



**STATE OF ARKANSAS**  
Arkansas Economic Development Commission  
900 W Capitol Ave, Suite 400  
Little Rock, AR 72201

**REQUEST FOR QUALIFICATION**  
**BID SOLICITATION DOCUMENT**

SOLICITATION INFORMATION			
RFQ Number:	AED-16-0016	Solicitation Issued:	Wednesday, April 27, 2016
Description:	<b>DIGITAL MARKETING (A&amp;P)</b>		
Agency:	Arkansas Economic Development Commission		

SUBMISSION DEADLINE FOR RESPONSE			
Proposal Opening Date:	Friday, May 27, 2016	Proposal Opening Time:	2:00 p.m., Central Time
Responses <b>shall not</b> be accepted after the designated proposal opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit responses at the designated location on or before the proposal opening date and time. Responses received after the designated proposal opening date and time <b>shall</b> be considered late and <b>shall</b> be returned to the vendor without further review. It is not necessary to return "no bids" to AEDC.			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<b>Arkansas Economic Development Commission</b> Attn: Kim Davis 900 W Capitol Ave, Suite 400 Little Rock, AR 72201  Delivery providers, USPS, UPS, and FedEx deliver mail to AEDC's street address on a schedule determined by each individual provider. These providers will deliver to AEDC based solely on the street address.
Response's Outer Packaging:	Outer packaging <b>must</b> be sealed and should be properly marked with the following information. If outer packaging of response submission is not properly marked, the package may be opened for identification purposes. <ul style="list-style-type: none"><li>• RFQ number</li><li>• Date and time of proposal opening</li><li>• Vendor's name and return address</li></ul>

AGENCY CONTACT INFORMATION			
AEDC Buyer:	Kim Davis	Buyer's Direct Phone Number:	501-682-5997
Email Address:	KDavis@ArkansasEDC.com	Agency Main Number:	800-ARKANSAS
Agency Website:	<a href="http://www.arkansas.gov/dfa/procurement/bids/index.php">http://www.arkansas.gov/dfa/procurement/bids/index.php</a>		

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

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

### **1.1 SOLICITATION INFORMATION**

- A. The Arkansas Economic Development Commission (AEDC) requires advertising and/or marketing services for a variety of unique needs. In addition, these needs require a great deal of specialized marketing experience and skill with respect to the multi-channel challenges presented by today's marketing landscape.
- B. The purpose of this RFQ is to establish a contract for specific types of marketing and communications services.
- C. This RFQ is released in conjunction with two other related but separate RFQs for advertising and marketing services. Vendors responding to these RFQs **must** submit separate responses for each RFQ.

### **1.2 TYPE OF CONTRACT**

- A. A Term contract will be awarded to a single vendor.
- B. The term of this contract **shall** be for one (1) year. The anticipated starting date for the contract is July 1, 2016. Upon mutual agreement by the vendor and agency, the contract may be renewed by AEDC on a year-to-year basis, for up to six (6) additional one-year terms or a portion thereof.
- C. The total contract term **shall not** be more than seven (7) years.

### **1.3 ISSUING AGENCY**

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

### **1.4 PROPOSAL OPENING LOCATION**

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

Arkansas Economic Development Commission  
900 W. Capitol, Suite 400  
Little Rock, AR 72201

### **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 *RFQ Solicitation*, whether submitted in the vendor's response or in subsequent correspondence, **shall** cause the vendor's response 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* in the Vendor

Response Packet. Vendor **must** clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies. (See *Agreement and Compliance Page*.)

## 1.6 DEFINITION OF TERMS

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

## 1.7 RESPONSE DOCUMENTS

- A. Original Vendor Response Packet (separate document from this solicitation document)
  - 1. The original Vendor Response Packet **must** be submitted on or before the bid opening date and time.
  - 2. The Vendor Response Packet should be clearly marked “Original” and **must** include the following:
    - a. Original signed *Response Signature Page*. (See *Response Signature Page*.)
    - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
    - c. Response to the *Information for Evaluation* section included in the Vendor Response Packet.
    - d. Other documents and/or information as may be expressly required in this *RFQ Solicitation*.
  - 3. The following items should be submitted in the original Vendor Response Packet.
    - a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions, #27. Disclosure*.)
    - b. Copy of Vendor’s *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
  - 4. **DO NOT** include any other documents or ancillary information, such as a cover letter or generalized promotional/marketing information.
- B. **Pricing is not requested for this solicitation and must not be submitted with the bidder’s response. (See Pricing Section 1.13.)**
- C. Additional Copies and Redacted Copy of the Vendor Response Packet

**In addition** to the original Vendor Response Packet, the following items should be submitted:

1. Additional Copies of the Vendor Response Packet
  - a. One (1) complete hard copy (marked "COPY") of the Vendor Response Packet.
  - b. Four (4) electronic copies of the Vendor Response 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 AEDC requests additional copies of the response, the copies **must** be delivered within twenty-four (24) hours of request.
2. One (1) redacted copy (marked "REDACTED") the original Vendor Response 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 Response.
- B. The original *Response Packet* and all copies should be arranged in the following order.
  - *Response Signature Page.*
  - *All Agreement and Compliance Pages.*
  - Signed Addenda, if applicable.
  - E.O. 98-04 – *Contract Grant and Disclosure Form.*
  - *Equal Opportunity Policy.*
  - Other documents and/or information as may be expressly required in this *RFQ Solicitation*. Label documents and/or information so as to reference the *RFQ Solicitation's* item number.
  - Response to the *Information for Evaluation* section of the Vendor Response Packet.

### 1.9 CLARIFICATION OF RFQ SOLICITATION

- A. Vendors may submit written questions requesting clarification of information contained in this *RFQ Solicitation*. Written questions should be submitted by 4:00 p.m., Central Time on Tuesday May 3, 2016. Submit written questions by email to the AEDC buyer as shown on page one (1) of this *RFQ Solicitation*.
  1. For each question submitted, vendor should reference the specific solicitation item number to which the question refers.
  2. 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 Monday May 9, 2016.
- A. Vendors may contact the AEDC buyer with procurement-related questions at any time prior to the proposal opening.

- B. Answers to verbal questions may be given as a matter of courtesy and **must** be evaluated at vendor's risk.

#### **1.10 RESPONSE SIGNATURE PAGE**

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

#### **1.11 AGREEMENT AND COMPLIANCE PAGES**

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

#### **1.12 SUBCONTRACTORS**

Subcontractors are allowed to perform work under the terms of this contract with AEDC written approval.

#### **1.13 PRICING**

Pricing will be negotiated with the apparent successful vendor after the evaluation of responses. Vendor **must not** include any pricing in their response.

#### **1.14 PRIME CONTRACTOR RESPONSIBILITY**

- A. A joint response 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.

#### **1.15 PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *RFQ Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the Vendor Response Packet. A CD is also acceptable.

- C. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- D. The vendor **shall** be responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- E. The redacted copy **shall** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor.
- F. If a redacted copy of the submission documents is not provided with vendor's response packet, a copy of the non-redacted documents, with the exception of financial data, **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.

#### **1.16 CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this *RFQ Solicitation* **must** be addressed through AEDC.
- B. Vendor **must not** alter any language in any solicitation document provided by the State.
- C. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- D. Responses **must** be submitted only in the English language.
- E. 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.
- F. Vendor **must** provide clarification of any information in their response documents as requested by AEDC.
- G. Qualifications **must** meet or exceed the required specifications as set forth in this *RFQ Solicitation*.
- H. Vendors may submit multiple responses.

#### **1.17 REQUIREMENT OF ADDENDUM**

- A. This *RFQ Solicitation* **shall** be modified only by an addendum written and authorized by AEDC.
- B. An addendum posted within three (3) calendar days prior to the proposal opening **shall** extend the proposal opening and may or may not include changes to the RFQ Solicitation.
- C. The vendor **shall** be responsible for checking the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to proposal opening.

**1.18 QUALIFICATION AND AWARD PROCESS****A. Successful Vendor Selection**

The ranking of vendors **shall** be determined by the total score each Response receives in evaluation. The vendor receiving the highest score for their Response **shall** be selected as the apparent successful vendor and **shall** enter pricing negotiations with the agency.

**B. Negotiations**

1. The agency will enter pricing negotiations with the highest scoring vendor.
2. If the agency so chooses, it **shall** also have the right to enter discussions with the highest scoring vendor to further define contract details. All negotiations **shall** be conducted at the sole discretion of the State. The State **shall** solely determine the items to be negotiated.
3. If the agency and vendor cannot reach an agreement regarding contractual matters, including pricing, the State **shall** declare the vendor as non-responsive and will begin the negotiation process with the next highest scoring 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. Issuance of a Contract**

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

**1.19 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 *Response Signature Page*.

**1.20 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](mailto:eeopolicy.osp@dfa.arkansas.gov), but should also be included as a hardcopy accompanying the solicitation response.

- C. The submission of an *EO Policy* to OSP is a one-time Requirement. Vendors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute.
- D. Vendors who are not required by law by to have an *EO Policy* **must** submit a written statement to that effect.

#### **1.21 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

- A. Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected vendor(s) **must** have a current certification on file with OSP stating that they do not employ or contract with illegal immigrants.
- B. OSP will notify the selected vendor(s) prior to award if their certification has expired or is not on file. Instructions for completing the certification process will be provided to the vendor(s) at that time.

#### **1.22 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". Responses submitted by vendors determined to be non-responsible **shall** be disqualified.

#### **1.23 VISA ACCEPTANCE**

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

#### **1.24 PUBLICITY**

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

#### **1.25 RESERVATION**

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

#### **1.26 DATA AND DELIVERABLES**

- A. Upon completion of a contract, all property rights, to data shall be passed to AEDC. This includes all rights in relation to any patents, trademarks, etc. that may be associated. Upon transfer, data and the like, both intellectual and tangible, pertaining to any responsibilities including but not limited to print ads; radio, television ads; digital products, including Websites, social media, third-party data and analytics/records; data and products under the contract shall be delivered to AEDC without cost within a time frame of 60 calendar days of completion of the contract. These jobs are considered a



“work for hire” for AEDC. Contractor shall not hold ownership or intellectual property claim on any data, or the like.

- B. Each deliverable/product shall become the exclusive property of AEDC. Qualified Vendor shall not utilize any portion of the projects developed, including deliverables and creative concepts, without prior written consent of the Executive Director of AEDC.

## **SECTION 2 – MINIMUM REQUIREMENTS**

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

### **2.1 BACKGROUND INFORMATION**

- A. **AEDC History:** The Arkansas Industrial Development Commission (AIDC) was created in 1955 by Act 404 of the Arkansas General Assembly to make the state more economically competitive in the post–World War II era. The AIDC was renamed the Arkansas Economic Development Commission (AEDC).
- B. **AEDC Mission:** The mission of the Arkansas Economic Development Commission is to create economic opportunity by attracting higher paying jobs, expanding and diversifying our state and local economies, increasing incomes and investment, and generating positive growth throughout Arkansas by:
  - 1. Attracting new businesses to Arkansas (relocation)
  - 2. Creating new businesses in Arkansas (entrepreneurialism)
  - 3. Retaining current Arkansas businesses (retention)
  - 4. Expanding existing Arkansas businesses (expansion)
- C. **AEDC Strategic Marketing & Communications Objectives:** The overarching marketing and communications goals for AEDC are to (1) create awareness of Arkansas as a desirable location for relocating or growing a business, as well as (2) facilitate lead generation throughout the various divisions within the agency relevant to their particular conversion goals, not least of which is business development. Targeted audiences for all AEDC divisions and promotions include:
  - 1. Site Location Consultants
  - 2. C-level executives outside the state
  - 3. Arkansas businesses
  - 4. International businesses
  - 5. Workforce
  - 6. Media
- D. **Current AEDC Brand Narrative:** Arkansas Inc. “Good company.” Building on the momentum of seven, homegrown Fortune 500 companies and countless other stories of innovation and success, Arkansas is in the business of growing business. Led by a governor who operates like a CEO, the state has streamlined its processes and delivers the nimble solutions companies need to efficiently expand and thrive in a competitive global economy. Solutions that have *CNBC* consistently rank Arkansas as one of the lowest costs of doing business in the nation and prompted *Wired* magazine to report the state as “leading the learn-to-code movement” in training tomorrow’s market-relevant workforce. Come join this amazing new venture we call “Arkansas Inc.” and see how doing business in Arkansas can put you in some very good company.

### **2.2 VENDOR REQUIREMENTS**

- A. AEDC is seeking qualified professionals with demonstrable capabilities and experience in digital marketing.

- B. Vendor must have business-to-business (B2B) web development, interactive and content management system (CMS) experience and capabilities.
- C. Vendor must have content marketing experience and capabilities.
- D. Vendor must have inbound marketing experience and capabilities.
- E. Vendor must have lead generation and customer relationship management (CRM) experience and capabilities.
- F. Vendor must have data onboarding and marketing intelligence experience and capabilities.
- G. Vendor must have metrics, analytics and comprehensive reporting experience and capabilities.
- H. Vendor must have experience with outbound marketing, such as paid/dynamic display and programmatic media experience and capabilities.
- I. Vendor must have search engine optimization (SEO) experience and capabilities.
- J. Vendor must have search engine marketing (SEM), paid search, and keyword experience and capabilities.
- K. Vendor must have social media and niche network experience and capabilities.
- L. Vendor must have experience with digital video content for Web and mobile experience capabilities.
- M. Vendor must have mobile rendering and optimization experience and capabilities.
- N. Vendor must have email marketing, as well as A/B and multivariate testing experience and capabilities.
- O. Vendor must have mobile & multiplatform application development experience and capabilities.

## **2.3 PERFORMANCE STANDARDS**

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. Table 1 below identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **must** meet in order to avoid assessment of damages.
- B. AEDC 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. AEDC **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. Any and all changes made to the Performance Standards as agreed upon by AEDC and vendor **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, vendor **shall** follow the direction of the agency regarding the required compensation process.

TABLE 1: PERFORMANCE STANDARDS	
Acceptable Performance	Penalty if not met
Projects completed by mutually agreed upon deadline	Payment withheld until work is completed and accepted by AEDC

Additional performance standards to be discussed and agreed upon by vendor and AEDC upon contract award.

### **SECTION 3 – CRITERIA FOR SELECTION**

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

#### **3.1 RESPONSE SCORE**

- A. AEDC will review each Vendor Response Packet to verify submission requirements have been met. Response 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 *responses*. Evaluation will be based on vendor's response to the *Information for Evaluation* section included in the Vendor Response Packet (a separate document from this solicitation document). Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.
- C. The *Information for Evaluation* section has several response items or questions. Each response item or question has been assigned a maximum point value. The maximum score for any proposal is 400 points.

#### **3.2 VENDOR ACCEPTANCE OF EVALUATION TECHNIQUE**

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

**SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS**

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

**4.1 PAYMENT AND INVOICE PROVISIONS**

- A. All invoices **should** be forwarded to:

Arkansas Economic Development Commission  
Attn: MARKETING  
900 W. Capitol Ave, Suite 400  
Little Rock, AR 72201

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods and services by the agency.
- C. The State **shall not** be invoiced in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the vendor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The vendor should invoice the agency by an itemized list of charges. The agency's Purchase Order Number and/or the Contract Number should be referenced on each invoice.
- F. Other sections of this *RFQ Solicitation* may contain additional Requirements for invoicing.
- G. Selected vendor **must** be registered with the State in order to receive payment and future *RFQ 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 that 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** pay damages, legal expenses, or other costs and expenses of any other party.
- C. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- D. The State **shall not** agree to any provision of a contract that violates the laws or constitution of the State of Arkansas.
- E. 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 rights 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.

F. The laws of the State of Arkansas **shall** govern this contract.

G. A contract **shall not** be effective prior to award being made by a State Procurement Official.

H. 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 a resulting 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 will not be liable in the event of loss, destruction or theft of vendor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The vendor **shall** retain total liability for equipment, software and technical and business or operations literature. The State **shall** not at any time be responsible for or accept liability for any vendor-owned items.
- B. The vendor's liability for damages to the State **shall** be limited to the value of the Contract or \$1,000,000, whichever is higher. The foregoing limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The vendor and the State **shall not** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court

costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

- C. Language in these terms and conditions **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The vendor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

#### **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 *RFQ Solicitation* may contain additional Requirements regarding record retention.

#### **4.6 PRICE ESCALATION**

- A. Price increases will be considered at the time of contract renewal.
- B. The vendor **must** provide the State with 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. The State **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. The State **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 *RFQ Solicitation* concerning the confidentiality and secure handling of information of which they may become aware during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State **shall** have the right to cancel the contract on these grounds.
- C. Previous sections of this *RFQ 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 determination 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 **shall** give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination. The effective date of termination **shall** be 30 days from the date of notification, unless a longer timeframe is specified in the notification.
- B. Upon default of a vendor, the State **shall** agree to pay only sums due for goods and services received and accepted up to cancellation of the contract.

#### **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 Response Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Vendor Response 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 responses **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 responses 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** agrees 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 *Response 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.