Department or Agency Number
ACA
Contract Routing Number
04- 00323

STATEWIDE BASIC ORDERING AGREEMENT

THIS BASIC ORDERING AGREEMENT, made this 27th day of January ~~2003~~ 2004, by and between the State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing Office, 225 East 16th Avenue, Suite 802, Denver, Colorado, 80203 on behalf of all participating state agencies, institutions of higher education and political subdivisions each of whom are referred to herein as "State", or "Customer", or "Ordering Entity" as defined herein, and Avis Rent A Car System, Inc., a corporation (hereinafter referred to as "contractor" or "vendor").

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies;

WHEREAS, the State of Colorado has need for an independent contractor to provide automobile rental services; and

WHEREAS, the contractor was awarded a Statewide Basic Ordering Agreement (hereinafter referred to as "BOA") in accordance with Colorado Procurement Code.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree:

1. Order of Precedence
This BOA establishes the terms and conditions of the agreement between the parties, and consists of the following component parts. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

A. Colorado Special Provisions, pages 9 – 10,
B. This Statewide BOA, pages 1 – 8,
C. Exhibit A – State of Colorado solicitation for Basic Ordering Agreement,
D. Exhibit B – Written clarifications from contractor dated November 21, 2003,
E. Exhibit C - Contractor's written BOA offer dated September 19, 2003.

2. Scope
The scope of services are defined in Exhibits A, B and C attached.

2.1 Insurance Refunds and Damages for Overcharging – Administrative/Recovery Fee.
The vendor shall not sell separate insurance to State travelers on business use unless the traveler has a waiver from the State of Colorado Statewide Travel Management Program. In the event the contractor does sell insurance to a State traveler on business use without a waiver, the vendor shall refund the full amount of the insurance premium sold back to the respective cardholder account on

which it was charged. In addition, if the contractor sells additional insurance to a State of Colorado traveler using the State of Colorado AWD #A5141, while renting a vehicle from the contractor while on official State business within the state of Colorado, vendor agrees to pay the State a $30.00 administrative fee.

If the vendor charges more than the price agreement/BOA rate when the terms and conditions of this price agreement/BOA and any subsequent agreement apply, the vendor must, upon notice from the Statewide Travel Management Program or any State agency, refund the difference to the State agency or the individual renter as directed by the State. In addition, the vendor agrees to pay a $30.00 "administrative/recovery" fee to the Department of Personnel & Administration on a per occurrence basis for any overcharges.

3. General

This BOA defines the unit prices or rates for services and products, supplies, or equipment ordered pursuant to the terms of this BOA. Except with respect to orders placed by it under this agreement, the Department of Personnel & Administration shall not be liable to contractor as a signatory to this BOA for any breach by a State agency or other ordering entity of any payment or other obligation herein or under a purchase order or contract that orders services from this BOA.

3.1. Mandatory Use

This BOA is designated as "mandatory"; state agencies and institutions by regulation must satisfy requirements through this agreement. Exceptions may be granted by the Statewide Travel Management Program Manager on application by the agency or institution involved.

3.2. Political Subdivisions

While political subdivisions may order from BOA(s), their use is discretionary with the political subdivision.

3.3. Minimum Orders

Unless stated otherwise in the award in order to take advantage of price reductions proposed by the vendor, there is no minimum order required in any resulting award.

3.4. Definitions

"Ordering entity" means a State agency, department, institution or political subdivision that places an order.

"Political Subdivision" shall mean any Colorado governmental entity such as cities, towns, counties, libraries, etc..

"State agency" shall mean any department, agency, or institution of higher education of the State of Colorado, not including political subdivisions of the State of Colorado.

"State Purchasing Office" shall mean the Colorado State Purchasing Office.

3.5. Change in Vendor Information

The vendor must notify the State Purchasing Office immediately of any change of vendor name or address.

3.6. Electronic File pricing format
The State Purchasing Office will post the vendor's pricing with service descriptions on the Internet. (Website is: www.gssa.state.co.us).

Vendor must provide a complete price list in machine-readable format to any State agency or institution upon their request.

3.7 Performance Period
The effective date of this BOA shall occur upon signature by the State's Controller and shall expire upon termination by either party as defined in Section 3.7.1..

3.7.1 Termination for Convenience and Default
Either party may terminate this BOA for convenience upon sixty (60) days prior written notice. This termination shall not affect orders placed before date of the written notice. Unless approved by the State Purchasing Office, after the date of written notice, the vendor shall not accept any new orders having performance periods extending beyond the effective date of the termination.

Either party may terminate this BOA for default upon ten (10) days written notice. Such written notice shall provide the other party with a written description of the grounds for the default.

3.8 Payment
Payment will be made via the State Travel Card through U.S. Bank VISA.

3.9 Audit and Recordkeeping
The vendor shall permit the State or any other duly authorized agent of the State to audit, inspect, examine, excerpt, copy and/or transcribe contractor's records during the term of this contract and for a period of one (1) year following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof. The vendor shall retain records concerning orders and pricing for a sufficient period of time to permit the State to exercise its audit right under this paragraph.

3.10 Addition of Vendors
The State intends to award BOA(s) to vendor(s) capable of fulfilling the anticipated volume needs for the commodities and/or services specified. However, should the State determine at any time during the term of the BOA(s) that there are additional vendors who can provide the services specified, the State then reserves the right to make additional awards as deemed necessary.

3.11 Tax Exempt Status.

3.11.1 State Entity
It is hereby recognized and acknowledged by the Contractor that State Agencies are tax-exempt; the State shall provide a copy of a tax exemption certificate with number 98-02565.

3.11.2 Political Subdivisions
Contractor will accord the same tax-free treatment to any political subdivision to the extent that they establish like exemption from taxes.

3.12 Insurance.
The State requires specific, minimum levels of insurance coverage for its travelers under the automobile rental price agreement/BOA program. These minimum coverages are described below.

The vendor must have or obtain the following types of general business insurance --

A. Commercial General Liability, Worker's Compensation, and Automobile Liability in accordance with the following language, specifically:

1. The vendor shall obtain, and maintain at all times during the term of this contract, insurance in the following kinds and amounts:

a. **Standard Workers' Compensation and Employer Liability** as required by state statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.

b. **Commercial General Liability and Automobile Liability -** (including bodily injury, personal injury and property damage) with the following minimum coverage, depending on the policy format:
(1). **Occurrence** basis policy - combined single limit of $600,000.
(2). **Annual Aggregate** limit policy - not less than $1,000,000 plus agreement that vendor will purchase additional insurance to replenish the limit to $1,000,000 if claims reduce the annual aggregate below $600,000.

c. Vendor shall provide such other insurance as may be required by law, or in this specific BOA.

2. The State of Colorado shall be named as an **additional insured** on all liability policies.

3. The insurance shall include a provision preventing cancellation without 45-calendar days prior written notice to the State by certified mail.

4. Vendor shall provide the following documentation to the State within seven (7) working days of a request therefore, unless otherwise provided:

a. **Certificate(s)** of adequate insurance coverage, each with a reference to the State being named as an additional insured,
OR
b. **Certificate(s)** of adequate insurance coverage and an **endorsement(s)** of additional insured coverage.

5. Vendor agrees to provide to the State all information required by CRS 10-4-716 and following or as amended and as it may apply during the term of any awarded price agreement/BOA.

B. Insurance -- Renter/Driver Liability

The State requires renter/driver automobile liability insurance as described below. The vendor shall have or obtain the following type of insurance that will extend coverage to renters of vehicles provided by the vendor:

1. The vendor shall provide automobile liability insurance affording coverage to the State of Colorado and its approved drivers for the use of vendor provided vehicles. The insurance shall be in the *minimum* amount of $600,000 combined single limit on an occurrence basis. Vendor shall provide a certificate of insurance in the required amounts showing the State of Colorado as Additional Insured.

Combined Official and Leisure/Personal rentals: The State of Colorado Fiscal Rules recognize that the purpose of travel may not be solely for state business. Vendor will make the renter/driver liability applicable for the entire rental in the case of combined official business and leisure use, or vendor will provide a process at the time of rental that will allow a reasonable allocation of personal and official business costs and renter/driver liability insurance coverage.

2. The vendor shall allow additional drivers who are on official state business at no cost.

3. Rental vehicles obtained by state travelers for official state business through a frequent traveler bonus points program or other incentives will be governed by the terms and conditions of this agreement, including minimum required insurance coverage, and will be applicable to all rentals at participating locations provided that the rental is made under the State of Colorado Corporate Discount #(AWD#) and utilized for business purposes only.

4. The State of Colorado shall be named as an **additional insured** on all liability policies.

5. The vendor must create, maintain, and report monthly to the Statewide Travel Management Program, the State of Colorado Risk Management program and to the University of Colorado Office of Risk Management all case reserves exceeding $75,000 as detailed in this BOA. Vendor must report within 24 hours if possible, and will make every attempt to contact the State within 72 hours, any accident involving State of Colorado employees using the State contract that, in the estimation of the vendor claims adjuster, might entail liability exposure of $75,000 or more or in the case of serious bodily injury or death. Vendor must file monthly updates on claims as responses to State request for defense attorney/adjuster evaluations of exposure.

6. Vendor may, at its option, transfer all program claims adjusting that involve University of Colorado employees using State price agreement/BOA to the University of Colorado with indemnification for the first $150,000 in cost for each claim within the minimum required $150,000 in third party liability insurance or any amount less than $600,000.

7. The insurance shall include a provision preventing cancellation without forty-five (45) calendar days prior written notice to the State by certified mail.

8. Vendor shall provide the following documentation to the State within seven (7) working days of a request therefore, unless otherwise provided:

a. **Certificate(s)** of adequate insurance coverage, each with a reference to the State being named as an additional insured,

OR

b. **Certificate(s)** of adequate insurance coverage and an **endorsement(s)** of additional insured coverage.

9.The State will not agree to waive any liability provisions for group rentals.

C. Vendor Obligations regarding Third Party Liability Claims

Regarding any liability claim, the State requires:

1. In adjusting any claim, the vendor shall not incur obligations or commit monies exceeding the required combined single occurrence limit offered;

2. Vendor shall share case investigation and evaluation materials for any claim if requested by the State;

3. Vendor shall adjust all claims with payment and reserves of $75,000 or more in consultation with the relevant State risk management office.

3.13 Governmental Immunity

Notwithstanding any other provision of the Contract to the contrary, no term or condition of the Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, section 24-10-101, *et.seq.*, C.R.S., as now or hereafter amended.

3.14 Severability

To the extent that the Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of the contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. Any order placed by an Ordering Entity and accepted by Contractor pursuant to this Agreement shall be severable, and the State Purchasing Office shall not be a party to any such order.

3.15 Waiver

The waiver of any breach of a term, provision, or requirement of the contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

3.16 Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

3.17 Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that there are terms and conditions of the Contract which may require continued performance, compliance, or effect beyond the termination date of this Agreement, and such terms and conditions shall survive such expiration or termination of this Agreement and shall be enforceable by the Ordering Entity or the Contractor.

3.18 Notices

All notices and other communications required or permitted to be given under this Agreement shall be in writing (except as otherwise agreed by the parties) and shall be effective on the earlier of the date on which such notice is actually received by the party to which addressed or three days after such notice has been deposited in the United States mail, postage prepaid, at the address set forth below:

For Avis Rent A Car System, Inc.	Cendant Car Rental Group – Avis & Budget Sales 888 Dove Street Newport Beach, CA 92660 ATTN: Kathleen Allen
For the State:	Department of Personnel & Administration State Purchasing Office 225 East 16th Avenue, Suite 802 Denver, CO 80203 ATTN: Robert Siefken

3.19 Colorado Special Provisions

The following Colorado Special Provisions, required by Fiscal Rule 3-1, 1 CCR 101-1, shall be applicable to any order placed by an agency, department, or institution of the State of Colorado and shall govern in the event of any conflict or inconsistency between the terms of any order and this BOA. With respect to paragraph 1 of the Special Provisions, State Controller or designee approval is not required for State purchase orders issued against this BOA by State purchasing agents.

SPECIAL PROVISIONS

(Not for Use with Inter-Governmental Contracts)

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1)**

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. **FUND AVAILABILITY. CRS 24-30-202 (5.5)**

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION.**

The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

4. **INDEPENDENT CONTRACTOR. 4 CCR 801-2**

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

5. **NON-DISCRIMINATION.**

The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.**

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. **VENDOR OFFSET. CRS 24-30-202.4**

Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00**

No State or other public funds payable under this contract shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of the contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507**

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

Effective Date: July 1, 2003

SPECIAL PROVISIONS

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

Avis Rent A Car System, Inc.
Legal Name of Contracting Entity

11-1998661
Social Security Number or FEIN

X
Signature of Authorized Officer

X CHUCK FALLON EVP
Print Name & Title of Authorized Officer

STATE OF COLORADO:

GOVERNOR

By
For **Executive Director**

Department of Personnel & Administration

LEGAL REVIEW:
Ken Salazar
ATTORNEY GENERAL

By AAG II

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By X
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

(Place corporate seal here, if available.)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
ARTHUR L. BARNHART

By Laurie Anderson
Date 4/6/04

Effective Date: July 1, 2003