



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

**REQUEST FOR PROPOSAL**  
**BID SOLICITATION DOCUMENT**

SOLICITATION INFORMATION			
Bid Number:	SP-17-0095	Solicitation Issued:	2/15/2017
Description:	Advertising, Marketing, and Website		
Agency:	Arkansas Department of Parks and Tourism		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	3/7/2015	Bid Opening Time:	2:00 p.m., Central Time
Proposals <b>shall not</b> be accepted after the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit proposals at the designated location on or before the bid opening date and time. Proposals received after the designated bid opening date and time <b>shall</b> be considered late and <b>shall</b> be returned to the vendor without further review. It is not necessary to return "no bids" to OSP.			

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

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Tanya Freeman	Buyer's Direct Phone Number:	501-682-4169
Email Address:	Tanya.freeman@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	<a href="http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx">http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx</a>		

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

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

### **1.1 PURPOSE**

The Office of State Procurement (OSP) issues this Request for Proposal (RFP) on behalf of the Arkansas Department of Parks and Tourism (ADPT) to obtain proposals and a contract for comprehensive advertising and marketing services. ADPT is looking to identify a marketing communications firm with a proven record of success in the travel and tourism field to serve as champion for both the Arkansas brand and that of Arkansas State Parks, bringing new visitors to the State and contributing to the growth of the State's economy.

### **1.2 TYPE OF CONTRACT**

- A. A Term contract will be awarded to a single vendor.
- B. The term of this contract **shall** be for one (1) year, subject to the State's right of cancellation. The anticipated starting date for the contract is July 1, 2017. Upon mutual agreement by the vendor and agency, the contract may be renewed by OSP on a year-to-year basis, for up to six (6) additional one-year terms or portions thereof.

### **1.3 ISSUING AGENCY**

Throughout this solicitation, OSP, as the issuing office, is the sole point of contact in connection with this solicitation.

### **1.4 BID OPENING LOCATION**

Responses submitted to the delivery address 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 RESPONSIVENES TO REQUIREMENTS**

- A. The words "**must**" and "**shall**" signify a Requirement of this solicitation and that vendor's agreement to and compliance with that item is mandatory.
- B. A proposal's failure to conform to the essential Requirements of this solicitation is grounds for its rejection.
- C. Vendor may request exceptions to NON-mandatory items. Any such request **shall** be declared on, or as an attachment to, the appropriate section's *Agreement and Compliance Page* in the *Response Packet*. Vendor **shall** 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 "Request for Proposal", "RFP" and "Bid Solicitation" are used synonymously in this document.

## 1.7 **RESPONSE DOCUMENTS**

### A. Original Technical Proposal Packet

1. The original *Technical Proposal Packet* **must** be received on or before the bid opening date and time.
2. The Proposal Packet should be clearly marked "Original" and **must** include the following:
  - a. Original signed *Proposal Signature Page*. (See *Proposal Signature Page*.)
  - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
  - c. Original signed *Proposed Subcontractors Form*. (See *Subcontractors*.)
  - d. *Technical Proposal* response to the *Information for Evaluation* section included in the *Technical Proposal 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 *Technical Proposal Packet*.
  - a. Signed Addenda, if applicable.
  - b. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions, #27. Disclosure*.)
  - c. Copy of Vendor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
  - d. *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. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". Vendor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.

### C. Additional Copies and Redacted Copy of the Technical Proposal Packet

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

1. Additional Copies of the *Technical Proposal Packet*
  - a. One (1) complete hard copy (marked "COPY") of the *Technical Proposal Packet*.
  - b. Ten (10) electronic copies of the *Technical Proposal Packet*, on flash drives and in PDF format.
    - i. The preferred method is PDF conversion from the vendor's source files (to minimize file size and maximize quality and accessibility) rather than scanning so that the State can open, print, read, and save the PDF file you have created. To ensure consistency, the electronic copy should be ONE file document and in the same order as the paper original. If this is not possible, the electronic copy files should be in the same order as the paper copy, with a directory listing of the files.

- c. The additional hard copy and electronic copies **shall** 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 proposal, the copies **shall** be delivered by the deadline determined by OSP in the request.
2. One (1) redacted (marked "REDACTED") copy the original *Technical Proposal Packet*, preferably on a flash drive. A CD will also be acceptable. (See *Proprietary Information*.)

### 1.8 **ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that vendors adhere to the following format and suggestions when preparing their Technical Proposal Response.
- B. The original *Technical Proposal Packet* and all copies should be arranged in the following order.
  - *Proposal Signature Page.*
  - *All Agreement and Compliance Pages.*
  - *Proposed Subcontractors Form.*
  - Signed Addenda, if applicable.
  - E.O. 98-04 – *Contract Grant and Disclosure Form.*
  - *Equal Opportunity Policy.*
  - *Voluntary Product Accessibility Template (VPAT).*
  - Other documents and/or information as may be expressly required in this *Bid Solicitation*. Label documents and/or information so as to reference the *Bid Solicitation's* item number.
  - Technical Proposal response to the *Information for Evaluation* section of the *Response Packet*.

### 1.9 **CLARIFICATION OF BID SOLICITATION**

- A. Any questions requesting clarification of information contained in this *Bid Solicitation* **shall** be submitted in writing via email by 9:00 a.m., Central Time on or before 2/21/2017 to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.
  1. For each question submitted, vendor should reference the specific solicitation item number to which the question refers.
  2. Vendors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on 2/24/2017.
- B. Vendors may contact the OSP buyer with non-substantive questions at any time prior to the bid opening.
- C. No oral statement by OSP is part of any contract resulting from this solicitation and may not reasonably be relied on by any vendor as an aid to interpretation unless it is reduced to writing and expressly adopted by OSP.

### 1.10 **RESPONSE SIGNATURE PAGE**

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

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

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

**1.12 SUBCONTRACTORS**

- A. Vendor **shall** complete, sign and submit the *Proposed Subcontractors Form* included in the *Technical Proposal Packet*.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Technical Proposal Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.
- C. ADPT **shall** have final approval of all proposed and/or future subcontractors.

**1.13 PRICING**

- A. Vendor(s) **shall** include all pricing on the Official Price Bid Sheet only. Any cost not identified by the successful vendor for the listed service but subsequently incurred in order to achieve successful operation of those services **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* is market basket pricing which includes the key services that will cover the bulk of the annual contract cost. The *Official Bid Price Sheet* is designed for direct cost comparison purposes. The actual number of hours for these services used for the resulting contract may be more or less than shown. Pricing for remaining services will be negotiated prior to contract award.
  1. If negotiations fail to result in a contract, the State may begin the negotiation process with the next highest ranking vendor. The negotiation process may be repeated until an anticipated successful vendor has been determined, or until such time the State decides not to move forward with an award.
- C. To allow time to evaluate proposals, vendor **shall** guarantee firm pricing for no less than 180 days following the bid opening.
- D. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **shall** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". DO NOT submit any ancillary information not related to actual pricing in the sealed pricing package.
- E. Vendor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.
- F. Failure to complete and submit the *Official Bid Price Sheet* **shall** result in disqualification.
- G. All proposal pricing **shall** be in United States dollars and cents.
- H. The Official Bid Price Sheet may be reproduced as needed.

**1.14 PRIME CONTRACTOR RESPONSIBILITY**

- A. A single vendor **shall** be identified as the prime contractor.
- B. The prime contractor **shall** be responsible for the contract and jointly and severally liable with any of its subcontractors, affiliates, or agents to OSP and ADPT for the performance thereof.

**1.15 INDEPENDENT PRICE DETERMINATION**

- A. By submission of this proposal, the vendor certifies that in connection with this proposal:
  - The prices in the proposal have been arrived at independently, without collusion.
  - No prior information concerning these prices has been received from, or given to, a competitive company.
- B. Evidence of collusion may warrant consideration by the Office of the Attorney General.

**1.16 PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).

- B. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Technical Proposal Packet*. A CD is also acceptable.
- C. Except for the redacted information, the redacted copy **shall** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- D. The vendor **shall** be responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- E. The redacted copy **shall** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor.
- F. If a redacted copy of the submission documents is not provided with vendor's response packet, a copy of the non-redacted documents, with the exception of financial data, **shall** be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- G. If the State deems redacted information to be subject to FOIA, the vendor will be contacted prior to release of the documents.

### 1.17 **CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **shall** be addressed through OSP.
- B. Vendor **shall not** alter any language in any solicitation document provided by the State.
- C. Vendor **shall 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. Proposals **shall** 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 **shall** provide clarification of any information in their response documents as requested by OSP.
- H. Qualifications and proposed services **shall** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- I. Vendors may submit multiple proposals.

### 1.18 **REQUIREMENT OF ADDENDUM**

- A. This *Bid Solicitation* may only be modified by an addendum written and authorized by OSP.
- B. An addendum posted within three (3) calendar days prior to the bid opening may 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.

### 1.19 **AWARD PROCESS**

- A. Successful Vendor Selection
  - 1. Proposals will be evaluated consistent with OSP policy. Evaluation culminates with a Grand Total Score for each proposal.
  - 2. The Grand Total Score for each proposal, which **shall** be a sum of the Technical Score and Cost Score, **shall** be used to determine the ranking of proposals. The State may move forward to negotiations with those responsible offerors determined, based on the ranking of the proposals, to be reasonably susceptible of being selected for award.

**B. Negotiations**

1. If the State so chooses, it **shall** have the right to conduct negotiations with the highest ranking vendors. All negotiations **shall** be conducted at the sole discretion of the State. The State **shall** solely determine the items to be negotiated.
2. If negotiations fail to result in a contract, the State may begin the negotiation process with the next highest ranking vendor. The negotiation process may be repeated until the anticipated successful vendor has been determined, or until such time the State decides not to move forward with an award.
3. The State may permit all offerors an opportunity to revise proposals for the purpose of obtaining best and final offers from all vendors.

**C. Anticipation to Award**

1. Once the 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](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.
2. A State Procurement Official will be responsible for award and administration of any resulting contract.

**1.20 PRESENTATIONS**

- A. The three (3) highest ranking responsive vendors, based on the scores received in *Part I* of the Evaluation, **shall** qualify to proceed to *Part II—Presentation* of the Evaluation.
- B. Qualifying vendors proceeding to *Part II--Presentation* of the Evaluation, **shall** deliver an Presentation, in person, to an Evaluation Committee appointed by the ADPT.
- C. Approximately one to two weeks prior to Presentations, qualifying vendors will receive official notification from the ADPT regarding specific scheduling and presentation requirement details.
- D. The vendor's staff member(s) to be assigned to the possible resulting contract for the ADPT account **shall** deliver the Presentation.
- E. Presentations **shall** be evaluated and scored as Part II of the Evaluation.
- F. The ADPT reserves the right to record any and all Presentations.
- G. The vendor **shall** be responsible for all expenses associated with the Presentation including all travel and preparation expenses.
- H. Pricing **shall not** be discussed or included in the Presentation.

**1.21 MINORITY BUSINESS POLICY**

- A. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this State who is:
- African American
  - American Indian
  - Asian American
  - Hispanic American
  - Pacific Islander American
  - A Service Disabled Veterans as designated by the United States Department of Veteran Affairs
- B. The Arkansas Economic Development Commission conducts a certification process for minority businesses and disabled veterans. The vendor's Certification Number should be included on the vendor's *Response Signature Page*.

**1.22 EQUAL OPPORTUNITY POLICY**

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

**1.23 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) **shall** 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 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 at that time.

**1.24 PAST PERFORMANCE**

In accordance with provisions of State Procurement Law, specifically OSP Rule R5:19-11-230(b)(1), a vendor's past performance with the State may be used to determine if the vendor is "responsible". Responses submitted by vendors determined to be non-responsible **shall** be disqualified.

**1.25 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 **shall** 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 **shall** 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.

#### **1.26 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM**

The respondent's solution **shall** 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.

#### **1.27 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.

#### **1.28 PUBLICITY**

- A. Vendors **shall not** release any information pertaining to this *Bid Solicitation* or any portion of the project without OSP's prior written approval. This **shall** include any information during the solicitation process and news releases after contract award.
- B. Failure to comply with this Requirement may be cause for a vendor's proposal to be disqualified.

**1.29 RESERVATION**

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

## **SECTION 2 – MINIMUM REQUIREMENTS**

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

### **2.1 INTRODUCTION**

The goal of this RFP is to identify a partner which can work in close collaboration with ADPT (which includes the State Parks Division and the Tourism Division) to develop, implement, and continually optimize a comprehensive and integrated marketing program that aggressively promotes the State of Arkansas as a year-round travel destination. The lead vendor should provide consumers with an integrated solution across traditional, digital, social media, and public relations – whether the media be paid, earned, or owned.

With enabling legislation dating back to the 1920s and '30s, the Arkansas Department of Parks and Tourism (ADPT) is a cabinet-level agency charged with enhancing the State's quality of life by promoting, protecting, interpreting, and managing Arkansas's natural and cultural resources. Although its central office is in Little Rock, most of the ADPT personnel are based in 52 state parks or 14 welcome centers located across Arkansas. Roughly 800 full-time employees and another 850 part-timers are on the payroll.

The ADPT has experienced monumental changes over the past quarter of a century, two of which radically transformed the agency's financial position. Passage of Act 38 of 1989 established a tourism development trust fund (primarily based on a 2% lodging tax) designed to supplement the Tourism Division's marketing efforts. These dollars have been used to mount research-based promotional campaigns aimed at key demographic groups in selected markets. In 1996, the State's voters approved Amendment 75, substantially increasing the budget of the State Parks Division. Now, following a couple of decades of improvements and enhancements, Arkansas can claim one of the top state park systems in the entire country.

Results from the two additional funding sources have been impressive. In calendar year 2015, for example, Arkansas's tourism industry hosted 28.1 million guests who spent \$7.3 billion in the State, to include \$374 million in State taxes. Visitation to "The Natural State" has nearly doubled since the "tourism tax" went into effect and overall spending by travelers has more than tripled.

Likewise, the State Parks Division has recorded substantial gains in recent years, particularly in terms of revenue growth. Its total sales of \$28 million in fiscal year 2016 were 30% higher than a decade earlier. The state park system tallied nearly 9 million visitors in Fiscal Year 2015, in broad contrast to its only 3 million residents.

The Arkansas Department of Parks and Tourism is charged with both encouraging its residents to vacation within the State and inspiring potential out-of-state travelers to visit Arkansas through promotional campaigns designed to establish the State as a world-class tourism destination.

For the past 20 years the ADPT has contracted with two outside vendors to handle its advertising needs. One vendor has provided what at one time was called "traditional" advertising services while the other was considered the ADPT internet vendor. Beginning in 2017, these professional services will be rolled into a single contract.

For further information, please see *Attachment A* which provides:

- Background and Current Environment of ADPT Advertising and Marketing
- Target Markets
- Key Challenges
- Additional Agency Information

*Attachment B, Attachment C, and Attachment D* also provide further information. However, all attachments A-D are for informational purposes only. A vendor should base a response on the bid solicitation and not on current practices.

**2.2 PRIME VENDOR QUALIFICATIONS**

- A. The prime vendor **shall** be authorized to do business in the State of Arkansas prior to award.
- B. The prime vendor **shall** be in full Americans with Disabilities Act (ADA) compliance.

**2.3 VENDOR QUALIFICATIONS**

- A. The qualifications in this section **shall** be met through the vendor's own experience or through the experience of the vendor's proposed subcontractors.
- B. The vendor **shall** have a minimum of five (5) years' experience with advertising in the travel category and with the nuances of the tourism industry.
- C. The vendor **shall** have a fully integrated creative development department.
- D. The vendor **shall** have clear lines of communication and responsibility within its organization.
- E. The vendor **shall** have a minimum of five (5) years' advertising experience with a destination marketing organization.
- F. The vendor **shall** have the ability to lead subcontractors in developing integrated marketing communications.
- G. The vendor **shall** have a minimum of two (2) years' experience hosting a major tourism-oriented website.
- H. The vendor **shall** have a minimum of three (3) years' experience with CMS, Google Analytics, and Google TagManager.
- I. The vendor **shall** have extensive knowledge and experience with industry's best practices in PR campaign management.
- J. The vendor **shall** have in-house media buying capability with buying experience in all of Arkansas' media markets.

**2.4 GENERAL REQUIREMENTS**

- A. Within one (1) year of contract award, the vendor **shall** develop, facilitate, and deliver on a foundational, creative, big idea that will serve as the brand catalyst and platform for all State promotional content.
- B. The vendor **shall** provide cross-functional, channel-agnostic creative and content ideas and recommendations.
- C. The vendor **shall** provide key insights and segmentation around target consumers.
- D. If requested, the vendor **shall** give a presentation that is approved by ADPT during the Arkansas's Annual Governor's Conference on Tourism. Details will be provided to the successful vendor.
- E. The vendor **shall** provide the six services listed below:
  - 1. Lead and Creative
  - 2. Public Relations
  - 3. Social Media
  - 4. Media Planning and Buying
  - 5. Website Development and Hosting
  - 6. Marketing
- F. The prime vendor **shall** provide Lead and Creative. As Lead, the vendor **shall** oversee all aspects of the contract, and it is highly preferable that the Lead handles the majority of all remaining services. However, the vendor may choose to subcontract one or more, or a portion thereof, of the above services numbered 2 through 6.

## 2.5 **CREATIVE SERVICES**

- A. The vendor **shall** conceptualize big, singular ideas that engage the audience with Arkansas's and Arkansas State Parks' brand.
- B. The vendor **shall** strategize, create, produce, procure, and prepare advertising and branded content for distribution on domestic and international online and offline media channels, including paid, owned, and earned and social media platforms.
- C. The vendor **shall** create, produce, publish, and distribute printed promotional materials including, but not limited to *The Arkansas Travel Guide*, *Water & Woods*, the *Arkansas Motorcycling Guide*, the *Arkansas Mountain Biking Guide*, the *Arkansas Road Biking Guide* and the *Arkansas State Park Guide*.
- D. The vendor **shall** research, produce and/or procure, and manage assets and content for tourism development and marketing purposes, including but not limited to artwork, illustrations, photography, video, music, maps, voiceover, copy, literature, brand identity, etc., negotiating rates and use for rights-managed assets.
- E. The vendor **shall** design and translate content for international, trade, and agency staff as necessary.
- F. The vendor **shall** develop creative concepts, design, and art direction for the various publications.
- G. The vendor **shall** design promotional content using static and dynamic data feeds and formats.
- H. The vendor **shall** work collaboratively with other State agencies, subcontractors, and ADPT's staff to bring ideas to life across all owned, earned, social, and paid media touch points.
- I. The methods and formats for the provision of the above work, as well as the final product, **shall** meet the approval of ADPT.

## 2.6 **PUBLIC RELATIONS**

- A. The vendor **shall** develop consumer-focused public relations programs that complement an overarching marketing plan.
- B. The vendor **shall** strategize, develop, execute, and support comprehensive domestic and international public/media relations campaigns and program activities, using both traditional and emerging social media approaches – including news releases, e-mail blasts, targeted media events, story pitches, and development of hosted press trips.
- C. The vendor **shall** engage Arkansas's tourism industry public and private sector partners to assist in all phases of work with the media.
- D. The vendor **shall** service inbound media requests/inquiries which may include but are not limited to content development, hosting, logistical arrangements, providing visuals and video.
- E. The vendor **shall** track results of inbound servicing.
- F. The vendor **shall** cultivate and maintain relationships with influential travel and lifestyle voices.
- G. The vendor **shall** enhance and maintain online media room and blogs. The current blogs are Arkansas Tourism Blog "Travel Arkansas" and Arkansas State Parks Blog "State Parks of Arkansas Blog".
- H. The vendor **shall** track and report on editorial coverage in both traditional and social media outlets to quantitatively and qualitatively assess earned media value of PR efforts and provide ongoing reports of the findings.
- I. The vendor **shall** develop and manage an integrated contact and communications management system for the purpose of facilitating and tracking communications with media contacts.
- J. The vendor **shall** work with ADPT communication team to share Arkansas Tourism success stories via news releases and annual reports.

- K. The vendor **shall** develop and deliver workshops and seminars on a variety of media, public relations, and travel trade topics as needed and/or requested by ADPT.
- L. The vendor **shall** assist with crisis management strategy, plan, protocol, execution, monitoring and support, including social media channels as directed by ADPT.
- M. The methods and formats for the provision of the above work, as well as the final product, **shall** meet the approval of ADPT.

## 2.7 **SOCIAL MEDIA**

- A. The vendor **shall** develop an integrated social media strategy within an overarching marketing platform.
- B. The vendor **shall** discover and present creative means to drive engagement and connect with consumers.
- C. The vendor **shall** deliver first-to-market opportunities within the tourism category.
- D. The vendor **shall** define and deliver against clear goals, success metrics, and return on investment. ADPT **shall** have the final determination of metrics.
- E. The vendor **shall** effectively buy media and extend the State's media investment through aggressive negotiations and added value programs, including an efficient and effective system of programmatic buying.
- F. The vendor **shall** strategize, develop, and execute social media strategies including competitive and situational analyses, goals, objectives, priorities, and audiences.
- G. The vendor **shall** develop a brand positioning which complements the overall consumer-marketing program.
- H. The vendor **shall** provide compelling, creative execution across all current and future social media channels on an on-going basis.
- I. The vendor **shall** identify and counsel ADPT as to how Arkansas can maximize emerging technology and trends in the social environment.
- J. The vendor **shall** execute, measure, track, and evaluate all social analytics.
- K. The vendor **shall** suggest new tactics and metrics such as objectives, network size, and campaigns as they mature, grow, and evolve.
- L. The vendor **shall** conceptualize, produce, and execute high-impact social media events and campaigns.
- M. The methods and formats for the provision of the above work, as well as the final product, **shall** meet the approval of ADPT.

## 2.8 **MEDIA PLANNING AND BUYING**

- A. The vendor **shall** annually develop and recommend media objectives, strategies, and tactics in support of overall marketing plan goals and objectives.
- B. The vendor **shall** plan, negotiate, and purchase media placements and program integration on channels and publishers including but not limited to print, digital (including display, search engine marketing, mobile, video, social media), broadcast, out-of-home, event sponsorship, point-of-purchase, cooperative marketing, direct marketing, and emerging technology vehicles.
- C. The vendor **shall** evaluate and recommend search engine optimization strategies and activities in coordination with the digital marketing vendor.
- D. The vendor **shall** monitor and optimize placements to ensure maximum performance and full completion of all media schedules, negotiating make-goods and bonus units as appropriate.

- E. The vendor **shall** provide performance reports and analyses of media placements throughout and at the completion of each campaign.
- F. The vendor **shall** retain, and submit to the State upon request, proof of publication, performance, or other such affidavits for all media participation.
- G. The vendor **shall** develop cooperative marketing programs for industry partner participation, such as magazine inserts.
- H. The vendor **shall** monitor industry and priority media markets and report on media insights, opportunities, and information of importance impacting client and its competitors.
- I. Details on hosting the Department's two primary websites – [www.Arkansas.com](http://www.Arkansas.com) and [www.ArkansasStateParks.com](http://www.ArkansasStateParks.com) and all associated URLs – will be determined during the contract transition stage.
- J. The methods and formats for the provision of the above work, as well as the final product, **shall** meet the approval of ADPT.

## 2.9 **WEBSITE**

- A. The vendor **shall** develop the website from the ground up.
- B. The vendor **shall** lead, actualize, and execute website design, re-design, coding, development, automated personalized marketing, content apps, and integration of marketing campaigns and digital projects.
- C. The vendor **shall** provide insightful leadership and best practices related to digital communications and targeted marketing.
- D. The vendor **shall** employ best practices in website optimization and user experience for consumers and staff.
- E. The vendor **shall** define and deliver against clear goals, success metrics, and return on investment. ADPT **shall** have the final determination of metrics.
- F. The vendor **shall** have a commitment to making the ADPT's websites among the best in the tourism category.
- G. The vendor **shall** have knowledge and utilization experience of best practices and analytical benchmarks.
- H. The vendor **shall** design the two websites, [www.Arkansas.com](http://www.Arkansas.com) and [www.ArkansasStateParks.com](http://www.ArkansasStateParks.com), so that they interface with each other for various items as determined by ADPT, such as event calendars and image libraries.

## 2.10 **WEBSITE SERVICES**

### A. Marketing Strategy and Brand Planning

1. The vendor **shall** develop digital marketing plans, including competitive and situational analyses, goals, objectives, priorities, and audiences.
2. The vendor **shall** develop a brand positioning that complements the overall consumer-marketing program.

### B. Creative Services

1. The vendor **shall** create, produce, and prepare digital branded content for distribution on domestic and international online media channels, including paid, owned, earned, and social media platforms.
2. The vendor **shall** research, produce and/or procure, and manage assets and content for tourism development and marketing purposes, including but not limited to artwork, illustration, photography, video, music, maps, voiceover, copy, literature, brand identity pieces, etc.
3. The vendor **shall** negotiate rates and use for rights-managed assets.

4. The vendor **shall** design and translate content for international, trade, and internal audiences as necessary.
5. The vendor **shall** design promotional content using static and dynamic data feeds and formats.

#### C. Website Development, Design, and Strategy

1. The vendor **shall** lead, actualize, and execute website design, re-design, coding, development, automated personalized marketing, content apps, and integration of marketing campaigns and digital projects.
2. The vendor **shall** research marketplace, target audiences/users and develop strategies to reach them and fulfill their needs and expectations of a travel destination website.
3. The vendor **shall** emphasize the automated, personalized marketing, user experience, and interaction design (commonly known as “the consumer journey”).
4. The vendor **shall** create a user interface design.
5. The vendor **shall** provide software engineering, programming, and development consistent with current technologies to include CMS, Google Analytics, and Google TagManager.
6. The vendor **shall** identify and counsel as to how the State can maximize emerging technology and trends in web marketing, design, and development.
7. The vendor **shall** identify and counsel as to how the State can maximize emerging technology and trends in mobile platforms (such as tablets, smartphone, wearables) in terms of native and web apps to support and enhance the State’s marketing efforts.
8. The vendor **shall** identify and counsel the State on current marketing and PR efforts on digital and mobile platforms.
9. The vendor **shall** advise on how to present and use [www.Arkansas.com](http://www.Arkansas.com) , and [www.ArkansasStateParks.com](http://www.ArkansasStateParks.com) , and all other associated URLs on mobile devices (i.e., responsive design, content parity, etc.).
10. The vendor **shall** develop content for [www.Arkansas.com](http://www.Arkansas.com) , and [www.ArkansasStateParks.com](http://www.ArkansasStateParks.com) , and all other associated URLs that is compatible with mobile devices (i.e., responsive design, content parity, etc.).
11. The vendor **shall** implement and provide any new and emerging web content delivery systems and technologies along with creative strategies and objectives as requested by ADPT. Provision of these services, and any implementation costs, will be negotiated with final approval by ADPT.
12. The vendor **shall** work with a ADPT’s third party reservations vendor to integrate online reservations into various online platforms for State Parks Division.

#### D. Website Administration

1. The vendor **shall** provide ADPT with an administrator user role that has the capability to update and maintain any and all functions of the website. Currently, ADPT utilizes the administrator role for updates to website content such as campsite closures and calendar event updates.
2. Prior to the websites’ “go live” date, ADPT **shall** be given access to the site for testing and approval of design. With the anticipated contract start date of July 1, 2017, ADPT’s goal is to “go live” by the end of 2017.
3. After ADPT testing, and prior to the “go live” date determined by ADPT, the vendor **shall** make any changes to the websites design and function that ADPT warrants necessary.

4. The vendor **shall** guarantee that there will be no downtime for any and all functional components of the website exceeding a combined 0.1% monthly. Exceptions to this include:
    - a. Routine server or connectivity maintenance.
    - b. Coding, including but not limited to, publishing new, approved code to the server.
    - c. Third-party plug-ins.
    - d. Actions of third-parties including, but not limited to, ADPT staff and/or hackers.
    - e. Acts of God.
  5. The vendor **shall** have tech support available to ADPT staff by a toll-free phone number and email 24 hours a day, 365 days a year. Within a timeframe acceptable to ADPT, tech support staff **shall** be able to remedy issues with performance, access to reservations system, and administrator updates.
  6. The vendor **shall** update the websites with new technologies as they become available and are requested by ADPT, within a timeframe negotiated and approved by ADPT.
  7. Within a timeframe acceptable to ADPT, the vendor **shall** make all content and function updates and changes to the websites that are requested by ADPT.
  8. Within a timeframe acceptable to ADPT, the vendor **shall** complete all standard maintenance to the websites, as well as any maintenance requests and requirements as stipulated by ADPT.
- E. The methods and formats for the provision of the above work, as well as the final product, **shall** meet the approval of ADPT.

## 2.11 **MARKETING STRATEGY AND BRAND PLANNING**

- A. The vendor **shall** develop brand positioning, strategy, and marketing plans, including competitive and situational analyses, goals, objectives, priorities, audiences, and integrated multi-media strategies.
- B. The vendor **shall** strategize, plan, and execute integrated and measurable marketing programs to build awareness, intent, and travel to Arkansas.
- C. The vendor **shall** develop partnership programs and brand-to-brand relationships to extend marketing reach, engage industry partners, and tap into shared consumer affinities.
- D. The vendor **shall** provide separate account management for Tourism and State Parks. This separate account management **shall** include support for each of the following:
  1. Staff coordination
  2. Budget management
  3. Project management
  4. Status reports
  5. Quality control
  6. Client communications

**2.12 STAFFING**

- A. The vendor **shall** have an office with a minimum of one (1), 100% dedicated Account Executive and dedicated day-to-day account staff in the greater Little Rock metropolitan area within 30 days of contract start date and throughout the contract term.
1. The dedicated Account Executive **shall** be the point of contact for the State in all matters related to the services under the resulting contract and **shall** be dedicated to ADPT only.
- B. The Account Executive, and additional staff as ADPT requires, **shall** travel to various locations within the State to attend and actively participate in the monthly meetings of the Arkansas State Parks, Recreation and Travel Commission.
- C. Upon request by the ADPT, the vendor **shall** replace any staff member assigned to the State's account. The vendor **shall** provide the ADPT with a replacement having equal or higher qualifications and expertise than the staff member being replaced. The vendor **shall** provide the replacement in such a way that does not disrupt the daily operations of the ADPT.
- D. As requested by the ADPT, the Account Executive and/or the dedicated staff assigned to the ADPT account **shall** attend planning and follow-up meetings at the ADPT offices in Little Rock, Arkansas.
1. These meetings are typically held during normal business hours which are Monday through Friday, 8:00 a.m. until 5:00 p.m. CST.
  2. Scheduled times for meetings **shall** be at the ADPT's discretion, and reasonable notice will be given.
  3. Currently, planning and follow-up meetings are held a minimum of once per week; however, the frequency is expected to fluctuate throughout the entire contract term.
- E. As standard advertising practice, and/or per the ADPT's discretion or approval, the Account Executive and/or the dedicated staff assigned to the ADPT account **shall** track the results of all comprehensive advertising, marketing, public or government relations campaigns implemented. The vendor **shall** provide the ADPT with the tracking results in the Post Campaign Report.
- F. The vendor **shall** provide dedicated account management that includes account staff coordination, budget management, project timelines, status reports, quality control, and client communications.
- G. The vendor **shall** represent Arkansas at media events, shows, marketplaces, trips, and other outreach forums and key in-state events.
1. These events vary and can be negotiated during the implementation meeting or throughout the contract as determined by ADPT. ADPT **shall** have the final approval of this negotiation.
  2. This representation **shall** be the Account Executive or a Subject Matter Expert that is a staff member, as approved by ADPT.

**2.13 RESEARCH AND EVALUATION OF STATE TOURISM BUSINESS**

- A. The vendor **shall** monitor, track, and provide to ADPT points-of-view on social, economic, political, environmental, media, consumer, and travel industry data and trends that could impact the State's tourism business.
- B. The vendor **shall** identify opportunities to grow market share and/or revenue.
- C. The vendor **shall** conduct research to shape, target, and measure marketing efforts.
- D. The vendor **shall** track and evaluate performance or marketing activities.
- E. The vendor **shall** produce reports, summaries, dashboards, and other tools on industry and State performance indicators.

- F. The vendor **shall** monitor and provide intelligence on marketing activities of competitors.
- G. The vendor **shall** conduct audits and analyses of State tourism products and experiences.
- H. The methods and formats for the provision of the above work, as well as the final product, **shall** meet the approval of ADPT.

## 2.14 **REPORTING**

- A. The vendor **shall** submit all reports to ADPT in a format and within the timeframes approved by ADPT.
- B. Status Reports
  - 1. The vendor **shall** submit a status report to ADPT weekly. The report **shall** include the following information, or as determined by ADPT:
    - a. A detailed status update of all current projects, production jobs, and promotional events.
    - b. Timelines for all initiatives.
    - c. The vendor **shall** provide no fewer than three (3) days for ADPT to approve, or require changes of the above, at any stage.
- C. Media Flowcharts
  - 4. The vendor **shall** monitor and maintain Media Flowcharts on an ongoing basis to determine and improve the Return on Investment and effectiveness of all media buys. The flowcharts **shall** be submitted to the ADPT as requested and **shall** be current to include the following information:
    - a. Media type
    - b. Market Tiers
    - c. GRP (gross rating point) Levels
    - d. Creative rotation
    - e. Costs for each campaign, summarized by campaign, month, quarter, and year
- D. The vendor **shall** submit a Post Campaign Report following each advertising campaign that is implemented.
- E. The methods and formats for the provision of the above work, as well as the final product, **shall** meet the approval of ADPT.

## 2.15 **PROPERTY RIGHTS**

- A. Upon expiration or termination of this contract, the vendor **shall** transfer property rights of all data and deliverables (intellectual and tangible) to the ADPT and **shall not** hold ownership or an intellectual property claim to any data or deliverable associated with the ADPT account including but not limited to the following:
  - Patents
  - Trademarks
  - Logos
  - Television, radio, and outdoor advertising and marketing products
  - Printed advertising and marketing products
  - Media Schedules

- Digital products including websites and social media
  - Third party data, analytics and/or records
- B. The vendor **shall** maintain the source code with an escrow agent and list the State as an authorized recipient of the source code for instances in which the vendor is unable to maintain the software. These instances include, but are not limited to, business failure, contract default, disaster recovery, or a different vendor continuing website services after the termination or expiration of the contract. These conditions **shall** be specified in the escrow agent contract, and this contract **shall** meet the approval of ADPT.
- C. Upon expiration or termination of this contract, the vendor **shall** transfer all data, deliverables, and products the vendor has created, developed, produced, or managed while performing the services outlined in this contract to the ADPT within thirty (30) calendar days and **shall not** charge a fee to the ADPT for this service. All data, deliverables, and products **shall** become the exclusive property of the ADPT.
- D. The vendor **shall not** utilize any portion of the projects created, developed, produced, or managed including all deliverables and creative concepts without the prior, written consent of the Director of the Department of Parks and Tourism.

## 2.16 **START OF CONTRACT TRANSITION AND IMPLEMENTATION**

- A. Transition details will be determined during first six months of contract, and ADPT **shall** have final approval of the plan.
- B. Vendor **shall** take the lead in development and execution of the transition and implementation plans.
- C. Within three (3) weeks of contract award, the awarded vendor **shall** schedule and setup a series of kickoff meetings with ADPT, who **shall** have the final determination of all meetings sites and times.

## 2.17 **END OF CONTRACT TRANSITION SERVICES**

- A. Upon termination or expiration, should any subsequent contract for advertising and marketing services be awarded to a provider other than the awardee of this RFP, the then current vendor **shall**, to the greatest extent possible and reasonable, cooperate with the ADPT in initiating a smooth and orderly transition to the next vendor.

## 2.18 **ADVERSE REPRESENTATION**

- A. The vendor for the Department of Parks and Tourism **shall not** hold a tourism account with a contiguous state throughout its contract with the State of Arkansas. By submitting a proposal, the offeror represents and warrants that it does not currently hold a tourism account with a state contiguous to the State of Arkansas.
- B. The vendor **shall not** enter into a contract to service the tourism account of a contiguous state for the duration of its contract with the ADPT.
- C. It is permissible for the vendor to include regional and local destination marketing organizations, both within Arkansas and beyond its borders, among its clients.
- D. It is possible that a primary vendor may wish to use a subcontractor to perform certain services required under this proposal (e.g., hosting the ADPT websites). In such situations, the ADPT has no issue with a subcontractor servicing other state tourism accounts. Should such an arrangement be proposed, the vendor and subcontractor **shall** each provide a single contact for Tourism and a single contact for State Parks.

## 2.19 **PERFORMANCE STANDARDS**

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. *Table 1: Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **shall** meet in order to avoid assessment of damages.
- B. The State will be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration.

- C. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the vendor so as to establish standards that are reasonably achievable.
- D. All changes made to the Performance Standards **shall** become an official part of the contract.
- E. Performance Standards **shall** continue throughout the term of the contract.
- F. Failure to meet the minimum Performance Standards as specified **shall** result in the assessment of damages.
- G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend or respond to the insufficiency. The State **shall** have the right to waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services. In these instances, the State **shall** have final determination of the performance acceptability.
- H. Should any compensation be owed to the agency due to the assessment of damages, vendor **shall** follow the direction of the agency regarding the required compensation process.

Table 1: Performance Standards

<i>Criteria</i>	<i>Standard</i>	<i>Damages</i>
Dedicated Account Management	Provides a minimum of one (1) Account Executive assigned by the vendor to be available daily to manage the department's account.	\$50 per day for each day the assigned dedicated staff member fails to respond to ADPT.
Creative Development Timelines	Creative is developed within the timelines approved by the department.	\$500 per 24 hours when creative development exceeds timelines established and/or approved by ADPT.
Creative Development Budgets	Creative is developed within the budgets approved by the department.	\$500 per each 10% that creative development exceeds any itemized budget line established and/or approved by ADPT.
Creative Production Timelines	Creative is produced within the timelines approved by the department.	\$500 per 24 hours when creative production exceeds the timelines established and/or approved by ADPT.
Creative Production Budgets	Creative is produced within the budgets approved by the department.	\$500 per each 10% that creative production exceeds any itemized budget line established and/or approved by ADPT.
Media Buys	Media buys are conducted within the timelines established by the department.	\$500 per occurrence for each missed deadline for a media buy.
Website Availability	Not more than .1% downtime monthly excluding any downtime caused by the following: <ol style="list-style-type: none"> <li>1. Routine server or connectivity maintenance</li> <li>2. Coding, including but not limited to, publishing new, approved code to the server</li> <li>3. Third-party plug-ins</li> <li>4. Actions of third-parties including but not limited to P&amp;T staff and/or hackers</li> <li>5. Acts of God</li> </ol>	Time to restore; < 4 hours monthly: 25% credit on monthly invoice for the monthly hosting fee for the website server. > 4 hours monthly: 100% credit on the monthly invoice for the monthly hosting fee for the website server, not including the exclusions listed under "Standard"

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

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

### **3.1 TECHNICAL PROPOSAL SCORE**

- A. OSP will review each *Technical Proposal Packet* to verify submission Requirements have been met. *Technical Proposals Packets* that do not meet submission Requirements **shall** be disqualified and **shall not** be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying Technical Proposals. Evaluation will be based on vendor's response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
1. Members of the Evaluation Committee will individually review and evaluate proposals and complete an Individual Score Worksheet for each proposal.
  2. After initial individual evaluations are complete, the Evaluation Committee members will meet to discuss their individual ratings. At this consensus scoring meeting, each member will be afforded an opportunity to discuss his or her rating for each evaluation criteria.
  3. After committee members have had an opportunity to discuss their individual scores with the group, the individual committee members will be given the opportunity to change their initial individual scores, if they feel that is appropriate.
  4. The final individual scores of the evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each proposal.
  5. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.
- C. The *Information for Evaluation* section has been divided into sub-sections.
1. In each sub-section, items/questions have each been assigned a maximum point value of five (5) points. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
  2. The agency has assigned Weighted Percentages to each sub-section according to its significance.

Information for Evaluation Sub-Sections	Maximum Raw Points Possible	Sub-Section's Weighted Percentage	* Maximum Weighted Score Possible
E.1 COMPANY PROFILE AND EXPERIENCE	85	10%	80
E.2 STAFFING/ DEPARTMENTS	25	5%	40
E.3 AWARDS, ACCOLADES, AND INDUSTRY RECOGNITION	5	2%	16
E.4 CREATIVE	75	18%	144
E.5 PUBLIC RELATIONS	30	5%	40
E.6 SOCIAL MEDIA	50	9%	72
E.7 MEDIA PLANNING AND BUYING	30	3%	24
E.8 DIGITAL	45	9%	72
E.9 WEBSITE	25	16%	128
E.10 TRANSITION AND IMPLEMENTATION	15	10%	80
<b>Technical Score Subtotal</b>	<b>385</b>	<b>87%</b>	<b>696</b>

Presentation	5	13%	104
<b>Technical Score Total</b>	<b>390</b>	<b>100%</b>	<b>800</b>

\*Sub-Section's Percentage Weight x Total Weighted Score = Maximum Weighted Score Possible for the sub-section.

D. The vendor's weighted score for each sub-section will be determined using the following formula:

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

A = Actual Raw Points received for sub-section in evaluation  
 B = Maximum Raw Points possible for sub-section  
 C = Maximum Weighted Score possible for sub-section  
 D = Weighted Score received for sub-section

E. Vendor's weighted scores for sub-sections will be added to determine the Technical Score Total for the Proposal.

**3.2 PRESENTATION SCORE**

- A. The three vendors with the top Technical Subtotal scores after the completion of the technical proposal evaluation will be contacted to schedule a Presentation.
- B. After each presentation is complete, the Evaluation Committee members will individually score the Presentation, discuss the Presentation, and have the opportunity to revise their individual Presentation scores based on the discussion.
- C. The final individual Presentation scores of the evaluators will be averaged and added to the Technical Subtotal to determine final Technical Score Total for each proposal.

**3.3 COST SCORE**

- A. When pricing is opened for scoring, the maximum amount of cost points will be given to the vendor with the lowest Estimated Annual Total Cost as shown on the Official Bid Price Sheet. (See *Grand Total Score* for maximum points possible for cost score.)
- B. The amount of cost points given to the remaining vendors will be allocated by using the following formula:

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

- A = Lowest Total Cost
- B = Second (and third) Lowest Total Cost
- C = Maximum Points for Lowest Total Cost
- D = Total Cost Points Received

Note: The *Official Bid Price Sheet* is market basket pricing which includes the key services that will cover the bulk of the annual contract cost. The *Official Bid Price Sheet* is designed for direct cost comparison purposes and should not be interpreted as the actual number of hours for the resulting contract. The actual number of hours for these services may be more or less than shown on the Official Price Sheet. Pricing for any remaining services will be negotiated prior to contract award.

**3.4 GRAND TOTAL SCORE**

The Technical Score and Cost Score will be added together to determine the Grand Total Score for the vendor. The vendor with the highest Grand Total Score will be selected as the apparent successful vendor, subject to the State’s right to engage in further negotiation, allow best and final offers, or cancel the solicitation. (See *Award Process*.)

	<b>Maximum Points Possible</b>
Technical Score including Presentation	800
Cost Score	200
<b>Maximum Possible Grand Total Score</b>	<b>1,000</b>

**3.5 VENDOR ACCEPTANCE OF EVALUATION TECHNIQUE**

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

## **SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS**

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

### **4.1 PAYMENT AND INVOICE PROVISIONS**

- A. All monthly invoices **shall** be forwarded to:

Arkansas Department of Parks and Tourism  
1 Capitol Mall, Suite 4A-900  
Little Rock, AR 72201

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services by the agency.
- C. The State **shall not** be invoiced in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the vendor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The vendor should invoice the agency by an itemized list of charges. The agency's Purchase Order Number and/or the Contract Number should be referenced on each invoice.
- F. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- G. Selected vendor **shall** be registered to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/vendor/index.html>.

### **4.2 GENERAL INFORMATION**

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

J. In a contract with another party, the State will accept the risk of loss of the equipment or software and pay for any destruction, loss or damage of the equipment or software while the State has such risk, when:

- The extent of liability for such risk is based upon the purchase price of the equipment or software at the time of any loss, and
- The contract has required the State to carry insurance for such risk.

#### 4.3 **CONDITIONS OF CONTRACT**

A. The vendor **shall** at all times observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to the execution of a resulting contract which in any manner affect the completion of the work.

B. The vendor **shall** indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the vendor.

#### 4.4 **STATEMENT OF LIABILITY**

A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of vendor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The vendor **shall** retain total liability for equipment, software and technical and business or operations literature. The State **shall** not at any time be responsible for or accept liability for any vendor-owned items.

B. The vendor's liability for damages to the State **shall** be limited to the value of the Contract or \$105,000,000, whichever is higher. The foregoing limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The vendor and the State **shall not** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

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

#### 4.5 **RECORD RETENTION**

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

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

C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

**4.6 PRICE ESCALATION**

- A. Price increases will be considered at the time of contract renewal.
- B. The vendor **shall** provide to OSP a written request for the price increase. The request **shall** include supporting documentation demonstrating that the increase in contract price is based on an increase in market price. OSP **shall** have the right to require additional information pertaining to the requested increase.
- C. Increases **shall not** be considered to increase profit or margins.
- D. OSP **shall** have the right to approve or deny the request.

**4.7 CONFIDENTIALITY**

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

**4.8 CONTRACT INTERPRETATION**

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

**4.9 CANCELLATION**

- A. In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding. The State **shall** give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination. The effective date of termination **shall** be 30 days from the date of notification, unless a longer timeframe is specified in the notification.
- B. Upon default of a vendor, the State **shall** agree to pay only sums due for goods and services received and accepted up to cancellation of the contract.

**4.10 SEVERABILITY**

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the vendor **shall** be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it **shall not** be affected by such declaration or finding and **shall** be fully performed.

## **SECTION 5 – STANDARD TERMS AND CONDITIONS**

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

1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
3. **BID SUBMISSION:** Original Proposal Packets **shall** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Proposal Packet **shall** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **shall** be typed or printed in ink. The signature **shall** 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 **shall** 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 **shall** 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 **shall** 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 **shall** 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, **shall** 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 **shall** 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 **shall** 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 **shall** 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. 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.
- 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.