



**STATE OF ARKANSAS**  
 Department of Human Services  
 Office of Procurement  
 700 Main Street  
 Little Rock, Arkansas 72201

**REQUEST FOR PROPOSAL**  
 RFP SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Solicitation Number:	710-25-005	Solicitation Issued:	June 24, 2024
Description:	Pharmacy Services		
Agency:	Department of Human Services, Division of Aging, Adult, and Behavioral Health Services and Division of Youth Services		
SUBMISSION DEADLINE			
Proposal Submission Date and Time:	July 17, 2024, 10:00 a.m., CST	Proposal Opening Date and Time:	July 17, 2024, 11:00 a.m., CST
<p>Proposals <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 Contractors to submit proposals at the designated location on or before the bid opening date and time. Proposals received after the designated bid opening date and time <b>shall</b> be considered late and <b>shall</b> be returned to Contractor without further review. It is not necessary to return "no bids" to the Office of Procurement (OP).</p>			
DELIVERY OF RESPONSE DOCUMENTS			
Drop off Address:	Arkansas Department of Human Services Attn: Office of Procurement 700 Main Street Little Rock, AR 72201 <i><b>Note: Hand delivered responses must be delivered directly to the security desk, otherwise these deliveries will not be accepted and may be grounds for disqualification.</b></i>		
United States Postal Service (USPS):	Arkansas Department of Human Services Attn: Office of Procurement P.O. Box 1437 Slot W345 Little Rock, AR 72203-1437		
Commercial Carrier (UPS, FedEx, or USPS Exp):	Arkansas Department of Human Services Attn: Office of Procurement 112 West 8 <sup>th</sup> Street, Slot W345 Little Rock, AR 72201  Delivery providers, USPS, UPS, and FedEx deliver mail to OP's street address on a schedule determined by each individual provider. These providers will deliver to OP based solely on the street address. <b>Prospective Contractors assume all risk for timely, properly submitted deliveries.</b>		
Proposal's Outer Packaging:	Seal outer packaging and properly mark with the following information. If outer packaging of proposal submission is not properly marked, the package may be opened for proposal identification purposes. <ul style="list-style-type: none"> <li>• Solicitation number</li> <li>• Date and time of proposal opening</li> <li>• Vendor's name and return address</li> </ul>		
OFFICE OF PROCUREMENT CONTACT INFORMATION			
OP Buyer:	Karrie Goodnight	Buyer's Direct Phone Number:	501-320-3906
Email Address:	<a href="mailto:DHS.OP.Solicitations@dhs.arkansas.gov">DHS.OP.Solicitations@dhs.arkansas.gov</a>	OP's Main Number:	501-396-6045
DHS Website:	<a href="https://humanservices.arkansas.gov/do-business-with-dhs">https://humanservices.arkansas.gov/do-business-with-dhs</a>		
OSP Website:	<a href="http://www.arkansas.gov/dfa/procurement/bids/index.php">http://www.arkansas.gov/dfa/procurement/bids/index.php</a>		

## **SECTION 1 – GENERAL INFORMATION AND INSTRUCTIONS**

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

### **1.1 INTRODUCTION**

This Request for Proposal (RFP) is issued by the Arkansas Department of Human Services (DHS), Office of Procurement (OP) for the Division of Aging, Adult, and Behavioral Health Services (DAABHS) and Division of Youth Services (DYS) to obtain pricing and a contract for pharmaceutical deliveries and services. OP is the sole point of contact throughout this solicitation process.

### **1.2 INTERGOVERNMENTAL/COOPERATIVE USE OF PROPOSAL AND CONTRACT**

In accordance with Ark. Code Ann. § 19-11-249, this proposal and resulting contract is available to any State Agency or Institution of Higher Education that wishes to utilize the services of the selected proposer, upon agreement by Contractor.

### **1.3 TYPE OF CONTRACT**

- A. As a result of this RFP, OP intends to award a contract to a single Contractor.
- B. The term of this contract shall be for one (1) year. The anticipated start date for the contract is January 1, 2025. Upon mutual agreement by Contractor and agency, the contract may be renewed by OP, on a year-to-year basis, for up to six (6) additional one-year terms or portions thereof.
- C. The total contract term shall not be more than seven (7) years.

### **1.4 ISSUING AGENCY**

OP, as the issuing office, is the sole point of contact throughout this solicitation process. Vendor questions regarding this Bid Solicitation should be made through the Issuing Officer as shown on page one (1) of this document.

### **1.5 BID OPENING LOCATION**

Bids submitted by the opening date and time will be opened via video conference. DHS will publish a link to the live bid opening on the DHS website for public access. Individuals will not be permitted to attend in-person. If the bid opening cannot be held as scheduled due to technical or other issues, DHS will publish an updated schedule and video conference link on the [DHS website](#).

### **1.6 ACCEPTANCE OF REQUIREMENTS**

- A. The words “**must**” and “**shall**” signify a Requirement of this solicitation and Contractor’s agreement to and compliance with that item is mandatory.
- B. Contractor’s proposal will be disqualified if a Contractor takes exceptions to any Requirements named in this RFP.
- C. Contractor 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. Contractor **must** clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies. (See Agreement and Compliance Page.)
- D. DHS **must** not be required to accept any requested exceptions. Only exceptions expressly accepted by DHS will become part of the resulting contract.

### **1.7 DEFINITION OF TERMS**

- A. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- B. “Prospective Contractor,” means a responsible offeror who submits a proposal in response to this solicitation. “Prospective Contractor,” “Contractor,” “bidder,” “vendor,” and “respondent” are used synonymously in this document.
- C. The terms “buyer” and “Issuing Officer” are used synonymously in this document.
- D. The terms “Request for Proposal,” “RFP,” “RFP Solicitation,” “Bid Solicitation,” and “Solicitation” are used synonymously in this document.
- E. “Responsive proposal” means a proposal submitted in response to this solicitation that conforms in all material respects to this RFP.

- F. "Proposal Submission Requirement" means a task a Prospective Contractor **shall** complete when submitting a proposal response. These requirements will be distinguished by using the term "shall" or "must" in the requirement.
- G. "Requirement" means a specification that a Contractor's commodity and/or service **must** meet or exceed in the performance of its contractual duties under any contract awarded as a result of this RFP. These specifications will be distinguished by using the terms "shall" or "must" in the requirement.
- H. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State Department using such a contract.

## 1.8 RESPONSE DOCUMENTS

### A. Original Technical Proposal Packet

The following items are Proposal Submission Requirements and **must** be submitted in the original *Technical Proposal Response Packet*.

1. A hard copy of the original *Technical Proposal Packet* **must** be received on or before the bid submittal date and time. Copy should not be two sided.
2. The *Proposal Packet* should be clearly marked "Original" and **must** include the following:
  - a. Original signed *Proposal Signature Page*. (See *Technical Proposal Packet*.)
  - b. Original signed *Agreement and Compliance Page*. (See *Technical Proposal Packet*.)
  - c. Original *Proposed Subcontractors Form*. (See *Subcontractors*.)
  - d. *EO 98-04 Disclosure Form, Attachment A*. (See *Standard Terms and Conditions, Disclosure*.)
  - e. *Technical Proposal* response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
  - f. Other documents and/or information as may be expressly required in this *Bid Solicitation*.
3. The following items should be submitted in the original *Technical Proposal Packet*.
  - a. Copy of Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
  - b. Signed addenda to this RFP, if applicable. (See *Requirement of Addendum*.)
  - c. *Voluntary Product Accessibility Template* (VPAT), if applicable. (See *Technology Access*.)
4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

### B. Official Bid Price Sheet. (See *Pricing*.)

1. Contractor's original *Official Bid Price Sheet* **must** be submitted in hard copy format.
2. Contractor should also submit one (1) electronic copy of the *Official Bid Price Sheet*, in PDF format, preferably on a flash drive. A CD will also be acceptable. All items on flash drive or CD should be in PDF format.
3. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing." Vendor **must not** include any pricing in the hard copies or electronic copies of its *Technical Proposal Packet*.

### C. Additional Copies and Redacted Copy of the Technical Proposal Packet

In addition to the original *Technical Proposal Packet* and the *Official Bid Price Sheet*, the following items should be submitted:

1. Additional Copies of the *Technical Proposal Packet*.
  - a. Four (4) complete hard copies (marked "COPY") of the *Technical Proposal Packet*.
  - b. Five (5) electronic copies of the *Technical Proposal Packet*, preferably on flash drives. CDs will also be acceptable. All items on flash drive or CD should be in PDF format.
  - 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. One (1) redacted copy, in PDF format (marked "REDACTED") of the original *Technical Packet*, preferably on a flash drive. A CD will also be acceptable. (See *Proprietary Information*.)
- e. If OP requests additional copies of the proposal, the copies **must** be delivered within twenty-four (24) hours of request.

## 1.9 ORGANIZATION OF RESPONSE DOCUMENTS

- A. Contractors are strongly recommended to adhere to the following format suggestions when preparing the *Technical Proposal Response*.
- B. The original *Technical Proposal Packet* and all copies should be arranged in the following order:
  - *Response Signature Page*.
  - *Agreement and Compliance Page*.
  - Signed *Addenda*, if applicable.
  - E.O. 98-04 – *Contract Grant and Disclosure Form*.
  - *Equal Opportunity Policy*.
  - *Proposed Subcontractors Form*.
  - Other documents and/or information as may be expressly required in this *Bid Solicitation*. Label documents and/or information so as to reference the Bid Solicitation's item number.
  - Technical Proposal response to the *Information for Evaluation* section of the *Technical Proposal Packet*.

## 1.10 CLARIFICATION OF RFP SOLICITATION

- A. Contractor may submit written questions requesting clarification of information contained in this *Bid Solicitation*. Written questions should be submitted via email by 4:00 p.m., CST on or before June 28, 2024. Submit questions to the OP buyer as shown on page one (1) of this *Bid Solicitation*. It is Contractor's responsibility to guarantee receipt of the questions by the specific time and date. DHS accepts no responsibility for accurate or timely receipt of email submission.
- B. The attached *Response Template (Attachment B)* should be used for submission of all written questions. For each question submitted, Vendor should reference the specific solicitation item number to which the question refers. Written questions submitted in a different format may not be answered by DHS.
- C. Contractor's written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OP website by the close of business on July 5, 2024.
- D. Answers to verbal questions may be given as a matter of courtesy and **must** be evaluated at contractor's risk.
- E. Oral statements by OP **shall not** be part of any contract resulting from this solicitation and **may not reasonably be relied on by any vendor as an aid to interpretation unless it is reduced to writing and expressly adopted by DHS**.

## 1.11 RESPONSE SIGNATURE PAGE

- A. An official authorized to bind Contractor to a resultant contract **must** sign the *Response Signature Page* included in the *Technical Proposal Packet*.
- B. Contractor's signature on this page **shall** signify Contractor's agreement that either of the following **shall** cause Contractor's proposal to be disqualified:
  1. Additional terms or conditions submitted intentionally or inadvertently.
  2. Any exception that conflicts with a Requirement of this *Bid Solicitation*.

## 1.12 AGREEMENT AND COMPLIANCE PAGE

- A. Contractor **must** sign the *Agreement and Compliance Page* relevant to each section of the *Bid Solicitation Document*. The *Agreement and Compliance Page* is included in the *Technical Proposal Packet*.
- B. Contractor's signature on this **shall** signify agreement to and compliance with all Requirements within the designated section.

## 1.13 SUBCONTRACTORS

- A. Contractor **must** complete and submit the *Proposed Subcontractors Form* included in the *Technical Proposal Packet* to indicate contractor's intent to utilize, or to not utilize, subcontractors.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Technical Proposal Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.
- C. The utilization of any proposed subcontractor is subject to approval by the State agency.

#### 1.14 PRICING

- A. Contractor shall include all pricing on the *Official Bid Price Sheet* only. Any cost not identified by the successful contractor but subsequently incurred in order to achieve successful operation **shall** be borne by Contractor. The *Official Bid Price Sheet* is provided as a separate file posted with this *Bid Solicitation*.
- B. To allow time to evaluate proposals, prices **must** be valid for one hundred and eighty (180) days following the bid opening.
- C. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing." DO NOT submit any ancillary information not related to actual pricing in the sealed pricing package. The *Official Bid Price Sheet* is provided as a separate file posted with this *Bid Solicitation*.
- D. Contractor **must not** include any pricing in the hard copies or electronic copies of the *Technical Proposal Packet*. Should hard copies or electronic copies of the *Response Packet* contain any pricing, the response **shall** be disqualified.
- E. Failure to complete and submit the *Official Bid Price Sheet* **shall** result in disqualification.
- F. All proposal pricing **must** be in United States dollars and cents.
- G. The *Official Bid Price Sheet* may be reproduced as needed.

#### 1.15 PRIME CONTRACTOR RESPONSIBILITY

- A. A single contractor **must** be identified as the prime contractor and shall be the sole point of contact.
- B. The prime Contractor **shall** be held responsible for the contract and jointly and severally liable with any of its subcontractors, affiliates, or agents to the State for the performance thereof.

#### 1.16 INDEPENDENT PRICE DETERMINATION

- A. By submission of this proposal, Contractor certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
  - 1. The prices in the proposal have been arrived at independently, without collusion; and
  - 2. No prior information concerning these prices has been received from, or given to, a competitive company.
- B. Evidence of collusion **shall** warrant consideration of this proposal by the Office of the Attorney General. All Contractors **shall** understand that this paragraph may be used as a basis for litigation.

#### 1.17 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. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
- C. Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
- D. By so redacting any information contained in the response, Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- E. Under no circumstances will pricing information be designated as confidential.

- F. 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 *Technical Proposal Packet*. A CD is also acceptable. Do not submit documents via e-mail or fax.
- G. 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.
- H. Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- I. The redacted copy **shall** be open to public inspection under FOIA without further notice to Contractor.
- J. If a redacted copy of the submission documents is not provided with Contractor's *Response Packet*, a copy of the non-redacted documents, with the exception of financial data (other than pricing), **will** be released in response to any request made under FOIA.
- K. If the State deems redacted information to be subject to FOIA, Contractor will be notified of the State's determination prior to release of the documents.
- L. The State has no liability to Contractor with respect to the disclosure of Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

### 1.18 CAUTION TO CONTRACTORS

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through the OP buyer.
- B. Contractor **must not** alter any language in any solicitation document provided by the State.
- C. Contractor **must not** alter the *Official Bid Price Sheet*.
- D. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- E. Proposals **must** be submitted only the English language.
- F. The State **shall** have the right to award or not award a contract, if it is in the State's best interest.
- G. Contractor **must** provide clarification of any information in their response documents as requested by OP.
- H. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- I. Contractors may submit multiple proposals. Each proposal shall be submitted separately and must include all documents and information required under this RFP in order to advance to evaluation.

### 1.19 REQUIREMENT OF ADDENDUM

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by OP.
- B. Contractors are cautioned to ensure that they have received or obtained, and have responded to, any and all addenda to the *Bid Solicitation* prior to submission of response.
- C. 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*.
- D. Vendor **shall** be responsible for checking the websites listed on page one (1) for any and all addenda up to bid opening.

### 1.20 AWARD PROCESS

#### A. Award Determination

The Grand Total Score for each Contractor, which shall be the sum of the Technical Score and Cost Score, shall be used to determine the ranking of proposals. The State may move forward to negotiations pursuant to Arkansas Code Annotated § 19-11-230, with those responsible Contractors determined, based on the ranking of the proposals, to be reasonably susceptible of being selected for award.

#### B. Discussions and Negotiations

1. The agency shall have the right to enter into discussion with the qualifying Vendors to further define contractual details. All such discussions shall be conducted at the sole discretion of the State and may be conducted at any lawful time of the State's choosing. The State shall solely determine the items to be discussed or negotiated.

2. If discussions or negotiations fail to result in a contract, the negotiation process may be repeated until an anticipated successful vendor(s) has been determined or an award made, or until such time the State decides not to move forward with an award.
3. The State may elect to request best and final offers. Any best and final offer request made by the State will be conducted with the responsible Contractors that meet the minimum qualifications at section 2.2.

C. Anticipation to Award

1. Once the anticipated successful Contractor has been determined, the anticipated award will be posted on the websites listed on page one (1) of this RFP.
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Contractors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen-day posting period.
3. DHS **shall** have the right to waive the fourteen (14) day anticipated award posting period when it is in the best interest of the State.
4. It is Contractor's responsibility to check the OP website for the posting of an anticipated award.

D. Issuance of Contract

1. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review.
2. A State Procurement Official will be responsible for award and administration of any resulting contract.
3. DHS reserves the right to award multiple contracts.

**1.21 MINORITY AND WOMEN-OWNED BUSINESS POLICY**

- A. A minority-owned business is defined by Ark. Code Ann. § 15-4-303 as a business that is at least fifty-one percent (51%) owned by a lawful permanent resident of this State who is:
- African American
  - American Indian
  - Asian American
  - Hispanic American
  - Pacific Islander American
  - A Service-Disabled Veteran as designated by the United States Department of Veteran Affairs
- B. A woman-owned business is defined by Ark. Code Ann. § 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 this State.
- C. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses. If certified, the Prospective Contractor's Certification Number should be included on the *Proposal Signature Page*.

**1.22 EQUAL OPPORTUNITY POLICY**

- A. In compliance with Ark. Code Ann. § 19-11-104, the State is required to have a copy of the anticipated Contractor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* should be included as a hardcopy accompanying the solicitation response.
- C. Contractors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute.
- D. Vendors who are not required by law to have an *EO Policy* **must** submit a written statement to that effect.

**1.23 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

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

**1.24 RESTRICTION OF BOYCOTT OF ISRAEL**

- A. Pursuant to Ark. Code Ann. § 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*, Contractor agrees and certifies that it does not, and will not for the duration of the contract, boycott Israel.

## 1.25 PAST PERFORMANCE

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

## 1.26 TECHNOLOGY ACCESS

- A. When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Ark. Code Ann. § 25-26-201 et seq., which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. Contractor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2019 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2019 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.
- B. ACCORDINGLY, CONTRACTOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. §§ 1194.21 and 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:
  - 1. Providing, to the extent required by Ark. Code Ann. § 25-26-201 et seq., equivalent access for effective use by both visual and non-visual means;
  - 2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
  - 3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
  - 4. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
  - 5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
  - 6. Integrating into networks used to share communications among employees, program participants, and the public; and
  - 7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.
- C. State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies **must** evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product, including any required reasonable accommodations.
- D. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Ark. Code Ann. § 25-26-201 et seq., if equivalent access is not reasonably available, then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.



- E. If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

### 1.27 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM

Contractor's solution **must** comply with the State's shared Technical Architecture Program which is a set of policies and standards that can be viewed at: <https://www.dfa.arkansas.gov/intergovernmental-services/state-technology-cost-analysis/architecture-compliance/>. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.

### 1.28 MASTERCARD ACCEPTANCE

- A. Awarded Contractor should have the capability of accepting the State's authorized MASTERCARD Procurement Card (p-card) as a method of payment.
- B. Price changes or additional fee(s) **shall not** be levied against the State when accepting the p-card as a form of payment.
- C. MASTERCARD is not the exclusive method of payment.

### 1.29 PUBLICITY

- A. Contractors **shall not** issue a news release pertaining to this *Bid Solicitation* or any portion of the project without OP's prior written approval.
- B. Failure to comply with this Requirement **shall** be cause for a Contractor's proposal to be disqualified or for the contract to be terminated.

### 1.30 RESERVATION

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

### 1.31 DATA LOCATION

Under no circumstances shall Contractor allow Arkansas data to be relocated, transmitted, hosted, or stored outside the continental United States in connection with any services provided under the contract entered into under this RFP, either directly by Contractor or its subcontractors.

### 1.32 SCHEDULE OF EVENTS

#### SOLICITATION SCHEDULE

ACTIVITY	DATE
Public Notice of RFP	June 24, 2024
Deadline for Receipt of Written Questions	June 28, 2024, 4:00 p.m. CST
Response to written Questions, On or About	July 5, 2024, 4:00 p.m. CST
Proposal Due Date and Time	July 17, 2024, 10:00 a.m. CST
Opening Proposal Date and Time	July 17, 2024, 11:00 a.m. CST
Intent to Award Announcement Posted, On or About	September 6, 2024
Contract Start Date (Subject to State Approval)	January 1, 2025

### 1.33 STATE HOLIDAYS

Holidays are those days declared legal state holidays by authority of Act 304 of 2001. Those days are as follows:

HOLIDAY	DATE
New Year's Day	January 1
Dr. Martin Luther King's Birthday	Third Monday in January

George Washington Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Eve	December 24
Christmas Day	December 25

Additional days can be proclaimed as holidays by the Governor through executive proclamation. State offices are normally closed on holidays; however, there are occasions (i.e., during legislative sessions) when it may become necessary to keep state offices open on holidays. Contractor **shall** maintain adequate staff on such working holidays.

## **SECTION 2 – SPECIFICATIONS**

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

### **2.1 INTRODUCTION**

This RFP is issued by the DHS OP for DAABHS and DYS to obtain pricing and a contract for pharmaceutical deliveries and services.

The Arkansas Health Center (AHC) is a 290-bed psychiatric nursing home licensed by the Office of Long-Term Care as a skilled nursing facility. AHC serves the needs of the elderly and persons with disabilities who require specialized services or programs that are not generally available through community nursing facilities. The program emphasizes the provision of services to special-need groups and individuals with cognitive dysfunction. Services are available to all residents of Arkansas, provided individuals meet admission criteria. This facility is open twenty-four (24) hours per day, seven (7) days a week.

DYS provides effective prevention, intervention, and treatment programs for youth involved in the Arkansas juvenile justice system. DYS is responsible for providing rehabilitation services utilizing research-informed and evidence-based treatment interventions, trauma-responsive interventions, Cognitive Behavioral Treatment Interventions (CBT), restorative justice principles, strength-based, and family-focused approaches when providing services to youth and families. DYS' goal is to give youth and families the opportunities and services they need to be successful in a way that ensures public safety. There are currently five (5) treatment centers and two (2) group homes that serve various youth populations.

Each of the facilities described above requires pharmacy services and delivery.

NOTE: All DHS facilities are designated as **NON-SMOKING**.

### **2.2 SERVICE DELIVERY LOCATIONS**

Deliveries **shall** be made to the follow locations:

**Arkansas Health Center, Bldg. 80**

6701 Highway 67  
Benton, AR 72015-84

**Arkansas Juvenile Assessment & Treatment Center**

1501 Woody Drive  
Alexander, AR 72002-9420

**Dermott Juvenile Treatment Center**

1001 Regional Road  
Dermott, AR 71639-0142

**Harrisburg Juvenile Treatment Center**

1800 Pine Grove Lane  
Harrisburg, AR 72432-9334

**Mansfield Juvenile Treatment Center**

36 Johnny Cake Road  
Mansfield, AR 72944-0487

**Lewisville Juvenile Treatment Center**

750 Lafayette CR 16  
Lewisville, AR 71845

**Consolidated Youth Services**

4220 Stadium Boulevard  
Jonesboro, AR 72404

**Vera Lloyd**

745 Old Warren Road  
Monticello, AR 71655

DHS, at its sole discretion, reserves the right to request services for additional DHS divisions and locations.

### **2.3 MINIMUM QUALIFICATIONS**

Contractor **must** meet the following requirements:

- A. Contractor **must** be registered to do business in the State of Arkansas and in good standing by the start of any resulting contract. For verification purposes, Contractor **must** provide a [Certificate of Good Standing](#), [Certificate of Authority](#), and any other required [Arkansas Secretary of State](#) documentation, such as non-filing or nonqualifying statements, upon DHS request.
- B. Bidder **must** include a copy of all required licensure and certification documents in its response to this solicitation. See "Response Documents."
- C. Contractor **must** be Certified/Licensed (Pharmaceutical license) in the State of Arkansas to dispense medicine. For verification purposes, Prospective Contractor **must** provide a copy of the license with bid response.
- D. Contractor **must** have a minimum of five (5) years' experience in dispensing pharmaceuticals in similar surroundings (Nursing Home, Residential Care). For verification purposes, Prospective Contractor **must** complete and provide *Attachment I - Client History Form*.

## 2.4 SCOPE OF WORK

- A. Contractor **must** comply with all requirements of governmental agencies that license, certify, or regulate the AHC and DYS. This includes labeling all medications and providing the necessary equipment for a medication administration system. Contractor **shall** provide routine medications as well as having a system in place for floor stock medications, as needed (PRN) medications, and emergency/urgently needed medications.
- B. Contractor **shall** provide medications in unit dose packaging, medication review, and billing to the appropriate Medicaid, Medicare Part D, or private insurance(s) for medications not covered by the applicable Medicaid, or Medicare Part D plan. Contractor **must** be able to directly bill vendor programs such as Medicaid, Medicare, and private insurance companies or other payor sources before invoicing. If the vendor programs are not directly billable or billable to other payer services, then the Division **shall** be billed for this service.
- C. Essential Services
  1. Contractor **shall** have a blister pack system for unit dose medication dispensing. This is the preferred method for both prescription and over-the-counter (OTC) medications. However, it is understood that not all medications will be able to be provided in a blister pack delivery system for a variety of reasons. Contractor **must** provide information on situations when it is anticipated that blister packs cannot be used.
  2. Contractor **shall** dispense scheduled and OTC medications for treatment of individuals residing in the AHC nursing home and DYS-contracted facilities as ordered by a Doctor of Medicine or other health care professional, who is duly licensed and qualified under the laws of this jurisdiction to prescribe:
    - a. OTC medications include, without limitation, diabetic test strips and/or any diabetic supplies.
    - b. Prescription containers (including blister packs) shall be labeled to include the individual's name, date, prescribing physician, medication name, lot number, strength, dosage, directions for administration, and any applicable warnings or dietary instructions or other information in compliance with federal regulations and the laws of the State of Arkansas.
  3. Medication orders **must** be dispensed for thirty (30) days, unless prescribed for a lesser amount of time, in a blister packaging system or alternative DHS security-approved packaging system for pill forms. Liquid medications, including vaccines, **must** be manufactured, and bottled for pharmacy use and **must** bear the contracting pharmacy's label.
  4. Contractor **shall** be able to provide compounded medications or arrange orders with another provider.
- D. Technical Functionality
  1. Within six (6) months of the contract start date, Contractor **must** have a computer system in place that will interface with each Division's electronic health records, that is readily available and capable of providing and maintaining medication profiles on every individual client for medical staff. DAABHS facilities currently use MatrixCare 2024 R2 and DYS facilities currently use Qshift as electronic health record systems.
  2. This system **must** be responsive to medical staff needs while adhering to the regulations for protection of patient privacy.
  3. The system **must** adhere to regulations for protection of patient privacy, including without limitation, the Health Insurance Portability and Accountability Act (HIPAA).
  4. Contractor **must** maintain accurate counts of prescriptions and OTC pharmaceuticals dispensed and maintained in inventory.

5. Contractor **must** provide routine checking of medication lists for allergies and medication interactions, especially when new medications or medication changes are ordered.

#### E. Medication Delivery Requirement

1. Contractor **must** provide delivery services up to three (3) times daily, Monday through Saturday as needed. Pharmacy services **must** also be available twenty-four (24) hours per day, seven (7) days a week for urgent/emergent medication orders and Schedule II Narcotics, delivered within two (2) hours from the time ordered. New orders called in by 2:00 p.m. **shall** be delivered on the same day.
2. Contractor **must** monitor the ordering and receiving of medications to ensure medications are ordered timely and are received from the pharmacy accurately and timely.
3. Contractor **shall** provide backup plans for urgent/emergent medication deliveries in the event of hazardous road conditions, natural disasters, etc. The expectation for urgent/emergent medication deliveries is that Contractor will complete deliveries as quickly as possible in coordination with DHS. Contractor **shall** give the facility immediate notice of any anticipated delays that will affect the service delivery requirement.

#### F. Pharmacy Services

1. Contractor **shall** be able to provide medications and services outlined in this solicitation upon the contract start date.
2. Contractor shall provide the following services:
  - a. Medication identification information **shall** be included with the blister packs/bottles.
  - b. A system for checking medications in inventory for accuracy of blister packs.
  - c. Provide a bar-code system in the pharmacy to reduce medication dispensing errors and improve the accuracy of ordering and receiving medications.
  - d. Clozapine Registry: The pharmacy **must** be certified in the clozapine Risk Evaluation and Mitigation (REM) program, obtain Pre-Dispense Authorization (PDA) from the REM's website, and have authorized representatives to enter Absolute Neutrophil Count (ANC) as needed.
  - e. Off cycle: Therapeutic and new admission short cycle medications.
  - f. Medication distribution system utilizing a cycle delivery for all routine oral dosage forms on a thirty (30)-day cycle.
  - g. Supply IV services, which may include IV infusion medications such as IV infusion balls.
  - h. Provide Schedule II Narcotics in accordance with General Regulation 7-04: Controlled Substances.
  - i. Provide a clear and concise system of documentation to process prior authorizations of medications.
  - j. Provide a method for medication management for client's visits home.

#### G. Exclusive Responsibilities

1. Except for medication carts, Contractor **shall** be responsible for provision of equipment necessary for the provision of pharmacy services.
2. Contractor **shall** maintain reliable transportation, to include insurance, for the beneficial and expeditious provision of pharmacy services and delivery.

### 2.4 GENERAL RESPONSIBILITIES

- A. DHS contracts with an independent pharmacy consultant to perform regular reviews of client medications lists. The primary objective will be to ensure that systems are in place to determine efficacy and toxicity of behavioral medications. Also, this consultant reviews Contractor's policies and procedures as needed. Contractor **shall** be available to assist the pharmacy consultant as needed in educating the nursing staff. Specific requirements include but are not limited to the following:
  1. Direct the daily operation of the medication delivery system and monitor the ordering, receiving, and accuracy of medication delivery.
  2. Monitoring proper medication storage.

3. Review all pharmacy charges to the facility. Attend meetings with facility administrative staff in an effort to find ways to keep pharmacy costs as low as possible.
  4. Make recommendations for changing medication therapy to medications that may be billed to other payor sources or change to the lowest cost products with the same therapeutic effectiveness.
  5. Assist the nursing staff with pharmacy questions, order entry, and questions of medication compatibility.
  6. Monitoring for proper medication utilization.
  7. Develop a monthly report and provide to the Director of Nursing and consultant Pharmacist.
  8. Coordinate with nursing staff and the attending physicians to obtain medication orders to comply with the established facility formulary and perform follow-up to ensure the order change was appropriately transcribed to the orders and Medication Administration Record (MAR).
  9. Assist nursing staff by transcribing medication orders into the computer or creation of the computer printed orders and MAR.
- B. DHS will have a Quality Assurance Committee which is responsible for formulary management, institutional policies, and procedures affecting facility-specific pharmacy services, medication error review, adverse medication reaction review and other pharmacy, nursing, and physician related issues of medication therapy. Contractor **shall** be responsive to this committee and, if possible, be willing to provide a liaison to this committee if notified in a timely manner.

## 2.5 CUSTOMER SERVICE

- A. Contractor **shall** ensure that its staff maintain good interpersonal skills and a professional business appearance.
- B. Contractor **shall** designate a pharmacy liaison to assist DHS with assessing client needs and providing product information. The pharmacy liaison must conduct monthly visits and shall provide training and education.
- C. Contractor **shall** assist DHS in resolving order and delivery issues.

## 2.6 PRIVACY & SECURITY

- A. Contractor **shall** ensure and maintain compliance with the most current version of Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH), The Privacy Act of 1974, Arkansas Personal Information Protection Act (A.C.A. § 4-110-104), and other Federal and State privacy and security standards. Prior to award, Contractor **must** complete and sign a Business Associate Agreement (BAA). The State of Arkansas Security and Privacy policies can be found at:

<https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1001.pdf>  
<https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1003.pdf>  
<https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4002.pdf>  
<https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4008.pdf>  
<https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4009.pdf>  
<https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5000.pdf>  
<https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5010.pdf>

- B. Contractor **shall** disclose any breaches of privacy or security by contacting the DHS Information Technology Security Office within one (1) business day of the breach at DHS.IT.Security.Team@dhs.arkansas.gov.
- C. Contractor **shall** use PHI and/or other confidential information only in a manner that is necessary to provide the services required in this solicitation.
- D. Contractor **shall** safeguard the use and disclosure of, and restrict access to, PHI and/or other confidential information.

## 2.7 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. *Attachment C: Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards Contractor **must** meet in order to avoid assessment of damages.
- B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration.

- C. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards and may include Contractor's input so as to establish reasonably achievable standards.
- D. All changes made to the Performance Standards **shall** become an official part of the contract.
- E. Performance Standards **shall** continue throughout the term of the contract.
- F. Failure to meet the minimum Performance Standards as specified may result in the assessment of damages.
- G. In the event a Performance Standard is not met, Contractor will have the opportunity to defend or respond to the insufficiency. The State may waive damages if it determines there were extenuating factors beyond Contractor's control that hindered the performance of services or if it is in the best interest of the State to do so. In these instances, the State **shall** have final determination of the performance acceptability.
- H. Should any compensation be owed to the agency due to the assessment of damages, Contractor **shall** follow the direction of the agency regarding the required compensation process.

### **SECTION 3 – SELECTION**

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

#### **3.1 TECHNICAL PROPOSAL SCORE**

- A. OP will review each *Technical Proposal Packet* to verify submission Requirements have been met. *Technical Proposal Packets* that do not meet submission Requirements **shall** be rejected and **shall** not be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying Technical Proposals. Evaluation will be based on Prospective Contractor's response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
1. Members of the Evaluation Committee will individually review and evaluate proposals and complete an Individual Score Worksheet for each proposal. Individual scoring for each Evaluation Criteria will be based on the following Scoring Description.

Quality Rating	Quality of Response	Description	Confidence in Proposed Approach
5	Excellent	When considered in relation to the RFP evaluation factor, the proposal squarely meets the requirement and exhibits outstanding knowledge, creativity, ability, or other exceptional characteristics. Extremely good.	Very High
4	Good	When considered in the relation to the RFP evaluation factor, the proposal squarely meets the requirement and is better than merely acceptable.	High
3	Acceptable	When considered in relation to the RFP evaluation factor, the proposal is of acceptable quality.	Moderate
2	Marginal	When considered in relation to the RFP evaluation factor, the proposal's acceptability is doubtful.	Low
1	Poor	When considered in relation to the RFP evaluation factor, the proposal is inferior.	Very Low
0	Unacceptable	When considered in relation to the RFP evaluation factor, the proposal clearly does not meet the requirement. Either nothing in the proposal is responsive in relation to the evaluation factor or the proposal affirmatively shows that it is unacceptable in relation to the evaluation factor.	No Confidence

2. After initial individual evaluations are complete, the Evaluation Committee members will meet to discuss their individual ratings in a consensus scoring meeting. At this consensus scoring meeting, each evaluator will be afforded an opportunity to discuss his or her rating for each evaluation criteria.
  3. After committee members have had an opportunity to discuss their individual scores recorded on the preliminary Individual Score Worksheet with the committee, the individual committee members will be given the opportunity to change their initial individual score, if they feel that is appropriate.
  4. The final individual scores of the evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each proposal. For purposes of scoring, only the final scores of the evaluators reflected on the Consensus Score Sheet will be used. Each evaluator shall sign the Consensus Score Sheet affirming that the score noted is the score intended by the evaluator.
  5. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.
- C. The *Information for Evaluation* section has been divided into sub-sections.



1. In each sub-section, items/questions have each been assigned a maximum point value of five (5) points. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
2. The agency has assigned Weighted Percentages to each sub-section according to its significance.

Information for Evaluation Sub-Sections	Maximum Raw Points Possible	Sub-Section's Weighted Percentage	* Maximum Weighted Score Possible
E.1 Start-up Plan	5	10%	70
E.2 Delivery	25	30%	210
E.3 Technical Functionality	20	50%	350
E.4 Billing	5	10%	70
<b>Total Technical Score</b>	<b>55</b>	<b>100%</b>	<b>700</b>

\*Sub-Section's Percentage Weight x Total Weighted Score = Maximum Weighted Score Possible for the sub-section.

D. The proposal's weighted score for each sub-section will be determined using the following formula:

$$(A/B) * C = D$$

A = Actual Raw Points received for sub-section in evaluation  
 B = Maximum Raw Points possible for sub-section  
 C = Maximum Weighted Score possible for sub-section  
 D = Weighted Score received for sub-section

- E. The proposal's weighted scores for sub-sections will be added to determine the Total Technical Score for the Proposal.
- F. Technical Proposals that do not receive a minimum weighted score/subtotal of three-hundred and fifty (350) may not move forward in the solicitation process. The pricing for proposals which do not move forward will not be scored.

**3.2 ORAL PRESENTATION/DEMONSTRATION SCORE**

- A. The two Prospective Contractors with the top technical proposal scores after the completion of the technical proposal evaluation may be contacted to schedule an oral presentation/demonstration. Proposed key staff must be available to participate in the oral presentations/demonstrations, if requested.
- B. Should DHS elect to hold oral presentations/demonstrations, the buyer will create a second set of score sheets by copying the Excel workbook (including the scores entered) and titling each of the score sheets in that workbook as the "Post-Demonstration" score sheets.
- C. After each oral presentation/demonstration is complete, the Evaluation Committee members will have the opportunity to discuss the oral presentation/demonstration and revise their individual scores on the Post-Demonstration Consensus Score Sheet based on the information provided during the oral presentation/demonstration.
- D. The final individual scores of the evaluators on the Post-Demonstration Consensus Score Sheets will be averaged to determine the final technical score for each proposal.

**3.3 COST SCORE**

- A. When pricing is opened for scoring, the maximum amount of cost points will be given to the proposal with the highest total discount resulting in the lowest cost as shown on the *Official Bid Price Sheet*. (See *Grand Total Score* for maximum points possible for cost score.)
- B. The amount of cost points given to the remaining proposals will be allocated by using the following formula:

$$(A/B) * (C) = D$$

A = Lowest Total Cost  
 B = Second (third, fourth, etc.) Lowest Total Cost  
 C = Maximum Points for Lowest Total Cost  
 D = Total Cost Points Received

**3.4 GRAND TOTAL SCORE**

The Technical Score and Cost Score will be added together to determine the Grand Total Score for the proposal. The Prospective Contractor's proposal with the highest Grand Total Score will be selected as the apparent successful Contractor (See *Award Process*).

	Maximum Points Possible
Technical Proposal	700
Cost	300
<b>Maximum Possible Grand Total Score</b>	<b>1,000</b>

### 3.5 PROSPECTIVE CONTRACTOR ACCEPTANCE OF EVALUATION TECHNIQUE

- A. Contractor **must** agree to all evaluation processes and procedures as defined in this solicitation.
- B. The submission of a *Technical Proposal Packet* **shall** signify Contractor's understanding and agreement that subjective judgments **shall** be made during the evaluation and scoring of the Technical Proposals.

**SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS**

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

**4.1 PAYMENT AND INVOICE PROVISIONS**

- A. All invoices for the AHC **shall** be mailed or delivered to the Business Office when medication is delivered to the units. The mailing address is:
- Arkansas Health Center  
6701 Highway 67  
Benton, AR 72015-8489*
- B. All invoices for DYS **shall** be mailed to DYS Finance at PO Box 1437 S501, Little Rock, AR 72203.
- C. Invoices **must** include the following: Patient name, name of medication, RX number, date filled, notation as RX, OTC, or wound product, and the amount owed (not covered by insurance). Invoices **must** have a total per patient, the total owed by facility not covered by insurance, the National Average Drug Acquisition (NADAC) pricing or Wholesale Average Cost (WAC), and the percentage discount applied.
- D. Contractor **shall** be responsible for the payment of state and federal taxes and Federal Insurance Contributions Act (FICA) with regards to wages received.
- E. Contractor **shall** be responsible for all meals, lodging, and any other expenses accrued during required travel.
- F. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods and services by the agency.
- G. The State **shall not** be invoiced in advance of delivery and acceptance of any goods or services.
- H. Payment will be made only after Contractor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- I. Contractor 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.
- J. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- K. Selected Contractor **must** be registered to receive payment and future *Bid Solicitation* notifications. Contractors 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 thirty (30) day written notice to Contractor/Lessor in the event funds are not appropriated.
- B. The State **shall not** pay damages, legal expenses, or other costs and expenses of any other party.
- C. The State **shall not** continue a contract once any equipment has been repossessed.
- D. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- E. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- F. The State **shall not** enter a contract which grants to another party any remedies other than the following:
1. The right to possession.
  2. The right to accrued payments.
  3. The right to expenses of de-installation.
  4. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  5. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- G. The laws of the State of Arkansas **shall** govern this contract.
- H. A contract **shall not** be effective prior to award being made by a State Procurement Official.

- I. 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:
  1. 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
  2. The contract has required the State to carry insurance for such risk.

#### 4.3 CONDITIONS OF CONTRACT

- A. Contractor **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. Contractor **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 Contractor.
- C. Contractor agrees to the *Performance Based Contracting Standards* as presented in *Attachment C*, *DHS Standard Terms and Conditions* as presented in *Attachment D*, a pro forma contract as presented in *Attachment E*, the *Business Associate Agreement* as presented in *Attachment F*, and the *Organizational or Personal Conflict of Interest* policy as presented in *Attachment G*. Do not complete and return any of the above-named attachments. They are for your information only.

#### 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 Contractor-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. Contractor will 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 Contractor-owned items.
- B. Contractor's liability for damages to the State **shall** be limited to the value of the Contract or five million dollars (\$5,000,000), 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 Contractor's gross negligence or willful misconduct; 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. Contractor 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 Contractor's gross negligence or willful misconduct; 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. Contractor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

#### 4.5 RECORD RETENTION

- A. Contractor **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted accounting principles and as specified by 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 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 the expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

#### 4.6 PRICE ESCALATION

- A. Price increases will be considered at the time of contract renewal.

- B. Contractor **must** provide to OP a written request for the price increase. The request **must** include supporting documentation demonstrating that the increase in contract price is based on an increase in market price. OP has the right to require additional information pertaining to the requested increase.
- C. Increases will not be considered to increase profit or margins.
- D. OP has the right to approve or deny the request.

#### 4.7 CONFIDENTIALITY

- A. Contractor, Contractor's subsidiaries, and Contractor's employees **shall** be bound to all laws and Requirements set forth in this *Bid Solicitation* concerning the confidentiality and secure handling of information to 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.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

#### 4.8 CONTRACT INTERPRETATION

Should the State and Contractor 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.

#### 4.9 CANCELLATION

- A. For Cause. The State may cancel any contract resulting from this solicitation for cause at DHS' discretion. The State shall give Contractor written notice of cancellation, specifying the terms and the effective date of contract termination.
- B. For Convenience. The State may cancel any contract resulting from the solicitation by giving Contractor written notice of such cancellation no less than thirty (30) days prior to the date of cancellation.
- C. If upon cancellation, Contractor has provided commodities or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, Contractor may file a claim with the Arkansas State Claims Commission under the laws and regulations governing the filing of such claims.

#### 4.10 SEVERABILITY

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and Contractor will 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 **must** 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 *Proposal Packets* **must** be submitted to OP on or before the date and time specified for bid opening. The *Proposal 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 proposals **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 (30) 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. Contractor **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 Contractor to supply additional descriptive material. Contractor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Contractors 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*. Contractor 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. Contractor **shall** further guarantee that if the items furnished hereunder are to be installed by Contractor, such items **shall** function properly when installed. Contractor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling, and registration. Contractor'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 Contractor'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 Contractor's expense. After reasonable examination, all demonstrators will be returned at Contractor'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 Contractor.
- 10. **AMENDMENTS:** Contractor's proposals 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 Contractor. 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 Contractor.

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 Contractor cannot meet the stated delivery, alternative delivery schedules may become a factor in an award. OP **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 Contractor.
14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of OP. Delivery **shall** be made during agency work hours only, 8:00 a.m. to 4:30 p.m. CST, 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 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 OP 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. Contractor **must** give written notice to OP 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 Contractors 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:** 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 Contractor hereunder or in contemplation hereof or developed by 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 Contractor's expense to the F.O.B. point provided by the agency or OP. Contractor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** 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. **CLAIMS:** Any claims Contractor may assert under this Agreement shall be brought before the Arkansas State Claims Commission, which shall have exclusive jurisdiction over any and all claims that Contractor may have arising from or in connection with this Agreement. Unless Contractor's obligations to perform are terminated by the State, Contractor shall continue to provide the Services under this Agreement even in the event that Contractor has a claim pending before the Commission.
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 Contractor 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 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, Contractor may file a claim with the Arkansas State Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation Contractor has provided services which the State has accepted, 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, Contractor agrees that: (a) Contractor **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, Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) Contractor 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 Contractor 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) Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.

25. **CONTINGENT FEE:** Contractor 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 Contractor for the purpose of securing business.
26. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, Contractor named on the *Proposal 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.