



**STATE OF ARKANSAS**  
**DEPARTMENT OF HUMAN SERVICES**  
**OFFICE OF PROCUREMENT**  
 700 Main Street  
 Little Rock, Arkansas 72201

**REQUEST FOR QUALIFICATIONS**  
**BID SOLICITATION DOCUMENT**

SOLICITATION INFORMATION			
Bid Number:	710-22-0045	Solicitation Issued:	06/02/2022
Description:	Legal Services		
Agency:	Arkansas Department of Human Services		
SUBMISSION DEADLINE FOR RESPONSE			
Bid Due Date and Time:	6/30/2022 1:00 pm CST	Bid Opening Date and Time:	6/30/2022 2:00 p.m. CST
<p>Responses <b>shall not</b> be accepted after the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit responses at the designated location on or before the bid opening date and time. Responses received after the designated bid opening date and time <b>shall</b> be considered late and <b>shall</b> be returned to the vendor without further review. It is not necessary to return "no bids" to DHS.</p>			
DELIVERY OF RESPONSE DOCUMENTS			
Delivery Address:	<p>Responses may be hand delivered to:            Arkansas Department of Human Services            Attn: Office of Procurement            700 West Main Street            Little Rock, AR 72201</p> <p>Or Mailed by United States mail to:            Arkansas Department of Human Services            Attn: Office of Procurement            PO BOX 1437 Slot W345            Little Rock, AR 72203-1437</p> <p>Or Mailed by commercial mail to:            Arkansas Department of Human Services            Attn: Office of Procurement            112 West 8<sup>th</sup> Street Slot W345            Little Rock, AR 72203-4608</p> <p>Or Emailed to: <a href="mailto:DHS.OP.Solicitations@dhs.arkansas.gov">DHS.OP.Solicitations@dhs.arkansas.gov</a>            Please note that email submissions are made at the vendors own risk. DHS strongly recommends that the vendor retain the confirmation of receipt provided to email submissions received prior to the deadline listed in the bid.</p>		
Response's Outer Packaging:	<p>Outer packaging <b>must</b> be sealed and should be properly marked with the following information. If outer packaging of response submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none"> <li>• Bid number</li> <li>• Vendor name and return address</li> <li>• Date and time of bid opening</li> <li>• Selected Areas of Expertise</li> </ul>		
OFFICE OF PROCUREMENT CONTACT INFORMATION			
Issuing Officer:	Margurite Al-Uqdah	Issuing Officer's Phone #:	501-682-8743
Email Address:	<a href="mailto:DHS.OP.Solicitations@dhs.arkansas.gov">DHS.OP.Solicitations@dhs.arkansas.gov</a>	Main Number:	501-683-4162
Website:	<a href="https://humanservices.arkansas.gov/divisions-shared-services/shared-services/office-of-procurement/procurement-announcements/">https://humanservices.arkansas.gov/divisions-shared-services/shared-services/office-of-procurement/procurement-announcements/</a>		

## SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

- Do not provide responses to items in this section unless specifically and expressly required.

### 1.1 PURPOSE

This Request for Qualifications (RFQ) has been issued by the Arkansas Department of Human Services (DHS), Office of Procurement (OP) as authorized in Ark. Code Ann. §19-11-802 to establish a list of vendors to represent the Arkansas Department of Human Services (DHS) in administrative hearings conducted pursuant to the Arkansas Administrative Procedure Act and DHS public assistance programs, including Medicaid, Medicaid waivers, and SNAP (Supplemental Nutrition Assistance Program).

### 1.2 VENDOR LISTING

- A. The initial validity term of the Qualified Vendor Listing is anticipated to be effective August 1, 2022 through July 31, 2023. Upon mutual agreement by DHS and the vendor, DHS **shall** have the option to extend the Qualified Vendor Listing on a year-to-year basis, for up to six (6) additional one-year terms or portion thereof. Any changes to this RFQ deemed necessary by the agency before an extension is granted must be agreed to by the vendor before the extension is granted. A vendor will be notified by the agency of any changes to the RFQ in writing, which will include documentation for the vendor to sign acknowledging agreement to all changes. If a vendor declines to agree to changes to the RFQ, the vendor shall be removed from the Qualified Vendor List at the end of the validity term. The total term of the Qualified Vendor Listing **shall not** exceed seven (7) years. The State **shall** have the right to terminate the Qualified Vendor Listing, or any parts thereof, prior to exercising any renewal option, if it is in the best interest of the State to do so.
- B. The resultant Qualified Vendor Listing **shall** be comprised only of those vendors meeting the Requirements of this RFQ and whose responses were received at the designated location (see Bid Opening Location) prior to the designated bid opening date and time as established on page one (1) of this solicitation. This Request for Qualifications will be closed after the date specified on page one (1) of this solicitation. If the State elects to extend the Qualified vendor listing, the RFQ will reopen for additional vendors to submit their qualifications to DHS for each extended year on the following schedule:

QVL Valid Effective Date	Qualifications submitted allowed
August 1, 2022 through July 31, 2023	June 2, 2022 through June 30, 2022
August 1, 2023 through July 31, 2024	May 1, 2023 through May 31, 2023
August 1, 2024 through July 31, 2025	May 1, 2024 through May 31, 2024
August 1, 2025 through July 31, 2026	May 1, 2025 through May 31, 2025
August 1, 2026 through July 31, 2027	May 1, 2026 through May 31, 2026
August 1, 2027 through July 31, 2028	May 1, 2027 through May 31, 2027
August 1, 2028 through July 31, 2029	

Those responses **shall** meet all the same requirements set forth in this initial request.

- C. DHS **shall** be responsible for maintaining and administering the resulting Qualified Vendor Listing and any resulting contracts. Each year prior to DHS renewing the Qualified Vendor Listing for an additional term or portion thereof, DHS will send a renewal notice to the listed vendors. The renewal notice will detail information and/or documents required from the vendor in order to continue inclusion on the Qualified Vendor Listing. Vendors, who do not provide the information and/or documents as specified in the renewal notice, **shall not** be included on the renewed Qualified Vendor Listing. Vendors, who have been removed from the Qualified Vendor Listing, **shall not** have the right to submit a new response for consideration.
- D. Throughout any validity period of the Qualified Vendor Listing, the vendor **shall** be responsible for notifying DHS of changes to their contact information, as well as sending DHS written notification requesting they no longer be listed under a specific area of expertise. DHS **shall not** be held responsible for a vendor not receiving communications (i.e., renewal information, agency solicitations, etc.) due to a vendor neglecting to notify the agency's designated buyer with updated contact information.
- E. A submittal of qualifications and placement on the Qualified Vendor Listing does not guarantee that the vendor will be contracted to perform any services but only serves notice as a desire to be considered.

### 1.3 **ISSUING AGENCY**

DHS, as the issuing agency, is the sole point of contact throughout this solicitation. Vendors may contact the OP buyer with procurement-related questions at any time prior to the bid opening. Answers to verbal questions may be given as a matter of courtesy and **must** be evaluated at vendor's risk.

### 1.4 **AGENCY'S SOLICITATION PROCESS**

Placement on the Qualified Vendor Listing does not guarantee that the vendor will be contracted to perform any services but only serves notice as a desire to be considered.

#### A. **Utilizing the Qualified Vendor Listing**

When utilizing the Qualified Vendor Listing, DHS will select a vendor from the listing according to the needs of the specific project or program area. When DHS requires deliverables, DHS shall negotiate performance indicators and deliverable-based scopes of work on a case-by-case basis.

#### Issuance of Contract

DHS **shall** be responsible for award and administration of any contract resulting from the utilization of the Qualified Vendor Listing. Contracts will be issued as prescribed by Arkansas law.

### 1.5 **BID OPENING LOCATION**

Responses submitted by the opening time and date **shall** be opened at the following location:

Arkansas Department of Human Services  
Office of Procurement  
Conference Room 3201  
700 Main Street  
Little Rock, AR 72201

Vendors wishing to attend the bid opening must report to the main entrance location, Arkansas Department of Human Services, Donaghey Plaza South Building, 700 Main Street, Little Rock, Arkansas 72201 and check in with the receptionist. All attendees are required to obtain security clearance upon entrance to the building by submitting a current, valid photo ID, preferably a driver's license, to the Security Officer at the reception area. The Security Officer will issue a visitor's badge which must be worn at all times. Before leaving the bid opening, visitors are required to return the visitor's badge to the Security Officer and retrieve their ID. The receptionist is to contact the buyer, for the vendor, for more detailed directions to the bid opening location.

When circumstances warrant, DHS may elect to conduct the bid opening entirely via video conference. If DHS makes this election, DHS shall post a link to the video conference on its website. If the bid opening will be conducted entirely via video conference, individuals will not be permitted to attend in-person.

### 1.6 **DEFINITION OF REQUIREMENT**

- A. The words "**must**" and "**shall**" signify a Requirement of this solicitation and that vendor's agreement to and compliance with that item is mandatory.
- B. Exceptions taken to any Requirement in this RFQ, whether submitted in the vendor's response or in subsequent correspondence, **shall** cause the vendor's response to be disqualified.
- C. Vendor may request exceptions to NON-mandatory items. Any such request **must** be declared on, or as an attachment to, the appropriate section's *Agreement and Compliance Page*. Vendor **must** clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies. (See *Agreement and Compliance Page*.)

### 1.7 **DEFINITION OF TERMS**

- A. The Issuing Officer has made every effort to use industry-accepted terminology in this RFQ and will attempt to further clarify any point of an item in question.
- B. The words "bidder," "vendor" and "contractor" are used synonymously in this document.
- C. The terms "Request for Qualifications", "RFQ" and "Bid Solicitation" are used synonymously in this document.

## 1.8 **RESPONSE DOCUMENTS**

### A. Original Response Packet

1. The original *Response Packet* for this RFQ **must** be submitted on or before the bid opening date and time.
2. The *Response Packet* should be clearly marked "Original" and **must** include the following:
  - a. Original signed *Response Signature Page*. (See *Response Signature Page*.)
  - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
  - c. Response to the *Information for Evaluation* section included in the *Response Packet*.
  - d. EO 98-04 Disclosure Form, Attachment B. (See *Standard Terms and Conditions, #27. Disclosure*.)
3. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

### B. Pricing is not requested for this solicitation and **must not** be submitted with the bidder's response to this RFQ. (See *Pricing*.)

### C. Additional Copies and Redacted Copy of the Response Packet

If the Respondent submits through email, additional copies of the submission are not required. However, a redacted copy (marked "REDACTED") may be included.

If the Respondent submits a hardcopy, in addition to the original *Response Packet*, the following items shall be submitted:

1. Additional Copies of the *Response Packet*
  - a. One (1) complete hard copy (marked "COPY") of the *Response Packet*.
  - b. Two (2) electronic copies of the *Response Packet*, preferably on flash drives.
  - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy **shall** govern.
  - d. If DHS requests additional copies of the response, the copies **must** be delivered within twenty-four (24) hours of request.
2. If applicable, one (1) redacted copy (marked "REDACTED") the original *Response Packet*, preferably on a flash drive. A CD will also be acceptable. (See 1.14 Proprietary Information.)

## 1.9 **ORGANIZATION OF RESPONSE DOCUMENTS**

### A. It is strongly recommended that vendors adhere to the following format and suggestions when preparing their Response.

### B. The original *Response Packet* to this RFQ and all copies should be arranged in the following order.

- *Response Signature Page*.
- All *Agreement and Compliance Pages*.
- Signed Addenda, if applicable.
- Response to the *Information for Evaluation* section of the *Response Packet*.
- E.O. 98-04 – *Contract and Grant Disclosure and certification Form*.

## 1.10 **RESPONSE SIGNATURE PAGE**

### A. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Response Signature Page* included in the *Response Packet*.

### B. Vendor's signature on this page **shall** signify vendor's agreement that either of the following **shall** cause the vendor's response to be disqualified:

1. Additional terms or conditions submitted intentionally or inadvertently.

2. Any exception that conflicts with a Requirement of this *Bid Solicitation*.

### 1.11 **AGREEMENT AND COMPLIANCE PAGES**

- A. Vendor **must** sign all *Agreement and Compliance Pages* relevant to each section of the *Bid Solicitation Document*. The *Agreement and Compliance Pages* are included in the *Response Packet*.
- B. Vendor's signature on these pages **shall** signify agreement to and compliance with all Requirements within the designated section.

### 1.12 **PRICING**

Vendor **must not** include any pricing in their response to this RFQ. Should the hard copies or electronic copies of their *Response Packet* contain any pricing, the response **shall** be disqualified.

### 1.13 **PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Response Packet* or with an email submission.
- C. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- D. The vendor **shall** be responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- E. The redacted copy **shall** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor.
- F. If a redacted copy of the submission documents is not provided with vendor's response packet, a copy of the non-redacted documents **shall** be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- G. If the State deems redacted information to be subject to FOIA, the vendor will be contacted prior to release of the documents.

### 1.14 **CAUTION TO VENDORS**

- A. All communication concerning this RFQ **must** be addressed through Issuing Officer.
- B. Vendor **must not** alter any language in any solicitation document provided by the State.
- C. All official documents and correspondence related to this solicitation **shall** be included as part of a resultant Contract
- D. Responses **must** be submitted only in the English language.
- E. Vendor **must** provide clarification of any information in their response documents as requested by DHS.
- F. Inclusion of a vendor on the Qualified Vendor List does not guarantee issuance of a contract. The State **shall** have the right to award or not award a contract, if it is in the best interest of the State to do so.
- G. Qualifications **must** meet or exceed the required specifications as set forth in this Bid Solicitation.
- H. Vendors may submit multiple responses.

### 1.15 **REQUIREMENT OF ADDENDUM**

- A. This Bid Solicitation **shall** be modified only by an addendum written and authorized by DHS.
- B. An addendum posted within three (3) calendar days prior to the bid opening **shall** extend the bid opening and may or may not include changes to the Bid Solicitation.

- C. The vendor **shall** be responsible for checking the websites listed below for any and all addenda up to bid opening.

<https://humanservices.arkansas.gov/divisions-shared-services/shared-services/office-of-procurement/procurement-announcements/>

#### 1.16 **MINORITY AND WOMEN-OWNED BUSINESS POLICY**

- A. "Minority business enterprise" is defined by Arkansas Code Annotated § 15-4-303(3) as a business that is at least fifty-one percent (51%) owned by one (1) or more persons who are lawful permanent residents of the state of Arkansas and who are:

- African American
- American Indian
- Asian American
- Hispanic American
- Pacific Islander American
- A Service Disabled Veterans as designated by the United States Department of Veteran Affairs

- B. "Women-owned business enterprise" is defined by Arkansas Code Annotated § 15-4-303(9) as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of the state of Arkansas.

- C. The Arkansas Economic Development Commission conducts a certification process for minority and women-owned businesses as provided under the Minority and Women-Owned Business Economic Development Act, Arkansas Code Annotated § 15-4-301 et seq. The Contractor's Certification Number should be included on the *Proposal Signature Page*.

#### 1.17 **PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

- A. Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected vendor(s) **must** have a current certification on file with OSP stating that they do not employ or contract with illegal immigrants. If selected, the Contractor certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.
- B. The State will notify the selected vendor(s) prior to award if their certification has expired or is not on file. Instructions for completing the certification process will be provided to the vendor(s) at that time.

#### 1.18 **RESTRICTION OF BOYCOTT OF ISRAEL**

- A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.
- B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.
- C. By checking the designated box on the Proposal Signature Page of the response packet, a Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

#### 1.19 **PAST PERFORMANCE**

In accordance with provisions of State Procurement Law, specifically OSP Rule R5:19-11-230(b) (1), a vendor's past performance with the State may be used to determine if the vendor is "responsible". Responses submitted by vendors determined to be non-responsible **shall** be disqualified.

#### 1.20 **PUBLICITY**

- A. Vendors **shall not** issue a news release pertaining to this *Bid Solicitation* or any portion of the project without DHS's prior written approval.
- B. Failure to comply with this Requirement **shall** be cause for a vendor's response to be disqualified.

#### 1.21 **RESERVATION**

The State **shall not** pay costs incurred in the preparation of a response.

**1.22 SCHEDULE OF EVENTS**

Public Notice of RFQ	June 2, 2022
Bid due date and time	July 1, 2022 1:00 pm CST
Date and time for Opening Bids	July 1, 2022 2:00 pm CST
Contract Start, (Subject to State Approval)	August 1, 2022

## **SECTION 2 – MINIMUM REQUIREMENTS**

- **Do not provide responses to items in this section unless specifically and expressly required.**

### **2.1 VENDOR QUALIFICATIONS**

- A. Vendor **must** have a minimum of one (1) year experience in litigation or administrative appeals. Vendor **must** provide a copy of any submitted attorney's resume detailing their relevant experience with response to this RFQ.
- B. Vendor **must** be licensed to practice law in Arkansas. For verification purposes, Vendor must provide a copy of licensure with response to this RFQ.
- C. Vendor **must** be in good standing in Arkansas. For verification purposes, Vendor **must** provide a copy of any submitted attorney's current Certificate of Good Standing from the Administrative Office of the Courts with response to this RFQ.

### **2.2 SCOPE OF WORK**

Attorney is responsible for representing the Arkansas Department of Human Services (DHS) in administrative hearings conducted pursuant to the Arkansas Administrative Procedure Act and DHS public assistance programs, including Medicaid, Medicaid waivers, and SNAP (Supplemental Nutrition Assistance Program). The attorney's client will be the applicable DHS Division. Tasks will include:

1. Acquisition of a reasonable degree of familiarity and knowledge of DHS medical assistance programs and SNAP program rules and practices necessary to represent the department at assigned administrative hearings;
2. Legal representation of DHS at administrative hearings, as assigned and accepted by attorney;
3. Appearance at administrative hearings and conferences on the date and at the time scheduled, and in the forum and manner noticed;
4. Research and writing, as appropriate;
5. Adequate case preparation, including conducting appropriate discovery, reviewing discovery responses, meeting with relevant witnesses, and reviewing evidence in advance of the hearings;
6. Introduction of witness testimony through direct examination and conducting the cross-examination of the opposing party's witnesses;
7. Introduction of relevant exhibits, documents and evidence at hearings;
8. Making opening and closing statements at hearings;
9. Participating in post-hearing meetings and follow-up;
10. Maintaining communications with:
  - a. DHS division representatives and witnesses;
  - b. DHS Office of Chief Counsel;
  - c. DHS Office of Appeals and Hearings;
  - d. Office of Medicaid Provider Appeals;
11. Following all legal and ethical cannons applicable; and
12. Possible travel within the State of Arkansas.
13. Ability to utilize technology, email, and other communications to participate in administrative hearings, meetings, and other matters related to legal representation.



## **SECTION 3 – CRITERIA FOR SELECTION**

- **Do not provide responses to items in this section.**

### **3.1 REVIEW OF SUBMISSIONS**

- A. DHS will review each response received to this RFQ to verify Requirements have been met. Responses that do not meet Requirements **shall** be disqualified and the vendor **shall not** be included on the Qualified Vendor Listing.
- B. Vendors whose response meets all Requirements of this RFQ **shall** be included on the Qualified Vendor Listing.
- C. DHS reserves the right to clarify presented information as it deems necessary.

## **SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS**

- **Do not provide responses to items in this section.**
- **The following requirements shall apply in the event a resultant contract is issued.**

### **4.1 PAYMENT AND INVOICE PROVISIONS**

- A. All invoices **shall** be forwarded to the agency as required for each project.
- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods and services by the agency.
- C. The State **shall not** be invoiced in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the vendor has successfully satisfied the agency as to the reliability and effectiveness of the goods and/or services purchased as a whole.
- E. The vendor should invoice the agency by an itemized list of charges. The agency's Purchase Order Number and/or the Contract Number should be referenced on each invoice.
- F. Selected vendor **must** be registered to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/vendor/index.html>.

### **4.2 GENERAL INFORMATION**

- A. The State **shall not** lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a 30 day written notice to the vendor/lessor in the event funds are not appropriated.
- B. The State **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- C. The State **shall not** pay damages, legal expenses or other costs and expenses of any other party.
- D. The State **shall not** continue a contract once any equipment has been repossessed.
- E. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- F. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- G. The State **shall not** enter a contract which grants to another party any remedies other than the following:
  - The right to possession.
  - The right to accrued payments.
  - The right to expenses of de-installation.
  - The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  - The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- H. The laws of the State of Arkansas **shall** govern this contract.
- I. A contract **shall not** be effective prior to award being made by DHS.
- J. In a contract with another party, the State will accept the risk of loss of the equipment or software and pay for any destruction, loss or damage of the equipment or software while the State has such risk, when:

- The extent of liability for such risk is based upon the purchase price of the equipment or software at the time of any loss, and
- The contract has required the State to carry insurance for such risk.

#### **4.3 CONDITIONS OF CONTRACT**

- A. The vendor **shall** at all times observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to the execution of a resulting contract which in any manner affect the completion of the work.
- B. The vendor **shall** indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the vendor.
- C. The vendor agrees to pro forma contract as presented in Attachment A, DHS Standard Terms and Conditions as presented in Attachment C, the Business Associate Agreement as presented in Attachment D, and the Organizational or Personal Conflict of Interest policy as presented in Attachment E. The Request for Certificate of Good Standing presented in Attachment F is provided for convenience.

#### **4.4 STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of vendor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The vendor **shall** retain total liability for equipment, software and technical and business or operations literature. The State **shall** not at any time be responsible for or accept liability for any vendor-owned items.
- B. The vendor's liability for damages to the State **shall** be limited to the value of the Contract or as set forth in the agency's statement of work, whichever is higher. The foregoing limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The vendor and the State **shall not** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.
- C. Language in these terms and conditions **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The vendor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

#### **4.5 RECORD RETENTION**

- A. The vendor **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.
- B. Financial and accounting records **shall** be retained and made available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof or until all audit questions or review issues, appeal hearings, investigations or administrative or judicial litigation to which the records may relate are finally concluded.

#### **4.6 CONFIDENTIALITY**

- A. The vendor, vendor's subsidiaries, and vendor's employees **shall** be bound to all laws and to all Requirements set forth in this Bid Solicitation concerning the confidentiality and secure handling of information of which they may become aware during the course of providing services under a resulting contract.

- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State **shall** have the right to cancel the contract on these grounds.

**4.7 CONTRACT INTERPRETATION**

Should the State and vendor interpret specifications differently, either party may request clarification. However if an agreement cannot be reached, the determination of the State **shall** be final and controlling.

**4.8 CANCELLATION**

A. In the event the State no longer needs the service and/or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding. The State **shall** give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination. The effective date of termination **shall** be 30 days from the date of notification, unless a longer timeframe is specified in the notification.

B. Upon default of a vendor, the State **shall** agree to pay only sums due for goods and/or services received and accepted up to cancellation of the contract.

**4.9 SEVERABILITY**

If any provision of a resulting contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the vendor **shall** be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it **shall not** be affected by such declaration or finding and **shall** be fully performed.

## **SECTION 5 – STANDARD TERMS AND CONDITIONS**

- **Do not provide responses to items in this section.**
  
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
- 2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
- 3. **BID SUBMISSION:** Original Response Packets **must** be submitted to the Office of Procurement on or before the date and time specified for bid opening. The Response Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple responses **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
- 4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
- 5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Vendor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
- 6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the vendor to supply additional descriptive material. The vendor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Vendors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.
- 7. **GUARANTY:** All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The vendor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The vendor **shall** further guarantee that if the items furnished hereunder are to be installed by the vendor, such items **shall** function properly when installed. The vendor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The vendor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
- 8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the vendor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at vendor's expense. After reasonable examination, all demonstrators will be returned at vendor's expense.
- 9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the vendor.
- 10. **AMENDMENTS:** Vendor's responses cannot be altered or amended after the bid opening except as permitted by regulation.
- 11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
- 12. **AWARD:** Term Contract: A contract award will be issued to the successful vendor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful vendor.
- 13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the vendor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **shall** be borne by the vendor.

14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor **must** give written notice to the Office of Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the vendors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the contractor's expense to the F.O.B. point provided by the agency or by OSP. Vendor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the State **shall** have the right to pursue any other remedy permitted by law or in equity.
23. **CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the vendor written notice of such cancellation thirty (30) days prior to the date of cancellation.

Any delivered but unpaid for goods will be returned in normal condition to the contractor by the State. If the State is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the contractor has provided services which the State has accepted, the contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**
24. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the vendor agrees that: (a) the vendor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the vendor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the vendor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the vendor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.
25. **CONTINGENT FEE:** The vendor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business.
26. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the vendor named on the *Response Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
27. **DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.