



SOLICITATION AMENDMENT #2

YH17-0058 Quality Measures	Solicitation Due Date: September 22, 2017 3:00 pm Arizona Time	Procurement Officer: Melannie Rustein Email: Melannie.Rustein@azahcccs.gov
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A signed copy of this amendment must be submitted with your solicitation response.

A. ADD: LIMITATION OF LIABILITY

First Party Limitation of Liability

Contractor’s liability for first party damages to the State arising from this Contract shall be limited to **2** time(s) the maximum not-to-exceed amount of this Contract. The foregoing limitation of liability shall not apply to: (i) liability, including indemnification obligations, for third party claims, including but not limited to, infringement of third party intellectual property rights; (ii) claims covered by any specific provision of the Contract calling for liquidated damages or other amounts, including but not limited to performance requirements; or (iii) costs or attorneys’ fees that the State is entitled to recover as a prevailing party in any action.

B. REMOVE: Uniform Terms and Conditions, Page 27, Paragraphs 6.1 “Risk of Loss” and 6.2 “Indemnification” and Insurance Requirements, Page 39, Paragraph 1.1, “Indemnification Clause”

REPLACE: Contractor shall, indemnify, defend with counsel reasonably approved by the State, and hold harmless, the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnatee") from and against any and all claims, actions, damages, costs, (including attorney's fees), and losses arising under this Contract, including, but not limited to bodily injury or personal injury (including death) or loss or damage to tangible or intangible property, but excluding damages arising solely from the gross negligence or willful misconduct of the Indemnatee. This indemnification obligation includes any claim or amount arising out of, or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved, or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorney’s fees and costs but not liability, and the State shall have the right to approve or disapprove

any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in its defense and any related settlement negotiations.

C. ADD: INTELLECTUAL PROPERTY INDEMNIFICATION

With respect solely to Materials provided or proposed by Contractor or Contractor's agents, employees, or subcontractors (each a "Contractor Party") for the performance of this Contract, Contractor shall indemnify, defend and hold harmless the State its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee"), against any third-party claims for liability including but not limited to, reasonable costs and expenses, including attorneys' fees, for infringement or violation of any patent, trademark, copyright or trade security, by such Materials or the State's use thereof.

In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party, Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing then; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State, Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation.

The State shall reasonably notify Contractor of any claim for which the Contractor may be liable under this section. If the Contractor is insured pursuant to ARS 41-621 and 35-154, this section shall not apply. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiation for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in the defense and any related settlement negotiations.

If Contractor believes at any time that any Materials provided or in the use pursuant to this Contract infringe a third party's intellectual property rights, Contractor shall, at Contractor's sole cost and expense, and upon receipt of the state's prior written consent, which shall not be unreasonably withheld, (i) replace in infringing Material with a non-infringing Material; (ii) obtain for the State the right to continue to use the infringing Material; or (iii) modify the infringing Material to be non-infringing, provided that following any replacement or modification made pursuant to the foregoing, the Material continues to function in accordance with the Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract.

Notwithstanding the foregoing, Contractor shall not be liable for infringement based solely on any Indemnitee's:

- (i) Modification of Materials provided by Contractor other than as contemplated by the Contract or the specifications of such Materials or as otherwise authorized or proposed in any way by Contractor or a Contractor Party;
- (ii) Use of the Materials in a manner other than as contemplated by this Contract or the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party; or
- (iii) Use of the Materials in combination, operation, or use with other products in a manner not contemplated by the Contract, or, the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party.

Contractor certifies, represents and warrants to the State that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of the Contractor for the acquisition, operation or maintenance of Materials in violation of intellectual property laws.

D. REMOVE: Uniform Terms and Conditions, Page 25, Paragraph 3.8, “Ownership of Intellectual Property” and Special Terms and Conditions, Page 36, Paragraph 16 “Ownership of Information and Data”

REPLACE: Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived solely pursuant to or as a result of this Contract and any related subcontract (collectively, the “Intellectual Property”), shall be work made for hire and the State shall be the owner of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Software and other Materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract (“Independent Materials”) do not constitute Intellectual Property. If Contractor creates derivative works of Independent Materials, then the elements of such derivative works created pursuant to this Contract shall constitute Intellectual Property owned by the State. Contractor shall notify the State, 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 State 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 State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

E. ADD: WARRANTY

Unless otherwise modified elsewhere in the terms and conditions, the Contractor warrants that, for one year after acceptance by the State, the Materials shall be fully compatible with the State’s computer hardware and software environment.

Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor’s employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the State of Work.

Contractor represents and warrants that the Materials provided through this Contract and Statement of Work shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on uses or prevent the Materials from performing as required under the terms and conditions of this Contract.

- F. The Offeror agrees that the above named additions and deletions are made to the solicitation and to its offer accordingly.
- G. In the event that its proposal contained any exceptions to AHCCCS’ terms and conditions, the Offeror agrees to remove all of the offer’s exceptions to its proposal.

OFFEROR HEREBY ACKNOWLEDGES RECEIPT AND UNDERSTANDING OF THIS SOLICITATION AMENDMENT.	THIS SOLICITATION AMENDMENT IS HEREBY EXECUTED ON THIS DAY, IN PHOENIX, AZ.
SIGNATURE OF AUTHORIZED INDIVIDUAL:	SIGNATURE: SIGNATURE ON FILE
TYPED NAME:	TYPED NAME: Meggan Harley, CPPO, MSW
TITLE:	TITLE: Chief Procurement Officer
DATE:	DATE: September 15, 2017