# ATTACHMENT II

## Designation of Confidential, Trade Secret & Proprietary Information

**Solicitation No.:** AG15-0068

**Project #:** Outside Counsel Supplement CY2015

**State of Arizona**
**Office of the Attorney General**
Procurement Section
1275 W Washington ST
Phoenix, Arizona 85007
(602) 542-8030

All materials submitted as part of a response to a solicitation are subject to Arizona public records law and will be disclosed if there is an appropriate public records request at the time of or after the award of the contract. Recognizing there may be materials included in a solicitation response that is proprietary or a trade secret, a process is set out in A.A.C. R2-7-103 (attached) that will allow qualifying materials to be designated as confidential and excluded from disclosure. For purposes of this process the definition of "trade secret" will be the same as that set out in A.A.C. R2-7-101(52).

This form must be completed and returned with the response to the solicitation and any supporting information to assist the State in making its determination as to whether any of the materials submitted as part of the solicitation response should be designated confidential because the material is proprietary or a trade secret and therefore not subject to disclosure.

**All Offerors must select <u>one</u> of the following:**

☐ My response does not contain proprietary or trade secret information. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.

☐ My response does contain trade secret information because it contains information that:

1. Is a formula, pattern, compilation, program, device, method, technique or process, AND
2. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; AND
3. Is the subject of efforts by myself or my organization that are reasonable under the circumstances to maintain its secrecy.

**Please note that failure to attach an explanation may result in a determination that the information does not meet the statutory trade secret definition. All information that does not meet the definition of trade secret as defined by A.A.C. R2-7-101(52) will become public in accordance with A.A.C. R2-7-C317. The State reserves the right to make its own determination of Proposer's trade secret materials through a written determination in accordance with A.A.C. R2-7-103.**

If the State agrees with the proposer's designation of trade secret or confidentiality and the determination is challenged, the undersigned hereby agrees to cooperate and support the defense of the determination with all interested parties, including legal counsel or other necessary assistance.

By submitting this response, proposer agrees that the entire offer, including confidential, trade secret and proprietary information may be shared with an evaluation committee and technical advisors during the evaluation process. Proposer agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the State's withholding of information based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the State in defending such an action.

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|---|---|
| Signature of Person Authorized to Sign | Printed Name |
| Title | Company Name |

**R2-7-103. Confidential Information**

A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.

B. Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.

C. Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:
   1. The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest;
   2. The designated information is not confidential; or
   3. Additional information is required before a final confidentiality determination can be made.

D. If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.

E. An agency chief procurement officer may release information designated as confidential under subsection (A) if:
   1. A request for review is not received by the state procurement administrator within the time period specified in the notice; or
   2. The state procurement administrator, after review, makes a written determination that the designated information is not confidential.