

Janice K. Brewer  
Governor



Brian C. McNeil  
Director

**ARIZONA DEPARTMENT OF ADMINISTRATION**

OFFICE OF THE DIRECTOR

100 NORTH FIFTEENTH AVENUE • SUITE 401  
PHOENIX, ARIZONA 85007

(602) 542-1500

October 10, 2014

Tom Betlach, Director  
Arizona Health Care Cost Containment System (AHCCCS)  
801 East Jefferson Street  
Phoenix, Arizona 85034

Dear Mr. Betlach:

Your request of September 26, 2014, regarding a one-year extension on contract YH12-0001 beyond the five-year term, is approved.

The basis/reasons for the approval follow:

1. A.R.S § 41-2546.A includes the following authority:

*...Notwithstanding any other law, a contract, including contracts not otherwise subject to this Chapter, may be entered into for materials or services for a period of time exceeding five years if, under rules adopted pursuant to this Chapter, the director determines in writing that such a contract would be advantageous to the state.*

2. You submitted a request to the Arizona Department of Administration (ADOA) originally on June 23, 2014 and updated the request on September 26, 2014 following a meeting held at ADOA.
3. ADOA concludes:
  - a. It is to the State's advantage to obtain clarity on a number of Medicaid-related issues, including Arizona's 1115 waiver renewal and federal law/regulatory changes. In addition, being able to address any developments that could arise with a new gubernatorial administration is also advantageous. We believe that AHCCCS makes a persuasive case that paying for uncertainty may be a very expensive proposition with the multi-billion dollar contract in question.

- b. Given its independent standing on the procurement of medical services, AHCCCS could attempt to pursue some form of limited Competition Impractical (CI) determination on its own. If AHCCCS was, instead, fully subject to the Procurement Code, we could imagine the agency approaching ADOA with a CI request – a request that would likely be supported given the case they have made.
- c. AHCCCS' commitment to holding a public meeting to discuss the matter of a twelve-month extension is an appropriate addition to the process. We have noted your position that, if a significant dispute occurs over the matter of the extension, you would withdraw the September 26, 2014 request. We believe that your willingness – and historical propensity – to collaborate with interested parties on difficult issues provides us an avenue for checking the reaction to our conclusion that the extension is advantageous to the State.
- d. I considered whether the ADOA Director's authority under the statute cited above includes allowing a contract extension or was limited to the procurement of new contracts. Because of my familiarity with the passage of the statute, and my belief that the statute was intended to ameliorate the adverse effects of situations like the present case, I concluded that the statute does allow me to grant the AHCCCS request. In case of any legal challenge, my understanding based on our previous discussions is that AHCCCS, as the real party in interest, has agreed to defend this determination.

Please ensure ADOA is invited to attend the public proceeding. We should have a subsequent exchange of correspondence after that proceeding (and following any public comment period) to verify whether AHCCCS is moving forward with the extension or withdrawing its request of ADOA.

Please contact me at [brian.mcneil@azdoa.gov](mailto:brian.mcneil@azdoa.gov), or Barbara Corella, State Procurement Administrator, [Barbara.corella@azdoa.gov](mailto:Barbara.corella@azdoa.gov), with any questions, concerns or comments.

Sincerely,



Brian C. McNeil  
Director



Barbara Corella  
State Procurement Administrator

Concur  Non-Concur

Attachments

June 23, 2014

Mr. Brian McNeil  
Director  
Arizona Department of Administration  
100 North 15<sup>th</sup> Avenue  
Phoenix, Arizona 85007

Dear Director McNeil:

The Arizona Health Care Cost Containment System (AHCCCS) contracts for the Arizona Long Term Care System (ALTCS) program are currently scheduled to expire on September 30, 2016. Pursuant to A.R.S. § 41-2546, as amended by Laws 2014, Chapter 145, AHCCCS is requesting that these contracts be extended for a period of 12-24 months.

The following are the main reasons for this request:

#### **Section 1115 Waiver**

The federal 1115 waiver provides the AHCCCS program with significant flexibility regarding federal program requirements. The existing waiver expires on September 30, 2016. We already know that there are significant new federal requirements that will impact the ALTCS program that we will be required to incorporate into the new waiver beginning October 1, 2016. In order to have a better understanding of how these requirements impact home and community based services and other key aspects of the ALTCS program, it is best that any waiver issues be resolved as part of the waiver renewal process before the agency conducts the procurement so that these changes can be appropriately incorporated into the contract requirements.

#### **Medicaid Managed Care Regulations**

The Centers for Medicaid and Medicare Services (CMS) is in the process of developing significant revisions to the regulations that currently govern Medicaid managed care. CMS has stated its intent to promulgate these regulations over the next two years. Again, it is important that AHCCCS have a comprehensive understanding of the impact of these new regulations before developing, issuing and awarding new ALTCS contracts.

#### **Dual Eligibles**

Finally, AHCCCS and the AHCCCS contractors have spent considerable time, effort and energy to develop a model for members that are eligible for both Medicare and Medicaid (dual eligibles). This model leverages Medicare Dual Special Needs Plans (a type of Medicare Advantage plan specifically available for dual eligibles) as a way to align and integrate Medicare and Medicaid services. This model is one of many that different states are pursuing to facilitate dual alignment, but it has shown promising results. However, there is currently considerable market uncertainty regarding this platform and it will be important to see how that or alternative dual alignment strategies evolve as part of developing the RFP.

Mr. Brian McNeil  
June 23, 2014  
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AHCCCS intends to get stakeholder input on this proposed extension. Upon completion of this process AHCCCS will communicate to ADOA our formal request for your review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas J. Betlach'. The signature is fluid and cursive, with a prominent initial 'T' and a long, sweeping horizontal stroke.

Thomas J. Betlach  
Director

September 26, 2014

Brian McNeil, Director  
Arizona Department of Administration  
100 North 15<sup>th</sup> Avenue  
Phoenix, Arizona 85007

Dear Director McNeil:

Pursuant to the authority granted the Director of the Department of Administration pursuant to A.R.S. § 41-2546(A), AHCCCS is requesting a determination from you that it is advantageous to the State to extend YH12-0001 for a period of time in excess of five years. In compliance with A.A.C. R2-7-605(B), this is the agency's written request for a one year extension of the initial five year term. This letter is intended to (1) document that the estimated requirements are reasonable and continuing and (2) document that such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

As detailed in my letter to you dated June 23, 2014, there are several important programmatic reasons that need to be considered as part of requesting a one year extension. The uncertainty and impact surrounding the Arizona 1115 waiver renewal, new Medicaid Managed Care Regulations and Dual Special Needs Plans all will negatively impact the procurement if it moves forward as scheduled for October 1, 2016. While AHCCCS must deal with uncertainty in every procurement cycle, the number and severity of the open issues associated with this procurement will no doubt add costs to the AHCCCS bids as potential contractors have to price into their bid the variables associated with each of these items. The value associated with the next contract will be approximately \$5 billion over five years. While it is difficult to quantify the premium associated with the programmatic variable highlighted above, it is reasonable to assume that it is at least millions and probably tens of millions of dollars in added costs to the AHCCCS program. It is also possible that, rather than pricing the uncertainties, some potential offerors may elect not to submit a proposal; in other words, the level of uncertainty may lead to reduced competition.

Issuing an RFP that is reasonably expected to include bid rates that are increased by a risk premium to account for uncertainties is not consistent with maximizing the purchasing value of public monies since the risk premium can be avoided by simply waiting one year. Stated differently, if the expensive contingencies do not come to pass, the state will still have incurred the cost through higher capitation payments during the first year of the contract.

In addition it is likely that, if a procurement is held for an October 1, 2016 contract, significant amendments will have to be made to the terms of the contracts and compensation under the contracts to account for the uncertainties once they are resolved. To the extent that this might be perceived as significant and material changes from the terms of the RFP, the necessary amendments may undermine public confidence in the procurement process.

The additional year will provide more clarity around each of the programmatic variables. The 1115 waiver issues will be resolved as the current waiver expires on September 30, 2016. The Medicaid Managed Care Regulations will have been promulgated by the federal government and the impact identified. Finally, AHCCCS will have considerable more information on how the Duals Special Needs Plan Medicare products are evolving.

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Among other objectives, Arizona Laws 1984, Chapter 251, Sections 1 and 40, lists the purposes of the Arizona Procurement Code as including: maximizing the purchasing value of public monies, fostering effective broad-based competition, safeguarding the quality and integrity of the procurement system, and increasing public confidence in the public procurement process. As stated in this letter and the letter of June 23, 2014, a one year delay is consistent with and fosters each of these objectives.

I also wanted to take this opportunity to provide additional information on the transparent public stakeholder process that was highlighted in my June 23<sup>rd</sup> letter. AHCCCS will follow a similar process to what we have currently engaged in with regards to the proposed merger between Banner Health Systems and the University of Arizona Health Network. As part of our review of this merger, AHCCCS has held a public hearing that was very well attended. At the hearing information was provided to the public as well as the opportunity for the public to make comments. AHCCCS also now has a 60 day period in which organizations can submit public comment that will be evaluated as part of the decision on the merger issues. As has been done with the Banner/UAHN merger, AHCCCS will post all relevant information to the website. This process of seeking stakeholder input is very important to AHCCCS given the size and scope of these public contracts. Stakeholder input will be evaluated and used to validate or alter the approach with regards to the proposed contract extension.

I appreciate your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'TBetlach', with a large, sweeping flourish at the end.

Thomas J. Betlach  
Director