



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

INVITATION FOR BID

IFB Number: SP-16-0115	Buyer: Tim O'Brien Email: Timothy.O'Brien@dfa.arkansas.gov
Commodity: Power Generator Equipment Electrical Equipment & Supplies Arkansas Department of Correction	Bid Opening Date: October 20th, 2015
Date Issued: October 6, 2015	Bid Opening Time: 1:30 PM Central Daylight Time

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

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

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

Name (type or print): _____

Title: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

Signature: _____

USE INK ONLY. UNSIGNED BIDS WILL NOT BE CONSIDERED

Business Designation
(check one):

Individual []

Sole Proprietorship []

Public Service Corp []

Partnership []

Corporation []

Government/ Nonprofit []

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TYPE OF CONTRACT:	FIRM
AGENCY P.R. NUMBER	1000724652

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

Check minority type: African American____ Hispanic American____ American Indian____ Asian American____
Pacific Islander American____ Service Disabled Veteran____

Arkansas Minority Certification Number_____

2. **EQUAL EMPLOYMENT OPPORTUNITY POLICY:** In compliance with Arkansas Code Annotated § 19-11-104, the Office of State Procurement is required to have a copy of the vendor's Equal Opportunity Policy prior to issuing a contract award. EO Policies may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov, or as a hard copy accompanying the solicitation response. The Office of State Procurement will maintain a file of all vendor EO policies submitted in response to solicitations issued by this office. The submission is a one- time requirement, but vendors are responsible for providing updates or changes to their respective policies, and for supplying EO policies upon request to other state agencies that must also comply with this statute. Vendors that do not have an established EO policy will not be prohibited from receiving a contract award, but are required to submit a written statement to that effect.

3. **PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS:**

- 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.
- 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.

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

5. **REQUIREMENT OF AMENDMENT:** THIS IFB MAY BE MODIFIED ONLY BY AMENDMENTS WRITTEN AND AUTHORIZED BY THE OFFICE OF STATE PROCUREMENT. Bidders are cautioned to ensure that they have received or obtained, and responded to, any and all amendments to the bid prior to submission. There will be no addendums to a bid 72 hours prior to the bid opening. It is the responsibility of the vendor to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php> for any and all addendums up to that time.

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

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7. **ADDITIONAL TERMS AND CONDITIONS:** The Office of State Procurement objects to, and shall not consider, any additional terms or conditions submitted by a bidder, including any appearing in documents attached as part of a bidder's response. In signing and submitting his bid, a bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a bid, shall be grounds for rejecting a bid.
8. **ANTICIPATION TO AWARD:** After complete evaluation of the solicitation, the anticipated award will be posted on the Office of State Procurement website. The purpose of the posting is to establish a specific time in which vendors and agencies are aware of the anticipated award. The bid results will be posted for a period of fourteen (14) days prior to the issuance of any award. Vendors and agencies are cautioned that these are preliminary results only, and no official award will be issued prior to the end of the fourteen-day posting period. Accordingly, any reliance on these preliminary results is at the agency's/vendor's own risk.
- The Office of State Procurement reserves the right to waive the Anticipation to Award when it is determined to be in the best interest of the State.
9. **PAST PERFORMANCE:** In accordance with provisions of The State Procurement Law, R7: 19-11-229 Competitive Sealed Bidding - Bid Evaluation paragraph (E) (i) & (ii): a vendor's past performance with the state may be used in the evaluation of any bid made in response to this solicitation. The past performance should not be greater than three years old and must be supported by written documentation on file in the Office of State Procurement at the time of the bid opening. Documentation may be in the form of a written or an electronic report, VPR (Vendor Performance Report), memo, file or any other appropriate authenticated notation of performance to the vendor files.
10. **VISA ACCEPTANCE:** Awarded contractors should have the capability of accepting the State's authorized VISA Procurement Card (p-card) as a method of payment. Price changes or additional fee(s) may not be assessed when accepting the p-card as a form of payment. The successful bidder may receive payment from the State by the p-card in the same manner as other VISA purchases. VISA acceptance is preferred but is not the exclusive method of payment.
11. **EO-98-04 GOVERNOR'S EXECUTIVE ORDER:** Bidders should complete the Disclosure Forms issued with this bid.
12. **CURRENCY:** All bid pricing must be United States dollars and cents.
13. **LANGUAGE:** Bids will only be accepted in the English language.

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SECTION 1 - GENERAL INFORMATION

1.1 INTRODUCTION:

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for the Arkansas Department of Correction to obtain pricing and a contract for the purchase, delivery and installation of a new generator and automatic transfer switch.

1.2 ISSUING AGENCY:

The issuing office is the sole point of contact in the State for the selection process. Vendor questions regarding IFB related matters should be made through the State's buyer, Tim O'Brien at 501-324-9320 or Timothy.O'Brien@dfa.arkansas.gov. Vendor's questions will be answered as a courtesy and at vendor's own risk.

1.3 CAUTION TO BIDDERS:

1. During the time between the bid opening and contract award, any contact concerning this IFB should be initiated by the issuing office or requesting entity and not the vendor. Specifically, the person(s) named herein will initiate all contact.
2. Vendors must submit one (1) signed original IFB response on or before the date specified on page one. Failure to submit the required number of copies with the bid may be cause for rejection. If the Office of State Procurement requests additional copies of the bid, they must be delivered within twenty-four (24) hours of request.
3. The State Procurement Official reserves the right to award a contract or reject a bid for any or all line items of a bid received as a result of this IFB, if it is in the best interest of the State to do so. Bids will be rejected for one or more reasons not limited to the following:
 - a. Failure of the vendor to submit his bid(s) on or before the deadline established by the issuing office.
 - b. Failure to sign an Official Bid Document.
 - c. Failure to complete the Official Bid Price Sheet(s).
 - d. Any wording by the vendor in their response to this IFB, or in subsequent correspondence, which conflicts with or takes exception to a requirement in the IFB.
 - e. Failure of any proposed goods or service to meet or exceed the specifications.

1.4 BID FORMAT:

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

1.5 TYPE OF CONTRACT:

This will be a firm contract (one time purchase).

1.6 PAYMENT AND INVOICE PROVISIONS:

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

All invoices **shall** be forwarded to:
Arkansas Department of Correction
Attention: Accounts Payable/Purchasing
P.O. Box 6408
Pine Bluff, AR 71611

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

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1.7 RECORD RETENTION:

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

Financial and accounting records **shall** be made available, upon request, to the State of Arkansas' designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.

1.8 PROPRIETARY INFORMATION:

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

1.9 RESERVATION:

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

1.10 PRIME CONTRACTOR RESPONSIBILITY:

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

1.11 CONDITIONS OF CONTRACT:

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

1.12 STATEMENT OF LIABILITY:

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

1.13 AWARD RESPONSIBILITY:

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

1.14 AWARD CRITERIA:

Award shall be made on an **ALL OR NONE** basis. Bids must meet or exceed all defined specifications. Bids must meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.

1.15 DELEGATION AND/OR ASSIGNMENT:

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

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1.16 COST:

All charges, including all shipping, handling, delivery and freight charges **must** be included on the Official Bid Price Sheet and **must** include all associated cost, including installation of all equipment and/or materials being bid. Bid pricing must be valid for 60 days following IFB opening to allow sufficient time to tabulate and evaluate bid responses.

NOTE:

1. The State will not be obligated to pay any costs not identified on the Official Bid Price Sheet.
2. Any cost not identified by the bidder but subsequently incurred in order to achieve proper generator and transfer switch installation and operation in accordance with all requirements and specifications **shall** be borne by the bidder.

1.17 DELIVERY: FOB DESTINATION

THE ARKANSAS DEPARTMENT OF CORRECTION REQUIRES AN ITEMIZED LIST OF ALL MATERIALS AND/OR EQUIPMENT TO BE DELIVERED. THE LIST WILL BE SUBMITTED TO ADC 10 DAYS PRIOR TO DELIVERY. IF THE LIST IS NOT PROVIDED 10 DAYS PRIOR TO DELIVERY THE SHIPMENT WILL BE REFUSED.

Ship to:
Cummins Unit Poultry Operation
2540 State Hwy 388
Gould, AR 71643

The agency requests project final completion within 90 days after receipt of the order. If final completion cannot be met within 90 days the bidder must state the number of days required for final completion. Failure to state the number of days required for project final completion obligates the bidder to complete project final completion by the agency's requested 90 day time frame. Extended delivery dates may be considered when in the best interest of the state.

Project Final Completion _____ days after receipt of order.

1.18 LIQUIDATED DAMAGES:

All commodities furnished will be subject to inspection and acceptance after delivery. Failure to meet specifications authorizes the Office of State Procurement to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor.

It is expressly acknowledged by the Contractor that the damages to the State for the Contractor's failure to perform its responsibilities in any form as agreed upon in this Contract will result in damages to the State, damages which are difficult to calculate. Accordingly, damages will be imposed by the State against the contractor for failure to meet the Final Project Completion schedule in the amount of Two Hundred Dollars (\$200.00) for each day that Final Project Completion is delayed beyond the specified Project Completion date as adjusted for time extensions provided by the Contract Documents as liquidated damages and not as a penalty. The contractor shall be relieved of delays due to causes beyond his control such as acts of God, national emergency, strikes or fire. The Office of State Procurement may assess such liquidated damages for late delivery in all cases except those that relate to causes beyond the contractor's control. The contractor must notify in writing, on a timely basis, the Office of State Procurement and the Ordering Agency of such developments stating reason, justification and extent of delay. Liquidated damages provided for in this contract must be verified and approved in writing by the Office of State Procurement prior to application by the ordering agency. Ordering agency shall have the right to deduct liquidated damages from any amount due or that may become due to the Contractor. The Office of State Purchasing has the option to enforce liquidated damages or to waive such damages.

1.19 CANCELLATION:

In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, the State may cancel the contract or purchase order by giving the contractor written notice of such cancellation thirty (30) days prior to the date of cancellation.

SECTION 2: SPECIFIC REQUIREMENTS

2.0 SCOPE:

The Office of State Procurement is seeking bids for a generator and automatic transfer switch for the Arkansas Department of Correction (ADC) Cummins Poultry Operation. All shipping and handling charges must be included in bid price.

Vendor will be responsible for delivery, offloading and insuring that the new equipment is properly set in place on the mounting surface. The vendor will then be responsible for final termination of the control power from the generator to the transfer switch, startup, and training of designated personnel upon request by ADC.

2.1 SUBMITTALS:

Forty five (45) days prior to delivery of any equipment, awarded vendor **must** provide a complete set of submittals including; installation drawings. Submittals **must** include three (3) printed copies and one (1) electronic copy of owner/operator/service manuals for the equipment being furnished. All manuals must be printed in the English language.

2.2 WARRANTY SERVICE:

All equipment and controls must have a full 1 year 100% parts and labor warranty. Parts, travel, mileage, fuel surcharges, labor and overtime must be included at no charge to the Arkansas Department of Correction for the one year warranty period.

Vendor **must** respond to site for in-warranty repairs within 24 hours of notification by ADC personnel.

Upon project completion and acceptance, vendor should provide a technician contact name and phone number for repair service.

2.3 PRODUCT SPECIFICATIONS:

1. Emergency Generator

Base unit with steel weather enclosure and 24 hour diesel tank. Kohler Emergency standby generator set, Model 600REOVZB or approved equal. 600KW @ 277/480 VAC, 3 phase, 60 HZ, UL2200 listed. Diesel fueled engine, 16.2 Liter minimum, operating at 1800 RPM. Digital control panel per NFPA-110 – Level 1 with local emergency stop switch. PMG alternator with minimum 2200 starting KVA at 110% sustained voltage. 1200 amp main output. Circuit breaker 3 pole, 600V, Square D, UL listed. Engine block heater rated 480V, 1 phase input. 1,030 gallon (minimum capacity) double wall subbase fuel tank, UL142 listed. **DIESEL TANK CAPACITY MUST NOT EXCEED 1,315 GALLONS.**

2. Automatic Transfer Switch

Automatic Transfer Switch, Kohler KCS-DMTC-1200S or approved equal. 1200 amps @ 277/480 VAC 3 phase, 3 pole, solid neutral 60Hz. Mpac 1500 digital display. **CONTROLLER MUST BE CAPABLE OF STORING AND DISPLAYING LAST 1000 DATE & TIME STAMPED EVENTS.** Inphase monitor Nema 3R enclosure controller programming to all three-source system functionality (one utility and two generator sets).

2.4 MANDATORY SITE VISIT:

The mandatory site visit will be conducted on October 12th, 2015 at 1:00 PM Central Daylight Time

ALL bidders must attend the site visit. The site visit form provided on page 10 of this document MUST be signed by an authorized ADC official at the time of the site visit.

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OFFICIAL PRICE SHEET

<u>ITEM DESCRIPTION</u>	<u>QUANTITY</u>	<u>PRICE</u>
1. Emergency Generator, Diesel	1 each	\$ _____
Brand and model of unit bid: _____		
2. Automatic Transfer Switch	1 each	\$ _____
Brand and model of unit bid: _____		

Failure to attend the scheduled mandatory site visit will result in bid rejection.

The mandatory site visit form on page #10 of this document must be completed and included with bid submission or bid will be rejected.

I HAVE READ AND UNDERSTAND PARAGRAPH 1.8 LIQUIDATED DAMAGES ON PAGE 6 OF 13.

COMPANY REPRESENTATIVE NAME: _____

COMPANY REPRESENTATIVE SIGNATURE: _____

DATE: _____

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OFFICIAL MANDATORY SITE VISITATION FORM

This form **must** be signed and dated by an authorized ADC official at the site visit.

Failure to include completed & signed site visitation form with submitted bid documents WILL result in disqualification.

The mandatory site visit/walk through will be held on October 12th, 2015 at 1:00 PM Central Daylight Time.

Prior to the walk through each bidder should carefully read the bid documents and thoroughly review the plans and specifications. Bidders should be prepared to ask any questions or voice any concerns at the site visit meeting.

For questions concerning the site visit contact: Scott McCarty at 870-643-9550.

Mandatory Site Visit Location: Arkansas Department of Correction
Cummins Poultry Operation
2540 State Highway 388
Gould, AR 71643

Name of Company attending site visit: _____

Name of attending Company Representative: (Please Print) _____

Signature of Company Representative: _____

Signature of ADC Official: _____

Date: _____

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STANDARD TERMS AND CONDITIONS

1. **GENERAL:** Any special terms and conditions included in the invitation for bid override these standard terms and conditions. The standard terms and conditions and any special terms and conditions become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
2. **ACCEPTANCE AND REJECTION:** The state reserves the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the state.
3. **BID SUBMISSION:** Bids must be submitted to the Office of State Procurement on this form, with attachments when appropriate, on or before the date and time specified for bid opening. If this form is not used, the bid may be rejected. The bid must be typed or printed in ink. The signature must be in ink. Unsigned bids will be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Each bid should be placed in a separate envelope completely and properly identified. Late bids will not be considered under any circumstances.
4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices shall govern. Prices are firm and not subject to escalation unless otherwise specified in the bid invitation. Unless otherwise specified, the bid must be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the bid invitation.
5. **QUANTITIES:** Quantities stated in **term contracts** are estimates only, and are not guaranteed. Bid unit price on the estimated quantity and unit of measure specified. The state may order more or less than the estimated quantity on term contracts. Quantities stated on **firm contracts** are actual requirements of the ordering agency.
6. **BRAND NAME REFERENCES:** Any catalog brand name or manufacturer's reference used in the bid invitation is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The state reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the state may require the bidder to supply additional descriptive material. The bidder guarantees that the product offered will meet or exceed specifications identified in this bid invitation. If the bidder takes no exception to specifications or reference data in this bid he will be required to furnish the product according to brand names, numbers, etc., as specified in the invitation.
7. **GUARANTY:** All items bid shall be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the bid invitation. The bidder hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which it was furnished. The bidder further guarantees that if the items furnished hereunder are to be installed by the bidder, such items will function properly when installed. The bidder also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The bidder's obligations under this paragraph shall survive for a period of one year from the date of delivery, unless otherwise specified herein.
8. **SAMPLES:** Samples or demonstrators, when requested, must be furnished free of expense to the state. Each sample should be marked with the bidder's name and address, bid number and item number. If samples are not destroyed during reasonable examination they will be returned at bidder's expense, if requested, within ten days following the opening of bids. All demonstrators will be returned after reasonable examination.
9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specifications, the cost of the sample used and the reasonable cost of the testing shall be borne by the bidder.
10. **AMENDMENTS:** The bid cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include state or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD: Term Contract:** A contract award will be issued to the successful bidder. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. **Firm Contract:** A written state purchase order authorizing shipment will be furnished to the successful bidder.
13. **LENGTH OF CONTRACT:** The invitation for bid will show the period of time the term contract will be in effect.

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- 14. DELIVERY ON FIRM CONTRACTS:** The invitation for bid will show the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost will be borne by the vendor.
- 15. DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery shall be made during agency work hours only 8:00 a.m. to 4:30 p.m., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.
- 16. STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
- 17. DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor must give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the bidders list or suspension of eligibility for award.
- 18. VARIATION IN QUANTITY:** The state assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
- 19. INVOICING:** The contractor shall be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the invitation for bid, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary state agencies. Invoices must be sent to the "Invoice To" point shown on the purchase order.
- 20. STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned.
- 21. PATENTS OR COPYRIGHTS:** The contractor agrees to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
- 22. ASSIGNMENT:** Any contract entered into pursuant to this invitation for bid is not assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
- 23. OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the state have the right to pursue any other remedy permitted by law or in equity.
- 24. LACK OF FUNDS:** The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. Any delivered but unpaid for goods will be returned in normal condition to the contractor by the state. If the state is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.
- 25. DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that: (a) the bidder will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the bidder will include the provisions of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

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- 26. CONTINGENT FEE:** The bidder guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business.
- 27. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this invitation for bid, the bidder named on the front of this invitation for bid, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this state for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
- 28. DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.