



# Improving State IT Procurement


Idaho State Procurement Laws Committee  
Presentation

October 27, 2016



# Presentation Overview

1. ITAPS State IT Terms and Conditions Best Practices
2. Idaho Terms and Conditions
3. Additional Considerations and Suggestions
4. Questions



# State IT Terms and Conditions Best Practices Key Principles

- Open, fair competitive bidding process
- Proportional risk
- Flexibility
- Efficiency
- Best value for state



# **IDAHO STANDARD TERMS AND CONDITIONS**



# Termination for Default

- As written, permits State to terminate for default or noncompliance once vendor notified and given no more than 30 days to cure.
- A state's right to terminate should be limited to a material breach
- Grant the state (and the vendor) the opportunity to terminate if the other party has defaulted and been given opportunity to cure
- Recommend minimum 30 days or mutually agreed upon timeframe



# Administrative Fee

## *Failure to Remit Administrative Fees*

- *If a Contractor fails to remit the Administrative Fee...the State, **at its discretion**, may declare the Contractor in default; cancel the Contract; assess and recover procurement costs from the Contractor (in addition to all outstanding Administrative Fees); seek State or federal audits, monitoring or inspections; exclude Contractor from participating in future solicitations; and/or suspend Contractor's IPRO account.*
- Termination as a penalty steep
- Broad, unilateral rights for damages



# Changes/Modifications

- *“...the State may issue **unilateral** amendments to the Contract to make administrative changes, when necessary”*
- All changes should be mutually agreed upon
- Administrative changes not defined



# Indemnification

- Should be limited to third party claims arising from the vendor's gross negligence, willful misconduct, or fraud, and should exclude claims to the extent they arise from the State or other contractors not under our control.
- If both the vendor and the state are concurrently at fault, the indemnity should be allocated proportionately between the parties based on their respective percentage of fault.





# **ADDITIONAL CONSIDERATIONS AND SUGGESTIONS**



# Limitation of Liability

- States benefit from limiting the nature of damages available for recovery and to commit to limits of liability that closely relate to contract value (NASCIO)
- Limit carve-outs
- North Carolina SB 792



# Permitting Exceptions to Terms and Conditions

- Disqualifying or discounting a vendor's bid based on their exception forces vendors to either undertake unreasonable risk or not bid on the project at all
- Reinforces ambiguous provisions that lead to poor contracting results
- 2016 VA SB 150 prohibits public bodies from requesting offerors to state any exception to any liability provisions in responding to a RFP for IT goods and services.



# Maryland Commission to Modernize State Procurement

- Created by Executive Order 01.01.2016.05 to comprehensively review Maryland's procurement laws and regulations
- Chaired by Lieutenant Governor. State agencies, Legislature and other stakeholders represented.
- Three Work Groups: Efficiencies, Initiatives, and Workforce
- Final report due to Governor December 1, 2016



# Additional Thoughts

- Procurement Staff Training
- Leveraging IT Expertise in Acquisition
- Communication and Contract Planning
- Specifically Defining the Business Problem to be Solved During the Pre-RFP Process



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**QUESTIONS?**