



STATE OF ARKANSAS

OFFICE OF STATE PROCUREMENT

1509 West 7th Street, Room 300
Little Rock, Arkansas 72201-4222

REQUEST FOR PROPOSAL BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION

Bid Number:	SP-15-0115	Solicitation Issued:	8/12/2015
Description:	Pharmacy Benefit Manager		
Agency:	Department of Finance and Administration Employee Benefits Division		

SUBMISSION DEADLINE FOR RESPONSE

Bid Opening Date:	September 11, 2015	Bid Opening Time:	2:00 p.m., Central Time
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Proposals **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. Proposals 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.

DELIVERY OF RESPONSE DOCUMENTS

Delivery Address:	Office of State Procurement 1509 West 7 th Street, Room 300 Little Rock, AR 72201-4222 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.
Proposal's Outer Packaging:	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. <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:	Jessica Lowder	Buyer's Direct Phone Number:	501-371-6059
Email Address:	jessica.lowder@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

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

1.1 PURPOSE

The Office of State Procurement, on behalf of the Department of Finance and Administration-Employee Benefits Division (EBD) is seeking proposals and pricing for the following services to be provided by a Pharmacy Benefit Manager (PBM):

- Electronic drug claims processing
- Comprehensive Pharmacy Network/Provider Relations
- Pharmacy auditing program
- Mail order program
- Specialty pharmacy program
- Accumulator coordination with medical carriers
- Online and interactive formulary information for Plan participants
- Medicare RDS Services
- Benefit Administration (programming)
- Customer Service Pharmacy calls

1.2 TYPE OF CONTRACT

- A. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review and approval.
- B. The resulting contract will be a TERM contract. The initial term of this contract **shall** be for three (3) years. The anticipated starting date for the contract is January 1, 2016.
- C. Upon mutual agreement by the vendor and agency, the contract may be renewed by OSP on a year-to-year basis, for up to four (4) additional one-year terms or a portion thereof.
- D. The total contract term **shall not** be more than seven (7) years.

1.3 ISSUING AGENCY

OSP, as the issuing office, is the sole point of contact for the selection process. Vendor questions regarding this *Bid Solicitation* should be made through the State's buyer as shown on page one of this document.

1.4 BID OPENING LOCATION

Proposals 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 proposal or in subsequent correspondence, **shall** cause the vendor's proposal 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 label the request to 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 item in question as indicated in *Clarification of Bid Solicitation and Questions*.

- 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.
- D. The Term “EBD” references the Employee Benefits Division which is a branch of the Department of Finance and Administration within this RFP.
- E. The term “agency” references the Employee Benefits Division.
- F. The term “PBM” references Pharmacy Benefits Management in this RFP

1.7 **RESPONSE DOCUMENTS**

A. Original Technical Proposal Packet

1. The original *Technical Proposal Packet* **must** be submitted on or before the bid opening date and time.
2. The Proposal Packet should be clearly marked “Original” and **must** include the following:
 - a. Original signed *Proposal Signature Page*. (See *Proposal Signature Page*.)
 - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
 - c. Original signed *Proposed Subcontractors Form*. (See *Subcontractors*.)
 - d. Other documents and/or information as may be expressly required in this *Bid Solicitation*.
 - e. *Technical Proposal* response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
3. The following items should be submitted in the original *Technical Proposal 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 version of the *Official Bid Price Sheet*, preferably on a flash drive. A CD will also be acceptable.
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”.

C. Network Repricing Submission on CD

1. The aggregated repriced total costs of Brand, Generic and Specialty drugs as submitted on the Network Repricing CD **must** be entered into Table E of the Official Price Sheet.
2. Vendor **must** provide two (2) Network Repricing CDs, the original, and a copy.
3. The CDs **must** be separately sealed from the Technical Proposal Packet and should be clearly marked as “Pricing”.
4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

D. 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. Three (3) complete hard copies (marked "COPY") of the *Technical Proposal Packet*.
 - b. Four (4) electronic versions of the *Technical Proposal Packet*, preferably on flash drives. CDs will also be acceptable.
 - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy **shall** govern.
 - d. If OSP requests additional copies of the *Technical Proposal Packet*, the copies **must** be delivered within twenty-four (24) hours of request.
2. One (1) redacted copy the original *Technical Proposal Packet*, preferably on a flash drive. A CD will also be acceptable. (See *Proprietary Information*.)

1.8 ORGANIZATION OF RESPONSE DOCUMENTS

- A. It is strongly recommended that vendors adhere to the following format and suggestions when preparing their *Technical Proposal* response.
- B. The original *Technical Proposal Packet* and all copies should be arranged in the following order.
 - *Proposal Signature Page*.
 - *All Agreement and Compliance Pages*.
 - *Proposed Subcontractors Form*.
 - Signed Addenda, if applicable.
 - E.O. 98-04 – *Contract Grant and Disclosure Form*.
 - *Equal Opportunity Policy*
 - *Voluntary Product Accessibility Template* (VPAT).
 - 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*.

1.9 CLARIFICATION OF BID SOLICITATION AND QUESTIONS

- A. Vendors may submit written questions requesting clarification of information contained in this *Bid Solicitation*. Written questions should be submitted by 4:00 p.m., Central Time on August 21, 2015. Submit written questions by email to the buyer as shown on page one (1) of this *Bid Solicitation*.
- B. Vendors written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on August 31, 2015.
- C. Answers to verbal questions may be given as a matter of courtesy and **must** be evaluated at vendor's risk.

1.10 PROPOSAL SIGNATURE PAGE

- A. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Proposal Signature Page* included in the *Technical Proposal Packet*.
- B. Vendor's signature on this page **shall** signify vendor's agreement that either of the following **shall** cause the vendor'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*.

1.11 AGREEMENT AND COMPLIANCE PAGES

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

1.12 SUBCONTRACTORS

- A. Vendor **must** complete, sign and submit the *Proposed Subcontractors Form* included in the *Technical Proposal Packet* to indicate vendor'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*.

1.13 PRICING

- A. All pricing **must** be disclosed on the *Office Bid Price Sheet* only, or on the Network Repricing submission on CD. The *Official Bid Price Sheet* is provided as a separate excel file posted with this *Bid Solicitation*. In addition to the pricing on the Official Pricing Sheet, vendors **must** submit Network Repricing on CD for a sample of drug claims provided by EBD. Network Repricing Table (Table E of the Official Price Sheet) **shall** be the basis for a portion of the Cost Score, along with the pricing of (Tables A, B and C of the Official Price Sheet).
- B. To allow time to evaluate proposals, prices on the Official Price Sheet **must** be valid for 120 days following the bid opening.
- C. The *Official Bid Price Sheet*, including the hard copy and electronic copy, along with the Network Repricing CD **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing".

NOTE: The Official Price Sheet contains two tabs

- D. Failure to complete and submit the *Official Bid Price Sheet* and the Network Repricing **shall** result in disqualification.
- E. The State **shall not** be obligated to pay any costs not identified on the *Official Bid Price Sheet*. Any cost not identified on the *Official Bid Price Sheet* **shall** be borne by the vendor.
- F. Vendor **must not** include any pricing from the *Official Bid Price Sheet* or *Network Repricing* in the hard copies or electronic copies of their *Technical Proposal Packet*.
- G. All proposal pricing **must** be in United States dollars and cents.
- H. Throughout the term of this contract, as requested by EBD or as required by law, the State **shall** have the right to add or remove any services offered by the vendor under the scope of this contract. These services may be existing optional services as offered in the vendor's proposal, or they may be newly created services based on improving technology or federal or State mandates which fall under the scope of work. Pricing for any of these services, which are not already submitted on the Official Price Sheet, **shall** be negotiated if/when the services are added; **shall** be consistent with current contract pricing for similar services; and **shall** be agreed upon in writing between agency and vendor prior to implementation of the service.
- I. If at any time a 5% or greater change is made to EBD's population of members with prescription drug coverage, then EBD **shall** have the right to re-negotiate the PMPM fee. For example, if the plan no longer provides drug coverage to Medicare eligible retirees, the PBM **must** renegotiate a fee that more accurately reflects the new ratio of members to prescription drug claims.
- J. If at any time EBD determines there is a sizable increase in claim cost compared to the submitted network repricing the vendor **must** provide a detailed explanation. Price increases that cannot be justified as reasonably determined by EBD, **shall** result in damages.
- K. The Official Bid Price Sheet may be reproduced as needed.

- L. The drug claims sampling for Network Repricing will be provided to the vendor on CD. The CD will contain data for approximately 645,000 claims. The vendor **must** provide their Network Repricing for each drug claim by filling in the required fields in the spreadsheet on the CD provided. The Network Repricing Totals from the CD **must** be entered into Table E of the Official Price Sheet. The original CD, and a copy CD, must be submitted in the pricing packet.
- M. All Network Repricing submissions will be reviewed by an actuary and a managed care pharmacy expert chosen by EBD to ensure the viability of the Network Repricing costs and the acceptability of any and all assumptions and caveats. If the actuary and the pharmacy expert determine a vendor's Network Repricing submission is not viable or that assumptions and caveats are unacceptable (for example, if pricing does not reflect market conditions and as a result, the overall numbers are manipulated to be falsely low) that vendor **shall** be disqualified.
- N. To obtain a copy of the CD containing the Network Claims Data Files for pricing submission, a request **must** be made in writing to Jessica Lowder at the State Procurement Office. Email, fax, or hard copy deliveries of requests are acceptable. Upon receipt of the request and necessary shipping information, the vendor will be notified by email that a copy of the CD will be shipped within one business day. Standard shipping will be through the U.S. Postal Service. If requested, shipment can also be made through UPS or Fed Ex. A Fed-Ex pre-paid account number or a UPS shipping label **must** be provided to cover costs for these deliveries.

To request the CD:

- By mail: Office of State Procurement
1509 West Seventh Street, Room 300
Little Rock, AR 72201-4222
Attn: Jessica Lowder
- By email: jessica.lowder@dfa.arkansas.gov
- By fax: 501-324-9311
Attn: Jessica Lowder

In your request, provide:

- Company name and address where CD is to be shipped
- Contact name, address, email, and phone number
- Desired method of shipment: USPS, FedEx, or UPS
- If FedEx or UPS:
 - State desired shipping time (standard, 2-day, overnight, etc.)
 - Provide pre-paid Fed-Ex account number or UPS shipping label to cover cost of shipping
 - Provide physical shipping address (not PO Box)

NOTE: The Official Price Sheet, and the CD containing the Network Repricing spreadsheet, must be sealed together in a separate package from the rest of the proposal and clearly marked as "Pricing". Pricing information must not be included in the technical response.

1.14 PRIME CONTRACTOR RESPONSIBILITY

- A. A joint proposal submitted by two 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 with regard to services and all Requirements.

1.15 INDEPENDENT PRICE DETERMINATION

- A. By submission of this proposal, the vendor certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
- The prices in the proposal 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 proposal by the Office of the Attorney General. All vendors **shall** understand that this paragraph may be used as a basis for litigation.

1.16 **PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. One complete copy of the submission documents from which any proprietary information has been redacted should be submitted in electronic format with your proposal.
- 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 empty space from which information was redacted.
- D. It is the responsibility of the vendor to identify all proprietary information and to ensure 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.

1.17 **CAUTION TO VENDORS**

- N. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through OSP.
- O. Vendor **must not** alter any language in any solicitation document provided by the State.
- P. Vendor **must not** alter the Official Bid Price Sheet or the Network Repricing format.
- Q. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- R. Proposals **must** be submitted only the English language.
- S. 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.
- T. Vendor **must** provide clarification of any information in their response documents as requested by OSP.
- U. Proposed services **must** meet or exceed the specifications as set forth in this *Bid Solicitation*.
- V. Vendors may submit multiple proposals.

1.18 **REQUIREMENT OF ADDENDUM**

- A. This *Bid Solicitation* **shall** 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 addenda to the *Bid Solicitation* prior to submission of response.
- C. There will be no addenda to a *Bid Solicitation* three (3) calendar days prior to the bid opening, unless the addenda extends the bid opening date or cancels 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 addenda up to bid opening.

1.19 **AWARD PROCESS**

A. Award Determination

1. A State Procurement Official will be responsible for award and administration of any resulting contract.
2. Award **shall** be made on an all or none basis.
3. The Grand Total Score for each vendor, which **shall** be a sum of the Technical Score and Cost Scores, **shall** be used to determine the ranking of proposals. The vendor with the highest ranking proposal **shall** move forward to the next step in the solicitation process.

B. Negotiations

1. If the State so chooses, it **shall** have the right to conduct negotiations with the highest ranking vendor. All negotiations **shall** be conducted at the sole discretion of the State. The State **shall** solely determine the items to be negotiated.
2. If negotiations fail to result in a contract, the State **shall** declare the vendor as non-responsive and will begin the negotiation process with the next highest ranking vendor. The negotiation process will be repeated until an anticipated successful vendor has been determined, or until such time the State decides not to move forward with an award.

C. 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.

1.20 **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 *Proposal Signature Page*.

1.21 **EQUAL 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 to have an *EO Policy* **must** submit a written statement to that effect.

1.22 **PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

- N. 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.
- O. 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.

1.23 **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.

1.24 **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.

1.25 **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.

1.26 **VISA ACCEPTANCE**

- N. Awarded vendor(s) should have the capability of accepting the State's authorized VISA Procurement Card (p-card) as a method of payment.
- O. Price changes or additional fee(s) **shall not** be levied against the State when accepting the p-card as a form of payment.
- P. VISA is not the exclusive method of payment.

1.27 **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 proposal to be disqualified.

1.28 **RESERVATION**

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

SECTION 2 – MINIMUM REQUIREMENTS

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

2.1 INTRODUCTION

EBD and its partners have historically taken a hands-on approach in managing the pharmacy benefit. EBD has a longstanding relationship with the University of Arkansas for Medical Sciences College of Pharmacy's Evidence-Based Prescription Drug Program (EBRx) and, through this relationship, many of the functions typically handled by a traditional Pharmacy Benefits Manager (PBM) are handled internally. For this reason, a subset of traditional PBM services comprises the nucleus of this proposal. Pharmacy Rebate Services will not be part of this RFP or a resulting contract.

2.2 BACKGROUND INFORMATION / CURRENT ENVIRONMENT OF REQUIRED SERVICES

Note: This information is provided for the prospective vendors to have a better understanding of the current required services that **must** be provided. Plan design and all rules **shall** be subject to change.

EBD currently covers approximately 135,000 employees, retirees, and dependents under its self-funded Health Plan program that collectively represents two distinct groups, the Public School Employees (PSE) group and the Arkansas State Employees (ASE) group. Effective date for the PBM Plan year **shall** be January 1, 2016 for both ASE and PSE groups. Customer service responsibilities are currently shared between the PBM and EBD, with the PBM handling all pharmacy service issues and EBD handling all member service issues.

A. The effective date of this contract **shall** be January 1, 2016.

B. The pharmacy Plan **shall** share the goals which are mandated for the Arkansas State and Public School Life and Health Insurance Board as defined in Arkansas Code 21-5-401 et seq.:

- Set and manage policies for the health insurance and life insurance programs of state and public school employees;
- Work in a concerted effort toward a common goal of parity between public school and state employee insurance programs;
- Improve the quality of health care services under the program;
- Increase participants' understanding of program features;
- Slow the rate of growth in health care expenses under the programs.

C. EBD **shall** have sole authority to control and administer the Plan under the policies established by the Board. The current required Plan design includes:

- A four-tier formulary for generic, brand formulary, brand non-formulary, and specialty (\$15 / \$40 / \$80 / \$100) for the traditional POS Plan
- Two HSA qualified High Deductible PPO Plans.
- Prior Authorization (PA) of some medications;
- Quantity Limits (QL)
- Daily Dose Edits that are intended to prevent wastage and unnecessary costs;
- Daily Dose Edits in order to eliminate inappropriate utilization of medications intended for once daily use;

- Reference Pricing (RP),
- Step-Therapy (ST), a method of encouraging the use of lower cost, but therapeutically effective alternatives to new and potentially more expensive drugs.

D. All pricing **shall** incorporate a “lesser than” logic to ensure lowest price for the Plan. The Plan currently has no incentive for mail order or for multiple month supply for maintenance medications.

E. The following data is provided for the prospective vendors to better understand currently required services which **must** be provided. It is subject to change with or without advance notice.

1. Eligibility

- a. Eligibility **shall** be defined by applicable State law and the policies of the Board, and as such can change from time to time during the term of this contract. Currently, eligible members **shall** be those employees and retirees along with their respective dependents as defined in the current Summary Plan Description (SPD). EBD **shall** be the sole source in determining eligibility.
- b. Eligibility structure (Accounts, Groups, Member IDs): The following structure is an example of what can be used to manage the Plan. The PBM **shall** be responsible for any conversion to and from the required structure (including on submitted claims and payment files.)

Accounts:	PSE	ASE	Description
Group:	PSPREM	ARPREM	Premium – actives, retirees, Cobra
	PSPRIM	ARPRIM	Primary – subscriber is Medicare primary
	PSPRIB	ARPRIB	Primary – both subscriber/spouse are Medicare primary
	PSPRIR	ARPRIR	Primary – non-Medicare retirees
	PSCLAS	ARCLAS	Classic – high deductible Plan
	PSBASE	ARBASE	Basic – high deductible Plan

- c. **Member Identification (ID) Number:** PBM **shall** utilize the unique member ID number as provided from the EBD eligibility system. This is an eight digit number assigned to every member (subscribers and dependents) in EBD’s system (for example: 12345601). The first six digits are common among all members associated with the subscriber / contract (for example: 123456) with the last two digits defining the sequence of members (for example: 01) joining the Plan.

Structure examples:

PSE Active member 12345601 would have a group number of PSPREM

ASE COBRA member 98765401 would have a group number of ARPREM

EBD Employees: Employees of the EBD will have differential group numbers to protect member information.

2. Eligibility periods:

- a. Members **shall** be allowed to enroll during an employee’s initial period of eligibility following new employment.
- b. Open Enrollment **shall** be the period announced by EBD to allow eligible subscribers to join the Plan, change coverage, or add/drop eligible dependents.

- c. Special Enrollment **shall** be based on numerous events that occur throughout the Plan year including but not limited to marriage, birth / adoption, etc.
- d. Eligibility **shall** be provided to the PBM electronically using the EBD required transactions, EBD-determined file layout, and on the schedule determined by EBD. The PBM **shall** be required to accept the transactions as sent by EBD. Any conversion of the data to meet a PBM's system requirements **shall** be the responsibility of the PBM.
- e. The following is a sample of the various eligibility transactions included in a typical eligibility file. Any of the following could have future or retroactive effective dates. The listing is provided for informational purposes and **shall not** be considered an all-inclusive list of eligibility transactions.
 - 1. New member/dependent enrollment
 - 2. Member/dependent termination
 - 3. Member/dependent adding and/or dropping various benefits
 - 4. Member moves between participating employer groups
 - 5. Dependent moves from participating primary member to another primary member
 - 6. Member/dependent status changes from active to retiree or COBRA status
 - 7. Member/dependent becomes eligible for Medicare
 - 8. A lapse is added to a member/dependent coverage
 - 9. Member address changes

3. Current Claims Utilization

The following information is to provide vendors with a high-level view of the utilization of the Plan for the periods shown below. Information below is for informational purposes only, presented in good faith, and based on reports generated by current PBM. The utilization of a resulting contract may be greater or lesser than the data depicted below, and the vendor **must** administer the program as specified regardless of utilization.

Current Claims Utilization 2014

Pharmacy Claims	Total	Specialty	Mail	Retail	Percentage
Paid	2,751,134	3,806	1,238	2,746,090	82%
Rejected	319,787	4,866	608	314,313	10%
Reversed	267,662	5,592	621	261,449	8%
Total	3,338,583	14,264	2,467	3,321,852	100%

Total number of claims processed are from the EBD Database for Jan 1, 2014 to Dec 31, 2014

OTC Claims	Total	Specialty	Mail	Retail
Paid	78,490	1	20	78,469
Rejected	37,948	18	40	37,890
Reversed	18,356	16	8	18,332
Total	134,794	35	68	134,691

OTC claims are included in the total pharmacy claims columns above

ASE 6-1-15 to 6-30-15

	Actives	Retirees	Medicare	COBRA	Total
<u>Basic</u>	1636	34	0	2	1672
<u>Classic</u>	3091	82	0	2	3175
<u>Premium</u>	42,738	2780	0	119	45,277
<u>Primary</u>	0	449	11490	0	11,939
Total ASE Insured	47,105	3345	11,490	123	62,063

PSE 6-1-15 to 6-30-15

	Actives	Retirees	Medicare	COBRA	Total
<u>Basic</u>	3,579	151	0	5	3,735
<u>Classic</u>	39,343	1,860	0	116	41,319
<u>Premium</u>	26,566	1,301	0	45	27,912
<u>Primary</u>	0	218	0	0	218
Total PSE Insured	69,488	3,530		166	73,184

Grand Total Insured 135,247

Claims utilization January and February 2015

Pharmacy Claims*	Total	Specialty	Mail	Retail	Percentage
Paid	430,645	666	150	429,829	83%
Rejected	49,585	714	155	48,716	10%
Reversed	39,994	1,160	19	38,815	8%
Total	520,224	2,540	324	517,360	100%

Total number of claims processed are from the EBD Database for Jan 1, 2015 to Feb 28, 2015

OTC Claims	Total	Specialty	Mail	Retail
Paid	12,045	0	3	12,042
Rejected	7,007	3	5	6,999
Reversed	2,474	0	1	2,473
Total	21,526	3	9	21,514

* OTC claims are included in the total pharmacy claims columns above

Current Prescription / Utilization Summary

Top 10 Therapeutic Classes by Plan Paid Amount: 1/1/2013 – 12/31/14	
Therapeutic Class	Total Plan Paid
Antidiabetic Agents	\$31,976,477
Analgesics	\$19,606,207
Psychotherapeutic Agents	\$16,351,246
Antineoplastics	\$12,639,155
Antiasthmatics	\$12,131,747
Antidepressants	\$10,237,422
Antivirals	\$9,423,442
ADHD Agents	\$9,073,494
Dermatologicals	\$8,633,480
Antihypertensives	\$8,492,007

Top 10 Therapeutic Classes by Plan Paid Amount: 1/1/2013 – 12/31/14	
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Antivirals	\$9,423,442
ADHD Agents	\$9,073,494
Dermatologicals	\$8,633,480
Antihypertensives	\$8,492,007

4. **Current Generic Dispensing Rate:** **88%**

5. **Current Formulary Management Rules – as adopted by the Board**

- a. Formulary changes for existing covered medications that are not due to significant clinical, access or financial reasons **shall be** only made at the beginning of a Plan year.
- b. New products not currently covered by the Plan in some other form **shall not** be added to the formulary until a clinical review is completed by the Drug Utilization and Evaluation Committee (DUEC). EBRx **shall** bring new products to the DUEC for review in regards to any of the following conditions:
 - i. When newly available on the market
 - ii. When requested by EBD, a member, a provider or the Board
 - iii. As part of a class review
 - iv. During a mid-quarter emergency review
 - v. When medical literature shows a significant change in outcomes or availability of new clinical data
- c. New generic products **shall** be placed in the same tier in which their equivalent brand product is placed until such time that the cost of the generic product has significantly decreased.

- d. Branded products that have an equivalent generic available **shall** apply the generic, tier 1, copayment plus the difference in the Plans' cost between the generic and brand product.
- e. Excluded drugs **shall** be reviewed in regards to any of the following conditions:
 - i. When requested by EBD or the Board
 - ii. As part of a class review
 - iii. When medical literature shows a significant change in outcomes or availability of new clinical data
- f. Financial appeals of formulary rules **shall not** be allowed; evidence of a medical reason to change a formulary rule will be considered by DUEC as part of a class review. This rule encompasses traditionally tiered drugs, reference priced drugs, and certain excluded drugs.
- g. Applicable state and federal laws **shall** be followed for the utilization of covered medications. Specific requirements will be outlined in requirement section.

2.3 **GENERAL REQUIREMENTS**

- A. The PBM **must** provide claims processing, financial reporting, and all other actions in a transparent and open environment as determined by EBD and described herein. All functions, operations and services performed by the vendor **shall** be open for inspection and completely transparent to any EBD internal or designated external auditor. Any contradictory terminology either stated or otherwise implied by the language in this RFP is purely accidental and **shall** be construed as requiring full transparency in the operation.
- B. EBD requires a fully transparent/pass-through financial pricing arrangement with the PBM. "Transparency" refers to financial arrangements which represent a direct and complete pass-through of all elements of negotiated provider pricing (e.g. discounts & dispensing fees, etc). The PBM **shall not** retain a differential between the amount reimbursed to the PBM by the EBD for each transaction and the payments made to the retail pharmacies by the PBM. Additionally, transparent administration means, but is not limited to mean, full and open administrative practices involving all aspects of the contractual relationship between EBD and the vendor, where all aspects of the operation or financial accounting **shall** be available for EBD's review regardless of confidentiality, proprietary or exclusive rights and / or privileges.
- C. The only compensation the PBM **shall** receive from or on behalf of the EBD for the services described in this proposal or any subsequent contract, **shall** be the PBM's quoted fees listed on the Official Price Sheet, or agreed upon in writing through subsequent discussion with the EBD.
- D. As indicated on the Official Bid Price Sheet Table C, the total "Implementation Fee" charged by the vendor for expenses incurred during implementation of the program **shall** be indicated as a One Time Fee and **shall** be payable at the end of implementation, anticipated as December 31, 2015.
- E. All services including claims processing, data storage / collection, and customer / provider services **must** be provided within the continental United States, and data **shall not** be allowed to leave the U.S.
- F. All data **shall** be the property of EBD and the use thereof, for any purpose other than payment and analysis, **shall** be specifically precluded unless authorized in writing by EBD. All data and information created or maintained as a result of this agreement **shall** be the property of EBD and **must** be provided to EBD in a format approved by EBD upon request within three (3) business days.
- G. Although the regulations affecting this Plan under Patient Protection and Affordable Care Act (healthcare reform) are evolving, the PBM **must** operate in full compliance with any and all applicable State and federal laws and **shall** advise the Executive Director of EBD as to potential changes required of the Plan based on new regulations.

- H. EBD **shall** have full ownership of the formulary.
- I. Vendor **must** agree that the rate of reimbursement and any dispensing fee amount, of which the Board has full authority and ownership, **shall** be subject to change at direction of the Board.
- J. All specialty medications may be dispensed at all network Arkansas pharmacies.
- K. Vendor **must** provide access to the claims adjudication system to EBD's chosen representative (Currently EBRx) to process Prior Authorization (PA) requests.
- L. EBD **shall** have the final decision as to the interpretation of any clause, issue, or discrepancy contained within this RFP and with any resulting contract.

2.4 QUALIFICATION REQUIREMENTS

- A. Vendor **must** currently be administering at least one large (in excess of 35,000 covered lives) self-funded pharmacy Plan.
- B. Vendor **must** have a minimum of five (5) years' experience in providing the PBM services including but not limited to claims processing and network administration to be procured through this competitive process.
- C. Vendor **must** have a minimum of five (5) years' experience in the development and implementation of network management, claims payment, and customer service for large self-funded pharmacy Plans.
- D. Vendor **must** have a minimum of five (5) years' experience in the development and implementation of claims administration system incorporating ANSI X12 HIPAA transactions including but not limited to the 834 eligibility file.
- E. Vendor **must** have experience coordinating the development, implementation, and management of a public employer pharmacy benefit Plan.
- F. Vendor **must** be licensed / legally authorized to conduct business as a PBM in the State of Arkansas.

2.5 ADMINISTRATIVE REQUIREMENTS

- A. Vendor **must** provide transparent administration of the Plan as determined by EBD and as defined in this RFP.
- B. Throughout the life of this contract, the Board and EBD's coverage policy decisions **shall** be final.
- C. Vendor **must** provide access via web portal to adjudication system to EBRx staff to enter, modify and process PA requests.
- D. Vendor **must** utilize the secure messaging and task service, currently a secure component of the ARBenefits administration system, as defined and developed by EBD.
- E. Vendor **must** utilize secure file transfer protocol as defined by EBD.
- F. Vendor **must** coordinate with EBD's Health Plan benefit coordinators for deductible / out-of-pocket accumulation tracking within 2 business days of processing a claim and provide "real time" deductible/out of pocket coordination with the health carriers.
- G. Vendor **must** coordinate all external communications, i.e. mail outs, pertaining to the ARBenefits Health Plan through the EBD Communications Manager such as but not limited to members, pharmacies, providers.
- H. The Board **shall** have full discretionary control over all prescription drug pricing covered through this Plan.
- I. EBD **shall** have final determination over which drugs are termed Generic.

- J. Vendor **must** agree that all pricing and processing logic **shall** remain identical within mail, retail and specialty pharmacies unless specified by EBD or agreed to during implementation. Vendor **shall not** price claims differently for any pharmacy that is owned or is a subsidiary of the PBM unless specified by EBD.
- K. Effective Discounts **shall not** be used in claims processing logic, reporting, performance standards or any activity regarding the Plan unless specifically requested and approved by EBD. Above discount rates **shall** be subject to change at direction of the Board on a prospective or retrospective basis.
- L. EBD and its clinical consultant (currently EBRx) **shall** be the sole determiner of Maximum Allowable Cost (MAC) pricing. Vendor **shall** update MAC prices (or allow EBD to update MAC prices) as specified by EBD in no less than one (1) business day. PBM **must** analyze all EBD MAC changes and advise in three (3) business days if such changes will affect network contracts or agreed upon discount rates.
- M. Vendor **must** provide duplicate electronic copies of each and every MAC list as well as other source documents as requested by EBD on a schedule and method to be determined by EBD.
- N. MAC lists **must** remain identical across all distribution channels (mail, retail and specialty) unless specified by EBD. EBD may choose to take MAC management entirely in house. If management is taken in house, Vendor **must** notify EBD of any negative effects to pharmacy network contracts related to MAC changes via email or EBD secure task system before MAC changes are implemented.
- O. Out of state mail and specialty pharmacies **shall not** be promoted or provide discounted copays to members unless specified by EBD.
- P. Vendor **must** maintain and provide EBD with any and all MAC lists used for EBD business. Such lists **must** be provided to EBD on a schedule and method to be determined by EBD. Vendor **must** report via EBD secure task system on weekly basis medications that have price increases or decreases in order for EBD to manage prices and predict Plan spend. EBD will work with the vendor to determine which medications to include on the report.
- Q. Vendor **must not** accept any fees payable to the PBM and/or any applicable subsidiary / sub-contractor by any third-party as a result of the management and operation of a resulting contract the prescriptions filled pursuant to the contract with EBD. Vendor **shall** only be allowed to collect “fees” or request payment for items disclosed on the price sheet or Network Repricing. Any variances in pricing **shall not** be allowed.

2.6 ELIGIBILITY

- A. Vendor **must** accept the eligibility file, eligibility changes and enrollment periods as defined by EBD.
- B. The vendor **must** convert any data (for example member identifiers) to meet their system requirements. Any conversion problems **must** be reported to EBD within 24 hours of discovery via EBD secure task system.
- C. The Vendor **must** process enrollment additions, changes, and deletions correctly within three (3) calendar days of the creation date of the file provided by EBD. Additions, changes, and deletions sent correctly by EBD but not processed correctly by the vendor **must**, to the extent permissible under applicable law, be retroactively corrected back to the original date, even if correction occurs more than 60 days following the date of the event. The vendor **must** notify EBD within 24 hours of discovery via EBD secure task system and take aggressive steps for correction. This **must** occur at no charge to EBD.
- D. Incomplete or unreadable information received by the vendor from EBD **must** be reported to EBD within 24 hours of discovery via EBD secure task system
- E. The vendor **must** provide an eligibility reconciliation file that provides basic demographic and Plan selection information by the third business day of each month using a file layout provided by EBD.
- F. EBD will provide a monthly full eligibility file to vendor in a HIPAA-compliant format on a date determined by EBD. The vendor **must** provide an enrollment mismatch report to EBD within fourteen (14) calendar days of the creation date of the full file. EBD will work with the vendor to provide information or make any necessary

corrections in EBD's eligibility system. The vendor **must** make needed corrections upon receipt of the necessary information.

2.7 NETWORK DEVELOPMENT AND MANAGEMENT

- A. Vendor **must** maintain and manage a compliant and comprehensive pharmacy network both in the State of Arkansas and across the country.
- B. The Vendor **must** have an online, Arkansas-based network with at least (ninety-five) 95% of Arkansas pharmacy providers included and an online national network with at least 50,000 participating pharmacies.
- C. Network pharmacies **shall** receive all of the EBD payment for adjudicated claims submitted thereby. The PBM **shall not** retain any portion thereof based upon any agreement between the PBM and its network pharmacies even if this requires a new agreement between the vendor and its pharmacies.
- D. Payments for claims by EBD and to network pharmacies **shall** be based upon the same updated version of the ingredient cost file. Although the PBM **must** audit its network pharmacies on behalf of the Plan, EBD **shall** have the right to additionally audit them.
- E. The PBM **shall** notify EBD of any internal or external pharmacy desk audits undertaken and of the resulting discrepancies identified, if any on a frequency and method to be determined by EBD.
- F. The PBM **shall** ensure that all network pharmacy audits are in compliance with applicable State and federal laws.
- G. EBD **shall** have the right to remove any pharmacy from the EBD network. The PBM **must**, upon request from EBD, remove a pharmacy in no less than five (5) business days. Failure to do so **shall** result in damages listed under Attachment C/Performance Standards. EBD **shall** have final determination regarding removal of a pharmacy within its network.
- H. Vendor **must** have the ability to modify network reimbursement administration to implement differential reimbursement for enhanced clinical services if requested by EBD. (i.e. increased dispensing fee for pharmacies that engage in medication therapy management).
- I. Vendor **must** maintain all provider contracts, terms and conditions, and **must** ensure contracts are available for inspection and review by EBD upon request.
- J. Vendor **must** handle all pharmacy provider quality and customer service issues.
- K. EBD **shall** have final determination on MAC prices and vendor **must** follow all applicable federal and State MAC laws.

2.8 CLAIMS PAYMENT

- A. The vendor **must** aggressively pursue the collection of overpayments to members and pharmacy providers in a manner and frequency to be determined by EBD. Vendor **must** also pursue Plan payments that are the responsibility of other third-party payers / insurers.
- B. Vendor **must** provide adverse benefit determination information to members consistent with federal mandates.
- C. Vendor **must** work cooperatively with EBD's contracted utilization review, case management and health claims payor.
- D. The Board **shall** retain the authority to require pre-authorization or other restrictions for any medication at any time.
- E. All claims payments **must** be made in accordance with applicable State or federal law to include but be not

limited to process and timelines.

- F. Vendor **must** provide detailed daily claims payment file, including paid, reversed and rejected claims, in a secure format to be determined by EBD.
- G. Vendor **must** provide coordination and facilitation of claims payment and / or secondary filing for Medicare part B qualified medications.
- H. Vendor **must** submit claims processing fee on a per paid claim basis on the Official Price Sheet.

2.9 **ADMINISTRATIVE / EXECUTIVE SUPPORT**

- A. Vendor **shall not** undertake a major conversion for, or related to, the system used to deliver services to the Plan without prior specific written notice of implementation to EBD. This does not apply to any program fixes, modifications and enhancements. EBD shall have the right to reject any proposed conversion.
- B. Vendor **must** provide an account manager residing in the greater Little Rock area to be the primary point of contact for all issues that arise with regard to the Plan, and it **shall** be the account manager whom EBD management **shall** hold accountable. The account manager **must** have the authority to escalate issues for immediate resolution and those instructions given to vendor staff from the account manager **must** be taken as if directly given from EBD management.
- C. The Account Manager **shall** be required to attend Board and Benefits meetings typically held on a monthly basis at EBD
- D. Vendor **must** agree to immediately change the assigned account manager at the direction of EBD management.
- E. Vendor **must** accept full financial liability for any costs incurred due to erroneous claims processing performed as a result of negligent act by the PBM. When both EBD and members perform their respective functions in good faith, EBD and members **shall not** be held financially responsible by the vendor and **shall not** be exposed to billing from the provider.
- F. Vendor **must not** make Plan coverage changes in their system without a written request from EBD management.
- G. Vendor **must** provide consulting services regarding vendor services, administration, or any of the services outlined in this RFP and/or as determined by EBD to support this program and EBD's objectives. Such consulting **shall not** be deemed legal advice and **must** be viewed as a standard service of the vendor and not a billable event. This service shall be included in the administrative cost.
- H. Vendor **must** agree to meet regularly with EBD and/or the Arkansas State and Public School Life and Health Insurance Board to report on general progress of services and interaction with members. These meetings **shall** occur as follows:
 - 1. During implementation, meetings **shall** be on a weekly basis or as requested by EBD.
 - 2. After implementation, meetings **shall** be on a quarterly basis or as requested by EBD.

2.10 **AUDITS**

- A. Vendor **shall** allow EBD, their chosen representatives and the Arkansas Division of Legislative Audit to conduct audits of all records maintained by the Vendor relative to this contract. All Subcontractors of Vendor **shall** also be held to this requirement. At minimum, EBD will give Vendor a least forty-eight (48) hours' notice of the audit.
- B. All pharmacies **shall** be audited against the same criteria.

- C. Pharmacy audits **shall not** use extrapolation to determine results.
- D. Vendor **shall** abide by the audit timeline specified by EBD, their chosen representatives and/or the Arkansas Division of Legislative Audit.
- E. Vendor **shall** grant EBD, their chosen representatives and the Arkansas Division of Legislative Audit, the right to reasonable inspection of facilities, equipment, and system support operations to ensure the continued ability of vendor to support the Plan.
- F. All audits **shall** take place at a site designated by EBD during the business hours of Monday to Friday 8am through 5pm central time
- G. Vendor **shall** perform an IT audit on an annual basis and **must** provide a copy of results to EBD.

2.11 **INVOICING**

- A. Paid claims **shall** be paid based on PBM submitted adjudicated claims after reconciliation and processing by EBD to determine validity.
- B. Vendor **must** provide separate invoice and paid claims details for ASE and PSE, with further details for Active (including COBRA), early retirees, and Medicare-Primary retirees on a schedule and in a format defined by EBD.
- C. Vendor **must** manage recoupment of claims using a process and schedule to be defined by EBD.
- D. Vendor **must** provide separate administration invoices for the ASE and PSE Plans on a monthly basis and claims on a weekly basis. The timeline for submitting the invoices as well as the invoice format **shall** be determined by EBD.
 - 1. Invoices **must** be on vendor letterhead;
 - 2. At minimum, the following information **must** be included on invoices:
 - a. Date
 - b. Name and contact information for Vendor.
 - c. Payment instructions including bank routing number and account number
- E. Vendor **must** pay all contracted pharmacies (whether payment is by check or EFT/ACH).

2.12 **REPORTING**

- A. Vendor **must** provide reporting based on the divisions defined by EBD (e.g., ASE/PSE, Group Numbers, etc), in formats approved by EBD, subject to deadlines determined by EBD.
- B. Vendor **must** provide on a schedule and in a format approved by EBD:
 - A monthly accounting report of claims
 - A quarterly Performance Standards report detailing any standards not met for that quarter.
 - A yearly summary report for date of service by Plan by year,
 - A year-end report at the appropriate Plan-year end,
 - Any additional requested data for actuarial analysis by deadline established by EBD and in format established by EBD.

- C. Vendor **must** provide a response to all requests for additional information within a 24-hour period.
- D. Vendor **must** provide, within ten (10) days of beginning implementation, a copy of the data dictionary for all fields that are operational in any administration system used on the Plan. This data dictionary **must** include the length of the field and a specific description of the data stored in each field.
- E. Vendor **must** provide pharmacy payment details in format and frequency determined by EBD. Data must be auditable and verifiable and, at a minimum, able to cross reference to claims payment requests to EBD and payment details from the Plan.
- F. Vendor **must** submit any applicable IRS Form 1099 (or other required forms) to the pharmacy providers and IRS on EBD's behalf.
- G. Vendor **must** provide a letter to EBD stating the 1099 process has been completed on behalf of EBD by March 15th of each year.
- H. Vendor **must** agree to comply with the Unclaimed Property Act 18-28-201 on behalf of EBD and **must** submit monies and report directly to the Auditor of State's Office.
- I. Vendor **must** provide a letter to EBD stating that the Unclaimed Property Act 18-28-201 has been complied with on behalf of EBD by November 15th of each year.
- J. Vendor **must** report to EBD, at least annually, all financial terms and arrangements for remuneration of any kind that apply between the PBM and any prescription drug manufacturer or labeler including but not limited to:
 - 1. Marketing, advertising, and promotional fees;
 - 2. Formulary management and drug switch programs;
 - 3. Data sales fees;
 - 4. Educational support and travel;
 - 5. Formulary management fees,
 - 6. Market share rebates,
 - 7. Data collection fees,
 - 8. Soft dollar payments as:
 - a) Health management fees,
 - b) Grants,
 - c) Disease management fees, or research.
- K. Vendor **must** provide EBD, upon request, a duplicate copy of any Average Wholesale Price (AWP) source file so that each individual claim may be re-priced during an audit.
- L. Vendor **must** identify source of AWP on each paid claim.
- M. Vendor **must** provide a comprehensive reporting package and reporting tool whereby EBD staff or their designated representatives can generate standardized and ad-hoc reports on-demand.

2.13 PRIVACY AND SECURITY

- A. Prior to award, Vendor **must** complete and sign the Business Associate Agreement (Attachment A) posted with the RFP.
- B. Vendor employees and representatives **must** complete the System Confidentiality Agreement (Attachment B) prior to implementation, prior to performing any work on this contract, or prior to accessing any member's information.
- C. Vendor and any subcontractor(s) **must** provide evidence with bid submission that the data systems utilized to transmit and warehouse any member information is SAS-70 Level II and/or SSAE-16 compliant.

Note: **THIS DOCUMENT MUST BE ADDED TO THE TECHNICAL PROPOSAL PACKET**

- D. Vendor **must** have the capability to remove or mask all but the last four (4) digits of a member's Social Security Numbers (SSN) from any printed report, letter or other form of communication.
- E. Vendor **must** have the capability to use an alternative member identification number (non SSN) for communication and reporting. Alternate identification number **must** be mutually agreed upon by Vendor and EBD.
- F. Vendor **must not** use, sell, or otherwise disclose any employee or Plan information to an outside party unless specifically provided in order to comply with the requirements and operations of the Plan. Any disclosure of this information **must** be subject to the written approval of EBD.
- G. Vendor **must** comply with HIPAA and other federal and/or State mandates to include privacy, security and electronic data transfer requirements.
- H. If requested by EBD, vendor **must** provide information regarding training provided to Vendor's staff pertaining to Internal Revenue Code, ADA, HIPAA and other regulatory issues/laws. This **must** contain the following:
 - 1. Staff's qualifications.
 - 2. Training.
 - 3. Certifications.
 - 4. Any other pertinent information as determined by EBD.
- I. Any current and future employees of the vendor or subcontractors assigned to this account **must** have attended or **shall** attend HIPAA training prior to performing work on this account or accessing Plan records. Documentation of the training by the vendor will be accepted for off-site employees. On-site employees **must** attend training provided by EBD.
- J. Vendor **must**, provide EBD with an emergency operations/disaster recovery plan that includes redundant systems to avoid any loss of data. Vendor's Disaster recovery plan must be submitted with vendor's proposal.

2.14 IMPLEMENTATION

- A. An "administration" fee of any kind **shall not** be paid during implementation on any basis. Applicable administration fees **shall** be paid beginning on the month of "go live" which is currently scheduled for January 1, 2016 unless an alternate date is agreed upon between EBD and the vendor. EBD **shall** have final determination of the date.
- B. The State of Arkansas Employee Benefits Division **shall not** accept any Implementation Bonus or Incentive or other payment from the vendor or other third party for or as a result of their selection from this RFP, and any payment of this type **must not** be added to the Official Price Sheet.

- C. Vendor **must** make technical updates and changes necessary for full implementation by January 1, 2016. Vendor **must** acknowledge and accept that EBD **shall** have the right to impose an implementation penalty as described in the Performance Standards for any failure to meet established goals including but not limited to full implementation by January 1, 2016.
- D. Vendor **must** acknowledge and agree that a significant amount of configuration will likely be needed to properly address established rules, exclusions, limitations, and other elements of current design that cannot be effectively provided within this RFP. The vendor **shall** be responsible for these configurations
- E. The one time implementation fee **must** be submitted on the Official Bid Price Sheet TABLE C and **shall** be included in the low cost determination.

2.15 **WEBSITE MANAGEMENT**

- A. Vendor must have the capabilities to develop and implement a trusted link between the ARBenefits Member page and the vendor website with limited programming and administrative support provided by EBD staff.
- B. Vendor **must** have a secure website to provide plan information for participating members.
- C. Vendor website **must** be available 100% of the time, unless it is unavailable due to scheduled maintenance. Maintenance **must** occur between midnight and 6:00 am central time.
- D. Vendor's website **must** reflect the actual and accurate formulary, in searchable form, adopted by the Board so that a member can examine any potentially covered medication.
- E. The site shall be sensitive to the Health Plan specific election to indicate correct co-payment, deductible, or co-insurance amount.
- F. EBD **shall** test website structure and pages, and review content for usability as determined by EBD; usability concerns **must** be resolved within two (2) business days.
- G. Vendor's website **must** comply with Arkansas laws for accessibility.

2.16 **PERSONNEL ADMINISTRATIVE SUPPORT**

- A. Through former and current PBM contracts, the PBM has provided EBD on site staff, selected by EBD and funded by reimbursement by EBD to the vendor. This practice **shall** continue under a resulting contract.
- B. While EBD manages this staff, all employee timekeeping **shall** be the responsibility of the vendor.
- C. EBD **shall** have the right to request 1-12 on-site employees. If, for any reason, the employee quits or EBD determines the position is no longer available, then EBD **shall** notify the vendor and **shall not** continue to reimburse the vendor for that position.
- D. An invoice for wage compensation (salary only) **shall** be sent monthly to EBD based upon the number of employees currently working and the number of days worked.
- E. Benefits, bonuses, other compensation for vendor employees **shall** be at vendor's expense.
- F. If any fees are charged for this service, indicate on Table B –Staffing of the Official Price Sheet. Fee **must** be based on per employee per month.
- G. Current on site staff:

- 5 on-site employees staffed as equivalent to a SOA C114 level employee-\$27,900 salary per employee annual
 - 5 on-site employees staffed as equivalent to a SOA C115 level employee-\$29,300 salary per employee annual
 - 2 on-site employees staffed as equivalent to a SOA C116 level employee-\$30,800 salary per employee annual
- H. EBD **shall** have the right to retain the current employees provided under the current PBM contract, and the new vendor **must** assist with transition of those employees to employment under the new PBM.
- I. Vendor employees assigned to EBD as on-site staff **shall** comply with applicable EBD and/or State policies concerning: agency related policies, dress code, hours of operation and State Holidays or holidays designated by the Governor's proclamation, and all other policies applicable to State or EBD employees.
- J. EBD **shall** have the right to meet any personnel assigned by the Vendor to this project and to recommend and/or require reassignment of personnel deemed unsatisfactory by EBD.

2.17 VENDOR'S RESPONSIBILITIES UPON TERMINATION OF RESULTING CONTRACT

- A. In the event the resulting contract should be terminated, cancelled or expire, the vendor shall assist EBD and the new vendor, to the extent as EBD determines necessary, to ensure an orderly transfer of responsibility and the continuity of those services required under the terms of the contract to another organization designated by EBD.
- B. Vendor **shall** provide at no charge, all records, documentation, reports, data, recommendations, or printing elements, etc., which are required to be produced under the terms of the contract to EBD or to EBD's designee, within seven (7) days of EBD's request, contract termination or contract cancellation. Method of delivery **shall** be determined by EBD. This requirement does not refer to the Vendor's intellectual property.
- C. Vendor **shall** provide all services to execute the successful transition of services data. Except for as specifically agreed to by EBD, it is anticipated that EBD's main role will be supervisory to ensure that all of EBD's needs are sufficiently and successfully met.
- D. All data, records, files and other information relating to the programs **shall** be the property of EBD and **must** be released to EBD in the event the contract is ended.
- E. At the time of termination, all information relating to membership information **must** be made available to EBD in both a secure electronic and printed format. Electronic format **shall** mean both electronic images of paper documentation and data extract.

2.18 ELECTRONIC TRANSACTIONS

- A. Vendor and/or its subcontractors **shall** handle all electronic records and/or any other electronic transactions on behalf of EBD according to all State and Federal laws, the Standards for Electronic Transactions as defined by HIPAA/HITECH as well as the SAS-70 Level II and/or SSAE-16 compliant statutes and regulations.
- B. Vendor and/or its subcontractors **must** have the ability to support e-prescribing: Sending accurate, error-free and legible prescriptions to a pharmacy from point-of-care.
- C. Vendor **shall** comply with all confidentiality and HIPAA requirements as they pertain to a member's confidentiality of their personal information.
- D. Vendor **shall** provide to EBD the name, title and contact information for Vendor's Privacy Officer before or during the implementation process.

2.19 BENEFITS ADMINISTRATION

- A. Currently EBD programs the benefit and Plan design in the PBM's claims adjudication software. EBD wishes to no longer perform this function in-house, the vendor **must** program all benefit setup changes, including but not limited to claims processing and Plan design, as directed by EBD.
- B. Unless approved by EBD, changes **must** be made within five (5) business days from request and **must** have documented and auditable quality control measures reported to EBD.
- C. For numerous or complex changes that take beyond 5 days (such as significant benefit structure changes) a mutual timeline **must** be agreed to by EBD and the vendor. (Failure to implement changes as specified by EBD **shall** result in damages as specified in Attachment C.

2.20 RETIREE DRUG SUBSIDY (RDS) REPORTING AND SUPPORT

- A. Vendor **must** complete any and all required reporting to the Center for Medicaid and Medicare (CMS). This specifically applies to but **shall not** be limited to the Medicare RDS reporting. Eligibility file format **shall** be determined by EBD.
- B. Vendor **must** provide full RDS support to EBD.

2.21 DESIRABLE CAPABILITIES

- A. It is highly preferable that vendor's pre-authorization logic system incorporate medical claims for systemic validation and authorization.
- B. It is preferable that EBD be provided access to data wholesaler cost information.
- C. It is preferable that the vendor has the capacity to benchmark the Plan with other clients of similar characteristics (size, geography, industry etc.).

2.22 OPTIONAL SERVICES

- A. The vendor **must** have the ability to implement a call center for member questions relating to the EBD formulary and prescription drug coverage. If EBD requires this service at a future date, the vendor **must** provide the following:
- B. Vendor **must** provide call center Monday-Friday 8-6 CST to handle member questions related to prescription drug formulary, pricing issues, complaints, and other drug specific information.
- C. Vendor call center staff **must** have the ability to access pharmacy system to perform functions, such as vacation overrides, under the direction of EBD.
- D. Calls **must** be answered by a live, English speaking representative.
- E. If needed for Spanish speaking members, vendor **must** provide transfer to a Spanish speaking representative or use a translation service.
- F. Call Center **must** utilize a toll free 1-800 number.
- G. Calls **must** be returned within 24 hours for any questions requiring research.

2.23 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 a vendor **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 the input of the vendor so as to establish standards that are reasonably achievable.
- 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 **shall** result in the assessment of damages.
- G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend or respond to the insufficiency. The State **shall** have the right to waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services. 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, the agency **shall** direct the vendor as to the required compensation process.

SECTION 3 – CRITERIA FOR SELECTION

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

3.1 TECHNICAL PROPOSAL SCORE

- A. OSP will review *Technical Proposals Packets* to verify submission Requirements have been met. *Technical Proposals Packets* that do not meet submission Requirements **shall** be disqualified and **shall not** be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying Technical Proposals. Evaluation **shall** be based on vendor's response to the *Information for Evaluation* section included in the *Technical Proposal Packet*. 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 been assigned a maximum point value. 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	x Weighted Percentage =	Maximum Weighted Score Possible*
E.1 Organizational Details	40	5%	30
E.2 Implementation	25	5%	30
E.3 Process Management	40	13%	78
E.4 Utilization Management	10	5%	30
E.5 Help Desk	15	5%	30
E.6 Pharmacy Audit	25	5%	30
E.7 System Information	65	13%	78
E.8 Reporting Capability	30	7%	42
E.9 Online Capability	30	5%	30
E.10 Disaster Recovery	25	5%	30
E.11 Eligibility Processing	30	5%	30
E.12 Network Management	40	13%	78
E.13 Specialty Pharmacy Services	15	2%	12
E.14 Mail Order Services	15	2%	12
E.15 Compliance	15	10%	60
Totals	420	100.0%	600

- D. The vendor's weighted score for each sub-section **shall** 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. 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 raw score of 252 out of 420 **shall not** move forward in the solicitation process and pricing **shall** remain sealed and **shall not** be scored.

3.2 **NETWORK REPRICING INFORMATION AND REQUIREMENTS**

- A. The data for Network Repricing will be provided by OSP on an encrypted CD which contains three months of claims history. The data will be provided in three separate file categories on the CD labeled as (1) Brand Repricing File, (2) Generic Repricing File, and (3) Specialty Repricing File. These file categories are provided as both excel and pipe delimited files.
- B. The pipe delimited files are provided strictly as a tool for the vendor to assist with their network pricing determination.
- C. The vendor **must** submit their Network Repricing on the original CD provided by OSP by completing the following three columns for each separate claim in each of the three excel files:
 - 1. Column F: Approved Ingredient Cost
 - 2. Column G: Approved Dispensing Fee
 - 3. Column H: Calculated Approved Drug Cost
- D. Network Repricing costs **must** reflect the following directives:
 - 1. All costs **must** be before copay.
 - 2. Vendor **must** price each file separately using the contracted reimbursement rates of the pharmacy network being proposed.
 - 3. Cost discounts for pharmacies owned or associated with the PBM **shall not** be different than in-network Arkansas pharmacies.
 - 4. All in-network Arkansas pharmacies **shall** dispense specialty medications for EBD, where appropriate. Dispensing restrictions **shall not** be placed on in-network Arkansas pharmacies.
 - 5. Costs **shall not** take into account U&C, Zero Balance, Full Copay or Submitted pricing, as EBD has removed these fields and will use the data to compare AWP discounts, dispensing fee, MAC and Specialty Pricing in a manner which does not contain alternative assumptions by proposing PBMs.
 - 6. MAC pricing **must** remain identical between all pharmacies and distribution channels. AWP discounts for all drugs (Brand, Specialty, and non-MAC'd generics) **must** also remain identical between all pharmacies and distribution channels. For example if the vendor proposes a specific AWP discount through mail order, the same rate **must** apply within the retail pharmacy network.
 - 7. Vendor **must** provide the best pricing that can be obtained for a full pass-through, broad network, with no dispensing restrictions for in network pharmacies.
 - 8. Vendor **must** use proposed discounts, current MAC pricing where applicable, and AWP as published on July 1, 2015.
 - 9. Vendor **must not** factor rebate dollars or negotiated discounts into the pricing.
 - 10. Vendor **must not** use any ancillary assumptions and/or caveats in their cost analysis beyond any which are industry standard. The acceptability of what constitutes industry standard shall be determined by the actuary and the managed care pharmacy expert during the review of the pricing.
 - 11. If larger discounts can be obtained through an exclusive or alternate arrangement, this may be discussed during implementation but **must not** be reflected in the pricing submission.
- E. Except for entering costs in columns F, G, and H, the vendor **must not** change, add, or delete data or formatting in any place on any of the electronic files. If any data or formatting is changed, added, or deleted on

a vendor's Network Repricing submission, either intentionally or inadvertently, the vendor's proposal **shall** be disqualified.

- F. The Aggregated Total from Column H: Calculated Approved Drug Cost **must** be determined by the vendor for each separate excel file provided on the CD and **must** be entered into Table E of the Official Price Sheet, along with the Grand Total of Network Repricing.
- G. The original CD with the vendor's submitted Network Repricing entered, along with an additional copy CD of the Network Pricing Submission, **must** be sealed in the pricing packet along with the Official Price Sheet.
- H. All Network Repricing submissions will be reviewed by an actuary and a managed care pharmacy expert chosen by EBD to ensure the viability of the Network Repricing costs and the acceptability of any and all assumptions and caveats. If the actuary and the pharmacy expert determine a vendor's Network Repricing submission is not viable or that assumptions and caveats are unacceptable (for example, if pricing does not reflect market conditions in a way that manipulates the overall numbers resulting in a falsely low total cost) that vendor **shall** be disqualified.

3.3 **SCORING OF NETWORK REPRICING COST**

The maximum amount of points for Network Repricing Cost (200) **shall** be awarded to the vendor with the lowest Grand Total of Network Repriced Cost as indicated in Table E on the Official Price Sheet. The amount of points awarded to the remaining vendors **shall** be allocated by using the following formula:

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

- A = Lowest Grand Total of Network Repriced Cost
- B = Second (third, fourth, etc.) Lowest Grand Total of Network Repriced Cost
- C = Maximum points for Network Repricing Cost (200)
- D = Number of Network Repricing Cost points scored for that particular proposal

3.4 **SCORING OF COST FROM OFFICIAL PRICE SHEET**

- A. The maximum amount of cost points for Official Price Sheet cost (200) **shall** be given to the vendor with the lowest Three Year Grand Total of Tables A, B and C on the Official Bid Price Sheet.
- B. The amount of cost points given to the remaining vendors for Official Price Sheet cost **shall** be allocated by using the following formula:

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

- A = Lowest Three Year Grand Total Cost
- B = Second (third, fourth, etc.) Lowest Three Year Grand Total Cost
- C = Maximum Points for Lowest Three Year Grand Total Cost
- D = Total Cost Points Received for the Official Price Sheet

3.5 **OVERALL TOTAL SCORE**

The Technical Score, Network Repricing Score and Official Price Sheet Score will be added together to determine the Overall Total Score for the vendor. The vendor with the highest Overall Total Score **shall** be selected as the apparent successful vendor. See *Award Process*.

	Maximum Points Possible
Technical Proposal	600
Network Repricing Cost	200
Cost from Official Price Sheet	200
Maximum Possible Overall Total Score	1,000

3.6 VENDOR ACCEPTANCE OF EVALUATION TECHNIQUE

- A. The submission of a *Technical Proposal Packet* **shall** signify vendor's understanding and agreement that subjective judgments **shall** be made by the evaluation committee and by the actuary and pharmacy managed care expert during the evaluation and scoring of the Technical Proposals and the Network Repricing.
- B. Vendor **must** agree to all evaluation processes and procedures as defined in this section.

SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS

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

4.1 PAYMENT AND INVOICE PROVISIONS

- A. All invoices **shall** be forwarded through the EBD Task system to the Account Payable Supervisor.
- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance 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. Should any compensation be owed to the agency due to the assessment of damages per the performance standards, the vendor **shall** follow the required compensation process as directed by the agency.
- G. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- H. Selected vendor **must** be registered to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/vendor/index.html>

4.2 GENERAL INFORMATION

- A. The State **shall not** lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a 30 day written notice to the vendor/lessor in the event funds are not appropriated.
- B. The State **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- C. The State **shall not** pay damages, legal expenses or other costs and expenses of any other party.
- D. The State **shall not** continue a contract once any equipment has been repossessed.
- E. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- F. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- G. The State **shall not** enter a contract which grants to another party any remedies other than the following:
 - The right to possession.
 - The right to accrued payments.
 - The right to expenses of 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.

4.3 **CONDITIONS OF CONTRACT**

- A. The vendor **shall** at all times observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of this contract which in any manner affect the completion of the work.
- B. The vendor **shall** indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the vendor.

4.4 **STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but **shall** 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. At no time **shall** the State 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 \$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 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. Neither the vendor nor the State **shall** 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. Nothing in these terms and conditions **shall** be construed or deemed as the State's waiver of its right of sovereign immunity. The vendor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

4.5 **RECORD RETENTION**

- A. The vendor **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.
- B. Financial and accounting records **shall** be 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.

4.6 **PRICE ESCALATION**

- A. Price increases for costs on the Official Price Sheet 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.

4.7 **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 the contract.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

4.8 **CONTRACT INTERPRETATION**

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

4.9 **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 may cancel the contract or purchase order by giving the vendor written notice of such cancellation 30 days prior to the date of cancellation.
- B. Upon default of a vendor, the State **shall** agree to pay only sums due for services and goods received and accepted up to cancellation of the contract.

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 the vendor **shall** be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it **shall not** be affected by such declaration or finding and **shall** be fully performed.

SECTION 5 – STANDARD TERMS AND CONDITIONS

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

1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
3. **BID SUBMISSION:** Original 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.