



STATE OF ARKANSAS
OFFICE OF STATE PROCUREMENT
1509 West 7th Street, Room 300
Little Rock, Arkansas 72201-4222

INVITATION FOR BID
BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	SP-17-0013	Solicitation Issued:	08/22/2016
Description:	Smartcard Readers and Software		
Agency:	Arkansas Department of Health		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	08/30/2016	Bid Opening Time:	2:00 p.m., Central Time
<p>Bids shall not 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 proposals at the designated location on or before the bid opening date and time. Bids received after the designated bid opening date and time shall be considered late and shall be returned to the vendor without further review. It is not necessary to return "no bids" to OSP.</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p>Office of State Procurement 1509 West 7th Street, Room 300 Little Rock, AR 72201-4222</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address.</p>
Bid's Outer Packaging:	<p>Outer packaging must be sealed and should be properly marked with the following information. If outer packaging of proposal submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none">• Bid number• Date and time of bid opening• Vendor's name and return address

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Shane Phillips	Buyer's Direct Phone Number:	501-324-9322
Email Address:	Jordan.Phillips@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx		

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

1.1 PURPOSE

The Healthy, Hunger-Free Kids Act of 2010 includes a mandate that all WIC State agencies convert food delivery for the WIC Program from paper to Electronic Benefit Transfer (EBT) by October 1, 2020. The Arkansas WIC Program is embarking on the final activities to facilitate the transition to EBT, and is requesting to purchase card terminals for use in the Local Health Units for WIC services. The transition to EBT is slated to begin in early 2017.

The U.S. Department of Agriculture, Food, and Nutrition Services (USDA-FNS) has approved the Arkansas WIC Program to implement EBT using "smartcard" technology and file-based processing. "Smartcard" technology refers to the use of an embedded microprocessor chip in the card that holds the food benefit issuance information for the participant. Unlike magnetic stripe cards that can be updated at any time using cloud technology, "smartcards" can only be updated using card terminals at the Local Health Unit. The Verifone VX-520 Card Terminals will be installed in all WIC clinics in Arkansas to assign WIC EBT cards, issue food benefits to the cards, modify food benefits already on the cards, perform card diagnostics, and other card interactions, as well as support personal identification number (PIN) selection and changes.

In order to comply with certain Federal mandates, the State of Arkansas seeks to purchase VX-520 terminals, acquire an updated version of the Verifone VX-570 WIC Smartcard Module software, and acquire a minimum of 3 years terminal maintenance and related support. No substitutions will be allowed.

1.2 TYPE OF CONTRACT

A Firm contract will be awarded to a single vendor.

1.3 ISSUING AGENCY

OSP, as the issuing office, is the sole point of contact throughout this solicitation.

1.4 BID OPENING LOCATION

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

Office of State Procurement
1509 West Seventh Street, Room 300
Little Rock, AR 72201-4222

1.5 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 *Bid Solicitation*, whether submitted in the vendor's bid or in subsequent correspondence, **shall** cause the vendor's bid 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*.)

1.6 DEFINITION OF TERMS

- A. The State Procurement Official has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.
- B. The words "bidder" and "vendor" are used synonymously in this document.
- C. The terms "Request for Proposal", "RFP" and "Bid Solicitation" are used synonymously in this document.

1.7 **RESPONSE DOCUMENTS**

A. Bid Response Packet

1. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Bid Signature Page*.
2. Vendor's signature on this page **shall** signify vendor's agreement that either of the following **shall** cause the vendor's bid to be disqualified
 - a. Additional terms or conditions submitted intentionally or inadvertently.
 - b. Any exception that conflicts with a Requirement of this *Bid Solicitation*.
3. The following items should be submitted in the original *Bid Response Packet*.
 - a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions, #27. Disclosure.*)
 - b. Copy of Vendor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy.*)
 - c. *Voluntary Product Accessibility Template (VPAT)*. (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. Vendor's original *Official Bid Price Sheet* **must** be submitted in hard copy format.
2. Vendor should also submit one (1) electronic copy of the *Official Bid Price Sheet*, preferably on a flash drive. A CD will also be acceptable.

1.8 **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 *Bid Response Packet*.
- B. Vendor's signature on these pages **shall** signify agreement to and compliance with all Requirements within the designated section.

1.9 **SUBCONTRACTORS**

Subcontractors are not allowed to perform work under the terms of this contract.

1.10 **PRICING**

- A. Vendor(s) **must** include all pricing on the Official Price Bid Sheet(s) only. Any cost not identified by the successful vendor but subsequently incurred in order to achieve successful operation **shall** be borne by the vendor. The *Official Bid Price Sheet* is provided as a separate excel file posted with this *Bid Solicitation*.
- B. To allow time to evaluate proposals, prices **must** be valid for 120 days following the bid opening.
- C. Failure to complete and submit the *Official Bid Price Sheet* **shall** result in disqualification.
- D. All bid pricing **must** be in United States dollars and cents.
- E. The Official Bid Price Sheet may be reproduced as needed.

1.11 **PRIME CONTRACTOR RESPONSIBILITY**

- A. A joint bid submitted by two (2) or more vendors is acceptable. However, a single vendor **must** be identified as the prime contractor.
- B. The prime contractor **shall** be held responsible for the contract and **shall** be the sole point of contact.

1.12 INDEPENDENT PRICE DETERMINATION

- A. By submission of this bid, the vendor certifies, and in the case of a joint response, each party thereto certifies as to its own organization, that in connection with this bid:
- The prices in the bid have been arrived at independently, without collusion.
 - 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 bid by the Office of the Attorney General. All vendors **shall** understand that this paragraph may be used as a basis for litigation.

1.13 PROPRIETARY INFORMATION

- A. Response 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. A CD is also acceptable.
- 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, with the exception of financial data (other than pricing), **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. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through OSP.
- B. Vendor **must not** alter any language in any solicitation document provided by the State.
- C. Vendor **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. Bids **must** be submitted only in the English language.
- F. 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. Vendor **must** provide clarification of any information in their response documents as requested by OSP.
- H. Bids **must** meet or exceed all defined specifications as set forth in this *Bid Solicitation*.
- I. Bids **must** meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.
- J. Vendors may submit multiple bids.

1.15 REQUIREMENT OF ADDENDUM

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by OSP.

- 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 OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to bid opening.

1.16 **AWARD PROCESS**

A. Vendor Selection

1. Award **shall** be made to a single vendor on an all or none basis.

B. Anticipation to Award

1. Once an anticipated successful vendor has been determined, the anticipated award will be posted on the OSP website at http://www.arkansas.gov/dfa/procurement/pro_intent.php.
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Vendors 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. OSP **shall** have the right to waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the vendor's responsibility to check the OSP website for the posting of an anticipated award.

C. Issuance of Contract

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

1.17 **MINORITY BUSINESS POLICY**

A. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this State who is:

- 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. The Arkansas Economic Development Commission conducts a certification process for minority businesses and disabled veterans. The vendor's Certification Number should be included on the vendor's *Bid Signature Page*.

1.18 **EQUAL EMPLOYMENT OPPORTUNITY POLICY**

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP is required to have a copy of the vendor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov, but should also be included as a hardcopy accompanying the solicitation response.
- C. The submission of an *EO Policy* to OSP is a one-time Requirement. Vendors 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 by to have an *EO Policy*, **must** submit a written statement to that effect.

1.19 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.
- B. OSP 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.

1.20 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". Proposals submitted by vendors determined to be non-responsible **shall** be disqualified.

1.21 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 Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, 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. The Vendor 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, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (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, THE VENDOR 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, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 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 Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, 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
 - 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 Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, 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.

1.22 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM

The respondent'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: <http://www.dis.arkansas.gov/policiesStandards/Pages/default.aspx>. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.

1.23 VISA ACCEPTANCE

- A. Awarded vendor should have the capability of accepting the State's authorized VISA 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. VISA is not the exclusive method of payment.

1.24 PUBLICITY

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

1.25 RESERVATION

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

SECTION 2 – MINIMUM REQUIREMENTS

2.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) on behalf of the Arkansas Department of Health (ADH) to obtain pricing for Verifone VX-520 Card Terminals, WIC Smartcard Module Software, and 3 years of terminal maintenance and support.

2.2 VENDOR RESPONSIBILITIES

- A. Vendor **must** provide nine hundred (900) new Verifone VX 520 Countertop Credit Card Readers. Please see Attachment A for specification sheet. No substitutions will be allowed.
- B. Units **must** be preloaded with Verifone's proprietary WIC Smartcard Module software.
- C. Vendor **must** provide three (3) year warranty for maintenance and support. Standard manufacturer's support is acceptable.
- D. Each device's warranty **must** begin upon receipt of device by ADH.
- E. Any necessary parts, equipment, and/or accessories for items in section 2.2 **shall** be included in the bid price.

2.3 DELIVERY: FOB DESTINATION

- A. Units **must** be drop shipped to multiple locations in Arkansas as provided by ADH at time of order.
- B. The agency requests delivery within 90 working days after receipt of the order. If this delivery date cannot be met, the bidder must state the number of days required to place the commodity in the ordering agency's designated locations. Failure to state the delivery time obligates the bidder to complete deliveries by the agency's requested date. Extended delivery dates may be considered when in the best interest of the state.
- C. All deliveries must be made during normal State work hours and within the agreed upon number of days unless otherwise arranged and coordinated with the agency. The vendor shall give the agency immediate notice of any anticipated delays or plant shutdowns that will affect the delivery requirement.
- D. Loss or damage that occurs during shipping, prior to the order being received by the agency, is the vendor's responsibility. All orders should be properly packaged to prevent damage during shipping.

2.4 ACCEPTANCE STANDARDS

Inspection and acceptance/rejection of product(s) shall be made within thirty (30) days of receipt. ADH shall have the option to return any product(s) within the thirty (30) day timeframe for any reason. Bid must include a "total satisfaction" return policy for all products and shall not impose any liability on the State for such returns.

SECTION 3 – GENERAL CONTRACTUAL REQUIREMENTS

3.1 PAYMENT AND INVOICE PROVISIONS

A. All invoices **shall** be forwarded to:

Arkansas Dept. of Health/WIC Program
5800 W. 10th Street, St. 800
Little Rock, AR 72204

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance 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 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. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- G. 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>.

3.2 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 deinstallation.
 - 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 a State Procurement Official.
- 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.

3.3 **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.
- A. 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.

3.4 **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 \$1,000,000, 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 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.

3.5 **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 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.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

3.6 PRICE ESCALATION

- A. Price increases will be considered at the time of contract renewal.
- B. The vendor **must** provide to OSP 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. OSP **shall** have the right to require additional information pertaining to the requested increase.
- C. Increases **shall not** be considered to increase profit or margins.
- D. OSP **shall** have the right to approve or deny the request.

3.7 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 of 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.

3.8 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.

3.9 CANCELLATION

- A. In the event the State no longer needs the service 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 services received and accepted up to cancellation of the contract.

3.10 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 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 4 – 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 the Office of State Procurement 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 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 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 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 State 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 State 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 State 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 State 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 *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.