



State of Arkansas
 OFFICE OF STATE PROCUREMENT
 1509 West Seventh Street, Room 300
 Little Rock, Arkansas 72201-4222

INVITATION FOR BID

IFB Number: SP-15-0090	Buyer: Jessica Lowder jessica.lowder@dfa.arkansas.gov
Commodity: Public Officials and Employment Practices Liability Coverage Agency: Arkansas Development of Finance Authority	Bid Opening Date: May 5, 2015
Date Issued: April 16, 2015	Bid Opening Time: 2:30 p.m. CDT

BIDS WILL BE ACCEPTED UNTIL THE TIME AND DATE SPECIFIED ABOVE. THE BID ENVELOPE, INCLUDING THE OUTSIDE OF OVERNIGHT PACKAGES, MUST BE SEALED AND SHOULD BE PROPERLY MARKED WITH THE IFB NUMBER, DATE AND HOUR OF BID OPENING AND VENDOR'S RETURN ADDRESS. IT IS NOT NECESSARY TO RETURN "NO BIDS" TO THE OFFICE OF STATE PROCUREMENT.

Vendors are responsible for delivery of their bid documents to the Office of State Procurement prior to the scheduled time for opening of the particular bid. When appropriate, vendors should consult with delivery providers to determine whether the bid documents will be delivered to the OSP office street address prior to the scheduled time for bid opening. Delivery providers, USPS, UPS, and FedEx deliver mail to our street address on a schedule determined by each individual provider. These providers will deliver to our offices based solely on our street address.

MAILING ADDRESS: Office of State Procurement 1509 West Seventh Street, Room 300 Little Rock, AR 72201-4222 TELEPHONE NUMBER: 501-324-9316	BID OPENING LOCATION: Office of State Procurement 1509 West Seventh Street, Room 300 Little Rock, AR 72201-4222
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Company Name: _____

Name (type or print): _____

Title: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

Authorized Signature: _____

USE INK ONLY. UNSIGNED BIDS SHALL NOT BE CONSIDERED

Business Designation
(check one):

Individual

Partnership

Sole Proprietorship

Corporation

Public Service Corp

Government/ Nonprofit

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1. MINORITY BUSINESS POLICY

Minority participation is encouraged in this and in all other procurements by state agencies. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this state who is: African American, Hispanic American, American Indian, Asian American, Pacific Islander American or a Service Disabled Veteran as designated by the United States Department of Veterans Affairs. The Arkansas Economic Development Commission conducts a certification process for minority business. Bidders unable to include minority-owned business as subcontractors "may explain the circumstances preventing minority inclusion".

Check minority type:

- African American Hispanic American American Indian ____ Service Disabled Veteran
 Asian American Pacific Islander American ____

Arkansas Minority Certification Number _____

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

In compliance with Arkansas Code Annotated § 19-11-104, the Office of State Procurement is required to have a copy of the vendor's Equal Opportunity Policy prior to issuing a contract award. 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.** The Office of State Procurement will maintain a file of all vendor EO policies submitted in response to solicitations issued by this office. The submission is a one-time requirement, but 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. Vendors that do not have an established EO policy will not be prohibited from receiving a contract award, but are required to submit a written statement to that effect.

3. 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 stating that they do not employ or contract with any illegal immigrants to provide services related to contracts with the State.
- B. OSP will notify the selected vendor(s) prior to award if vendor's certification has expired or is not on file with OSP. The buyer will provide instructions for the certification process at that time.

4. ALTERATION OF ORIGINAL IFB DOCUMENTS

The original written or electronic language of the IFB documents **shall not** be changed or altered except by approved written addendum issued by the Office of State Procurement. This does not eliminate a Bidder from taking exception(s) to non-mandatory terms and conditions, but does clarify that the Bidder cannot change the original document's written or electronic language. If the Bidder wishes to make exception(s) to any of the original language, it **must** be submitted by the Bidder in separate written or electronic language in a manner that clearly explains the exception(s). If Bidder's/Contractor's submittal is discovered to contain alterations/changes to the original written or electronic documents, the Bidder's response may be declared "non-responsible," and the response **shall not** be considered.

5. REQUIREMENT OF AMENDMENT

- A. This bid solicitation may be modified only by an addendum written and authorized by OSP.
- B. Vendors are cautioned to ensure that they have received or obtained, and have responded to, any and all addendums to the bid solicitation prior to submission of response.
- C. There will be no addendums to a bid solicitation 72 hours prior to the bid solicitation opening, other than to:
- Extend the bid opening date.
 - Cancel the bid.
- D. It is the responsibility of the vendor to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addendums up to bid opening.

6. DELIVERY OF RESPONSE DOCUMENTS

In accordance with the Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit bids at the place, and on or before the date and time, set in the bid solicitation documents. Bids received at the Office of State Procurement after the date and time designated for bid opening **shall** be considered late and **shall not** be considered. Bid documents arriving late, which are to be returned and are not clearly marked, may be opened to determine for which bid the submission is intended.

7. ADDITIONAL TERMS AND CONDITIONS

The Office of State Procurement objects to, and **shall not** consider, any additional terms or conditions submitted by a bidder, including any appearing in documents attached as part of a bidder's response, that conflict with mandatory terms and conditions required by law. In signing and submitting his bid, a bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, **shall** have no force or effect. Failure to comply with terms and conditions, including those specifying information that **must** be submitted with a bid, **shall** be grounds for rejecting a bid.

8. ANTICIPATION TO AWARD

After complete evaluation of the bid, the anticipated award will be posted on the OSP website (http://www.arkansas.gov/dfa/procurement/pro_intent.php). The purpose of the posting is to establish a specific timeframe in which vendors and agencies are aware of the anticipated award. The bid results will be posted for a period of fourteen (14) days prior to the issuance of any award. Vendors and agencies are cautioned that these are preliminary results only, and no official award will be issued prior to the end of the fourteen day posting period. Accordingly, any reliance on these preliminary results is at the agency's/vendor's own risk.

The Office of State Procurement reserves the right to waive the policy of Anticipation to Award when it is in the best interest of the State. Vendors are responsible for viewing the Anticipation to Award section of the OSP web site at: http://www.arkansas.gov/dfa/procurement/pro_intent.php.

9. PAST PERFORMANCE

In accordance with provisions of the State Procurement Law, specifically OSP Rule R7:19-11-229(2)(E), a vendor's past performance with the state may be used in the evaluation of any bid made in response to this solicitation. The past performance should not be greater than three years old and must be supported by written documentation on file in the Office of State Procurement at the time of the bid opening. Documentation may be in the form of a written or an electronic report, VPR (Vendor Performance Report), memo, file or any other appropriate authenticated notation of performance to the vendor files.

10. VISA ACCEPTANCE

Awarded contractors should have the capability of accepting the State's authorized VISA Procurement Card (p-card) as a method of payment. Price changes or additional fee(s) may not be assessed when accepting the p-card as a form of payment. The successful bidder may receive payment from the State by the p-card in the same manner as other VISA purchases. VISA acceptance is preferred but is not the exclusive method of payment.

11. EO-98-04 GOVERNOR'S EXECUTIVE ORDER

Bidders should complete the Disclosure Forms issued with this bid.

12. CURRENCY

All bid pricing **must** be United States dollars and cents.

13. LANGUAGE

Bids **shall** only be accepted in the English language.

SECTION 1 - GENERAL INFORMATION

1.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for the Arkansas Development Finance Authority (ADFA) to obtain pricing and a contract for Public Officials and Employment Practices Liability Coverage.

1.2 ISSUING AGENCY

The issuing office is the sole point of contact in the State for the selection process. Vendor questions regarding IFB related matters should be made through the State's buyer, Jessica Lowder at 501-324-9316 or by email at jessica.lowder@dfa.arkansas.gov. Vendor's questions will be answered as a courtesy and at vendor's own risk.

1.3 CAUTION TO BIDDERS

1. During the time between the bid opening and contract award, any contact concerning this IFB should be initiated by the issuing office or requesting entity and not the vendor. Specifically, the person(s) named herein will initiate all contact.
2. The State Procurement Official reserves the right to award a contract or reject a bid for any or all line items of a bid received as a result of this IFB, if it is in the best interest of the State to do so. Bids **shall** be rejected for one or more reasons not limited to the following:
 - a. Failure of the vendor to submit his bid on or before the deadline established by the issuing office.
 - b. Failure to sign an Official Bid Document.
 - c. Failure to complete the Official Bid Price Sheet(s).
 - d. Any wording by the vendor in their response to this IFB, or in subsequent correspondence, which conflicts with or takes exception to a requirement in the IFB.
 - e. Failure of any proposed goods or service to meet or exceed the specifications.

1.4 BID FORMAT

Any statement in this document that contains the words "**must**" or "**shall**" means that compliance with the intent of the statement is mandatory, and failure by the bidder to satisfy that intent **shall** cause the bid to be rejected. Reference to handbooks or other technical materials as part of a response **must not** constitute the entire response and vendor must identify the specific page and paragraph being referenced.

1.5 TYPE OF CONTRACT

The resulting contract will be a one-year term contract with a beginning date of August 28, 2015. Upon mutual agreement by the vendor and agency, the contract may be renewed by OSP on a year-to-year basis, for up to six (6) additional one-year terms or a portion thereof. In no event **shall** the total contract term be more than seven (7) years.

1.6 PAYMENT AND INVOICE PROVISIONS

All invoices **shall** be forwarded to the:

Arkansas Development Finance Authority
PO Box 8023
Little Rock, AR 72203-8023

Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the Agency. The State may not be invoiced in advance of delivery and acceptance of any equipment. Payment will be made only after the contractor has successfully satisfied the Arkansas Department of Information Systems as to the goods and/or services purchased. Vendors should invoice Arkansas Department of Information Systems by an itemized list of charges. Purchase Order Number and/or Contract Number should be referenced on each invoice.

Selected vendor **must** be registered to receive payment and future bid notifications. If you are not a registered vendor you may register on-line at <https://www.ark.org/vendor/index.html>

1.7 RECORD RETENTION

The Contractor **shall** be required to maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Arkansas. Access **shall** be granted upon request, to State or Federal Government entities or any of their duly authorized representatives.

Financial and accounting records **shall** be made available, upon request, to the State of Arkansas' 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.

1.8 PROPRIETARY INFORMATION

Proprietary information submitted in response to this IFB will be processed in accordance with applicable State of Arkansas procurement procedures. Bids and documents pertaining to the IFB become the property of the State and **shall** be open to public inspection subsequent to bid opening. It is the responsibility of the Vendor to identify all proprietary information. **The vendor should submit one complete copy of the response from which any proprietary information has been removed, i.e., a redacted copy.** The redacted copy should reflect the same pagination as the original, show the empty space from which information was redacted, and should be submitted on a CD or flash drive. Except for the redacted information, the redacted copy must be identical to the original hard copy. The vendor is responsible for ensuring the redacted copy on CD/flash drive is protected against restoration of redacted data. The redacted copy **shall** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor. If a redacted copy is not included, the entire bid **shall** be open to public inspection with the exception of financial data (other than pricing). If the State of Arkansas deems redacted information to be subject to the FOIA the vendor will be contacted prior to sending out the information.

1.9 RESERVATION

This IFB **shall not** commit the State Procurement Official to award a contract, to pay costs incurred in the preparation of a bid in response to this request, or to procure or contract for commodities or services.

1.10 PRIME CONTRACTOR RESPONSIBILITY

The selected vendor **shall** be required to assume prime contractor responsibility for the contract and **shall** be the sole point of contact with regard to all commodities, services and support.

1.11 CONTRACT INFORMATION

1. The State of Arkansas may not contract with another party:
 - a. To indemnify and defend that party for any liability and damages. However, the State Procurement Official may agree to hold the other party harmless from any loss or claim resulting directly from and attributable to the State's use or possession of equipment or software and reimburse that party for the loss caused solely by the State's uses or possession.
 - b. Upon default, to pay all sums to become due under a contract.
 - c. To pay damages, legal expenses or other costs and expenses of any party.
 - d. To continue a contract once the equipment has been repossessed.
 - e. To conduct litigation in a place other than Pulaski County, Arkansas
 - f. To agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
2. A party wishing to contract with the State of Arkansas should:
 - a. Remove any language from its contract which grants to it any remedies other than:
 - i. The right to possession.
 - ii. The right to accrued payments.
 - iii. The right to expenses of deinstallation.
 - iv. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - v. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
 - b. Include in its contract that the laws of the State of Arkansas govern the contract.
 - c. Acknowledge that contracts become effective when awarded by the State Procurement Official.
 - d. To accept the risk of loss of the equipment and pay for any destruction, loss or damage of the equipment while the State has such risk, when the extent of liability for such risk is based upon the purchase price of the equipment at the time of any loss and the contract has required the State to carry insurance for such risk.

1.12 CONDITIONS OF CONTRACT

The successful bidder **shall** at all times observe and comply with federal and State laws, local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of this contract which in any manner affect the completion of the work. The successful bidder **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 successful bidder.

1.13 STATEMENT OF LIABILITY

The State will demonstrate reasonable care but **shall not** be liable in the event of loss, destruction, or theft of contractor-owned items to be delivered or to be used in the installation of deliverables. The vendor is required to retain total liability until the deliverables have been accepted by the "authorized agency official." At no time **shall** the State be responsible for or accept liability for any vendor-owned items.

1.14 AWARD RESPONSIBILITY

The State Procurement Official will be responsible for award and administration of any resulting contract.

1.15 AWARD CRITERIA

Award **shall** be made on all or none basis to the lowest responsible, responsive bidder. Bids **must** meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.

1.16 DELEGATION AND/OR ASSIGNMENT

The vendor **shall not** assign the contract in whole or in part or any payment arising there from without the prior written consent of the State Procurement Official. The vendor **shall not** delegate any duties under this contract to a subcontractor unless the State Procurement Official has given written consent to the delegation.

1.17 COST

All charges **must** be included on the Official Bid Price Sheet and **must** include all associated cost for the system being bid. Bid pricing **must** be valid for 30 days following IFB opening to allow sufficient time to tabulate and evaluate bid responses.

Note:

1. The State **shall not** be obligated to pay any costs not identified on the Official Bid Price Sheet
2. Any cost not identified by the bidder but subsequently incurred in order to achieve contract fulfillment **shall** be borne by the bidder.

1.18 CANCELLATION

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 may cancel the contract or purchase order by giving the contractor written notice of such cancellation 30 days prior to the date of cancellation.

SECTION 2 - SPECIFIC REQUIREMENTS

2.1 COVERAGE SPECIFICATIONS

- A. Vendor **must** provide costs for the following coverage amounts. Excess coverage to reach the required value is acceptable.

Required Coverage	
Each Public Officials Claim	\$10 million
Each Employment Practices Claim	\$10 million
Annual Aggregate	\$10 million

- B. Policy **must** have a Retention Limit per Loss of \$75,000. Full Prior Act Coverage is required.
- C. Endorsements **must** include:
1. Employment Practices Liability
 2. Deductible applies to Damages and Legal Expense
 3. Defense Cost in addition to Policy Limits
 4. Punitive Damages Included
 5. Delete Bond Exclusion
 6. Back wages -- \$50,000 per claim with \$250,000 Aggregate
 7. Non-monetary Defense -- \$25,000 per claim with \$100,000 Aggregate
- D. Coverage **must** meet or exceed the coverage provided by the current existing policies, which is a standard Directors and Officers policy changed by certain endorsements. (See Attachments A - C for background and current policy information.)
- E. Effective Date: August 28, 2015 12:01 a.m. All retro dates currently used **must** be adhered to.
- F. The insurance policy **shall** become part of the contract between the State and the successful bidder. Any settlement **shall** be in the best interest of the State of Arkansas where a conflict between the contract and the insurance policy exists.
- G. Specimen policies, including all applicable endorsement, **must** be included with the bid.

2.2 SERVICE REQUIREMENTS

- A. Vendor **shall** be required to provide an annual review of ADFA policies and to advise of the adequacy of coverage provisions.
- B. Each coverage form may be written with different insurance companies, but all policies **shall** be awarded to one vendor.
- C. Premium Payment **must** be on an annual basis.
- D. Vendor **must** provide ADFA with a detailed loss history on an annual basis, or within 30 days of a written request.
- E. Vendor **must** accept all deletions and additions of any kind during the policy term on a pro-rata basis.
- F. Should the contracting vendor desire to cancel or to not renew coverage, the vendor **must** give the President and the Vice President for Finance & Administration of ADFA 60 days written notice.

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- G. All adjustments in rates **must** be presented to ADFA in writing no less than 60 days before the renewal date. ADFA will review rate adjustments with consideration of original bid rate, present market conditions, losses to date, and underwriting changes to determine whether or not to renew.

2.3 VENDOR REQUIREMENTS

- A. The State reserves the right to make whatever investigation necessary to determine if the bidder is qualified to carry out the terms of the contract.
- B. Bidders **must** have a minimum of A- 6 AM Best rating, and rating **must** be entered on the Official Price Sheet.
- C. Bidder/broker **must** be licensed to do business in the State of Arkansas with a minimum of five (5) years as a licensed insurance broker or agent in the Public Officials and Employment Practices Liability insurance market.
- D. Insurer **must** have an A.M. Best Company rating of A- Class FSC VI or better with a "Stable" or "Positive Outlook".
- E. Bidder/broker **must** be able to demonstrate evidence of insurance agent and broker Errors & Omissions insurance with a minimum limit of \$10,000,000 annual aggregate.

2.4 PRICING

- A. Bids **must** show a premium to include policies as specified. Bids for partial coverage **shall not** be accepted.
- B. Bids from non-admitted insurers **shall not** be considered unless the full premium is at least 20% less than any acceptable bid from an admitted carrier.
- F. Bids from non-admitted insurers **shall not** be considered unless the full premium is at least twenty percent (20%) less than any acceptable bid from an admitted carrier. Included within this pricing **must** be a "cut-through" endorsement to an admitted carrier with the A.M. Best Company rating of A- Class FSC VI or better with a "Stable" or "Positive Outlook".

OFFICIAL PRICE SHEET

	Annual Premium
Primary Public Officials and Employment Practices Liability Coverage	\$
Excess Public Official Liability <i>Should an additional policy be needed to meet the total amount of coverage required, list additional premium here.</i>	\$
Total Annual Premium	\$

BIDDER: _____

INSURER: _____

A.M. BEST RATING: _____

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STANDARD TERMS AND CONDITIONS

1. **GENERAL:** Any special terms and conditions included in the invitation for bid override these standard terms and conditions. The standard terms and conditions and any special terms and conditions 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 reserves 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:** Bids must be submitted to the Office of State Procurement on this form, with attachments when appropriate, on or before the date and time specified for bid opening. If this form is not used, the bid may be rejected. The bid must be typed or printed in ink. The signature must be in ink. Unsigned bids will be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Each bid should be placed in a separate envelope completely and properly identified. Late bids will 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 are firm and not subject to escalation unless otherwise specified in the bid invitation. 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 invitation.
5. **QUANTITIES:** Quantities stated in **term contracts** are estimates only, and are not guaranteed. 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:** Any catalog brand name or manufacturer's reference used in the bid invitation 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 reserves 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 bidder to supply additional descriptive material. The bidder guarantees that the product offered will meet or exceed specifications identified in this bid invitation. If the bidder takes no exception to specifications or reference data in this bid he will be required to furnish the product according to brand names, numbers, etc., as specified in the invitation.
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 invitation. The bidder hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which it was furnished. The bidder further guarantees that if the items furnished hereunder are to be installed by the bidder, such items will function properly when installed. The bidder also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The bidder'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 bidder's name and address, bid number and item number. If samples are not destroyed during reasonable examination they will be returned at bidder's expense, if requested, within ten days following the opening of bids. All demonstrators will be returned after reasonable examination.
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 bidder.
10. **AMENDMENTS:** The bid 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 bidder. 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 bidder.
13. **LENGTH OF CONTRACT:** The invitation for bid will show the period of time the term contract will be in effect.
14. **DELIVERY ON FIRM CONTRACTS:** The invitation for bid will show the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost will be borne by the vendor.

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- 15. 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., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.
- 16. STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
- 17. DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications 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 bidders list or suspension of eligibility for award.
- 18. 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.
- 19. 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 invitation for bid, (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.
- 20. 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, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned.
- 21. PATENTS OR COPYRIGHTS:** The contractor agrees to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
- 22. ASSIGNMENT:** Any contract entered into pursuant to this invitation for bid is not assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
- 23. OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the state have the right to pursue any other remedy permitted by law or in equity.
- 24. LACK OF FUNDS:** The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. 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. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.
- 25. DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that: (a) the bidder will 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 bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder 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 bidder 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 bidder will include the provisions of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.
- 26. CONTINGENT FEE:** The bidder 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 bidder for the purpose of securing business.
- 27. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this invitation for bid, the bidder named on the front of this invitation for bid, 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.
- 28. 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.