



STATE OF ARKANSAS
OFFICE OF STATE PROCUREMENT
1509 West 7th Street, Room 300
Little Rock, Arkansas 72201-4222

INVITATION FOR BID
BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	SP-17-0060	Solicitation Issued:	11-23-2016
Description:	Direct Internet Access		
Agency:	Department of Information Systems		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	12-16-2016	Bid Opening Time:	2:00 p.m., Central Time
<p>Bids shall not be accepted after the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit proposals at the designated location on or before the bid opening date and time. Bids received after the designated bid opening date and time shall be considered late and shall be returned to the vendor without further review. It is not necessary to return "no bids" to OSP.</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p>Office of State Procurement 1509 West 7th Street, Room 300 Little Rock, AR 72201-4222</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address.</p>
Bid's Outer Packaging:	<p>Outer packaging must be sealed and should be properly marked with the following information. If outer packaging of proposal submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none">• Bid number• Date and time of bid opening• Vendor's name and return address

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Timothy Smith, CPPB	Buyer's Direct Phone Number:	501-371-6070
Email Address:	Timothy.smith@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx		

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

1.1 PURPOSE

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for the Department of Information Systems (DIS) to obtain pricing and contract(s) for Direct Internet Access (DIA) provided via generic Digital Subscriber Line (DSL), Cable Modem, Business Class DSL, Wireless, etc. on a flat rate basis. The service will be used by agencies and affiliates for access to the Internet without using the State WAN network. It will also be used to reach the State WAN network on a Virtual Private Network (VPN) basis via the Internet.

1.2 TYPE OF CONTRACT

- A. A Term contract will be awarded to multiple successful vendor(s).
- B. The term of this contract(s) **shall** be for three (3) years from date of award. Upon mutual agreement by the vendor(s) and DIS, the contract may be renewed by OSP on a year-to-year basis or increments thereof. The renewal period(s) shall not exceed a total of four (4) years.
- C. The total contract term **shall not** be more than seven (7) years from date of award.

1.3 ISSUING AGENCY

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

1.4 BID OPENING LOCATION

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

Office of State Procurement
1509 West Seventh Street, Room 300
Little Rock, AR 72201-4222

1.5 DEFINITION OF REQUIREMENT

- A. The words “**must**” and “**shall**” signify a Requirement of this solicitation and that the vendor’s agreement to and compliance with that item is mandatory.
- B. Exceptions taken to any Requirement in this *Bid Solicitation*, whether submitted in the vendor’s bid or in subsequent correspondence, **shall** cause the vendor’s bid to be disqualified.
- C. Vendor may request exceptions to NON-mandatory items. Any such request **must** be declared on, or as an attachment to, the appropriate section’s *Agreement and Compliance Page*. Vendor **must** clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies. (See *Agreement and Compliance Page*.)

1.6 DEFINITION OF TERMS

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

D. Acronyms used throughout the solicitation:

<u>Acronym</u>	<u>Description</u>
ACIC	Arkansas Crime Information Center
ARO	After Receipt of Order
ASP	Arkansas State Police
CST	Central Standard Time
DFA	Department of Finance and Administration
DIA	Direct Internet Access
DIS	Arkansas Department of Information Systems
DSL	Digital Subscriber Line
EO	Equal Opportunity
FCC	Federal Communications Commission
FOIA	Freedom of Information Act
ID	Identification
IFB	Invitation for Bid
IP	Internet Protocol
MRC	Monthly Recurring Charges
MS	Micro-Soft
NIST	National Institute of Standards and Technology
NOC	Network Operations Center
NS/EP	National Security and Emergency Preparedness
OC&C	Other Charges and Credits
OSP	Office of State Procurement
PSC	Public Service Commission
SAP	Service Action Plan
TSP	Telecommunications Service Priority
VPAT	Voluntary Product Accessibility Template
VPN	Virtual Private Network
VPR	Vendor Performance Report
WAN	Wide Area Network

1.7 RESPONSE DOCUMENTSA. Original Bid Response Packet

1. The original *Bid Response Packet* **must** be received on or before the bid opening date and time.
2. The *Bid Response Packet* should be clearly marked "Original" and **must** include the following:
 - a. Original signed *Bid Signature Page*. (See *Bid Signature Page*.)
 - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
 - c. Original signed *Proposed Subcontractors Form*. (See *Subcontractors*.)
 - d. Response to the *Bid Submission Sheet* section included in the *Bid Response Packet*.
 - e. Other documents and/or information as may be expressly required in this *Bid Solicitation*.
3. The following items should be submitted in the original *Bid 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*.)
 - c. *Voluntary Product Accessibility Template* (VPAT). (See *Technology Access*.)

4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information

B. Official Bid Price Sheet. (See Pricing)

1. Vendor's original *Official Bid Price Sheet* **must** be submitted in hard copy format.
2. Vendor should also submit one (1) electronic copy of the *Official Bid Price Sheet*, preferably on a flash drive. A CD will also be acceptable.
3. Vendors **shall** not lock or password-protect the submitted price sheets.
4. The submitted price sheet data **shall** be evaluated using Excel formulas and **must** be accessible, sortable, and allow for pivot table creation from the data.

C. Additional Copies and Redacted Copy of the Bid Response Packet

In addition to the original *Bid Response Packet* and the *Official Bid Price Sheet*, the following items should be submitted:

1. Additional Copies of the *Bid Response Packet*
 - a. Three (3) complete hard copies (marked "COPY") of the *Bid Response Packet*.
 - b. Four (4) electronic copies of the *Bid Response Packet*, in MS Word/Excel format, preferably on four (4) flash drives. CDs will also be acceptable.
 - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy **shall** govern.
 - d. If OSP requests additional copies of the response packet, the copies **must** be delivered within twenty-four (24) hours of request.
2. One (1) redacted (marked "REDACTED") copy of the original *Bid Response Packet*, preferably on a flash drive. A CD will also be acceptable. (See *Proprietary Information*.)

1.8 **BID SIGNATURE PAGE**

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

1.9 **AGREEMENT AND COMPLIANCE PAGES**

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

1.10 **CLARIFICATION OF BID SOLICITATION**

Vendor questions regarding IFB related matters should be made through the State's buyer, Timothy Smith by email at timothy.smith@dfa.arkansas.gov. Vendor's questions will be answered as a courtesy and at vendor's own risk.

1.11 SUBCONTRACTORS

- A. Vendor **must** complete, sign and submit the *Proposed Subcontractors Form* included in the *Bid Response Packet* to indicate vendor's intent to utilize, or to not utilize, subcontractors.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.

1.12 PRICING

- A. Vendor(s) **must** include all pricing on the *Official Price Bid Sheet(s)* only. Any cost not identified by the successful vendor but subsequently incurred in order to achieve successful operation **shall** be borne by the vendor. The *Official Bid Price Sheet* is provided as a separate excel file posted with this *Bid Solicitation*.
- B. The *Official Bid Price Sheet* includes Bid Instructions. The vendor **must** abide by the Bid Instructions when completing the *Official Bid Price Sheet*.
- C. To allow time to evaluate proposals, prices **must** be valid for sixty (60) days following the bid opening.
- D. Failure to complete and submit the *Official Bid Price Sheet* **shall** result in disqualification.
- E. All bid pricing **must** be in United States dollars and cents.
- F. The Official Bid Price Sheet may be reproduced as needed.

1.13 PRIME CONTRACTOR RESPONSIBILITY

- A. A joint bid submitted by two (2) 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.

1.14 INDEPENDENT PRICE DETERMINATION

- A. By submission of this bid, the vendor certifies, and in the case of a joint response, each party thereto certifies as to its own organization, that in connection with this bid:
 - The prices in the bid have been arrived at independently, without collusion.
 - No prior information concerning these prices has been received from, or given to, a competitive company.
- B. Evidence of collusion **shall** warrant consideration of this bid by the Office of the Attorney General. All vendors **shall** understand that this paragraph may be used as a basis for litigation.

1.15 PROPRIETARY INFORMATION

- A. Response documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive. 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 (other than pricing), **shall** be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- G. If the State deems redacted information to be subject to FOIA, the vendor will be contacted prior to release of the documents.

1.16 **CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through OSP.
- B. Vendor **must not** alter any language in any solicitation document provided by the State.
- C. Vendor **must not** alter the Official Bid Price Sheet.
- D. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- E. Bids **must** be submitted only in the English language.
- F. 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.
- G. Vendor **must** provide clarification of any information in their response documents as requested by OSP.
- H. Bids **must** meet or exceed all defined specifications as set forth in this *Bid Solicitation*.
- I. Bids **must** meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.
- J. Vendors may submit multiple bids.

1.17 **REQUIREMENT OF ADDENDUM**

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by OSP.
- B. An addendum posted within three (3) calendar days prior to the bid opening **shall** extend the bid opening and may or may not include changes to the Bid 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 bid opening.

1.18 **AWARD PROCESS**

- A. Award shall be made on a multiple award basis.
- B. Vendor Selection
Award **shall** be made as follows:
 - 1. Table 1: The State desires to award a primary and secondary vendor per exchange where possible so the customer can order a primary and secondary connection or two connections to the Internet for diversity. In exchanges where two vendors are awarded a contract, the vendor with the lowest total thirty-six month cost bid (consisting of Monthly Recurring Charges (MRC) and One-Time charges) for that exchange will be considered the primary vendor and the vendor with the second lowest total thirty-six month cost bid (consisting of Monthly Recurring Charges (MRC) and One-Time charges) for that exchange will be considered the secondary vendor. Award **shall** be made *per exchange*.
 - 2. Table 2: Vendor(s) may bid optional bandwidths for the exchanges they are bidding in Table 1. A vendor **must** have received either the Primary or Secondary Award for the exchange in Table 1 to be eligible for the optional awards in Table 2. Table 2 may or may not be awarded. If awarded the services may or may not be procured from this contract.

3. Table 3: Vendor(s) **must** bid any static IP Rates. These costs will not be included in the price evaluation.
4. Table 4: Vendor(s) may bid an optional purchase price for the site modems. These costs will not be included in the price evaluation

C. Anticipation to Award

1. Once an anticipated successful vendor has been determined, the anticipated award will be posted on the OSP website at http://www.arkansas.gov/dfa/procurement/pro_intent.php.
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Vendors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen day posting period.
3. OSP **shall** have the right to waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the vendor's responsibility to check the OSP website for the posting of an anticipated award.

D. Issuance of Contract

1. Any resultant contract of this *Bid 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.

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 *Bid Signature Page*.

1.20 EQUAL EMPLOYMENT OPPORTUNITY POLICY

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP is required to have a copy of the vendor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov, but should also be included as a hardcopy accompanying the solicitation response.
- C. The submission of an *EO Policy* to OSP is a one-time Requirement. Vendors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that **must** also comply with this statute.
- D. Vendors, who are not required by law 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". Proposals submitted by vendors determined to be non-responsible **shall** be disqualified.

1.23 TECHNOLOGY ACCESS

- A. When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.
- B. ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:
1. Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means
 2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use
 3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired
 4. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
 5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact
 6. Integrating into networks used to share communications among employees, program participants, and the public
 7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired
- C. State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies **must** evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency **must** provide written documentation supporting the selection of a different product, including any required reasonable accommodations.

- D. For purposes of this section, the phrase “equivalent access” means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired **shall** be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.
- E. If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

1.24 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM

The respondent’s solution **must** comply with the state’s shared Technical Architecture Program which is a set of policies and standards that can be viewed at: <http://www.dis.arkansas.gov/policiesStandards/Pages/default.aspx>. Only those standards which are fully promulgated or have been approved by the Governor’s Office apply to this solution.

1.25 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.

1.26 PUBLICITY

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

1.27 RESERVATION

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

SECTION 2 – MINIMUM REQUIREMENTS

2.1 INTRODUCTION

This *Invitation for Bid* (IFB) is issued by the Office of State Procurement (OSP) for the Department of Information Systems (DIS) to obtain pricing and contract(s) for Direct Internet Access (DIA) provided via generic DSL, Cable Modem, Business Class DSL, Wireless, etc. on a flat rate basis.

2.2 PROJECT CONCEPT

The service will be used by agencies and affiliates for access to the Internet without using the State WAN network and be used to reach the State WAN network on a Virtual Private Network (VPN) basis. This IFB is requesting pricing using DSL, Cable Modem, Business Class DSL Wireless, etc. to connect to the agencies and affiliates but will access the State WAN without the Internet.

2.3 BIDDING REQUIREMENTS

- A. The vendor may bid on any or all exchanges in Table 1. If the vendor does not desire to bid service in a particular exchange, the bidder may show “no bid” (NB) on the price sheet. Leaving a line blank on the price sheet will be interpreted as a “no bid”.
- B. The vendor(s) **must** bid, at a minimum, 1Mbps upstream and 10 Mbps downstream for exchanges listed in Table 1.
- C. As an option, a vendor may include other speeds they offer and provide the cost for those speeds in Table 2 of the Official Price Sheets ONLY for exchanges they bid in Table 1. If exchanges in Table 2 are awarded, they will be awarded to the Primary and Secondary vendor(s) who are awarded that exchange in Table 1. Over the term of the contract, higher bandwidths other than those awarded on Table 1 will be needed to meet customer needs. If service is ordered from Table 2, DIS will choose from the available optional awards for that location (Primary and Secondary Vendors) the lowest price speed which most closely meets customer needs. In the event of the Primary and the Secondary Vendors bid the same speed and at the same price, the Primary Vendor will be given the first right of refusal.
- D. The vendor **must** provide the service type in column “I” on the Official Bid Price Sheet.
- E. The vendor **should** bid on the assumption that facilities are available. However, if at a future time when access is ordered through the primary vendor, at a specific location in an exchange where facilities are not available and special construction, excess construction, aid to construction, etc. is required to be provided by the State in addition to the rates bid, the State will move to the Secondary Vendor (if applicable) for services. If both vendors require additional charges, the State reserves the right to issue a bid for those locations.
- F. Routers or other hardware necessary to terminate the vendor’s service at the customer location will be provided by DIS or the end user, unless the service provider requires that they provide the terminating equipment. If service provider equipment is required and there is a monthly charge for the equipment, the cost of the equipment **must** be shown on the Official Price Sheet (Tables 1 and 2).
- G. For DSL service, DIS or the end user will provide the hardware to terminate the service bid.
- H. For service protocols other than DSL, the vendor will provide a copper fast Ethernet handoff at the end user site.
- I. Static IP addresses will be required where the service ordered is the primary service for the location. The vendor **must** provide the cost for Static IP addresses on Table 3. If the cost is different for different exchanges, the vendor **must** provide the cost for each exchange they bid in Table 1 and Table 2. These costs will not be used in the pricing evaluation.

2.4 **SERVICE AND PROJECT MANAGER**

- A. The vendor **must** assign a Service Manager responsible for all aspects of the contract and vendor performance and a Project Manager within fourteen calendar days of contract award. Names and contact information should be submitted by email to dis.contracts@arkansas.gov.
- B. The Service Manager **must** act as the central point for advanced escalations for all issues.
- C. The Project Manager **shall** be responsible for all aspects of the implementation process.
- D. The Service Manager **shall** be responsible for providing reports of measurable results for such things as Network Provisioning Performance, Network Maintenance Performance, Service Billing Performance, and other desired metrics.
- E. The Service Manager, upon DIS request, **shall** prepare a Service Action Plan (SAP) when there are complex outstanding service issues. The SAP **shall** be agreed upon by both DIS and the Service Manager. Reviews of the SAP **shall** be conducted to audit progress in implementing action plans in order to document and measure progress toward the desired outcome.

2.5 **SUPPORT SERVICES**

- A. The vendor **shall** comply with the Telecommunications Service Priority (TSP) Program, a Federal Communications Commission (FCC) mandate for prioritizing service requests by identifying those services critical to National Security and Emergency Preparedness (NS/EP) and be in compliance with all Arkansas Public Service Commission and FCC Requirements.
- B. Vendor **shall** physically secure all data and networking facilities through which data traverses vendor's network complying with the physical security controls of National Institute of Standards and Technology (NIST) SP 800-53, ISO/IEC 27001, or equivalent standards.
- C. The vendor **must** assign account specific resources for administrative and technical support personnel who are familiar with the State Network and DIS processes to assist in initiating orders, resolving service problems, trouble escalation, billing errors, etc. The resources **must not** be pooled.
- D. The vendor **must** be able to participate in standing monthly vendor meetings as part of our vendor management program to review service results and arrive at remedies to improve or correct deficiencies.
 - 1. The agenda and location for each month's meeting **will** be sent out in advance.
 - 2. The vendor **shall** have the appropriate personnel to address all agenda items on-site at a facility provided by DIS or available by vendor-provided and vendor paid Conference Bridge and/or web meeting, unless otherwise authorized in writing by DIS.
 - 3. Failure to have appropriate vendor personnel could result in a negative Vendor Performance Report (VPR).
- E. No later than thirty (30) days following contract award, the vendor **must** list the performance reports and maintenance reports that are available to DIS for the services bid and describe how they can be accessed by DIS, i.e., Web Interface, telephone or other electronic access. Vendor should **not** include this with their bid response but upon award the vendor **must** send the information to dis.contracts@arkansas.gov.
- F. Vendor **must** submit samples of available reports for various metrics and a sample Service Action Plan no later than thirty (30) days following contract award. Vendor should **not** include this with their bid response but upon award the vendor **must** send the information to dis.contracts@arkansas.gov.
- G. Vendor **must** describe, no later than thirty (30) days following contract award, their applicable trouble reporting system and how the State can access the system for originating trouble reports and receiving status reports. Vendor should **not** include this with their bid response but upon award the vendor **must** send the information to dis.contracts@arkansas.gov.

2.6 CATASTROPHIC EVENTS

- A. Restoration of service after catastrophic events such as fires, storms, earthquakes, or accidental damage **shall** be on an around-the-clock basis until service is restored.
- B. The vendor **must** describe, no later than thirty (30) days following contract award, how they handle critical outages. Vendor should **not** include this with their bid response but upon award the vendor **must** send the information to dis.contracts@arkansas.gov.
- C. The vendor **must** describe, no later than thirty (30) days following contract award, the anticipated level of response, response times, and response procedures in case of a catastrophe such as fire, flood, earthquake, etc. Vendor should **not** include this with their bid response but upon award the vendor **must** send the information to dis.contracts@arkansas.gov.

2.7 NETWORK OPERATIONS CENTER (NOC)

- A. The vendor **shall** maintain a Network Operations Center (NOC) that is staffed on an around-the-clock basis that coordinates and manages all outages across their network.
- B. The NOC **shall** perform network surveillance and fault management (trouble identification, isolation and notification) where applicable.
- C. The NOC **shall** monitor network performance in near real-time to identify issues and implement controls to optimize the network health and performance immediately.

2.8 MAINTENANCE SUPPORT REQUIREMENTS

- A. The vendor **must** provide, no later than thirty (30) days from contract award, a toll free telephone support center for use by DIS with the following functionalities:
 - 1. Available 24 hours a day, 7 days per week
 - 2. Has English-speaking staff
 - 3. Preferably located within the continental United States of America.Vendor **must** send the toll free number to dis.contracts@arkansas.gov. Vendor should **not** include this with their bid response.
- B. The technical support personnel **must** be knowledgeable and technically trained to answer/resolve technical support problems. The support center personnel **must** be familiar with DIS networks, **must** have advanced technical expertise available, and **must** maintain and own trouble tickets reported by DIS or DIS' authorized customer until those troubles are resolved.
- C. Vendor **must** maintain an inventory of records of the services provided site information that includes, at a minimum, the following:
 - 1. Circuit ID
 - 2. Agency Name
 - 3. Agency Address
 - 4. Site Contact Information
- D. Vendor **must** have an established escalation procedure for all proposed services which **must** be accessible 24 hours per day, 7 days per week for all critical or emergency situations or outages. Vendor **must** provide their escalation procedure with contact information (i.e. names, titles, phone numbers, and pager numbers) in writing within thirty (30) days following contract award and provide any subsequent updates or changes in writing to DIS within five (10) business days of said change or update. Vendor should **not** include this with their bid response but upon award the vendor **must** send the information to dis.contracts@arkansas.gov.

- E. Vendor **shall** be responsive and timely to maintenance/technical support calls/inquiries made by DIS. The State **shall** have the right to determine and assign levels of severity for the issue/support problems and the vendor **must** adhere to these severity levels.
- F. The severity of the issue/support problem **shall** determine the average problem resolution and response time in any calendar month of the contract. DIS **shall** determine the severity level and **shall** have the ability to escalate/de-escalate the issue between severity levels.
- G. Outages **shall** be categorized by DIS, as the following:
 - 1. Minor Outage – any apparent abnormal operation of the service that impacts user access to State network.
 - 2. Major Outage – any one (1) site not able to access the State network.
 - 3. Critical Outage – any outage that DIS determines will severely impact the ability to do business or endanger public health and safety.
 - 4. DIS **shall** the right to further define these outage terms as deemed necessary during the course of the contract.
- H. Figure A below specifies the maximum response time and resolution times based on level of severity:
 - 1. “Response time” **shall** be calculated as the time from which the outage is reported until the time maintenance personnel arrive on site.
 - 2. “Resolution time” **shall** be calculated as the time from which the trouble ticket is opened with the vendor until the trouble is cleared and notification is received by DIS from the vendor.
 - 3. Response times may be met via remote maintenance procedures.
 - 4. DIS business hours are 8:00 a.m. to 5:00 p.m. (CST) Monday through Friday excluding State holidays, <http://www.sos.arkansas.gov/aboutOffice/Pages/stateHolidayCalendar.aspx>. However, there are critical locations which operate around the clock and require 7x24x365 vendor support. The critical locations include, but **shall not** be limited to, Arkansas Crime Information Center (ACIC) and Arkansas State Police (ASP).

FIGURE A

Severity Level	Sample Situations	Maximum Response Time	Resolution Time
1	Critical outages and situations when network services are down and DIS customers are unable to use/access the network.	Two (2) hours Around the clock	As quickly as possible, which on average shall not exceed four (4) hours, unless otherwise authorized in writing by the DIS. For any critical outage that cannot be fixed remotely, DIS shall have the right to require an on-site response. DIS requested vendor on-site response time should be no more than one (1) hour from time of request, but shall be no more than two (2) hours, including weekends and holidays.
2	Major outages and/or repeated failure of service preventing its successful operation. The service may operate but is severely restricted (i.e. slow response, intermittent but repeated inaccessibility, etc.).	Two (2) business hours	As quickly as possible, which on average shall not exceed six (6) business hours, unless otherwise authorized in writing by the DIS. DIS shall retain the right to escalate Level 2 outages to Level 1 at its discretion. For any major outage that cannot be fixed remotely, DIS shall have the right to require an on-site response. DIS requested vendor on-site response time should be no more than one (1) business hour from time of request, but shall be no more than two (2) business hours.
3	Minor outages and/or a problem that exists with the service but the majority of the functions/services are still usable and some circumvention may be required to provide service.	Two (2) business hours	As quickly as possible, which on average shall not exceed eight (8) business hours, unless otherwise authorized in writing by the DIS.

- I. The vendor **shall** have a software maintenance application capable of logging trouble calls including, at a minimum, the following information:

- The date
- Time of call
- Apparent nature of trouble
- Arrival time of maintenance personnel (if applicable)
- Time trouble is cleared
- Cause of trouble

- J. The vendor **shall** have the ability to make any necessary repairs and provide a monthly report in “.xls” format, prior to the monthly vendor meeting, via email to the designated Network Operations Vendor Liaison, or upon request from DIS of the diagnostic findings, including at a minimum:
 - 1. Circuit ID, or equipment item name or number
 - 2. Time and date the trouble is reported
 - 3. Time and date the trouble is resolved
 - 4. Trouble resolution
- K. The vendor **must** immediately notify the designated DIS contact via e-mail or phone call as instructed by DIS for any planned maintenance outage by the vendor.
- L. Trouble notifications and response procedures, including time, place, and frequency of vendor acknowledgement of DIS supplied trouble tickets, **shall** be negotiated with DIS upon award.

2.9 **ADDITIONAL REQUIREMENTS**

- A. The vendor **must** supply technical assistance and consultation to the designated DIS resources and DIS administrators on an ongoing basis as needed per DIS.
- B. Vendor **shall** conduct technical interviews relating to State site vendor needs on a timely basis to insure established due dates are met.
- C. Vendor **shall** un-box and install vendor equipment in locations designated by DIS.
- D. Vendor **shall** conduct worksite cleanup. All packing crates, boxes, paper, packing material, and all other such extraneous material **shall** be removed from the premises by the vendor at the vendor's expense after installation.
- E. Vendor **shall** work in conjunction with DIS for any further responsibilities.
- F. DIS **shall** designate DIS Project Manager to whom all communications may be addressed.
- G. DIS **shall** for each site to be deployed, provide contact name, telephone number, address, and email for a primary and backup site contact.
- H. The State **shall** perform all customer site preparation activities including, but not limited to, power, ventilation, proper environmental conditions as per the equipment manufacturer's specifications and the installation of equipment racks.
- I. DIS **shall** provide authorized personnel on-site during the installation to assist and cooperate to the extent DIS deems necessary in the installation.
- J. DIS **shall** provide access, escorts and/or badges for vendor personnel to all necessary building areas in order to implement service.
- K. DIS **shall** ensure circuit demarcation points are clearly identified.

2.10 **INSTALLATION INVOLVING BUILDING MODIFICATION**

- A. State Agencies: Installation **shall** be provided for State agencies for installation services that do not modify existing building structures as covered under Arkansas Building Authority Regulations. Any installation services over \$20,000 that modify existing building structures **must** be regulated by DFA Division of Building Authority.
- B. All other Entities: Any other state entity utilizing a resulting contract **shall** follow their rules and regulations regarding installation services.

2.11 SECURITY REQUIREMENTS

- A. Vendor **must** understand that DIS and each of DIS' customers may have individual standard government security policies and access requirements that the vendor's services, processes, or employees **must** abide by. Background checks **shall** be performed on all persons entering State data centers.
- B. The DIS IT Data and Security Policy can be found at the following link:
<http://www.dis.arkansas.gov/security/Pages/default.aspx>
- C. Vendor **must** have measures in place to prevent security breaches as well as processes and procedures in place to react to a security breach that occurs via their access to the State network infrastructure.

2.12 IMPLEMENTATION

- A. Vendors **must** submit a proposed timeline schedule in the *Bid Response Packet*, in days, of the time required for the various components consisting of: facilities check, design, engineering, construction, central office or point of presence upgrades, installation, training, testing, and service acceptance to provide for a cutover date.
- B. If the proposed timeline schedule exceeds the requested initial installation interval of 30 days or the proposed initial vendor service date, it **must** be agreed to in writing by DIS. (See Section 2.15 A)
- C. Upon award DIS and the vendor **shall** negotiate a mutually agreeable installation plan for the DIS facilities.
- D. The service **must** be installed in a manner and within a time frame designed to minimize disruption of the normal functions of all entities.
- E. The conversion of service **must** be performed on a schedule that supports DIS and DIS customers' operational needs and may include nights, weekends, and holidays.

2.13 SPECIAL INSTALLATION CONDITIONS

During installation the vendor **shall** provide experienced and knowledgeable onsite support at the DIS facilities at DIS' request at no charge.

2.14 MOVES, ADDS AND CHANGES

The vendor **shall** accept move, add, and change orders from only authorized DIS employees via email.

2.15 DELIVERY AND PROVISIONING OF SERVICE – FOB DESTINATION; FREIGHT PREPAID AND ALLOWED

- A. DIS requests service delivery within 30 calendar days after receipt of the order (ARO). If this delivery date cannot be met, the bidder **must** state the number of days required to place the commodity or service in DIS' designated locations in the *Bid Response Packet*. Failure to state the delivery time **shall** obligate the vendor to complete delivery by DIS' requested date. Extended delivery dates may be considered when in the best interest of DIS.
- B. DIS **shall** communicate in their purchase order the option to have vendor equipment delivered to the end user service address or to DIS' central warehouse at:

Arkansas Department of Information Systems
2201 Brookwood
Suite 104
Little Rock, AR 72202
- C. All deliveries **must** be made during normal state work hours and within the agreed upon number of days unless otherwise arranged and coordinated with DIS. The vendor **shall** give DIS immediate notice of any anticipated delays or plant shutdowns that will affect the delivery requirement.
- D. The vendor **shall** be responsible for damage to DIS property during installation of system and for damage to vendor owned property caused by the vendor.
- E. Loss or damage that occurs during shipping, prior to the order being received by the DIS, **shall** be the vendor's responsibility. All orders should be properly packaged to prevent damage during shipping.

- F. For each calendar day of delay beyond the stated interval ARO and after due allowance for reasonable extension of time upon request and mutually agreed upon and through a maximum of sixty (60) calendar days, DIS **shall** withhold from vendor's compensation the following sum:

$$(A/B) * 50\% * C = D$$

A = Monthly Contract Rate
B = 30 (daily rate)
C = Number of days beyond due date interval
D = Damages to be Assessed

Such sum **shall** be treated as damages and not as a penalty. If the vendor has Installation Service Level Agreements which exceed this requirement, the vendor may offer it in place of the damages above.

- G. If any agreed upon or established due date or interval is subject to being missed by more than three (3) business days, DIS should be notified immediately and a new due date negotiated. A planned due date **must** be established for tracking purposes. If an acceptable due date cannot be established DIS may cancel the order and alternate methods of procurement will be pursued.

2.16 **FORCE MAJURE**

Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss, or damage due to fire, explosion, cable/fiber cuts, power blackout, earthquake, flood, embargo, acts of civil or military authority, war, terrorism, acts of God, acts of public enemy, acts of regulatory or governmental agencies, delays from third parties deterring the vendor from obtaining necessary licensing/construction permits/right of ways, or other causes beyond such party's reasonable control.

2.17 **ONGOING PERFORMANCE**

- A. Ongoing performance requirements **shall** begin upon DIS acceptance of the service.
- B. The vendor **shall** have the service maintain a minimum of ninety-nine and ninety five one hundredths percent (99.95%) up time. Vendors **must** state their remedies, approaches, and/or corporate position that support this up time in the *Bid Response Packet*.
- C. In the event a 99.95% up time is not maintained due to equipment or operating software failure for any consecutive two (2) month period, the vendor **shall** receive formal notice in writing by DIS. The vendor **shall** be required to take the necessary action to increase the up time to at least 99.95% in the month subsequent to written notification.
- D. In the event the equipment does not meet the required 99.95% up time in any consecutive two (2) month period, excluding normally scheduled upgrades and maintenance, vendor **must** take one (1) or more of the following actions, unless DIS and the vendor agree that the problem has been corrected and the system is currently in good working order:
1. Provide an on-site Customer Engineer for analysis and correction of the problem;
 2. Provide back-up equipment and software, if available;

The vendor may take any of the above actions prior to the third (3rd) consecutive month.

- E. If the service fails to meet the requirements within ninety (90) days of the installation date, DIS may terminate the contract in its entirety.

2.18 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include performance standards for measuring the overall quality of the services provided. Figure B below identifies deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **must** meet in order to avoid assessment of damages.
- B. The State may be open to negotiations of performance standards prior to contract award, prior to the commencement of services, or at any time throughout the contract duration.
- C. The state **shall** have the right to modify, add, or delete performance standards throughout the term of the contract, should the state determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the vendor so as to establish standards that are reasonably achievable.
- D. All changes made to the performance standards **shall** become an official part of the contract.
- E. Performance standards **shall** continue throughout the term of the contract.
- F. Failure to meet the minimum performance standards as specified **shall** result in the assessment of damages.
- G. In the event a performance standard is not met, the vendor will have the opportunity to defend or respond to the insufficiency. The state **shall** have the right to waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services. In these instances, the state **shall** have final determination of the performance acceptability.
- H. If the vendor has service level agreements which exceed these standards, the vendor may offer it as an amendment to the awarded contract in place of damages being assessed.

FIGURE B

PERFORMANCE STANDARDS			
Vendor's Network Availability			
Service Criteria	Acceptable Performance	Damages	Measurement
Vendor Network Failure	99.95% Network Availability each calendar month.	100% of the Monthly Recurring Charge (MRC) for: outage > 16 business hours	Vendor provided monthly report based on a 30-day calendar month average.
Initial Service Delivery			
Service Criteria	Acceptable Performance	Damages	Measurement
Missed Initial Service Delivery	DIS requests service delivery within 30 calendar days after receipt of the order (ARO). If this delivery date cannot be met, the bidder must state the number of days required to place the commodity or service in DIS' designated locations in the <i>Bid Response Packet</i> . Failure to state the delivery time shall obligate the vendor to complete delivery by DIS' requested date.	For each calendar day of delay beyond the stated interval ARO and after due allowance for reasonable extension of time upon request and mutually agreed upon and through a maximum of sixty (60) calendar days,	DIS shall withhold from vendor's compensation the following sum: (A/B)*50%*C =D A = Monthly Contract Rate B = 30 (daily rate) C = Number of days beyond due date interval D = Damages to be Assessed
	Extended delivery dates may be considered when in the best interest of DIS, in which case Vendor's performance will not be negatively impacted.		

SECTION 3 – GENERAL CONTRACTUAL REQUIREMENTS

3.1 BILLING PROCESS & MANAGEMENT

A. Billing Errors

The vendor **must** describe their process for resolving billing errors and the timeline for correcting billing errors. The vendor **must** send the information to dis.contracts@arkansas.gov no later than thirty (30) days following contract award. Vendor should **not** include this with their bid response.

B. Billing Review

1. The vendor **must** conduct a *first bill review* within thirty (30) days of the first bill cycle of each type of service to verify correctness of contract billing. It is the vendor's responsibility to initiate and coordinate this meeting by emailing dis.contracts@arkansas.gov. Failure to do so may result in a negative Vendor Performance Report.
2. At least one (1) vendor representative **must** be on site at DIS for the bill review meeting unless permission has been given by email from DIS to not be on-site. The vendor representative will provide at their expense a conference bridge or web-meeting allowing all necessary vendor personnel to participate.
3. If incorrect rates or quantities are found, DIS **must** be notified and they **must** be corrected no later than the fourth (4th) billing cycle after error is found. The State **shall** have the right to withhold payment until corrections have been made and a corrected invoice is received.
4. All billing errors **must** be credited back to the original date of the error, but not beyond the beginning of the corresponding contract.
5. The vendor **shall not** impose any time restrictions upon DIS to identify billing errors and request a credit or refund.

C. Billing Invoices

1. The vendor **must** set up and maintain account billing on an ongoing basis for no additional charge as directed by DIS to facilitate cost accounting and cost recovery.
2. Each service location billed on the vendor invoice **must** have a service location plus circuit ID, telephone number, or equivalent which **will** be used to identify the location and/or DIS customer being billed.
3. The vendor **must** invoice DIS by line of service or speed and in the account format directed by DIS. An invoice with only the address, account number and amount **shall not** be acceptable.

D. Billing Discontinuance

The vendor **must** stop billing for service on the day notification to disconnect service is received or on a future date if requested. If the vendor's billing system does not allow this, credits **must** be issued within two billing cycles. The vendor **shall not** make DIS open a billing dispute to receive credit. The vendor's failure to comply with these requirements may result in DIS withholding payment.

E. Billing (End to End Circuit)

End to End Circuit billing **must** be provided on the same invoice. If manual billing or special billing is required by the vendor to provide End to End Circuit billing, the vendor **must** provide this billing free of charge. Failure to do so will result in negative Vendor Performance Reports.

F. Billing (Contract Rates)

Detailed Contract Rate **must** match each line item bid as it appears on the monthly billing statement and electronic media.

G. Billing Compatibility

Detailed information in any form **must** be compatible with the tele-management system used by DIS (currently Calero previously known as Compco).

H. Billing Fields Required

The following fields for services, equipment, and onetime charges **must** be provided on each invoice if applicable:

- Vendor Account Number
- 1. Invoice Number
- 2. Invoice Date
- 3. Invoice From Date
- 4. Invoice To Date
- 5. User ID, Extension, Subsystem, Circuit ID, Telephone No., Inventory number, etc.
- 6. Quantity
- 7. Unit Price
- 8. Total Amount
- 9. Transaction Date
- 10. Transaction From Date
- 11. Transaction To Date
- 12. Product Code, Service Code, USOC, Inventory Item
- 13. Description
- 14. State Service Order Number
- 15. Contract Number
- 16. Vendor Work Order Number
- 17. Originating Location
- 18. Terminating Location
- 19. Taxes and Fees

3.2 PAYMENT AND INVOICE PROVISIONS**A. All invoices shall be forwarded to:**

Arkansas Department of Information Systems
Attention: Accounts Payable
P.O. Box 3155
Little Rock, AR 72203-3155

Or the appropriate ordering and billed entity as specified by the Purchase Order or the State Work Order.

- B.** Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services by DIS.
- C.** DIS **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 **must** invoice DIS by an itemized list of charges. DIS' Purchase Order Number and/or the Contract Number **must** be referenced on each invoice. The itemized invoice **must** include the following detailed information:
1. Each active site
 2. Associated billable features with each active site
 3. Labor charges associated to each service order and trouble ticket
 4. Other charges and credits (OC&C) associated to the service location
- F. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.

Selected vendor **must** be registered to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/vendor/index.html>.

3.3 **GENERAL INFORMATION**

- A. The State **shall not** lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a thirty (30) day written notice to the vendor/lessor in the event funds are not appropriated.
- B. The State **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- C. The State **shall not** pay damages, legal expenses or other costs and expenses of any other party.
- D. The State **shall not** continue a contract once any equipment has been repossessed.
- E. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- F. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- G. The State **shall not** enter a contract which grants to another party any remedies other than the following:
- The right to possession.
 - The right to accrued payments.
 - The right to expenses of de-installation.
 - The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- H. The laws of the State of Arkansas **shall** govern this contract.
- I. A contract **shall not** be effective prior to award being made by a State Procurement Official.
- J. In a contract with another party, the State will accept the risk of loss of the equipment or software and pay for any destruction, loss or damage of the equipment or software while the State has such risk, when:
- The extent of liability for such risk is based upon the purchase price of the equipment or software at the time of any loss, and
 - The contract has required the State to carry insurance for such risk.

3.4 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.

3.5 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. 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.

3.6 RECORD RETENTION

- A. The vendor **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.
- B. Financial and accounting records **shall** be made available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

3.7 PRICE REVIEW AND ESCALATION

- A. Pricing **shall** be firm and **shall not** be subject to being increased during any contract term.
- B. If, during the term of the contract and any extension, there are any changes to legally mandated and/or required charges, fees, taxes or other costs that the vendor is mandated to pass through to their customers, the vendor **must** first provide notice of same to DIS; said notice **must** be delivered a minimum of sixty (60) days prior to any proposed change, and **shall** include:
 - 1. The citation to the specific law, ruling, order, regulation or authorizing action.
 - 2. A copy of the document establishing the change.
 - 3. An explanation of how the change **shall** be calculated and applied to the pricing model for this contract.

- C. Increases **shall not** be considered to increase profit or margins.
- D. OSP **shall** have the right to approve or deny the request.
- E. A price review **shall** be conducted at DIS's discretion during month twenty-four (24) and prior to each exercised extension.
- F. Price reductions may be sought based on then current market pricing trends.
- G. It is understood that if the parties are unable to agree on decreased pricing, OSP may, at its sole discretion, elect to terminate the vendor(s) contract and issue a solicitation for the services terminated.

3.8 **CONFIDENTIALITY**

- A. The vendor, vendor's subsidiaries, and vendor's employees **shall** be bound to all laws and to all Requirements set forth in this *Bid Solicitation* concerning the confidentiality and secure handling of information of which they may become aware of during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State **shall** have the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

3.9 **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.

3.10 **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.

3.11 **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.

3.12 **LICENSE AGREEMENTS / SLA'S/SERVICE REQUEST DOCUMENTS**

- A. The State **shall not** accept nor execute any vendor's license agreements, service agreements, or Service Request documents. The IFB and the awarded vendor's bid response to the IFB, and any State clarifications (if necessary) **shall** represent the entire agreement for the provisions of products and services required herein. The vendor will receive orders from the appropriate State entity using documents such as Purchase Orders or Work Orders.
- B. Any language or provisions contained in any of the vendor's or third party's web application "click-through" licensing agreement(s) **shall not** have force or effect and **shall not** be binding if such language or provision conflict with the terms and conditions of this IFB. The terms and conditions of this IFB **shall** supersede and govern in the event of conflict with the language or provisions contained in any of the vendor's or third party's web application "click-through" licensing agreement(s).
- C. Any vendor Master Agreement or Terms and Conditions previously negotiated and on file with OSP **shall not** be considered in response to this solicitation or referenced by the vendor in their response.

SECTION 4 – STANDARD TERMS AND CONDITIONS

Do not provide responses to items in this section.

1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
3. **BID SUBMISSION:** Original Proposal Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Proposal Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple proposals **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Vendor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the vendor to supply additional descriptive material. The vendor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Vendors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.
7. **GUARANTY:** All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The vendor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The vendor **shall** further guarantee that if the items furnished hereunder are to be installed by the vendor, such items **shall** function properly when installed. The vendor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The vendor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the vendor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at vendor's expense. After reasonable examination, all demonstrators will be returned at vendor's expense.
9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the vendor.
10. **AMENDMENTS:** Vendor's proposals cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD:** Term Contract: A contract award will be issued to the successful vendor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful vendor.

13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the vendor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **shall** be borne by the vendor.
14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the vendors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the contractor's expense to the F.O.B. point provided by the agency or by OSP. Vendor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the State **shall** have the right to pursue any other remedy permitted by law or in equity.
23. **CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the vendor written notice of such cancellation thirty (30) days prior to the date of cancellation.

Any delivered but unpaid for goods will be returned in normal condition to the contractor by the State. If the State is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the contractor has provided services which the State has accepted, the contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**
24. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the vendor agrees that: (a) the vendor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the vendor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the vendor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the vendor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.
25. **CONTINGENT FEE:** The vendor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business.

- 26. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the vendor named on the *Proposal Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
- 27. DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.