested on or before May 19, 2014.

Pinal County has decided not to replace the precinct scanners previously used in favor of a central count type system to tabulate paper ballots for the 2014 Election Cycle. We plan to acquire enough ADA compliant voting units for each polling place to accommodate voters with disabilities. As these units will also be used at our early voting sites, each device must be able to contain all ballot styles for the entire county.



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Statement of Work RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

The planned system should provide a high speed central count solution along with all necessary maintenance and support for processing the expected volume of ballots as mentioned above based on voter turnout and mail ballots returned to the county. All eligible ballots must be tabulated quickly and efficiently on Election night in order to upload our county results in the expected time frame – 1 hour after the polls close and hourly thereafter. Each unit must have the capability of being able to detect anomalies or any mark such as a write-in vote. Such aforementioned ballots should be out stacked separately while still continuing to tabulate the remaining ballots.

2. HARDWARE REQUIREMENT

2.1. System Requirements

2.1.1. Mandatory Requirements

- 2.1.1.1. Certified by Voting System Test Laboratory (VSTL) to Voluntary Voting System Guidelines (VVSG). Document Voting System Name and Version, and to which Version VVSG the system is certified.
- 2.1.1.2. Certified by Arizona Secretary of State (SOS) to meet Arizona Election Laws by April 21, 2014.
- 2.1.1.3. EMS is a standalone system, not connected to an external network, a public system, or the internet at any time. The EMS and components of the system may only be attached to other components inside of an isolated network.
- 2.1.1.4. Wireless communications devices are not used on any voting equipment, vote tabulation computers, or any network that attaches vote tabulation equipment or computers.
- 2.1.1.5. Full implementation and acceptance testing of proposed solution, including Federal and State certification, must be possible by May 19, 2014.

2.2. Central Count Machine

2.2.1. Mandatory Requirements

- 2.2.1.1. Audit log of all actions taken on device is kept and accessible for printing.
- 2.2.1.2. Can read ballots from all precincts in election without exchanging media.

2.2.2. Preferred Requirements

- 2.2.2.1. Capable of counting non-oriented ballots.
- 2.2.2.2. Can produce reports including number of ballots cast or read into each precinct without closing the polls or revealing any preliminary results data.
- 2.2.2.3. System tolerates folded ballots at the same speed as flat ballots.
- 2.2.2.4. System is capable of detecting, alerting and sorting ballots issued on the wrong style for the election being processed without tabulating ballot.
- 2.2.2.5. Capable of sorting or out-stacking ballots with write-in votes.
- 2.2.2.6. Capable of sorting or out-stacking ballots with overvotes.
- 2.2.2.7. Capable of sorting or out-stacking blank voted ballots.
- 2.2.2.8. System supports saving ballot data from multiple central count machines to a single piece of memory media.



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Statement of Work RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

2.2.2.9. Capable of printing a unique ballot identifier on individual ballots as they are tallied.

2.3. Accessible Voting Equipment for individuals with disabilities

2.3.1. Mandatory Requirements

2.3.1.1. System shall be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

2.3.1.2. Multi-language support.

2.3.1.3. The units must be interchangeable, and able to be used for both early voting and Election Day.

2.3.1.4. Units can be outfitted with tamper evident security seals and/or locks.

2.3.2. Preferred Requirements

2.3.2.1. Ability to use various accessibility tools such as A/B paddle, sip-and-puff, etc.

2.3.2.2. Easily transportable without damage to internal circuitry.

2.3.2.3. Devices should withstand frequent loading and unloading, stacking, assembling, disassembling, reassembling, and heavy use, without damage to internal circuitry.

2.3.2.4. Battery backup solution, either internal or external, capable of maintaining uninterrupted usage and preservation of election data during a power failure, or when power is disengaged or interrupted from the unit. This battery back-up device should be able to fully operate the unit for at least 4 hours.

2.3.2.5. Visible low battery indicator.

2.3.2.6. Units are configured for efficient storage when not in use.

2.3.2.7. All locks keyed the same with a key unique to Pinal County and not provided to all purchasers.

2.3.2.8. Internal capability to perform self-diagnostic that specifically identifies any malfunctions with user friendly messages.

2.3.2.9. Easy to set up and take down, with minimal or no technical assistance.

2.3.2.10. Units are of current technology and parts and consumables are readily available from more than one source.

2.3.2.11. Charging of multiple units using a single electrical outlet.

2.3.2.12. Lightweight, with the unit weighing less than 20 lbs.

2.4. Servers and Workstation

2.4.1. Mandatory Requirements

2.4.1.1. Servers – Tower style with at least one terabyte of storage capability. Must be compatible with the latest version of Windows Server (include keyboard, monitor, mouse, speakers).

2.4.1.2. Workstation - Remote access to EMS servers (keyboard, monitor, mouse, speakers, printer).

2.4.1.3. Connectivity – Capable of networking with the central count units



PINAL COUNTY
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Statement of Work RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

2.4.1.4. Compatible with EMS software.

3. SOFTWARE AND REPORTING REQUIREMENTS:

3.1. Software

3.1.1. Mandatory Requirements

- 3.1.1.1. Certified by VSTL to VVSG. Document to which version VVSG the system is certified.
- 3.1.1.2. Certified by Arizona SOS to meet Arizona Election Laws by April 21, 2014.
- 3.1.1.3. Full implementation and acceptance testing of proposed solution, including Federal and State certification, must be possible by May 19, 2014.
- 3.1.1.4. Ability to affirm Hash Code with National Institute of Science and Technology (NIST) Software Library or with the Arizona Secretary of State's Office.
- 3.1.1.5. EMS requires a user to logon with a password at the operating system level.
- 3.1.1.6. EMS has multiple levels of user access controlled by user accounts/passwords.
- 3.1.1.7. Elections are Pinal County programmable from initial election definition to printer-ready ballots and ready-to-use ballot counter media without vendor intervention.
- 3.1.1.8. Capable of managing counter groups that can be assigned to precincts in a many-to-one relationship, including for each precinct, an election day group, an absentee group, and a provisional group.
- 3.1.1.9. Software provides multi-language support for ballot creation.
- 3.1.1.10. Programmable election types compatible with all system hardware include all those necessary for the State of Arizona including the multi-party open primary combined with nonpartisan primary ballot.
- 3.1.1.11. Software provides for rotation of candidate names on ballot to be turned on or off in accordance with Arizona State Law.
- 3.1.1.12. System can produce necessary text file for upload to the State's Election Night Reporting system.
- 3.1.1.13. Generates exportable backup file for offsite storage.
- 3.1.1.14. System provides a secure method that will prevent a voter from voting twice.
- 3.1.1.15. Capable of setting up multiple elections for City/Town with option of all mail elections.
- 3.1.1.16. Ability to pull up a ballot image.

3.1.2. Preferred Requirements

- 3.1.2.1. Software works with commercial off the shelf (COTS) hardware, computers/servers, monitors, and operating system.
- 3.1.2.2. Capable of handling electronically transmitted results from different groups transmitted simultaneously into the same precinct and tabulated automatically.
- 3.1.2.3. Capable of managing multiple precincts without exchanging memory media. Document upper limit on number of precincts.



PINAL COUNTY
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Statement of Work RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

3.1.2.4. System can be programmed with an import utility for importing district, precinct, office, candidate, and voter registration data from the existing Voter Registration System.

3.1.2.5. System compatible with a variety of proprietary voter registration systems

3.1.2.6. System sorting/out-stacking options are configurable.

3.2. Results and Reports

3.2.1. Mandatory Requirements

3.2.1.1. Generates presentable, Pinal County configurable web results, listing proportion of precincts reported for each contest and displaying precinct-level results.

3.2.1.2. Generates pre- and post-election reporting with the following data: 1) contests and candidates in election, 2) precinct attributes such as Voter Registration totals, races, splits etc., 3) candidate rotations by contest and precinct, 4) Voter Registration totals, 5) precincts reported, 6) linked precincts and districts, 7) contest by precinct, 8) ballot styles by precinct and by district, 9) headers by precinct, 10) statement of votes cast detailing all contests and precincts, 11) election milestones by precinct such as programming, burning media, reporting results, 12) proofing report for proofing candidates, contests and "Vote For" number.

3.2.1.3. Application must supply an export utility that extracts current/up to date election results allowing client to display election results via the web.

3.2.2. Preferred Requirements

3.2.2.1. System is capable of reporting results by central count batch for purposes of hand count auditing.

3.2.2.2. Reports can be sorted by various fields.

3.2.2.3. Capable of conducting all mail and precinct elections simultaneously

3.3. Ballot Design

3.3.1. Mandatory Requirements

3.3.1.1. Ballot counter, central count, and ballot layout software accommodate multiple ballot length options, up to or exceeding 18". Document options available.

3.3.1.2. Ballots are printable by a commercial printing vendor selected by Pinal County.

3.3.1.3. System outputs .PDF or .PS files with cut marks and fold marks for printer use.

3.3.1.4. Same ballot style is usable in any counter group assigned to the precinct regardless of counter group and precinct arrangement.

3.3.2. Preferred Requirements

3.3.2.1. Supports ballot printing on non-proprietary, non-copy written, blank ballot stock.

3.3.2.2. System produces ballots designed to prevent ink bleed through from affecting targets and timing marks on the other side of the ballot.

3.3.2.3. System provides on screen preview of both paper ballot and ADA ballots with a WYSIWYG user interface.

3.3.2.4. System automatically adds correct number of write-in lines to correspond to number to be elected.

3.3.2.5. Space available on the ballot for a printed barcode.



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Statement of Work RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

3.3.2.6. Capable of printing a unique ballot identifier on individual ballots as they are tallied to prevent multiple counting of ballots.

4. Training

4.1. Mandatory Requirements

4.1.1. Successful responder will agree to provide all necessary hardware and software training as part of their proposal, and such training shall coincide so as to be completed by the May 19, 2014 implementation date for up to 20 county employees.

5. Support

5.1. Mandatory Requirements

5.1.1. On site support for implementation is required.

5.1.2. On site election day support for the 2014 primary and general elections to include the four days prior to elections for mail election support.

5.1.3. Ongoing help desk support.

5.1.4. In the event proposed hardware/software is not operational by May 19, 2014, vendor will be responsible for programming and designing ballots for Pinal County until hardware/software is operational.



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Special Terms and Conditions RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

SPECIAL TERMS AND CONDITIONS

- Contract Term:
The term of any resultant contract will commence on the date of award and will continue for one year unless canceled, terminated or extended as otherwise provided herein.
- Contract Type (Firm):
Firm fixed price indefinite quantity.
- Contract Extension:
The contract shall not bind nor purport to bind, the County for any contractual commitment in excess of the original contract period. The County shall have the sole option to extend the contract for four (4) additional one (1) year periods or a portion thereof. If the County exercises such rights, all terms, conditions and provisions of the original contract shall remain the same and apply during the extension period.
- Price Adjustment (Annual):
The County may review a fully documented request for a price increase only after the contract has been in effect for one (1) year. A price increase adjustment shall only be considered at the time of a contract extension and shall be a factor in the extension review process. The Contractor shall submit a request for a price increase at least thirty (30) days prior to the contract extension.

The Contractor may offer the County a price reduction at any time during the contract period.

The price increase adjustment, if approved, will be effective upon the date of the contract extension. Price reductions will become effective upon acceptance by the County.

- Eligible Agencies (Cooperative Usage):
This contract shall be for the permissive use by Pinal County. The County has entered into various cooperative purchasing agreements with other Arizona government entities in order to conserve resources, reduce overhead and purchase costs and improve delivery time. The contract resulting from this Solicitation may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the Contractor. Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The County shall not be responsible for any disputes arising out of transactions made by others.
- Licenses:
Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.
- Insurance Requirements:
The Contractor and subcontractors shall purchase and maintain at its own expense the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to the County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the County, constitute a material breach of this Contract. The Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by the County shall not contribute to it. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

The insurance policies may provide coverage that contains deductibles or self-insured retentions. Contractor shall be solely responsible for the deductible and/or self-insured retention and the County, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.



PINAL COUNTY
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Special Terms and Conditions RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

The County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. County shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract. The insurance policies required by this Contract, except Workers' Compensation, and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insured.

The policies required hereunder, except Workers' Compensation, and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Pinal County in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability:**

Commercial General Liability (CGL) Insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence and \$3,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

2. **Automobile Liability**

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

a. Policy shall contain a waiver of subrogation against Pinal County and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

4. **Professional Errors and Omissions or (when applicable) Medical Malpractice Liability:**

Coverage shall be for minimum amounts of \$1,000,000 per claim and \$2,000,000 annual aggregate

B. **CERTIFICATES OF INSURANCE:** Prior to commencing work or services under this Contract, Contractor shall upon request, furnish the County with certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title. In the event any insurance policy(ies) required by this contract is (are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance. If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date. Insurance required herein shall not be permitted to expire, be cancelled, or materially changed without thirty (30) days prior written notice to the County.



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Special Terms and
Conditions
RFP PC-131219
Elections Equipment
and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

C. BOND REQUIREMENT:

- 1.1.1 Concurrently with the award of the Contract, the Contractor shall furnish the Contracting Agency within 24 hours the following bonds, which shall become binding upon the award of the contract to the Contractor.
 - 1.1.1.1 A Performance Bond equal to the full Contract amount conditioned upon the faithful performance of the Contract in accordance with plans, specifications and conditions thereof. Such bond shall be solely for the protection of the Contracting Agency awarding the Contract.
- 1.1.2 Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of his judgment such reasonable attorney's fees as may be fixed by a judge of the court.
- 1.1.3 Each bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance. The bonds shall not be executed by an individual surety or sureties. The bonds shall be made payable and acceptable to the Contracting Agency. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of the Power of Attorney of the signing official. In addition, said company or companies shall be rated "Best-A" or better as required by the Contracting Agency, as currently listed in the most recent Best Key Rating Guide, published by the A.M. Best Company.



PINAL COUNTY
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Uniform Terms and Conditions RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

- 1 DEFINITIONS** - The Definitions on page 3 of this Solicitation apply to these Uniform Terms and Conditions.
- 2 CONTRACT INTERPRETATION**
- 2.1 Arizona Law. This contract shall be governed by the law of the State of Arizona, and suits pertaining to this contract shall be brought only in the Pinal County Superior Court, Florence Arizona.
- 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the County and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1 Special Terms and Conditions;
 - 2.3.2 Uniform Terms and Conditions;
 - 2.3.3 Statement or Scope of Work;
 - 2.3.4 Specifications;
 - 2.3.5 Attachments;
 - 2.3.6 Exhibits;
 - 2.3.7 Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 3 CONTRACT ADMINISTRATION AND OPERATION**
- 3.1 Notice to Proceed/Ordering Authority. The Contractor agrees to render goods or services promptly and diligently upon receipt of a written purchase order or notice to proceed. Prior to receiving this notice, Contractors shall not commence any billable activities in the performance of the Contract. Any attempt to represent any product not specifically awarded under this Contract is a violation of the contract. Any such action is subject to the legal and contractual remedies available to the County, inclusive of, but not limited to, contract termination, suspension and/or debarment of the Contractor. A signed Contract and valid purchase order must be in place prior to the start of any work each year, including renewal periods.
- 3.2 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the County at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.3 Non-Discrimination. The Contractor shall comply with State of Arizona Executive Order No. 2009-9 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.4 Contractor Business Facilities and Business Practices. The Contractor's personnel, facilities and equipment shall be in full compliance with all applicable federal, state and local health, environmental and safety laws, regulations, standards, ordinances, privilege license and permit requirements, whether or not they have been referenced by the County.



PINAL COUNTY
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Uniform Terms and Conditions RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

Employee compensation shall meet all applicable requirements of the Fair Labor Standards Act and Federal and Arizona minimum wage laws, in addition to all applicable OSHA regulations. The Contractor bears full responsibility for employee training, safety, and providing necessary equipment to achieve compliance with all such laws and regulations prior to the contract commencement date and to maintain compliance throughout the duration of the contract.

- 3.5 **Affirmative Action.** Contractor agrees to abide by the provisions of the County Affirmative Action Program. Contractor, their subcontractor(s) and supplier(s) agree to adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, promote and upgrade the position of employees regardless of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status, or marital status and who agree and are responsive to the County's goals. Upon request, the Responder/Contractor agrees to submit the following reports to the County's Office of Equal Opportunity Programs:

- Part A. Employment Information Report
- Part B. Equal Employment Opportunity/Affirmative Action Policy Plan;
- Part C. Employer Equal Employment Opportunity (EEO) Workforce Profile.

All such reports on file with the Equal Employment Opportunity Office will be updated at least annually. The Equal Employment Opportunity Office may for good cause recommend to the County's Chief Financial Officer that failure to comply with the requirements of this subsection be waived and that the submittal be accepted contingent upon receipt of the required reports before a notice to proceed is issued.

- 3.6 **Drug Free Workplace Program.** Contractors are hereby advised that Pinal County has adopted a policy establishing a drug free workplace for itself and as a requirement for Contractors doing business with the County, to ensure the safety and health of employees working on its contracts/projects. The Contractor shall require a drug free workplace for all employees working under the contract. Specifically, all Contractor employees who are working under this contract shall be notified in writing by the Contractor that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace. The Contractor agrees to prohibit the use of intoxicating substances by all employees and shall ensure that employees do not use or possess illegal drugs while in the course of performing their duties. Failure to require a drug free workplace in accordance with the Policy may result in termination of the contract and possible debarment from bidding on future contracts/projects.
- 3.7 **Audit.** Pursuant to ARS § 35-214, at any time during the term of this Contract and six (6) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the County and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.8 **Facilities Inspection and Materials/Service Testing.** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The County shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the County determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the County for testing and inspection. All material or service is subject to final inspection and acceptance by the County. Material or service failing to conform to the specifications of this contract shall be held at Contractor's risk and may be returned. If defective goods are returned or services must be re-performed, all costs are the responsibility of the Contractor.
- 3.9 **Notices.** Notices to the Contractor required by this Contract shall be made by the County to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the County required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.10 **Advertising, Publishing and Promotion of Contract.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.11 **Property of the County.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the County. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the



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Pinal County
Finance Department
31 N. Pinal St.
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Florence, AZ 85132

prior written consent of the County.

- 3.12 Offshore Performance of Work Prohibited. Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the Pinal County or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.
- 3.13 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the County shall be considered the creator of such Intellectual Property. The Pinal County department requesting the issuance of this contract shall own (for and on behalf of the County) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the County, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the County and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the County. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the County without the express written authorization of the Pinal County department requesting the issuance of this contract.
- 3.14 Confidentiality of Records. The Contractor shall maintain the confidentiality and privilege of any documents that the Contractor has access to which have been designated by the County as confidential or privileged. The Contractor shall establish and maintain procedures and controls that are acceptable to the County for the purpose of assuring that no information contained in its records obtained from the County or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the County. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the County.
- 3.15 Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The County shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the County determine that the contractor and/or any subcontractors be found noncompliant, the County may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.16 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

4 COST AND PAYMENTS

- 4.1 Payments. A separate invoice shall be issued for each shipment of goods or services performed, and no payment shall be issued prior to receipt of acceptable goods and/or services and a correct invoice. The County shall make every effort to process payment for acceptable goods or services within thirty (30) calendar days after receipt of said items/services and a correct invoice. All invoices shall reflect the contracted prices or rates for goods or services as described in the Scope of Work.
- 4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes. The Contractor shall be responsible for paying all applicable taxes.

Pinal County is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller



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Uniform Terms and Conditions RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

from its obligation to remit taxes.

Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the County harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with Pinal County' unless not required by law.

4.4 Availability of Funds for the next County fiscal year. Funds may not presently be available for performance under this Contract beyond the current County fiscal year. No legal liability on the part of the County for any payment may arise under this Contract beyond the current County fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current County fiscal year. Should the County Board of Supervisors reduce the appropriations or for any reason and these goods or services are not funded, the County may take any of the following actions: Accept a decrease in price offered by the contractor; Cancel the Contract; or Cancel the contract and re-solicit the requirements.

5 CONTRACT CHANGES

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

5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. It is expressly understood that all persons employed by the Contractor, either directly or indirectly, shall be considered employees or agents of the Contractor and not the County. Nothing contained in any contract or joint venture agreement shall create any contractual relationships between any subcontractor and Pinal County, nor shall the same create any obligation on the part of Pinal County to pay any subcontractor. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation. No right or interest in this contract shall be assignable in whole or in part without the written consent of the parties hereto, and no delegation of any duty of Responder/Contractor shall be made without prior written permission of the County's Chief Financial Officer. This Contract and all of the terms, conditions and provisions herein, shall extend to and be binding upon the heirs, administrators, executors, successors, and assigns of the parties hereto. The County shall not unreasonably withhold approval of assignment/delegation and shall notify the Responder/Contractor of the County's position within fifteen (15) days of receipt of written notice.

6 RISK AND LIABILITY

6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification. The Contractor agrees to defend, indemnify and hold the County, its elected officials, officers, agents and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' and expert witnesses' fees, and expenses incident thereto, relating to bodily injuries to persons (including death) and for loss of, damage to, or destruction of real and/or tangible personal property (including property of the Count) and all other types of claims resulting from the actual or alleged negligence, misconduct, or fault of the Contractor resulting from the acts or omissions of the Contractor, its employees, agents, or subcontractors in the performance of the contract.



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Uniform Terms and Conditions RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

The Contractor shall assume risk of loss until delivery to the County's facility. The Contractor shall do nothing to prejudice the County's right to recover against third parties for any loss, destruction, or damage to County property, and shall at the County's request and expense, furnish reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the County in obtaining recovery. In any instance where the Contractor has accepted a tender from the County, the Contractor agrees to update the County during the course of the litigation and to timely notify the County of any issues that may involve the independent negligence of the County that is not covered by the tender.

Without limiting the foregoing, the Contractor shall, without limitation, at its expense defend the County against all claims asserted by any person that anything provided by the Contractor infringes a patent, copyright, trade secret or other intellectual property right and shall, without limitation, pay the costs, damages and attorneys' fees awarded against the County in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment shall be obtained against the County's use or operation of the items provided by the Contractor hereunder or any part thereof by reason of any alleged infringement, the Contractor shall, at its expense and without limitation, either (a) modify the item so that it becomes non-infringing; or (b) procure for the County the right to continue to use the item; or (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the County an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount shall be calculated on a useful life not less than 5 years, and plus any additional costs the County may incur to acquire substitute supplies or services.

The County assumes no liability for actions of the Contractor and shall not indemnify or hold the Contractor or any third-party harmless for claims based on this contract or use of the Contractor provided supplies or services. Neither party shall be liable for incidental, special or consequential damages.

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

Force Majeure shall not include the following occurrences: Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.4 Third Party Antitrust Violations. The Contractor assigns to the County any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

6.5 Care of County Property. The Contractor will be responsible for any damages to County property when such property is the responsibility of or in the custody of the Contractor or its employees.

7 WARRANTIES



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Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

- 7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the County of the materials, they shall be: Of a quality to pass without objection in the trade under the Contract description; Fit for the intended purposes for which the materials are used; Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units; Adequately contained, packaged and marked as the Contract may require; and Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 Quality of Work. The Contractor shall be responsible for the professional quality and technical accuracy of the goods and services provided under this contract. Services shall be performed in accordance with generally accepted professional and industry standards. All services shall conform to and be in compliance with applicable federal, state and local statutes, rules, codes, laws, ordinances, regulations and restrictions. The Responder shall work closely with the County, and provide all reports and documents, including proposed corrective work through the County Chief Financial Officer or her designee.
- 7.4 Fitness. The Contractor warrants that any material supplied to the County shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.5 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the County.
- 7.6 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.
- 7.7 IT 508 Compliance. Unless specifically authorized in the Contract, any electronic or information technology offered to Pinal County under this solicitation shall comply with Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.
- 7.8 Survival of Rights and Obligations after Contract Expiration or Termination. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the County is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8 COUNTY'S CONTRACTUAL REMEDIES

- 8.1 Right to Assurance. If the County in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the County's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order. The County may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the County after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies. The rights and the remedies of the County under this Contract are not exclusive.
- 8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the County may terminate the Contract for default under applicable



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Uniform Terms and Conditions RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- 8.5 Right of Offset. The County shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the County, or damages assessed by the County concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9 CONTRACT TERMINATION

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the County may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- 9.2 Gratuities. The County may, by written notice, terminate this Contract, in whole or in part, if the County determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the County for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The County, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment. The County may, by written notice to the Contractor, immediately terminate this Contract if the County determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the County.
- 9.4 Termination for Convenience. The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default. The County reserves the right to terminate any part or all of a contract resulting from this solicitation if the Contractor fails to carry out any term, promise, or condition of the contract. The County will issue a written Notice of Default to the Contractor if in the opinion of the County, the Contractor:
- 9.5.1 Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the contract resulting from this solicitation.
 - 9.5.2 Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) days.
 - 9.5.3 Fails to obtain and/or keep any required bonds and insurance policies in full force and effect at all times during the term of the contract.
 - 9.5.4 Provides services that do not meet the requirements of the contract or conducts business in an unethical or illegal manner.
 - 9.5.5 Fails to complete the required work or fails to perform required services within the time frame stipulated.
 - 9.5.6 Fails to materially perform or comply with the terms and conditions of the contract resulting from this solicitation.



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Uniform Terms and Conditions RFP PC-131219 Elections Equipment and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

Failure of the Contractor to remedy any problems noted by the deadline set in the Notice of Default or to otherwise bring performance to satisfactory levels that are within the requirements of the Contract shall give the County cause to cancel this contract.

If the County terminates the contract, the Contractor will be provided with a written notice that specifies the effective date of the termination. After receipt of the Notice of Termination, the Contractor agrees to perform under the terms and conditions of this contract up to and including the date of termination as though no termination has been made. In addition, the Contractor shall deliver to the Procurement Office all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this contract, whether completed or not.

If the Contract is terminated for default, the County reserves the right to purchase the goods and/or services required under the contract from the open market, to complete required work itself or have it completed at the expense of the Contractor. The County may recover any excess costs by (1) deduction from an unpaid balance due to the Contractor; (2) collection against the proposal and/or performance security; if any; (3) collection against liquidated damages (if applicable); or (4) a combination of the aforementioned remedies or other remedies as provided by law.

9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10 CONTRACT CLAIMS

All claims and controversies shall be subject to the Pinal County Procurement Code.

11 ARBITRATION

It is understood and agreed that no provision of any resulting contract shall require arbitration upon the County except by the County's express written consent given subsequent to the execution of the Contract. However, if both parties agree, disputes may be resolved through arbitration. The dispute shall be resolved as provided for in A.R.S. Sec. 12-1501, et seq. The Contractor shall continue to render the services required by this contract without interruption, notwithstanding the provisions of this section.



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Addendum
Acknowledgement Form
RFP PC-131219
Elections Equipment
and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

ADDENDUM ACKNOWLEDGEMENT FORM

Solicitation Addendums are posted on the Pinal County website at the following address:

<http://pinalcountyz.gov/Departments/Finance/Pages/BidsProposals.aspx> . It is the responsibility of the Responder to periodically check this website for any Solicitation Addendum.

This page is used to acknowledge any and all addendums that might be issued. Any addendum issued within five days of the solicitation due date, will include a new due date to allow for addressing the addendum issues. Your signature indicates that you took the information provided in the addendums into consideration when providing your complete response.

Please sign and date:

ADDENDUM NO. 1 Acknowledgement _____
Signature Date

ADDENDUM NO. 2 Acknowledgement _____
Signature Date

ADDENDUM NO. 3 Acknowledgement _____
Signature Date

If no addendums were issued, indicate below, sign the form and return with your response.

Firm

Authorized Signature



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W-9
RFP PC-131219
Elections Equipment
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Florence, AZ 85132

W-9 FORM

Download W-9 Form from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>



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**Responder's Checklist
RFP PC-131219
Elections Equipment
and Maintenance**

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
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Florence, AZ 85132

RESPONDERS CHECKLIST

	Yes/No
Did you sign your Offer sheet? <i>See Page 31 & 32 of this solicitation.</i>	
Did you acknowledge all addendums, if any? <i>See page 28. Any addendums would be posted on the Pinal County website on the Bids/Proposals page of the Finance/Purchasing Department.</i>	
Did you complete all required Response Forms? <i>Any Response forms would be posted on the Pinal County website on the Bids/Proposals page of the Finance/Purchasing Department.</i>	
Did you include your W-9 Form? <i>See page 29 of this solicitation.</i>	
Did you include any necessary attachments?	
Is the outside of your sealed submittal marked with the Solicitation #, Due Date and Time? <i>See page 1 for this information.</i>	
Did you include one original and the required number of copies? <i>See page 1 for the quantity.</i>	
Did you follow the order for submissions of documents? <i>See Section 3.4 – Offer format in the Special Instructions of this solicitation.</i>	
Did you include proof of insurance(s) if requested?	



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**Offer and Acceptance
RFP PC-131219
Elections Equipment
and Maintenance**

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

OFFER AND ACCEPTANCE FORM

TO PINAL COUNTY:

The undersigned hereby offers and agrees to furnish the material, service, or construction in compliance with all terms, conditions, specifications, and amendments in the Solicitation.

Authorized Signature Title

Printed Name Date

Company Name Telephone

Address City, State, Zip

For clarification of this offer, contact:

Name: _____ Phone: _____ Fax: _____

Email: _____

**ACCEPTANCE OF OFFER
(For Pinal County Use Only)**

The offer is hereby accepted and the Responder is now bound to sell or provide the materials, services, or construction as indicated by the Purchase Order or Notice of Award and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Offer as accepted by Pinal County.

The contract is for:

This contract shall henceforth be referenced to as Contract No. PC-131219. The Responder is cautioned not to commence any billable work or to provide any material or service under this contract until Responder receives an executed purchase order or notice to proceed.

Awarded this _____ day of _____ 2014.

Name (Print) Title Signature

Approved as to form:

Pinal County Attorney's Office



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Offer and Acceptance
RFP PC-131219
Elections Equipment
and Maintenance

Pinal County
Finance Department
31 N. Pinal St.
Bldg. A
P.O. Box 1348
Florence, AZ 85132

OFFER AND ACCEPTANCE FORM – Page 2

By signing the previous page of the Offer and Acceptance Form, Responder certifies:

- A. The submission of the bid did not involve collusion or other anti-competitive practices.
- B. The Responder shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.
- C. The Responder has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Submittal.
- D. The Responder certifies that it complies with Executive Order 12549 related to Federal Government Debarment and Suspension (see 4-7)
- E. The Responder certifies that the individual signing the bid is an authorized agent for the Responder and has the authority to bind them to the contract.


Firm

Authorized Signature



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End of Solicitation

	<p>RFP PC-131219 Elections Equipment and Maintenance</p> <p>Appendix 1 – Terms & Conditions</p>	<p>Pinal County Finance Department 31 N. Pinal St. Bldg. A P.O. Box 1348 Florence, AZ 85132</p>
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Appendix 1 – Terms & Conditions

Special Terms and Conditions - Section 7 Insurance Requirements – C. Bond Requirements - Replace with:

C. Bond Requirement:

- 1.1.1 Concurrently with the award of the Contract, the Contractor shall furnish a letter from the Contractor's surety to the Contracting Agency within 24 hours which provides that the Contractor's surety will provide the bonds set forth herein upon the execution of a contract by the parties. Within two (2) business days from contract execution, the following bonds shall be provided by the Contractor.

Uniform Terms and Conditions – Section 3 Contract Administration and Operation – 3.11 Property of the County – Replace with:

- 3.11 Property of the County. Any materials, including reports, computer programs and other deliverables, specifically created under this Contract and which do not contain any Contractor intellectual property are the sole property of the County. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the County.

Uniform Terms and Conditions – Section 3 Contract Administration and Operation – 3.13 Ownership of Intellectual Property – Replace with:


- 3.13 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets specifically created by the Contractor for the County pursuant to or as a result of this contract and any related subcontract which does not contain any pre-existing Contractor or subcontractor intellectual property ("Intellectual Property"), shall be work made for hire and the County shall be considered the creator of such Intellectual Property. The Pinal County department requesting the issuance of this contract shall own (for and on behalf of the County) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the County, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the County and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the County. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the County without the express written authorization of the Pinal County department requesting the issuance of this contract.

Uniform Terms and Conditions – Section 6 Risk and Liability – 6.2 Indemnification – Include with original language:

- 6.2 Indemnification. Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Contract. Neither party shall be liable for the other party's negligent or willful misconduct. Except for claims associated with intellectual property infringement, personal injury (including death) and personal property damage, Contractor's total liability to County arising out of or relating to this Contract shall not exceed the aggregate amount to be paid to Contractor hereunder.


Uniform Terms and Conditions – Section 7 Warranties – 7.2 – Quality – Replace with:

- 7.2 Quality/Warranty.

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- 7.2.1 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the County of the materials, they shall be: Of a quality to pass without objection in the trade under the Contract description; Fit for the intended purposes for which the materials are used; Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units; Adequately contained, packaged and marked as the Contract may require; and conform to the written promises or affirmations of fact made by the Contractor.
- 7.2.2 Contractor Equipment and Contractor Software Warranty. Contractor warrants that for a 1-year period (the “Warranty Period”), it will repair or replace any component of the Contractor equipment or Contractor software which, while under normal use and service; (i) fails to perform in accordance with its documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty shall not include the repair or replacement of any Contractor equipment components that are consumed in the normal course of operating the equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. The Warranty Period will commence upon completion of the Acceptance Testing. Any repaired or replaced item of Contractor equipment or Contractor software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the Contractor Equipment or Contractor Software will become the property of Contractor. This warranty is effective provided that (I) County promptly notifies Contractor of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (II) the Contractor Equipment or Contractor Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by Contractor, (III) the Contractor Equipment or Contractor Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by Contractor or causes beyond the reasonable control of Contractor or County, including but not limited to, acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (IV) County has installed and is using the most recent Update, provided to it by Contractor. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.
- 7.2.3 System. Contractor warrants that the Contractor equipment and Contractor Software will operate in conjunction with the third party items, if applicable, during the Warranty Period, provided that, (i) County has installed and is using the most recent Update, provided to it by Contractor, and (ii) the third party items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, Contractor will repair or replace the item of Contractor equipment or Contractor software that is causing such breach to occur. County acknowledges that Contractor has merely purchased the third party items for resale or rental to County, and that the proprietary and intellectual property rights to the third party items are owned by parties other than Contractor (“Third Parties”). County further acknowledges that except for the payment to Contractor for the third party items, all of its right and obligations with respect thereto flow from and to the Third Parties.
- 7.2.4 Exclusive Remedies. IN THE EVENT OF A BREACH OF SUBSECTIONS 7.2.2 OR 7.2.3, CONTRACTOR’S OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE COUNTY’S SOLE AND EXCLUSIVE REMEDIES. ES&S EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS CONTRACT.


Uniform Terms and Conditions – Section 9 Contract Termination – 9.5 – Termination for Default – Replace with:

	<p>RFP PC-131219 Elections Equipment and Maintenance</p> <p>Appendix 1 – Terms & Conditions</p>	<p>Pinal County Finance Department 31 N. Pinal St. Bldg. A P.O. Box 1348 Florence, AZ 85132</p>
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9.5 Termination for Default. The County reserves the right to terminate any part or all of a contract resulting from this solicitation if the Contractor fails to carry out any term, promise, or condition of the contract. The County will issue a written Notice of Default to the Contractor. Upon joint agreement the parties can extend the ten (10) day cure period in those non-election periods, to be defined as thirty (30) days pre and post any election date in which the Contractor's equipment is to be utilized, if in the opinion of the County, the Contractor:

Additions to Special Terms and Conditions

8. Grant of License. Subject to the terms and conditions of this Contract, Contractor hereby grants to County a nonexclusive, nontransferable license for its bona fide full time employees to use the Contractor Software and Documentation supplied by Contractor. The license allows County to use and copy the Contractor Software (in object code only) and the Documentation, solely for the purpose of defining an election and tabulating and reporting election results in the Jurisdiction. The licenses granted in this Section do not permit County to use the source code for the Contractor Software. The license does not permit County to take any of the following actions:
- a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Contractor Software;
 - b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the Contractor Software or Documentation by any third party to perform any services for County (including, but not limited to, any coding, programming or layout services) without Contractor's prior written consent; or
 - c. Cause or permit any change to be made to the Contractor Software without Contractor's prior written consent.
 - d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Software in which Contractor owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.
9. License Fees. In consideration for Contractor's grant of the license for the Contractor Software described in Section 8, County shall pay Contractor the Contractor Software License Fees set forth in the Contract. The consideration for Contractor's grant of the license for the Contractor Firmware is included in the cost of the Contractor Equipment. Any license or royalty fees payable to any Third Parties for the use of any Third Party items are the sole responsibility of County.
10. Term of License. The licenses granted in Section 8 shall commence upon the delivery of the Contractor Software described in Section 8 and shall continue for a one-year period (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by County of the annual software license and software maintenance and support fee as set forth herein. Contractor may terminate either license if County fails to pay the consideration due for, or breaches Sections 8, 9 or 14 with respect to, such license. Upon the termination of either of the licenses granted in Section 8 for Contractor Software or upon County's discontinuation of the use of any Contractor Software, County shall immediately return such Contractor Software and the related Documentation (including any and all copies thereof) to Contractor, or (if requested by Contractor) destroy such Contractor Software and Documentation and certify in writing to Contractor that such destruction has occurred.

	<p>RFP PC-131219 Elections Equipment and Maintenance</p> <p>Appendix 1 – Terms & Conditions</p>	<p>Pinal County Finance Department 31 N. Pinal St. Bldg. A P.O. Box 1348 Florence, AZ 85132</p>
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11. Updates. During the Initial License Term or any License Renewal Term, Contractor may provide new releases, upgrades or maintenance patches to the Contractor Software, together with appropriate Documentation (“Updates”), on a schedule defined by Contractor. County is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates. All Updates shall be deemed to be Contractor Software for purposes of this Contract upon delivery. County may install the Updates in accordance with Contractor’s recommended instructions or may request that Contractor install the Updates. Contractor may charge County at its then-current rates to (i) deliver the Updates to the County, (ii) train County on Updates, if such training is requested by County; (iii) install the Updates or (iv) provide maintenance and support on the Contractor Software that is required as a result of County’s failure to timely or properly install an Update. County shall be responsible for any claim, damage, loss, judgment, penalty, cost amount paid in settlement or fee which is caused by County’s failure to install and use the most recent Update provided to it by Contractor. If County proposes changes in the contractor Software to Contractor, such proposals will become Contractor’s property. Contractor may, in its sole discretion, elect to make or not to make such changes without reference or compensation to County or any third party. Contractor represents to County that the Updates will comply with all applicable state law requirements at the time of delivery. County shall be responsible to ensure that it has installed and is using only certified versions of Contractor Software in accordance with applicable law. County shall pay Contractor for any Update which is required due to a change in state or local law. Upon termination of the Warranty Period, County shall be entitled to receive the Software License and Maintenance and Support described in Exhibit F if it has so elected in Section B of the signature page to this contract.
12. Compliance with Laws. In performing its obligations or enjoying its rights under this Contract, each party shall comply with all applicable laws and regulations. In addition, Contractor warrants to County that, at the time of delivery, the Equipment and Software sold and licensed under this Contract will comply with all applicable requirements of state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in the County’s state. Contractor further warrants that during the Warranty Period and thereafter so long as County is subscribing and paying for Contractor Hardware Maintenance Services and Contractor Software License, Maintenance and Support Services, the Equipment and Software shall be maintained or upgraded by Contractor in such a way as to remain compliant with all applicable state election laws and regulations. “Maintained or upgraded” shall mean only such changes to individual items of the Software (but not Equipment) as are technologically feasible and commercially reasonable. County shall be solely responsible for the cost of any replacements, retrofits or modifications to the Equipment contracted for herein that may be developed and offered by Contractor in order for such Equipment to remain compliant with applicable laws and regulations. County shall also be solely responsible for the cost of any third party items that are required in order for the Equipment and/or Software to remain compliant with applicable laws and regulations.
13. State Recertifications. In the event that any future state certifications or recertifications are required that are not otherwise required as a result of any changes or modifications voluntarily made by Contractor to the Software and/or Equipment licensed and sold hereunder, County shall be responsible for:
- (i) the total cost of any third party items that are required in order for the Equipment and/or Software to remain certified;
 - (ii) County’s pro-rata share of such future state certification or recertification costs; and
 - (iii) County’s pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the Equipment and/or Software that may result from such future state certifications or recertifications.
- County’s pro-rata share of the costs included under subsections 13(ii) and 13(iii) above shall be determined at the time by dividing the number of registered voters in County’s jurisdiction by the total number of registered

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voters in all counties in the County's state to which Contractor has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by County under this Contract.

14. Proprietary Rights. County acknowledges and agrees as follows:

- a. Contractor owns the Contractor Software, all Documentation and training materials provided by Contractor, the design and configuration of the Contractor Equipment and the format, layout, measurements, design and all other technical information (except for County supplied information such as election information) associated with the ballots to be used with the Contractor Equipment. County has the right to use the aforementioned items to the extent specified in this Contract. Contractor also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of Contractor that are protected by law and are of substantial value to Contractor.
- b. County shall not cause or permit the adaptation, conversion, reverse engineering, disassembly or decompilation of any of the Contractor Equipment or Contractor Software.
- c. County shall keep the Contractor Software and related Documentation free and clear of all claims, liens, and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the Contractor Equipment, the Contractor Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.