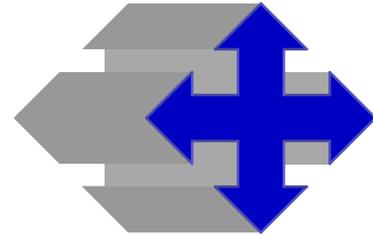


GOVERNMENT FINANCIAL SOLUTIONS, INC.
PUBLIC SECTOR CONSULTANTS
1531 Kirkwood Drive
Fort Collins, CO 80525
(970) 218-0681 Phone
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April 2, 2007

Board of Directors
Southeast Metro Stormwater Authority
10730 E. Briarwood Ave.
Centennial, CO 80112

Dear Board Members:

Attached is a first draft of a purchasing policy for your consideration. It incorporates the concepts and limits we discussed at the March 21 meeting, including the use of purchasing cards. Still to be done are surveys of other government entities to gather some information about their policies.

We anticipate bringing the policy to you for adoption on April 18. Your feedback is critical as we proceed with this item.

Sincerely,
GOVERNMENT FINANCIAL SOLUTIONS, INC.

David C. Agee
David C. Agee, President

**SOUTHEAST METRO STORMWATER AUTHORITY
PURCHASING POLICY
SUMMARY**

Draft 4/2/07

- ❑ The Policy will apply to the procurement of all materials, services and professional services by the Southeast Metro Stormwater Authority.
- ❑ The purposes of the Policy are to provide for the fair and equitable treatment of all persons involved in public purchasing by the Authority, to maximize the purchasing value of public funds, to standardize the Authority's purchasing procedures for orderly and efficient administration, to provide safeguards for maintaining a procurement system of quality and integrity and to foster effective, broad-based competition within the free enterprise system.
- ❑ The Director of Finance or his designee will serve as the public purchasing official for the Authority.
- ❑ All procurements will be awarded by competitive sealed bidding or sealed competitive proposals except as provided for in the exceptions section of this policy.
- ❑ Exceptions to competitive bids or proposals:

Contracts or bids up to \$20,000 may be authorized without formal competition; however, generally at least three quotes shall be obtained.

Department heads (or designee) may purchase up to \$5,000 of goods or services without competitive bidding.

Contracts are not to be divided to avoid competitive bidding.

Sole source – up to \$50,000 approved by Executive Director; over \$50,000 approved by the Board.

Construction change orders – greater of 15% of contract amount or \$30,000; any construction change order which authorizes a new improvement under a construction contract.

- ❑ Competitive sealed bids or sealed proposals received by any other governmental agency shall be the equivalent of bids or proposals received by the Authority and may be the basis for any procurement by the Authority.
- ❑ Purchases of materials, goods, or services where the estimated cost exceeds \$50,000, shall be submitted to the Board of Directors for approval prior to requesting competitive sealed bids or competitive sealed proposals for such materials, goods, or services.
- ❑ Purchases of materials, goods, or services where the estimated cost exceeds \$5,000 but is less than \$50,000, shall be submitted to the Executive Director for approval prior to requesting competitive sealed bids or competitive sealed proposals for such materials, goods, or services.
- ❑ Purchase of materials, services or professional services may be made with the use of purchasing cards approved by department heads or their designee, provided that no such purchase shall exceed a cost of five thousand dollars (\$5,000).

SOUTHEAST METRO STORMWATER AUTHORITY PURCHASING POLICY

Applicability

This Policy shall apply to the procurement of all materials, services and professional services required or used by the Southeast Metro Stormwater Authority (“the Authority”), whether used in the construction of improvements or otherwise, except activities subject to contracts between the Authority and other governmental bodies. When any procurement involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state laws or regulations. This Policy does not create or confer any right or entitlement upon any person to bid on or receive an award of any Authority contract.

Purpose

The purposes of this Policy are to provide for the fair and equitable treatment of all persons involved in public purchasing by the Authority, to maximize the purchasing value of public funds, to standardize the Authority's purchasing procedures for the orderly and efficient administration thereof, to provide safeguards for maintaining a procurement system of quality and integrity and to foster effective, broad-based competition within the free enterprise system.

Designated Official

The Director of Finance or his designee shall serve as the public purchasing official for the Authority, and shall be responsible for the procurement of all materials, services, professional services and construction for the Authority which are governed by the terms of this Policy. Unless otherwise provided in this Policy, the Director of Finance may establish Administrative purchasing procedures consistent with this Policy.

Methods of Selection

All procurements subject to the terms of this Policy shall be awarded by competitive sealed bidding or sealed competitive proposals except as provided for in the exceptions section of this policy.

Competitive Sealed Bidding

(a) Procurements shall be awarded to the lowest responsive and responsible bidder after competitive sealed bidding.

(b) An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.

(c) Public notice shall be given and shall include the bid title, place, date and time of bid opening.

(d) All bids shall be opened in public at the time and place stated in the invitation for bids. The amount of each bid and such other relevant information as the Director of Finance deems appropriate, together with the name of each bidder, shall be recorded. Thereafter, the record of bids and each bid shall be available for public inspection in the office of the Finance Director in the same manner as are other public records. In the event of good cause as determined by the Finance Director, bid openings may be postponed.

(e) Bids shall be unconditionally accepted without alteration or correction, except as authorized in Subparagraph (g) of this Section. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria and/or processes for determining acceptability, such as inspection, provision of sample materials, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth all evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(f) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be authorized when deemed appropriate by the Finance Director.

(1) Mistakes discovered before bid opening may be corrected or withdrawn in writing by the bidder. Any such corrections or notices of withdrawal must be received in the office designated in the invitation for bids prior to the time set for bid opening.

(2) After bid opening, the following provisions shall apply:

a. A low bidder alleging a material mistake of fact may be permitted by the Finance Director to correct its bid if the mistake is clearly evident on the face of the bid document and the intended correct bid is similarly evident.

b. A low bidder alleging a material mistake of fact may be permitted by the Finance Director to withdraw its bid: (i) if the mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident or (ii) if the mistake is not clearly evident on the face of the bid but the bidder submits evidence to the Finance Director which clearly and convincingly demonstrates that a mistake was made, in which case the bidder must show the nature of the mistake and the bid price actually intended.

(3) No changes in bid prices or other provisions of bids prejudicial to the interests of the Authority or fair competition shall be permitted.

(4) All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes will be supported by a written determination made by the Finance Director.

(g) The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. If the lowest responsive and responsible bid exceeds budgeted funds and either time constraints or economic considerations preclude resolicitation of work of a reduced scope, the Finance Director is authorized to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder or to modify the scope of work, so as to bring the bid within the amount of available funds.

Competitive Sealed Proposals

(a) Procurements for the following are eligible for award by competitive sealed proposals:

(1) For materials and services when the Finance Director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Authority; and

(2) For professional services; and

(3) For capital improvements.

(b) Procurements that meet the criteria for competitive sealed proposals shall be solicited through a request for proposals.

(c) Public notice shall be given and shall include the proposal title, place, date and time of proposal opening.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be maintained containing the name of each offeror and shall be open for public inspection after the award of the contract in the office of the Finance Director in the same manner as are other public records.

(e) The request for proposals shall state evaluation factors and their relative importance.

(f) After proposal opening, interviews may be conducted with the highest ranked responsible offeror or offerors for the purpose of clarification and to assure full

understanding of, and responsiveness to, solicitation requirements. Offerors selected for interview shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and prior to award in order to reflect clarifications in the proposal's scope of work or contract amount. In conducting interviews, there shall be no disclosure by the Authority or any officer, employee or committee, of any information derived from proposals submitted by competing offerors, nor shall there be any disclosure of information discussed by the evaluation committee in selecting the highest ranked offeror(s). After the contract has been awarded and a written contract executed with the selected offeror(s), the total points of the evaluation committee will be retained by the Finance Director for a period of time consistent with the Authority's record retention policy. Individual rating sheets and notes prepared or utilized by members of the evaluation committee shall not be made available for public inspection.

(g) The contract shall be awarded with reasonable promptness by written notice to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Authority, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.

(h) The Finance Director is authorized to negotiate the final price and precise scope of work with the selected offeror.

Responsibility of Bidders and Offerors

(a) In determining whether a bidder or offeror is responsible, the following shall be considered:

(1) The ability, capacity and skill of the bidder or offeror to perform the contract or provide the services required;

(2) Whether the bidder or offeror can perform the contract or provide the service promptly and within the time specified without delay or interference;

(3) The character, integrity, reputation, judgment, experience and efficiency of the bidder or offeror;

(4) The quality of the bidder's or offeror's performance of previous contracts or services;

(5) The previous and existing compliance by the bidder or offeror with laws and ordinances relating to the contract or service;

(6) The sufficiency of the financial resources and ability of the bidder or offeror to perform the contract or provide the service;

(7) The quality, availability and adaptability of the materials and services to the particular use required;

(8) The ability of the bidder or offeror to provide future maintenance and service for the use of the subject of the contract;

(9) Any other circumstances which will affect the bidder's or offeror's performance of the contract.

(b) The Finance Director shall have the authority to reject all bids or proposals or any portions thereof when the interests of the Authority and the public will be served thereby. All such decisions will be supported by a written determination made by the Finance Director.

(c) No bidder or offeror shall be in default on the performance of any other contract with the Authority or in the payment of any taxes, licenses or other monies due to the Authority.

Exemptions To Use Of Competitive Bid Or Proposal

(a) Minor Purchases.

(1) The Finance Director shall have the power to negotiate without formal competition for the purchase of any materials, professional services, services or construction not exceeding a cost of twenty thousand dollars (\$20,000.). Where a project has been previously bid, project managers may approve, pursuant to administrative guidelines approved by the Finance Director, change orders up to the \$20,000 minor purchase limit ; provided, however, that no such change order shall authorize any expenditure of funds in excess of the amounts budgeted and appropriated for the project.

(2) Such negotiated purchases shall be made in the open market, but wherever practical or advantageous, the Finance Director shall obtain quotes from at least three (3) suppliers. Negotiated purchases of materials, services or construction shall be awarded to the person supplying the lowest responsible and responsive quote.

(3) The purchase of materials, services or professional services in the open market by departments of the Authority may be approved by department heads or their designee, provided that no such purchase shall exceed a cost of five thousand dollars (\$5,000.).

(4) No contract will be divided so as to circumvent the limits stated herein.

(b) Sole Source.

(1) A contract for materials, professional services or services may be awarded without competition if the Finance Director determines in writing that one (1) or more of the following conditions exists:

- a. There exists only one (1) responsible source;
- b. Although there exists more than one (1) responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the Authority, will otherwise injure the Authority's financial interests or will substantially impede the Authority's administrative functions or the delivery of services to the public;
- c. A particular material or service is required to maintain interchangeability or compatibility as a part of an existing integrated system;
- d. A particular material, professional service or service is required in order to standardize or maintain standardization for the purpose of reducing financial investment or simplifying administration;
- e. The material is perishable;
- f. A particular material is required to match materials in use, so as to produce visual harmony;
- g. A particular material is prescribed by a professional advisor;
- h. The material, professional service or service is the subject of a change order.

(2) Except as stated below, the Finance Director shall submit each sole source determination made to the Executive Director, who shall approve or reject the procurement.

(3) The Executive Director shall submit all sole source procurements which exceed a cost of fifty thousand dollars (\$50,000) to the Board of Directors for final approval.

(c) Construction change orders.

(1) One or more change orders to an existing construction contract may be executed without competition unless the cumulative amount of such change orders exceeds the greater of:

- a. Fifteen (15) percent of the contract amount; or
- b. Thirty thousand dollars (\$30,000.).

(2) Any construction change order which authorizes a new improvement under a construction contract may be executed without competition when:

a. The new improvement is required for the completion of an improvement which is currently under construction pursuant to a competitive bidding or competitive proposal process;

b. The new improvement results from the discovery of differing or unforeseen physical conditions at the site of the improvement under construction and is required for the completion of the improvement under construction; and

c. An administrative finding has been made by the Finance Director that it would be in the Authority's best interest to negotiate with the on-site contractor for the construction of the new improvement.

Bid and Performance Bonds

(a) When deemed necessary by the Finance Director, bid bonds or other equivalent security shall be required and the invitation for bids or request for proposals shall describe the requirements. Unsuccessful bidders or offerors shall be entitled to the return of any cash deposit. Unless a specific extension is granted in writing, a successful bidder or offeror shall forfeit any bid bond or equivalent security required by the Finance Director upon its failure to enter into a contract within fifteen (15) days after the award.

(b) All contracts for construction the cost of which exceed the sum of fifty thousand dollars (\$50,000) shall require a performance bond or other equivalent security.

(c) Nothing in this Policy shall be construed to limit the authority of the Authority to require additional bonds or security.

Cooperative Procurement Plans

The Finance Director shall have the authority to join with other units of government in cooperative procurement plans when the best interests of the Authority would be served. Competitive sealed bids or sealed proposals received by any other governmental agency shall be the equivalent of bids or proposals received by the Authority and may be the basis for any procurement by the Authority.

Board Approval Required

Purchases of materials, goods, or services where the estimated cost exceeds \$50,000, shall be submitted to the Board of Directors for approval prior to

requesting competitive sealed bids or competitive sealed proposals for such materials, goods, or services.

Executive Director Approval Required

Purchases of materials, goods, or services where the estimated cost exceeds \$5,000 but is less than \$50,000, shall be submitted to the Executive Director for approval prior to requesting competitive sealed bids or competitive sealed proposals for such materials, goods, or services.

Purchasing Cards Authorized

- (a) The purchase of materials, services or professional services in the open market by departments of the Authority may be made with the use of purchasing cards approved by department heads or their designee, provided that no such purchase shall exceed a cost of five thousand dollars (\$5,000).
- (b) Purchases with the use of purchasing cards shall be subject to daily and monthly dollar limits for individual employees.
 - (1) Department heads or the Executive Director may purchase up to \$5,000 per day and \$20,000 per month.
 - (2) Non-department heads may purchase up to \$200 per day and \$5,000 per month.
 - (3) All purchases made with the use of purchase cards shall be reviewed and approved by the supervisor at least one level higher than the employee making the purchase. In the case of the Executive Director, such purchases shall be reviewed and approved by the Chairman of the Board of Directors.



Draft 4/2/07

EXAMPLE

PURCHASE ORDER

DATE: April 4, 2007

VENDOR: ABC Concrete, Inc.
601 E. 45th Avenue
Denver, CO 80216

SHIP TO: Southeast Metro Stormwater Authority
10730 E. Briarwood Ave., Suite 100
Centennial, CO 80112

MAIL INVOICES TO: Southeast Metro Stormwater Authority
10730 E. Briarwood Ave., Suite 100
Centennial, CO 80112

<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total</u>
1,000	Tons concrete per specs attached	\$50.00	\$50,000.00

Authorized Signature:

SOTUHEAST METRO STORMWATER AUTHORITY

David C. Agee, Finance Director

(See attached terms and conditions)

PURCHASE ORDER TERMS AND CONDITIONS

1. COMMERCIAL DETAILS

Invoice Address

To ensure prompt payment, mail invoices to:

Southeast Metro Stormwater Authority
10730 E. Briarwood Ave., Ste. 100
Centennial, CO 80112

Tax Exemption

By statute, the Southeast Metro Stormwater Authority is exempt from sales and local taxes. Our tax exemption number is 98-18556.

Equipment or Goods Rejected

Equipment or goods rejected due to failure to meet specifications, either when shipped, or due to defects of damage in transit, may be returned to you for credit and are not to be replaced except on receipt of written instructions from the Southeast Metro Stormwater Authority.

Inspection

Equipment or goods are subject to Southeast Metro Stormwater Authority inspection upon arrival.

Final Acceptance

Receipt of equipment or goods in response to this order can result in authorized payment on the part of the Southeast Metro Stormwater Authority. However, it is understood that final acceptance is dependent upon completion of all applicable inspection procedures.

Freight Terms

Freight terms must be F.O.B. Southeast Metro Stormwater Authority, 10730 E. Briarwood Ave., Ste. 100, Centennial, CO 80112, unless otherwise specified on this order.

Permits

Seller shall procure at seller's sole cost all necessary permits, certificates, and licenses required by all applicable laws, regulations, ordinances, and rules of the state, municipality, territory, political subdivision, or any other duly constituted public authority having jurisdiction over the work of vendor where the work is to be performed. Seller further agrees to hold the Southeast Metro Stormwater Authority harmless from and against all liability and loss incurred by them by reason of an asserted or established violation of any such laws, regulations, ordinances, rules, and requirements.

Authorization

All parties to this contract agree that the representatives are, in fact, bona fide and possess full and complete authority to bind said parties.

Limitation of Terms

This purchase order expressly limits acceptance to the terms and conditions stated herein, and any supplemental or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by Seller are objected to and hereby rejected.

2. DELIVERY

The Finance Director is to be advised immediately if you cannot make complete shipment to arrive on your promised delivery date as noted. Time is of the essence. Delivery and performance must be effected within the time stated on the purchase order and the documents attached hereto. No acts of the purchaser including, without limitation, acceptance of partial late deliveries, shall operate as a waiver of this provision. In the event of any delay, the purchaser shall have, in addition to other legal and equitable remedies, the option of placing this order elsewhere and holding the seller liable for damages. However, the seller shall not be liable for damages as a result of delays due to causes not reasonably foreseeable which are beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authorities, governmental priorities, fires, strikes, flood, epidemics, wars or riots, provided that notice of the conditions causing such delay is given to the Purchaser within five days of the time when the Seller first received knowledge thereof. In the event of any such delay, the date of delivery shall be extended for the period equal to the time actually lost by reason of the delay.

3. WARRANTY

The Seller warrants that all equipment, goods, articles, materials, and work covered by this order will conform with applicable drawings, specifications, samples, and/or other descriptions given, will be fit for the purposes intended, and performed with the highest degree of care and competence in accordance with accepted standards for work of a similar nature. The Seller agrees to hold the purchaser harmless from any loss, damage, or expense which the Purchaser may suffer or incur on account of the Seller's breach of warranty. The Seller shall replace, repair, or make good, without cost to the Purchaser, any defects or faults arising within one year or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty provided by the Seller after the date of acceptance of the goods furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Seller. Acceptance or use of goods by the Purchaser shall not constitute a waiver of any claim under this warranty. Except as otherwise provided in this purchase order, the Seller's liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties or guarantees, but such liability shall in no event include loss of profits or loss of use. No implied warranty of merchantability or of fitness for purpose shall apply.

4. CHANGE IN LEGAL TERMS

Changes in legal terms may be made by change order.

5. CHANGES IN COMMERCIAL TERMS

The Purchaser may make any changes to the terms, other than legal terms, including additions to or deletions from the quantities originally ordered in the specifications or drawings, by verbal or written change order. If any such change affects the amount due or the time of performance hereunder, an equitable adjustment shall be made.

6. TERMINATIONS

The Purchaser may at any time by written change order, terminate this agreement as to any or all portions of the goods then not shipped, subject to any equitable adjustment between the parties as to any work or materials then in progress provided that the Purchaser shall not be liable for any claims for anticipated profits on the uncompleted portion of the goods and/or work, for incidental or consequential damages, and that no such adjustment be made in favor of the Seller with respect to any goods which are the Seller's standard stock. No such termination shall relieve the Purchaser or Seller of any of their obligations as to any goods delivered hereunder.

7. CLAIMS FOR ADJUSTMENT

Any claim for adjustment must be asserted within thirty days from the date the change or termination is ordered.

8. COMPLIANCE WITH LAW

The Seller warrants that all equipment or goods sold hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which the equipment or goods are subject. The Seller shall execute and deliver such documents as may be required to effect or evidence compliance. All laws and regulations required to be incorporated in agreements of this character are hereby incorporated herein by this reference. The Seller agrees to indemnify and hold the Purchaser harmless from all costs and damages suffered by the Purchaser as a result of the Seller's failure to comply with such law.

9. ASSIGNMENT

Neither party shall assign, transfer, or convey this order, or any monies due or to become due hereunder without the prior written consent of the other party.

10. TITLE

The Seller warrants full, clear, and unrestricted title to the Purchaser for all equipment, materials, and items furnished in performance of this agreement, free and clear of any and all liens, restrictions, reservations, security interest, encumbrances, and claims of others.

11. NONWAIVER

Failure of the Purchaser to insist upon strict performance of the terms and conditions hereof, failure or delay to exercise any rights or remedies provided herein or by law, failure to promptly notify the Seller in the event of a breach, the acceptance of or payment for goods hereunder or approval of the design, shall not release the Seller of any of the warranties or obligations of this purchase order and shall not be deemed a waiver of any right of the purchaser to insist performance hereof or any of its rights or remedies as to any such equipment or goods, regardless of when shipped, received, or accepted, as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this purchase order by the Purchaser operate as a waiver of any of the terms hereof.

12. ASSIGNMENT OF ANTITRUST CLAIMS

Seller and the Purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact borne by the Purchaser. Therefore, for good cause and as consideration for executing this purchase order, the Seller hereby assigns to the Purchaser any and all claims it may now have or hereafter acquire under federal or state antitrust laws for such overcharges relating to the particular equipment, goods or services purchased or acquired by the Purchaser pursuant to this purchase order.

13. PURCHASER'S PERFORMANCE OF SELLER'S OBLIGATIONS

If the Purchaser directs the Seller to correct nonconforming or defective equipment or goods by a date to be agreed upon by the parties and the Seller thereafter indicates its inability or unwillingness to comply, the Purchaser may cause the work to be performed by the most expeditious means available to it, and the Seller shall pay all costs associated with such work. The Seller shall release the Purchaser and its contractors of any tier from all liability and claims of any nature resulting from the performance of such work. This release shall apply even in the event of fault or negligence of the party released and shall extend to the directors, officers and employees of such party. The Seller's contractual obligations, including warranty, shall not be deemed to be reduced, in any way, because such work is performed or caused to be performed by the Purchaser.

14. PATENTS

Whenever the Seller is required to use any design, device, material, or process covered by letter, patent, trademark, or copyright, the Seller shall indemnify and save harmless the Purchaser from any and all claims for infringement by reason of the use of such patented design, device, material, or process in connection with the contract, and shall indemnify the Purchaser for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during or after the completion of the work. In case said equipment, or any part thereof or the intended use of the equipment or goods, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, the Seller shall, at its own expense and at its option, either procure for the Purchaser the right to continue using said equipment or parts, replace the same with substantially equal but non-infringing equipment, or modify it so it becomes non-infringing.

15. INSOLVENCY

If the Seller shall become insolvent or bankrupt, make an assignment for the benefit of creditors, appoint a receiver or trustee for any of the Seller's property or business, this order may forthwith be canceled by the Purchaser without liability.

16. GOVERNING LAW

The definitions of terms used or the interpretation of the agreement and the rights of all parties hereunder shall be construed under and governed by the laws of the State of Colorado.