



ARIZONA DEPARTMENT OF EDUCATION

REQUEST FOR PROPOSAL

Solicitation Number: **BPM005443**

Solicitation Due Date / Time: **June 2, 2023** Time (Local Time): **3:00 p.m. MST (Arizona time)**

Submittal Location: <https://appstate.az.gov>

Description of Procurement: **Empowerment Scholarship Accounts (ESA) Program – Third-Party Evaluators**

Pre-Offer Conference: **None**

In accordance with A.R.S. § 41-2534, the Arizona Department of Education is soliciting competitive sealed proposals pursuant to this Request for Proposal (RFP) for the materials or services specified herein. Respondents will submit their Offers to the State Procurement Office online through the State's e-Procurement system. Arizona Procurement Portal (<https://appstate.az.gov>) at the date and time posted in ARIZONA PROCUREMENT PORTAL. Proposals received by the correct time and date will be opened and the name of each Offeror will be publicly available. **Proposals shall be in the actual possession of the State prior to the time and date and at the location indicated in the Notice. Late proposals will not be considered.**

The Offer shall be submitted in an acceptable format, as described herein, using the State's online e-Procurement application Arizona Procurement Portal at <https://appstate.az.gov>. Submission of offers by means other than the Arizona Procurement Portal system will not be accepted. Prospective Offerors with questions in this regard shall contact the Procurement Officer prior to the Solicitation's due date and time.

To submit an Offer, Offerors shall register in the Arizona Procurement Portal system. Offerors requiring assistance in the registration process or in navigating the Arizona Procurement Portal system may call the Help Desk at 602-542-7600.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.
Please enter a nominal amount in the items/bid tab for award consideration.

Braulio Garcia

5.19.2023

Procurement Specialist

Date

Steven Paulson

5.19.2023

Chief Procurement Officer

Date




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State of Arizona
Department of Education
1535 W. Jefferson Street
Phoenix, AZ 85007

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	<h1>Scope of Work</h1>	State of Arizona Department of Education 1535 W. Jefferson Street Phoenix, AZ 85007
Solicitation No.: BPM005443 Description: Empowerment Scholarship Accounts (ESA) Program – Third-Party Evaluators		

1.0 MISSION STATEMENT

- 1.1 The Arizona Department of Education is a service organization committed to raising academic outcomes and empowering parents.

2.0 BACKGROUND

As outlined in Arizona Revised Statute § 15-2403, the Arizona Department of Education (ADE) shall contract with an independent third-party contractor for the purposes of determining whether a qualified student is eligible to receive educational therapies or services pursuant to section A.R.S. § 15-2401, subsection B, paragraph 4, subdivision (c). Additionally, pursuant to A.R.S. § 2401, paragraph 7, subdivision (a), item (ii) a “qualified student” means a resident of this state who is “identified by a school district or by an independent third-party pursuant to section A.R.S. § 15-2403, subsection J as a child with a disability as defined in section A.R.S. § 15-731 or A.R.S. § 15-761.” Students evaluated by an independent third-party may be identified as a student with a disability for the purposes of the ESA Program and may qualify for a different funding weight associated with the disability category or may qualify for additional eligible expense categories pursuant to A.R.S. § 15-2402.

3.0 PURPOSE


The ADE is issuing this solicitation to obtain responses from vendors to conduct independent third-party evaluations for the Empowerment Scholarship Accounts Program (hereinafter referred to as “ESA” or “the ESA Program”). ADE is seeking qualified professionals to conduct evaluations to determine if a student meets the definition of a qualified student pursuant to section A.R.S. § 15-2401, paragraph 7, subdivision (a), item (ii), Arizona Revised Statutes and to determine whether an ESA qualified student is eligible to receive educational therapies or services pursuant to section A.R.S. § 15-2402, subsection B, paragraph 4, subdivision (c), Arizona Revised Statutes. Qualified contractors will be placed on an approved independent third-party ESA evaluator list and will be authorized to make determinations of eligibility pursuant to the outlined statutes for active ESA students seeking a third-party ESA evaluation. The approved evaluator list will include each approved evaluator, the disabilities the evaluator is qualified to evaluate and the contact information for the evaluator. Active ESA students may request an evaluation from any vendor on the approved independent third-party ESA evaluator list and the cost of any ESA third-party evaluation will be paid for by the student’s representative. Students who qualify for the ESA program as a student with a disability may utilize ESA funds to pay for the evaluation pursuant to A.R.S. § 15-2402(B)(4)(c)(iv).

ADE reserves the right to reopen this solicitation to continue to add additional vendors to the approved list. It is expected that the contract and approved vendor list will be effective on or around July 1, 2023.

4.0 CONTRACTOR RESPONSIBILITIES

Contractor shall:

- 4.1 Provide all services in a linguistically appropriate manner that recognizes ADE’s mission: We are a service organization committed to raising academic outcomes and empowering parents.
- 4.2 Be qualified to or employ persons who are qualified to conduct evaluations to determine whether or not a student is eligible to receive educational therapies or services or is qualified to enroll in the ESA program as a student with a disability.
 - 4.2.1 Applicants must provide documentation outlining the credentials, including active licensure that qualify the vendor to conduct evaluations related to disabilities for the purposes of eligibility in the ESA Program.
 - 4.2.2 Applicants must provide documentation related to which educational therapies or services the vendor is qualified to assess eligibility for and which disabilities the vendor is qualified to evaluate and make determinations regarding.

	<h2>Scope of Work</h2>	<p style="text-align: center;">State of Arizona Department of Education 1535 W. Jefferson Street Phoenix, AZ 85007</p>
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- 4.3 Be familiar with and comply with the applicable aspects of the following requirements regarding student and/or patient (if applicable) personally identifying including but not limited to Arizona Revised Statute 15-1045 which incorporates the family education rights and privacy act (FERPA; 20 U.S.C: section 1232g): (a) the “Privacy Rule” in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996; (b) Arizona Laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR45-160(B) or the Employee Retirement Income Security Act of 1974 (“ERISA”) as amended; and (c) State’s current and published PHI/ePHI privacy and security policies and procedures.
Note: For convenience of reference only, FERPA is available at: <https://studentprivacy.ed.gov/ferpa> and the Privacy Rule is available at: <http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>
- 4.4 Be liable and bear all the responsibility of and resolve any complaints or issues a student’s representative may have towards the conduct of the evaluation and/or any privacy or data breaches under state or federal law.

5.0 DELIVERABLES

Contractor shall:

- 5.1 Adhere to any guidance issued by ADE under Section 6.0
- 5.2 Promptly notify ADE if the vendor no longer wishes to be included on an approved ESA evaluator list as described in Section 6.2.


6.0 ADE RESPONSIBILITIES

ADE may:

- 6.1 Issue guidance to contractors related to best practices for conducting ESA third-party evaluations.
- 6.2 Remove contractor(s) from the approved vendor list for non-compliance with any best practices guidance issued by ADE.

7.0 PAYMENT

- 7.1 Contractor shall charge the active ESA student a fee for evaluation services. The cost for evaluations should be reasonable and commensurate with the usual and standard rates for this service. ADE reserves the right to reject any rate that does not, in its sole discretion, meet this standard.

	<h1>Uniform Instructions to Offerors</h1>	<p>State of Arizona Department of Education 1535 W. Jefferson Street Phoenix, AZ 85007</p>
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I. UNIFORM INSTRUCTIONS TO OFFERORS

A. Definition of Terms

As used in these Instructions, the terms listed below are defined as follows:

1. “*Attachment*” means any item the Solicitation requires an Offeror to submit as part of the Offer.
2. “*Best and Final Offer*” means a revision to an Offer submitted after negotiations are completed that contains the Offeror’s most favorable terms for price, service, and products to be delivered; sometimes referred to as a Final Proposal Revision.
3. “*Contract*” means the combination of the Solicitation, including the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer, any Clarifications, and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
4. “*Contract Amendment*” means a written document signed by the Procurement Officer issued for the purpose of making changes in the Contract.
5. “*Contractor*” means any person who has a Contract with a state governmental unit.
6. “*Day*” means calendar days unless otherwise specified.
7. “*eProcurement (Electronic Procurement)*” means conducting all or some of the procurement function over the Internet. Point, click, buy and ship Internet technology is replacing paper-based procurement and supply management business processes. Elements of eProcurement also include Invitation for Bids, Request for Proposals, and Request for Quotations.
8. “*Exhibit*” means any document or object labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
9. “*Offer*” means a response to a solicitation.
10. “*Offeror*” means a person who responds to a Solicitation.
11. “*Person*” means any corporation, business, individual, union, committee, club, or other organization or group of individuals.
12. “*Procurement Officer*” means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
13. “*Solicitation*” means an Invitation for Bids (“IFB”), a Request for Technical Offers, a Request for Proposals (“RFP”), a Request for Quotations (“RFQ”), or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
14. “*Solicitation Amendment*” means a change to the Solicitation issued by the Procurement Officer.
15. “*Subcontract*” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
16. “*State*” means the State of Arizona and Department or Agency of the State that executes the Contract.



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B. Inquiries

1. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.
2. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Procurement Officer.
3. Submission of Inquiries. All inquiries related to the Solicitation are required to be submitted in the State's eProcurement system. All responses to inquiries will be answered in the State's eProcurement system. Any inquiry related to the Solicitation should reference the appropriate solicitation page and paragraph number. Offerors are prohibited from contacting any State employee other than the Procurement Officer concerning the procurement while the solicitation and evaluation are in process.
4. Timeliness. Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
5. No Right to Rely on Verbal or Electronic Mail Responses. An Offeror shall not rely on verbal or electronic mail responses to inquiries. A verbal or electronic mail reply to an inquiry does not constitute a modification of the solicitation.
6. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
7. Pre-Offer Conference. If a pre-Offer conference has been scheduled under the Solicitation, the date, time and location shall appear in the State's eProcurement system. Offerors should raise any questions about the Solicitation at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a Solicitation Amendment.
8. Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer. Requests shall be made as early as possible to allow time to arrange the accommodation.

C. Offer Preparation

1. Electronic Documents. The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission to the State's eProcurement system. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. Offeror's electronic files shall be submitted in a format acceptable to the State. Acceptable formats include .doc and .docx (Microsoft Word), .xls and .xlsx (Microsoft Excel), .ppt and .pptx (Microsoft PowerPoint) and .pdf (Adobe Acrobat). Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.
2. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer in the State's eProcurement system and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as a signature, shall result in rejection of the Offer.



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3. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in the State's eProcurement system in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
 - 3.1. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
 - 3.2. Request for Proposals. All exceptions that are contained in the Offer may negatively impact an Offeror's susceptibility for award. An Offer that takes exception to any material requirement of the solicitation may be rejected.
4. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
5. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
6. Federal Excise Tax. The State is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
7. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance form.
 - 7.1 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this Contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
8. Identification of Taxes in Offer. The State is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the Solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.
9. Disclosure. If the person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall set forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
10. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).
11. Federal Immigration and Nationality Act. By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion require evidence of



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compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have five days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the Offer not being considered for contract award.

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

D. Submission of Offer

1. Offer Submission, Due Date and Time. Offerors responding to a Solicitation must submit the Offer electronically through the State's eProcurement system. Offers shall be received before the due date and time stated in the solicitation. Offers submitted outside of the State's eProcurement system or those that are received after the due date and time shall be rejected.
2. Offer and Acceptance. Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted in the State's eProcurement system with the Offer no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.
3. Solicitation Amendments. A Solicitation Amendment shall be acknowledged in the State's eProcurement system no later than the Offer due date and time. Failure to acknowledge a Solicitation Amendment may result in rejection of the Offer.
4. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
5. Confidential Information. If an Offeror believes that any portion of an Offer, protest, or correspondence contains a trade secret or other proprietary information, the Offeror shall clearly designate the trade secret and other proprietary information, using the term "confidential." An Offeror shall provide a statement detailing the reasons why the information should not be disclosed including the specific harm or prejudice that may arise upon disclosure. The Procurement Officer shall review all requests for confidentiality and provide a written determination. Until a written determination is made, a Procurement Officer shall not disclose information designated as confidential except to those individuals deemed to have a legitimate State interest. In the event the Procurement Officer denies the request for confidentiality, the Offeror may appeal the determination to the State Procurement Administrator within the time specified in the written determination. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information.
6. Public Record. All Offers submitted and opened are public records and must be retained by the State for six years. Offers shall be open and available to public inspection through the State's eProcurement system after Contract award, except for such Offers deemed to be confidential by the State.
7. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or other official contract form, the Offeror certifies that:
 - 7.1. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and



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

E. Evaluation

1. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
2. Taxes. If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the Offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.
3. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the Offer for the purpose of evaluating that price.
4. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
5. Disqualifications. An Offeror (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its Offer rejected.
6. Offer Acceptance Period. An Offeror submitting an offer under the Solicitation shall hold its offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for offer acceptance, the number of days shall be one hundred twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its offer open for one hundred twenty (120) days from the Best and Final Offer due date.
7. Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:
 - 7.1 Waive any minor informality;
 - 7.2 Reject any and all Offers or portions thereof; or
 - 7.3 Cancel the Solicitation.

F. Award

1. Number of Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State.
2. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
3. Effective Date. The effective date of the Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

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G. Protests

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of the Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the Procurement Officer makes the procurement file available for public inspection. A protest shall include:

1. The name, address, email address and telephone number of the interested party;
2. The signature of the interested party or its representative;
3. Identification of the purchasing agency and the Solicitation or Contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

H. Comments Welcome

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

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II. UNIFORM TERMS AND CONDITIONS Version: 9

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1 Attachment

“Attachment” means any item that: (1) the Solicitation required Offeror to submit as part of the Offer; (2) was attached to the Offer when submitted; and (3) was attached, with or without modification from the initial submission, as the case may be, to the Accepted Offer following acceptance by the State.

1.2 Contract

“Contract” means the combination of the Solicitation, the Accepted Offer, and any Contract Amendments.

1.3 Contract Amendment

“Contract Amendment” means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4 Contractor

“Contractor” means the Person identified on the signed Offer and Acceptance Form who has entered into the Contract with the State.

1.5 Days

“Days” means calendar days unless otherwise specified.

1.6 Exhibit

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

1.7 Gratuity

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

1.8 Materials

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

1.9 Procurement Officer

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

1.10 Services

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

1.11 Subcontract

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

1.12 State

“State” means the State of Arizona and Department or Agency of the State that executes the Contract.



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1.13 State Fiscal Year

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

2.0 CONTRACT INTERPRETATION

2.1 Arizona Law

The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2 Implied Contract Terms

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3 Contract Order of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- 2.3.1 the Special Terms and Conditions;
- 2.3.2 Uniform Terms and Conditions;
- 2.3.3 Statement or Scope of Work;
- 2.3.4 Specifications
- 2.3.5 Attachments;
- 2.3.6 Exhibits;
- 2.3.7 Any other documents referenced or included in the solicitation

2.4 Relationship of Parties

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5 Severability

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6 No Parole Evidence

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7 No Waiver

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3.0 CONTRACT ADMINISTRATION AND OPERATION

3.1 Records

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other “records” relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to



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inspection and audit by the State at reasonable times. Upon request, the Contactor shall produce a legible copy of any or all such records.

3.2 Non-Discrimination

The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3 Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4 Facilities Inspection and Materials Testing

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5 Notices

Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6 Advertising, Publishing and Promotion of Contract

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7 Property of the State

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

3.8 Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator 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. 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



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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.

3.9 Federal Immigration and Nationality Act

The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the Contract. The State shall retain the right to perform random audits of Contractor and Subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor and/or any Subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the Contract for default and suspension and/or debarment of the Contractor.

3.10 E-Verify Requirements

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited

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

4.0 COSTS AND PAYMENTS

4.1 Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

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

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.



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4.4 Availability of Funds for the Next State fiscal year

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

4.5 Availability of Funds for the current State fiscal year

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the Contractor;

4.5.2 Cancel the Contract; or

4.5.3 Cancel the Contract and re-solicit the requirements.

5.0 CONTRACT CHANGES

5.1 Amendments

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

5.2 Subcontracts

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6.0 RISK AND LIABILITY

6.1 Risk of Loss

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

6.2 Indemnification

6.2.1 Contractor / Vendor Indemnification (Not Public Agency).

The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.



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6.2.2 Public Agency Language Only.

Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3 **Indemnification – Patent and Copyright**

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 **Force Majeure**

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

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

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

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



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6.5 Third Party Antitrust Violations

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

7.0 WARRANTIES

7.1 Liens

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

- 7.2.1 Of a quality to pass without objection in the trade under the Contract description;
- 7.2.2 Fit for the intended purposes for which the materials are used;
- 7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4 Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance With Applicable Laws

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination

- 7.6.1 **Contractor's Representations and Warranties.** All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2 **Purchase Orders.** The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.



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8.0 STATE'S CONTRACTUAL REMEDIES

8.1 Right to Assurance

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2 Stop Work Order

The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies

The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset

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

9.0 CONTRACT TERMINATION

9.1 Cancellation for Conflict of Interest

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.



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9.2 Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3 Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4 Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination

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

10.0 CONTRACT CLAIMS

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518



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11.0 Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12.0 COMMENTS WELCOME

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

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1. Pre-proposal Conference

None.

2. ADE Representative

The ADE Representative is **Braulio Garcia, Procurement Services Supervisor.**

Note: All questions should be in writing referencing the RFP #BPM005443 via **Arizona Procurement Portal Q & A Tab**. <https://appstate.az.gov>

3. Inquiries

Any questions related to this Request for Proposal shall be submitted through the Arizona Procurement Portal website using the Discussion Forum associated with this solicitation. Please select “All not blocked bidders” from the “To:” Drop Box so that the question and response will be viewable by all potential offerors. The Offeror shall not contact or ask questions of the Department for which the requirement is being procured. Any correspondence related to a solicitation should refer to the appropriate solicitation number, page and paragraph number. Clarification questions should be received at least 7 days before RFP due date. No questions in the Discussion Forum will be answered after that date.

4. Submission Required in Arizona Procurement Portal

The Offer shall be submitted in an acceptable format, as described herein, using the State’s online eProcurement application Arizona Procurement Portal at <https://appstate.az.gov>. Submission of offers by means other than the Arizona Procurement Portal system will not be accepted. Prospective Offerors with questions in this regard shall contact the Procurement Officer prior to the Solicitation’s due date and time.


To submit an Offer, Offerors shall register in the Arizona Procurement Portal system. Offerors requiring assistance in the registration process or in navigating the Arizona Procurement Portal system may call the Help Desk at 602-542-7600. ****Suppliers are required to enter a nominal value of \$0.01 or \$1.00 in the Unit Price (V) and Amount (V) field boxes. Do not leave the Item (F) blank. Pricing shall be submitted on the ATTACHMENT III – PRICE SHEET.**

5. Confidential Information

If a person believes that any portion of a proposal, bid, offer, specification, protest or correspondence contains information that should be withheld, then the Procurement Officer shall be so advised in writing or through use of the Confidentiality feature within Arizona Procurement Portal (Price is not confidential and will not be withheld). Such material shall be identified as confidential wherever it appears. The State, pursuant to A.A.C. R2-7-103, shall review all requests for confidentiality and provide a written determination. If the confidential request is denied, such information shall be disclosed as public information, unless the person utilizes the 'Protest' provision as noted in A.R.S. §§ 41-2611 through 41-2616.

All proposals will be made available for public inspection after the award is made; except to the extent that, pursuant to the provisions of the Arizona School ADE Procurements Rules A.A.C. Rules R2-7-2001, et seq., the Offeror has designated certain information to remain confidential and the State Agency concurs that the information should remain confidential.

If an Offeror believes that data contained in their proposal contains trade secrets or other proprietary information, and should remain confidential and not be disclosed, a statement advising the State Agency of this fact shall

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accompany the respective document or documents, and such information shall be specifically identified wherever it appears.

NOTE: PROPOSALS SUBMITTED REQUESTING THAT THE ENTIRE PROPOSAL BE HELD CONFIDENTIAL SHALL BE REJECTED AS NON-RESPONSIVE.


6. Offerors Responsibility

The Offeror is cautioned that it is the Offerors sole responsibility to submit information related to the evaluation categories and that ADE is under no obligation to solicit such information if it is not included with the Offerors proposal. Failure by the Offeror to submit such information may cause an adverse impact on the evaluation of the Offerors proposal.

7. Responsibility, Responsiveness and Acceptability

In accordance with A.R.S. § 41-234(G), A.A.C. R2-7-C311, R2-7-C312, and R2-7-C316, ADE shall consider at a minimum, the following criteria when determining Offeror's responsibility, as well as the proposal's responsiveness and susceptibility for contract award.

- A. Whether the Offeror has had a contract within the last five years that was terminated for cause due to breach or similar failure to comply with the terms of the contract.
- B. Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints and/or negative references.
- C. Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including subcontractors.
 - Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.
- D. Whether the Offeror promptly supplied all requested information concerning its responsibility.
- E. Whether the Offer was sufficient to permit evaluation by ADE, in accordance with the evaluation criteria identified in this solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform Scope of Work, acknowledge Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitations.
- F. Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference.
- G. Whether the Offer limits the rights of ADE.
- H. Whether the Offer includes or is subjected to unreasonable conditions, to include conditions upon ADE, Necessary for successful Contract performance. ADE shall be the sole determiner as to the reasonableness of a condition.

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- I. Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions.
- J. Whether the Offeror provides misleading or inaccurate information.

8. Authorized Signature

Any document that requires the Offeror’s signature, the signature provided must be that of the Owner, Partner, or Corporate Officer duly authorized to sign contractual agreements. Additionally, if requested by the ADE, disclosure of ownership information shall be submitted.

- Private Owned- The Owner must sign this contract.
- Partnership- A Partner must sign this contract.
- Corporation- A Corporate Officer must sign this contract.

If an employee other than these specified individuals signs this Agreement, a Power of Attorney indicating employee’s authority must accompany this Agreement. All addenda to this Agreement shall be signed by the authorized individual who signed this Agreement.

9. Evaluation Schedule

The Proposals will be initially evaluated for conforming to the requirements of the RFP. Then a technical score will be given. The Proposals with the highest scores may be selected for Oral Presentations to determine the best interests of the ADE.

Exceptions to the Terms and Conditions, as stated in the Uniform Instructions Section C.3, will impact an Offeror’s susceptibility for award.

- 10. **Evaluation Criteria:** In accordance with the Arizona Procurement Code § 41-2534, Competitive Sealed Proposals, award(s) shall be made to the responsible Offeror(s) whose offer is determined in writing to be the most advantageous to ADE based upon the evaluation factors listed below. The evaluation factors are listed in their relative order of importance.

- A. Qualified Contractor Application
- B. Authorization Statement

11. Clarifications

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

12. Questionnaire Section

Offeror(s) should complete the entire **Attachment I - Questionnaire** section of the Request for Proposal. The Offerors responses should be in the form of a brief written narrative demonstrating the Offerors ability to satisfy the Scope of Work. The narrative should describe a logical progression of tasks and efforts starting with the initial steps or tasks to be accomplished and continuing until all proposed tasks are fully described. The language of the narrative



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should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The use of technical language should be minimized and used only to describe a technical process.

13. Discussions (Negotiations)

In accordance with A.R.S. § 41-2534, after the initial receipt of offers, ADE reserves the option to conduct discussions with those Offerors who submit offers determined by ADE to be reasonably susceptible of being selected for award.

14. Best and Final Offer

If discussions are conducted, the ADE shall issue a written request for best and final offers. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the ADE makes a determination that it is advantageous to conduct further discussions or change the solicitation requirements.

15. Certificate of Insurance Form

ADE recommends that the Offeror consider using the sample Certificate of Insurance included in this Solicitation. If the Offeror wishes, it may submit a substantially similar Certificate of Insurance. If the Offeror so elects, the proposed Certificate of Insurance shall be submitted to ADE for review and approval.

16. Contract Award

An agency chief procurement officer shall award the contract to the responsible Offeror whose offer is determined to be most advantageous to the State based on the evaluation factors set forth in the solicitation.

17. Public Record

All Proposals submitted in response to this Request for Proposal shall become the property of the State and shall become a matter of Public Record available for review, subsequent to the award notification, as provided for by the Arizona Procurement Code.


18. Anticipated Timeline

ACTIVITY	DATE
RFP Issue Date	5/19/2023
Pre-Offer Conference	
Clarification Questions due	7 days prior to RFP due date
Proposal Due Date	6/2/2023
*Proposal Evaluations	TBD
*Oral Presentations (if needed)	TBD
*Best and Final Offer	TBD
* Award Date	TBD

* These dates are estimates only, and are subject to change without prior notice.*

19. Offer Acceptance Period

Proposals are an irrevocable offer for **120 days** after the opening time and to allow the ADE sufficient time to evaluate the responses.

	<h2>Special Instructions to Offerors</h2>	<p>State of Arizona Department of Education 1535 W. Jefferson Street Phoenix, AZ 85007</p>
<p>Solicitation No.: BPM005443 Description: Empowerment Scholarship Accounts (ESA) Program – Third-Party Evaluators</p>		

20. Rights Reserved

The right is reserved to reject any or all proposals, or to waive any informality in any proposal received or to accept all or any part of any proposal considered advantageous to the State Agency.

21. Clarification of Solicitation Requirements

It is the responsibility of all Offerors to examine the Solicitation and seek clarification of any item or requirement that may be unclear to them and to check all offers for accuracy before submittal to ADE. Any questions regarding this solicitation can be answered by submitting a request through the Arizona Procurement Portal website. The Chief Procurement Officer is the only authorized person to give information as to the requirements of the solicitation in addition to that contained in the written documents.

- Questions should be submitted through the Arizona Procurement Portal website and received by the Chief Procurement Officer no less than 7 days prior to the RFP due date. All questions must reference the page and item that is to be addressed.
- A Solicitation Amendment must be acknowledged by submitting a signed copy of the Amendment with your Solicitation Response.
- No verbal or written information, which is obtained other than by information in this document or by an Amendment to this solicitation, will be binding on the Arizona Department of Education.



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1. Glossary Terms

1. “*ADE*” means the Arizona Department of Education
2. “*Department*” means the Arizona Department of Education
3. “*LEA*” means Local Educational Agency which consists of Arizona public school districts, charter schools, and accommodation schools.

2. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. § 41 2501 et seq., the State of Arizona intends to establish a Contract for services as listed herein for services on behalf of the LEAs.

3. Term of Contract

The term of the contract shall commence upon award and shall remain in effect for (1) one year, unless terminated, canceled or extended as otherwise provided herein.

4. Contract Extensions

The Contractor agrees that the State shall have the right, at its sole option, to renew the contract in accordance with any extensions the State may receive for supplemental periods up to a maximum contract term of (5) five years. In the event that the State exercises such right, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period with the exception of price.

5. Price Increase

ADE may review a fully documented request for a price increase only after the contract has been in effect for three (3) years. A price increase adjustment shall only be considered at the time of a contract extension and shall be a factor in the extension review process. ADE shall determine whether the requested price increase or an alternate option is in the best interest of the State. The price increase adjustment, if approved, will be effective upon the effective date of the contract extension.

The request shall be submitted at least 60 days prior to the contract renewal date and shall be a factor in the extension review process.

Failure to submit the request within the stated timeframe and/or failure to supply adequate information with the request may result in the State not considering the request.

The State, at its sole option shall determine whether the requested price adjustment or an alternate option is in the best interest of the State.

6. Price Reductions

Price reductions may be submitted to the State for consideration at any time during the contract period. The State at its own discretion may accept a price reduction.

7. Contract Type

Firm fixed price, indefinite quantity



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8. Multiple Award

ADE reserves the right to make a multiple award to more than one Offeror.

9. Estimated Usage

The Contract shall be on an as needed, if needed basis. The State makes no guarantee as to the amount of usage that may occur under a resultant contract.

10. Non-Exclusive Contract

Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source, when necessary, or when determined to be in the best interest of the State.

11. Licenses

Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.

12. Order Process

The award of a Contract shall be in accordance with the Arizona Procurement Code. Any attempt to represent any material and/or service not specifically awarded as being under contract with the State is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

13. Changes

ADE reserves the right to revise the delivery schedule and make other changes within the Scope of Work as may be deemed necessary to best serve the interest of ADE. All changes shall be documented by formal amendments to the Contract. Changes made without benefit of a formal amendment will not be valid.

14. Acceptance

Upon receipt of Products and Services, and/or commencement of continual Services, ADE shall determine whether all delivered Products and Services meet the applicable Product and Services specifications and quality requirements established herein.

15. Inclusive Offeror

Offeror(s) are encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority-owned business enterprises. This could include subcontracts for a percentage of Administrative or Billing needs. Offerors who are committing a portion of their work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning your organization's utilization of small, women-owned and/or minority-owned business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.



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16. Offshore Performance of Work Prohibited

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

17. Confidentiality of Records

The contractor shall establish and maintain procedures and controls acceptable to the State for the purpose of assuring that information or data in its possession is not mishandled, misused, released, disclosed, or used in an inappropriate manner by it, its agents, officers, or employees. This includes information contained in its records obtained from the State or others, necessary for contract performance. The contractor shall take all reasonable steps and precautions to safeguard this information and data and shall not divulge the information or data to parties other than those needed for the performance of duties under the contract.

18. Disabilities Acts

The Contractor shall comply with the Americans with Disabilities Act of 1990 (Public Law 101-336) and the Arizona Disability Act of 1992 (A.R.S. §§ 41-1492 et. seq.), which prohibits discrimination on the basis of physical or mental disabilities in delivering contract services or in the employment, or advancement in employment of qualified individuals.

19. Family Education Rights and Privacy Act of 1974 (FERPA)

If applicable both parties agree to comply with the federal Family Educational Rights and Privacy Act of 1974. This applies to all provisions of this Agreement which involves identifiable individual student data.

20. Assignment

The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Arizona of all rights, title and interest in and to all causes of action that the contractor may possess under the antitrust laws of the United States or the State of Arizona for which causes of action have accrued or will accrue as the result of or in relation to the goods or services purchased or procured by the contractor in the fulfillment of the contract with the State of Arizona.

21. Compliance Requirements For A.R.S. § 41-4401, Government Procurement; E-Verify Requirement

The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program."). A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract. The ADE retains the legal right to inspect the papers of any employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty.



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22. Warranty of Services

- i. The Contractor warrants that all services provided hereunder will conform to the requirements of the Contract, including all descriptions, specifications, attachments, and exhibits made a part of this Contract. The ADE's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.
- ii. In addition to its other remedies, the ADE may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished hereunder.

23. Participation in Boycott of Israel

Contractor warrants it is not engaged in a boycott of Israel as defined by A.R.S. § 35-393.01.

24. Participation in Forced Labor of Ethnic Uyghurs Ban

Contractor warrants that is in compliance with the A.R.S. § 35-394.

25. Indemnification Clause

To the extent allowed by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

26. Insurance Requirements

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work



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under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. Minimum Scope and Limits of Insurance: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$ 50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities,



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officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

B. Additional Insurance Requirements

- a. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions: The Contractor's policies shall stipulate that the insurance afforded the contractor shall be primary insurance and that any insurance carried by the Department, and its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- b. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. Notice of Cancellation: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to the Arizona Department of Education 1535 W Jefferson St. Phoenix, AZ 85007. Attn: Procurement Dept. and shall be sent by certified mail, return receipt requested.

D. Acceptability of Insurers: Contractors insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. Verification of Coverage: Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Arizona Department of Education 1535 W Jefferson St. Phoenix, AZ 85007. Attn: Procurement Dept. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. Subcontractors: Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

G. Approval and Modifications: The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.



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- H. Exceptions:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.