



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

## INVITATION FOR BID

IFB Number: <b>SP-17-0043</b>	Buyer: <b>Judy Shirley, CPPB</b> Email: <a href="mailto:judy.shirley@dfa.arkansas.gov">judy.shirley@dfa.arkansas.gov</a>
Commodity or Service: <b>Pediatric Resuscitation System</b>	Bid Opening Date: <b>November 8, 2016</b>
Agency: <b>AR Department of Health</b>	
Date Issued: <b>October 19, 2016</b>	Bid Opening Time: <b>2.:00 p.m. Central Time</b>

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.

<b>MAILING ADDRESS:</b> Office of State Procurement 1509 West Seventh Street, Room 300 Little Rock, AR 72201-4222  <b>TELEPHONE NUMBER:</b> 501-324-9316	<b>BID OPENING LOCATION:</b> 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:	<b>TERM</b>
AGENCY P.R. NUMBER	<b>1000761662</b>

**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 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](mailto: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. 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.

**4. 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.

**5. 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.

**6. 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

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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.

**7. 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.

**8. 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.

**9. 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.

**10. EO-98-04 GOVERNOR'S EXECUTIVE ORDER**

Bidders should complete the Disclosure Forms issued with this bid.

**11. CURRENCY**

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

**12. LANGUAGE**

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

## **SECTION 1 - GENERAL INFORMATION**

### **1.1 INTRODUCTION**

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for **AR Department of Health (ADH)** to obtain pricing and a contract for **Pediatric Resuscitation Kits**.

### **1.2 COOPERATIVE PROCUREMENT PROGRAM PARTICIPATION**

Arkansas' Purchasing Law provides that local public procurement units (counties, municipalities, school districts, certain nonprofit corporations, and so forth) may participate in state procurement contracts. Therefore the contractor agrees to enter into an agreement with cooperative procurement program participants. Unless otherwise stated, all standard and special terms and conditions listed within the Invitation for Bid **must** be equally applied to such participants.

### **1.3 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, **Judy Shirley at (501) 324-9314** or by email: **judy.shirley@dfa.arkansas.gov**. Vendor's questions **will** be answered as a courtesy and at vendor's own risk.

### **1.4 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 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.** 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.

### **1.5 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.

### **1.6 TYPE OF CONTRACT**

Any resulting contract **will** be a one (1) year **TERM** contract from the date of award. Upon mutual agreement by the contractor and OSP, the contract may be renewed on a year-to-year basis, for up to **six (6)** additional one year terms or a portion thereof. In no event **shall** the total contract term be more than **seven (7)** years.

**1.7 PAYMENT AND INVOICE PROVISIONS**

All invoices should be forwarded to:  
AR Department of Health  
5800 W. 10<sup>th</sup> Street, Ste. 800  
Little Rock, AR 72204

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

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

**1.8 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' designees 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.

**1.9 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.

**1.10 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.

**1.11 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/or support.

If any part of the work **must** be subcontracted, vendor should include a list of subcontractors, including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractor's organizational activities in their technical bid response.

The contractor **shall** give OSP immediate notice, in writing, by certified mail of any action which, in the opinion of the contractor, may result in litigation related in any way to the contract or the State.

**1.12 CONTRACT INFORMATION**

1. The State of Arkansas may not contract with another party:
  - a. To lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows cancellation by the State Procurement Official upon thirty (30) days written notice whenever there are no funded appropriations for the equipment or software.
  - b. To indemnify and defend that party for any liability and damages. However, the State Procurement Official may agree to hold the other party harmless from any loss or claim resulting directly from and attributable to the State's use or possession of equipment or software and reimburse that party for the loss caused solely by the State's uses or possession.
  - c. Upon default, to pay all sums to become due under a contract.
  - d. To pay damages, legal expenses or other costs and expenses of any party.
  - e. To continue a contract once the equipment has been repossessed.
  - f. To conduct litigation in a place other than Pulaski County, Arkansas
  - g. To agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
2. A party wishing to contract with the State of Arkansas should:
  - a. Remove any language from its contract which grants to it any remedies other than:
    - i. The right to possession.
    - ii. The right to accrued payments.
    - iii. The right to expenses of de-installation.
    - iv. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
    - v. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
  - b. Include in its contract that the laws of the State of Arkansas govern the contract.
  - c. Acknowledge that contracts become effective when awarded by the State Procurement Official.
3. The State of Arkansas may contract with another party:
  - a. To 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.
  - b. To lease any equipment and/or software past the end of a fiscal year if the contract contains a provision to allow cancellation by the State Procurement Official upon a 30 day written notice to the vendor/lessor in the event funds are not appropriated.

**1.13 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 the 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.

**1.14 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.

**1.15 AWARD RESPONSIBILITY**

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

**1.16 PUBLICITY**

News releases by a vendor pertaining to this IFB or any portion of the project **shall not** be made without prior written approval of the State Procurement Official. Failure to comply with this requirement is deemed to be a valid reason for disqualification of the vendor's bid. The State Procurement Official **will** not initiate any publicity relating to this procurement action before the contract award is completed.

**1.17 AWARD CRITERIA**

This Invitation for Bid **shall** be awarded to the lowest responsible, responsive bidder by **Grand Total**.

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.

**1.18 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 the contract to a subcontractor unless the State Procurement Official has given written consent to the delegation.

**1.19 COST**

All charges **must** be included on the Official Bid Price Sheet(s) and **must** include all associated cost for the goods/service being bid. Bid pricing **must** be valid for ninety (90) 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 completion and delivery of items **shall** be borne by the bidder.

**1.20 PRICE ESCALATION**

All prices bid **will** remain firm for the first term of the contract. In the event of an industry wide price increase for the item(s) quoted, the vendor may request a price adjustment at the time of the contract extension request, provided the vendor submits documentation from the manufacturer certifying/justifying the increased cost. After receipt of required documentation and in the event a price change is authorized thereafter, said prices **will** remain firm for any period agreed upon for extension. Under no circumstances **will** vendor be retroactively compensated for any increased costs covered by this subsection.

In the event of a general price decrease, the State **shall** be guaranteed full benefit of the price reduction for all undelivered purchase orders on the effective date of the decrease and thereafter.

The State further reserves the right to reject any proposed price increase, cancel the contract and re-bid if such actions are determined to be in the best interests of the State.

**1.21 DELIVERY: FOB DESTINATION**

AR Department of Health  
5800 W. 10<sup>th</sup> Street, Ste. 800  
Little Rock, AR 72204

The agency requests delivery within **thirty (30) calendar** days after receipt of the order. If this delivery date cannot be met, the bidder **must** state the number of days required to place the commodity in the ordering agency's designated location. Failure to state the delivery time obligates the bidder to complete delivery by the agency's requested date. Extended delivery dates may be considered when in the best interest of the state.

Delivery \_\_\_\_\_ **calendar** days after receipt of order.

All deliveries **must** be made during normal state work hours and within the agreed upon number of days unless otherwise arranged and coordinated with the agency. The vendor **shall** give the agency immediate notice of any anticipated delays or plant shutdowns that **will** affect the delivery requirement.

Loss or damage that occurs during shipping, prior to the order being received by the agency, is the vendor's responsibility. All orders should be properly packaged to prevent damage during shipping.

**1.22 ACCEPTANCE STANDARDS**

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

**1.22 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 OF WORK**

The purpose of this solicitation is to establish a contract with a vendor for the AR Department of Health to purchase Pediatric Resuscitation kits designed with children's care in mind.

### **2.1 MINIMUM REQUIREMENTS:**

- Each kit **must** meet or exceed the brand referenced as described in Section 3, Specifications
- Each kit **must** be easy to use
- Work accurately
- Work swiftly
- Approved by the PALS education program
- Designed for children 3 to 34 kg

### **2.2 CERTIFICATION**

The successful vendor **must** supply documentation with the bid submission that the product being offered is PALS education program certified.

### **2.3 ADDITION OF NEW ITEMS TESTED**

The State intends to obtain for the duration of this contract or any contract extensions thereof, products that reflect the industry's latest Pediatric Resuscitation kit technology. The State recognizes that there will be Pediatric Resuscitation kit testing technological modifications and improvements that will become available during the life of this contract that **will** be unavailable on the date of the contract award.

- a) New items, or items not previously tested, are to be available to the AR Department of Health at discounted contract pricing.
- b) New items will receive the same pricing parameters as other items listed in this IFB.

### **2.4 QUANTITIES**

The quantities stated within are estimated for bidding purposes only. The State may order more or less as is required during the term of the contract.

### **2.5 TECHNICAL SUPPORT**

The awarded vendor **shall** provide statewide support on a timely basis. The awarded vendor **must** provide a Toll-Free Assistance line or allow for collect calls to be accepted Monday thru Friday, five (5) days per week, between the hours of 8:00 A.M. and 5:00 P.M. (CDT). Technical knowledgeable personnel **must** be available during these hours to answer questions and to provide assistance.

TECH SUPPORT NUMBER: \_\_\_\_\_

HOURS OF OPERATION: \_\_\_\_\_

### **SECTION 3 – SPECIFICATIONS**

3.0 **BRAND REFERENCED:** Broselow/Hinkle Pediatric Resuscitation System AE-4700

Brand submitted **must** meet or exceed the brand referenced above.

OSP and the AR Department of Health will review the specifications per the kit submitted to determine the acceptance.

3.1 **PEDIATRIC KIT SPECIFICATIONS** (Per the Brand Referenced above)

The collection kits **must** be provided fully assembled, consisting of the following:

- All of the information and equipment required for young patients' emergency resuscitation requirements
- The kit should be color coded
- The kit should include a minimum of twenty-eight (28) size-specific procedural modules in seven pouches color coded pouches with the appropriate emergency tape per the brand submitted.
- Kits are to be contained in a heavy duty ALS equipment organizer
- The Kit, at a minimum, should be designed for children in the range weighing 3 to 36 kg (6.6 to 79.3 lb)
- The kit should be Latex free

**OFFICIAL BID PRICE SHEET**

<b>Description</b>	<b>Quantity / UOM</b>	<b>Price per Each</b>	<b>Total</b>
<b><u>Pediatric Resuscitation System</u></b>  Brand submitted: <hr/>	35 each	\$	\$
<b>GRAND TOTAL</b>			\$

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**STANDARD TERMS AND CONDITIONS**

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

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- 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. CLAIMS:** Any claims the Contractor may assert under this Agreement shall be brought before the Arkansas State Claims Commission ("Commission"), which shall have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor shall continue to provide the Services under this Agreement even in the event that the Contractor has a claim pending before the Commission.
- 24. LACK OF FUNDS:** The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. Any delivered but unpaid for goods **will** be returned in normal condition to the contractor by the state. If the state is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.
- 25. DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that: (a) the bidder **will not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the bidder **will** state that all qualified applicants **will** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder **will** furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the bidder **will** include the provisions of items (a) through (d) in every subcontract so that such provisions **will** be binding upon such subcontractor or vendor.
- 26. CONTINGENT FEE:** The bidder guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business.
- 27. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this invitation for bid, the bidder named on the front of this invitation for bid, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this state for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
- 28. DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.