

STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

- 1. **DEFINITIONS:** Unless the context requires otherwise, all terms not defined below shall have the meanings defined in Idaho Code Section 67-5716 or IDAPA 38.05.01.011.
 - A. Agreement – Any State written contract, lease or purchase order including solicitation or specification documents and the accepted portions of the submission for the acquisition of Property. An Agreement shall also include any amendments mutually agreed upon by both parties.
 - B. Contractor – A vendor who has been awarded an Agreement.
 - C. Property – Goods, services, parts, supplies and equipment, both tangible and intangible, including, but not exclusively, designs, plans, programs, systems, techniques and any rights and interest in such property.
 - D. State – The State of Idaho including each agency unless the context implies other states of the United States.
- 2. **TERMINATION:** The State may terminate the Agreement (and/or any order issued pursuant to the Agreement) when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days. If the Agreement is terminated for default or non-compliance, the Contractor will be responsible for any costs resulting from the State’s placement of a new contract and any damages incurred by the State. The State, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.
- 3. **RENEWAL OPTIONS:** Upon mutual agreement by both parties (unless otherwise modified by a special contract term, condition, or specification), this Agreement may be extended under the same terms and conditions for one (1) year intervals or the time interval equal to the original contract period.
- 4. **PRICES:** Prices shall not fluctuate for the period of the Agreement and any renewal or extension, unless otherwise specified by the State in the bidding documents or other terms of the Agreement. Prices include all costs associated with shipping and delivery to the F.O.B. destination address, prepaid and allowed. If installation is requested by the State or specified in the State’s solicitation documents, pricing shall include all charges associated with a complete installation at the location specified.

5. ADMINISTRATIVE FEE:

A. Application of Administrative Fee:

- 1. All Purchase Orders (PO) and Contract Purchase Orders (CPO) issued through the Idaho eProcurement System (IPRO) shall be subject to an Administrative Fee of one point two five percent (1.25%) of the value of the Agreement, unless the PO or CPO is exempted as described below. The Administrative Fee will apply to all PO and CPO Awards issued through IPRO, regardless of Contractor’s mode of response submission to the solicitation (i.e. manual or electronic).
- 2. Subsequent renewals, amendments or change orders to the initial PO or CPO, which result in an increased Agreement value, will constitute an incremental or additional award for which an additional Administrative Fee will apply; however, the additional Administrative Fee will be a Flat Fee, applied as follows:

<u>Original value + all amendments</u>	<u>Flat Fee</u>
\$50,000 - \$1 Million	\$ 500
\$1 Million - \$8 Million	\$ 1000
\$8 Million +	\$ 2000

- 3. Regardless of the number of renewals, amendments, and/or change orders, the total aggregate Administrative Fee assessed per PO or CPO will not exceed one hundred thousand dollars (\$100,000).

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4. A contractor's failure to consider the Administrative Fee when preparing its solicitation response shall not constitute or be deemed a waiver by the State of any Administrative Fees owed by Contractor as a result of a PO or CPO Award issued through IPRO.

B. Administrative Fee Exemptions:

1. Notwithstanding any language to the contrary, the Administrative Fee referenced in Section 5.A, above, will not apply to contracts with an original awarded value of less than \$50,000; or to contracts issued through IPRO without a competitive solicitation, e.g. Emergency Procurements (EPA), Sole Source Procurements (SSA), Exempt Purchases (EXPO), awards issued under Delegated Purchase Authority (DPA), and orders placed against WSCA/NASPO or other cooperative contracts (PADD) that are exempt from the requirements for competitive bidding.

2. The Administrative Fee referenced in Section 5.A., above, will not apply to Blanket Purchase Orders (BPO) or Statewide Blanket Purchase Orders (SBPO); however, BPOs and SBPOs (like PADDs) may have a separate Administrative Fee applied to orders placed against the contract, as specifically described in the individual BPO or SBPO.

3. The State may also exempt a specific PO or CPO from the Administrative Fee requirement.

C. Payment of Administrative Fee: Contractor will remit the Administrative Fee applicable to a PO or CPO, as described in Section 5.A., above, to the IPRO Administrator, SicommNet, Inc., as follows:

1. **Awards with a firm delivery date:** SicommNet, Inc. will invoice Contractor for the Administrative Fee on or after the delivery date provided in the Agreement, with payment due thirty (30) days after receipt of invoice.

2. **Awards with a contract start and end date:** SicommNet, Inc. will invoice Contractor on either a quarterly, monthly or "per payment" basis; or may offer Contractor a prepayment option. Payment will be due thirty (30) days after receipt of each invoice.

D. Refund of Administrative Fee: In the event that a PO or CPO is cancelled by the State through no fault of the Contractor, or if item(s) are returned by the State through no fault, act, or omission of the Contractor after the sale of any such item(s) to the State, the State will direct SicommNet, Inc. to refund the Contractor any Administrative Fees remitted to SicommNet, Inc. Administrative Fees will not be refunded or returned when an item is rejected or returned, or declined, or the Agreement cancelled by the State due to the Contractor's failure to perform or comply with specifications or requirements of the Agreement. If, for any other reason, the Contractor is obligated to refund to the State all or a portion of the State's payment to the Contractor, or the State withholds payment because of the assessment of liquidated damages, the Administrative Fee assessed on the PO or CPO will not be refunded in whole or in part.

E. Failure to Remit Administrative Fees: If a Contractor fails to remit the Administrative Fee, as provided in Section 5.C. above, the State, at its discretion, may declare the Contractor in default; cancel the Agreement or award; assess and recover re-procurement costs from the Contractor (in addition to all outstanding Administrative Fees); seek State or Federal audits, monitoring or inspections; exclude Contractor from participating in future solicitations; and/or suspend Contractor's online account.

6. **CHANGES/MODIFICATIONS:** Changes of specifications or modification of this Agreement in any particular can be affected only upon written consent of the Division of Purchasing, but not until any proposed change or modification has been submitted in writing, signed by the party proposing the said change.

7. **CONFORMING PROPERTY:** The Property shall conform in all respects with the specifications or the State's solicitation documents. In event of nonconformity, and without limitation upon any other remedy, the State shall have no financial obligation in regard to the non-conforming goods or services.

8. **OFFICIAL, AGENT AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE:** In no event shall any official, officer, employee or agent of the State be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement.

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- 9. CONTRACT RELATIONSHIP:** It is distinctly and particularly understood and agreed between the parties hereto that the State is in no way associated or otherwise connected with the performance of any service under this Agreement on the part of the Contractor or with the employment of labor or the incurring of expenses by the Contractor. Said Contractor is an independent contractor in the performance of each and every part of this Agreement, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of this Agreement, whether it may be for personal injuries or damages of any other kind. The Contractor shall exonerate, defend, indemnify and hold the State harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, workman's compensation and income tax laws with respect to the Contractor or Contractor's employees engaged in performance under this Agreement. The Contractor will maintain any applicable workman's compensation insurance as required by law and will provide certificate of same if requested. There will be no exceptions made to this requirement and failure to provide a certification of workman's compensation insurance may, at the State's option, result in cancellation of this Agreement or in a contract price adjustment to cover the State's cost of providing any necessary workman's compensation insurance. The contractor must provide either a certificate of workman's' compensation insurance issued by a surety licensed to write workman's' compensation insurance in the State of Idaho, as evidence that the contractor has in effect a current Idaho workman's compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Industrial Commission. The State does not assume liability as an employer.
- 10. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE:** Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964, in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No other wise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Act of 1990, are also incorporated into this Agreement. The Contractor shall comply with pertinent amendments to such laws made during the term of the Agreement and with all federal and state rules and regulations implementing such laws. The Contractor must include this provision in every subcontract relating to this Agreement.
- 11. TAXES:** The State is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service (Chapter 32 Internal Revenue Code [No. 82-73-0019K]). Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State, it shall be solely and absolutely responsible for the payment of those taxes. If, after the effective date of this Agreement, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time this Agreement becomes effective, the State will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the State be responsible for personal property taxes affecting items subject to this Agreement at the time it becomes effective.
- 12. SAVE HARMLESS:** Contractor shall defend, indemnify and hold harmless the State from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, caused by or that arise from the negligent or wrongful acts or omissions of the Contractor, its employees, agents, or subcontractors under this Agreement that cause death or injury or damage to property or arising out of a failure to comply with any state or federal statute, law, regulation or act. Contractor shall have no indemnification liability under this section for death, injury, or damage arising solely out of the negligence or misconduct of the State.
- 13. ORDER NUMBERS:** The Contractor shall clearly show the State's Agreement order numbers or purchase order numbers on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

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- 14. CONTRACTOR RESPONSIBILITY:** The Contractor is responsible for furnishing and delivery of all Property included in this Agreement, whether or not the Contractor is the manufacturer or producer of such Property. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of Property.
- 15. SUBCONTRACTING:** Unless otherwise allowed by the State in this Agreement, the Contractor shall not, without written approval from the State, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of any responsibility under this Agreement. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.
- 16. COMMODITY STATUS:** It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the State in the specifications. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. "New" means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain new or minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the State as their first customer and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. The warranty is to include replacement, repair, and any labor for the period of time required by other specifications or for the standard manufacturer or vendor warranty, whichever is longer.
- 17. SHIPPING AND DELIVERY:** All orders will be shipped directly to the ordering agency at the location specified by the State, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. "F.O.B. Destination", unless otherwise specified in the Agreement or solicitation documents, shall mean delivered to the State Agency Receiving Dock or Store Door Delivery Point. The Contractor shall deliver all orders and complete installation, if required, within the time specified in the Agreement. Time for delivery commences at the time the order is received by the Contractor.
- 18. INSTALLATION AND ACCEPTANCE:** When the purchase price does not include installation, acceptance shall occur fourteen (14) calendar days after delivery; unless the State has notified the Contractor in writing that the order does not meet the State's specification requirements or otherwise fails to pass the Contractor's established test procedures or programs. When installation is included, acceptance shall occur fourteen (14) calendar days after completion of installation; unless the State has notified the Contractor in writing that the order does not meet the State's specification requirements or otherwise fails to pass the Contractor's established test procedures or programs. If an order is for support or other services, acceptance shall occur fourteen (14) calendar days after completion, unless the State has notified the Contractor in writing that the order does not meet the State's requirements or otherwise fails to pass the Contractor's established test procedures or programs.
- 19. RISK OF LOSS:** Risk of loss and responsibility and liability for loss or damage will remain with Contractor until acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement.
- 20. INVOICING: ALL INVOICES** are to be sent directly to the **ORDERING AGENCY ONLY**. The Agreement number and/or purchase order number is to be shown on all invoices. In no case are invoices to be sent to the Division of Purchasing.
- 21. ASSIGNMENTS:** No Agreement or order or any interest therein shall be transferred by the Contractor to whom such Agreement or order is given to any other party without the approval in writing of the Administrator, Division of Purchasing. Transfer of an Agreement without approval shall cause the annulment of the

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Agreement so transferred, at the option of the State. All rights of action, however, for any breach of such Agreement are reserved to the State. (Idaho Code Section 67-5726[1])

22. PAYMENT PROCESSING: Idaho Code Section 67-5735 reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered."

23. COMPLIANCE WITH LAW, LICENSING AND CERTIFICATIONS: Contractor shall comply with **ALL** requirements of federal, state and local laws and regulations applicable to Contractor or to the Property provided by Contractor pursuant to this Agreement. For the duration of the Agreement, the Contractor shall maintain in effect and have in its possession all licenses and certifications required by federal, state and local laws and rules.

24. PATENTS AND COPYRIGHT INDEMNITY:

- A. Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States' patent, copyright, trade secret, or trademark for Property purchased under this Agreement. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.
- B. Contractor shall have no liability to the State under any provision of this clause with respect to any claim of infringement that is based upon: (i) the combination or utilization of the Property with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications unless such combination or utilization was disclosed in the specifications; (ii) the modification of the Property unless such modification was disclosed in the specifications; or (iii) the use of the Property not in accordance with Contractor's previously established specifications unless such use was disclosed in the specifications.
- C. Should the Property become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States' patent, the Contractor shall, at its option and expense, either procure for the State the right to continue using the Property, to replace or modify the Property so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the Property and accept its return.

25. CONFIDENTIAL INFORMATION: Pursuant to this Agreement, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the State to any third party, except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then only upon timely notice to the State. The State may require that Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the State upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. Confidential Information shall not include data or information that:

- A. Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;

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- B. Becomes generally available to the public other than as a result of disclosure by Contractor; or
- C. Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

26. USE OF THE STATE OF IDAHO NAME: Contractor shall not, prior to, in the course of, or after performance under this Agreement, use the State's name in any advertising or promotional media, including press releases, as a customer or client of Contractor without the prior written consent of the State.

27. APPROPRIATION BY LEGISLATURE REQUIRED: The State is a government entity and this Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. The State reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending. All affected future rights and liabilities of the parties hereto shall thereupon cease within ten (10) calendar days after notice to the Contractor. It is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations.

28. FORCE MAJEURE: Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, or unusually severe weather, provided that in all cases the Contractor shall notify the State promptly in writing of any cause for delay and the State concurs that the delay was beyond the control and without the fault or negligence of the Contractor. The period for the performance shall be extended for a period equivalent to the period of the Force Majeure delay. Matters of the Contractor's finances shall not be a Force Majeure.

29. GOVERNING LAW AND SEVERABILITY: This Agreement shall be construed in accordance with and governed by the laws of the State of Idaho. Any action to enforce the provisions of this Agreement shall be brought in State district court in Ada County, Boise, Idaho. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.

30. ENTIRE AGREEMENT: This Agreement is the entire agreement between the parties with respect to the subject matter hereof. Where terms and conditions specified in the Contractor's response differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. In the event of any conflict between these standard terms and conditions and any special terms and conditions applicable to this acquisition, the special terms and conditions will govern. This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

31. PRIORITY OF DOCUMENTS: This Agreement consists of and precedence is established by the order of the following documents:

1. This Agreement;
2. The Solicitation; and
3. Contractor's proposal as accepted by the State.

The Solicitation and the Contractor's proposal accepted by the State are incorporated herein by this reference. The parties intend to include all items necessary for the proper completion of the scope of work. The documents set forth above are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a lower numbered document shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. Provided, however, that in the event an issue is addressed in one of the above mentioned

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documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur.

Where terms and conditions specified in the Contractor's proposal differ from the terms in this Solicitation, the terms and conditions of this Solicitation shall apply. Where terms and conditions specified in the Contractor's proposal supplement the terms and conditions in this solicitation, the supplemental terms and conditions shall apply only if specifically accepted by the Division of Purchasing in writing.

- 32. PUBLIC RECORDS:** Pursuant to Idaho Code Section 9-335, et seq., information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate individual documents as "exempt" on each page of such documents and shall indicate the basis for such exemption. The State will not accept the marking of an entire document as exempt. In addition, the State will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. The Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release. If the State receives a request for materials claimed exempt by the Contractor, the Contractor shall provide the legal defense for such claim.
- 33. NOTICES:** Any notice which may be or is required to be given pursuant to the provisions of this Agreement shall be in writing and shall be hand delivered, sent by facsimile, prepaid overnight courier or United States' mail as follows. For notice to the State, the address and facsimile number are:

State of Idaho
Division of Purchasing
650 W State Street – Room B15
P.O. Box 83720
Boise, ID 83720-0075
208-327-7465 (phone)
208-327-7320 (fax)

For notice to the Contractor, the address or facsimile number shall be that contained on the Contractor's bid, quotation or proposal. Notice shall be deemed delivered immediately upon personal service or facsimile transmission (with confirmation printout), the day after deposit for overnight courier or forty-eight (48) hours after deposit in the United States' mail. Either party may change its address or facsimile number by giving written notice of the change to the other party.

- 34. NON-WAIVER:** The failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
- 35. ATTORNEYS' FEES:** In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith in addition to any other available remedies.
- 36. RESTRICTIONS ON AND WARRANTIES – ILLEGAL ALIENS:** Contractor warrants that any contract resulting from this Solicitation is subject to Executive Order 2009-10 [http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html]; it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent (5%) of the contract price, per violation, and/or termination of its contract