



STATE OF ARKANSAS

Department of Human Services
Office of Procurement
700 Main Street,
Little Rock, AR 72201

INVITATION FOR BID BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	710-17-1019	Solicitation Issued:	05/08/2017
Description:	Data Mining and Program Evaluation		
Agency:	Department of Human Services (DHS)/Division of Medical Services (DMS) by Office of Procurement (OP)		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Submission Date:	05/26/2017	Bid Submission Time:	10:00 a.m. Central Time
<p>Bids shall not be accepted after the designated bid submission 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 submission date and time. Bids received after the designated bid submission 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 the Office of Procurement (OP).</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address: Drop off (walk in):	Arkansas Department of Human Services Attn: Office of Procurement 700 Main Street Slot W345 Little Rock, AR 72201
United States mail (USPS):	Arkansas Department of Human Services Attn: Office of Procurement P.O. Box 1437 Slot W345 Little Rock, AR 72203-1437
Commercial Carrier (UPS, FedEx or USPS Exp):	Arkansas Department of Human Services Attn: Office of Procurement 112 West 8 th Street, Slot W345 Little Rock, AR 72201 Delivery providers, USPS, UPS, and FedEx deliver mail to OP's street address on a schedule determined by each individual provider. These providers will deliver to OP based solely on the street address.
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

Department of Human Services CONTACT INFORMATION			
OP Buyer:	Warren Jensen	Buyer's Direct Phone Number:	501-537-1066
Email Address:	Warren.Jensen@dhs.arkansas.gov	DHS's Main Number:	501-682-1001
DHS Website:	http://humanservices.arkansas.gov/Pages/default.aspx		
OPS Website:	http://www.arkansas.gov/dfa/procurement/bids/index.php		
DMS Website	https://www.medicaid.state.ar.us/provider/logon.aspx		

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

1.1 PURPOSE

The purpose of this Invitation to Bid (IFB) is to solicit proposals from qualified organizations, to develop and manage the program evaluation, data mining, and utilization analysis activities for the Division of Medical Services (DMS).

1.2 TYPE OF CONTRACT

- A. A Term contract will be awarded to a single vendor.
- B. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review.
- C. The term of this contract **shall** be for one (1) year. The anticipated starting date for the contract is 08/01/2017. Upon mutual agreement by the vendor and agency, the contract may be renewed by OP on a year-to-year basis, for up to six (6) additional one-year terms or a portion thereof.
- D. The total contract term **shall not** be more than seven (7) years.

1.3 ISSUING AGENCY

The Office of Procurement (OP), as the issuing office, is the sole point of contact throughout this solicitation process. Vendor questions regarding this Bid Solicitation should be made through the State's buyer as shown on page two of this document. Vendor's questions will be answered as a courtesy and at vendor's own risk.

1.4 BID OPENING LOCATION

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

Department of Human Services
Office of Procurement
700 Main Street
Little Rock, AR 72201

Vendors wishing to attend the bid opening must report to the main entrance location, Arkansas Department of Human Services, Donaghey Plaza South Building, 700 Main Street, Little Rock, Arkansas 72201 and check in with the receptionist. All attendees are required to obtain security clearance upon entrance to the building by submitting a current, valid photo ID, preferably a driver's license, to the Security Officer at the reception area. The Security Officer will issue a visitor's badge which must be worn at all times. Before leaving the bid opening visitors are required to return the visitor's badge to the Security Officer and retrieve their ID.

The receptionist is to contact the buyer, for the vendor, for more detailed directions to the bid opening location.

1.5 DEFINITION OF REQUIREMENT

- A. The words "**must**" and "**shall**" signify a Requirement of this solicitation and that vendor's agreement to and compliance with that item is mandatory.
- B. Exceptions taken to any Requirement in this *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.

1.7 RESPONSE DOCUMENTS**A. Bid Response Packet**

- 1. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Bid Signature Page*.
- 2. Vendor’s signature on this page **shall** signify vendor’s agreement that either of the following **shall** cause the vendor’s bid to be disqualified
 - a. Additional terms or conditions submitted intentionally or inadvertently.
 - b. Any exception that conflicts with a Requirement of this *Bid Solicitation*.
- 3. The following items **shall** be submitted with the *Bid Response Packet in a sealed envelope*.
 - I Copy of Vendor’s Equal Opportunity Policy. (See Equal Opportunity Policy.)
 - II Signed addenda to this IFB, if applicable. (See Requirement of Addendum.)
 - III Documentation that vendor meets the minimum qualifications outlined in this IFB. (See *Minimum Qualifications*.)
- 4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information. **Submit one (1) electronic copy of the response packet, excluding the Official Bid Price Sheet, preferably on a flash drive. To the extent possible, all electronic files should be a single document in PDF format.**

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, in a single PDF file.
- 3. The *Official Bid Price Sheet*, including the hard copy and electronic copy, must be separately sealed from the *Bid Response Packet* and should be clearly marked as “Pricing.” Vendor must not include any pricing in the hard copies or electronic copies of the *Bid Response Packet*.

1.8 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.

1.9 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*.

1.10 PRICING

- A. Vendor(s) **must** include all pricing on the Official Bid Price 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 in the Bid Response Packet.
- B. A justification of prices quoted should be attached to the *Official Bid Price Sheet*.
- C. To allow time to evaluate bids, prices **must** be valid for 120 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.
- G. The *Official Bid Price Sheet* and accompanying price justification **must** be separately sealed from the *Bid Response Packet*.

1.11 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.

1.12 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.

1.13 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.
- 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.

1.14 CAUTION TO VENDORS

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through OP.
- 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 OP.
- 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.

1.15 REQUIREMENT OF ADDENDUM

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by OP.
- 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 following websites for any and all addenda up to bid opening:
<http://www.arkansas.gov/dfa/procurement/bids/index.php>,
<http://humanservices.arkansas.gov/Pages/default.aspxhttps://www.medicaid.state.ar.us/provider/logon.aspx>

1.16 AWARD PROCESS**A. Vendor Selection**

- 1. Award **shall** be made on an ALL OR NONE basis to the lowest responsive bidder. Bidders must meet minimum qualifications. Bids must meet or exceed all defined specifications. Bids must meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.

Contract award, extension, or renewal is contingent upon approval by officials of DHS, subsequent approval by the DHS Office of Procurement, review by the Legislative Council and the availability of State funds. Changes to any non-financial portion of this agreement may be made with the agreement of both DHS and the Contractor.

B. Anticipation to Award

- 1. Once an anticipated successful vendor has been determined, the anticipated award will be posted on the following websites:
http://www.arkansas.gov/dfa/procurement/pro_intent.php
<http://humanservices.arkansas.gov/Pages/default.aspx>
<https://www.medicaid.state.ar.us/provider/logon.aspx>
- 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. OP **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 above referenced websites for the posting of an anticipated award.

C. Issuance of Contract

1. Any resultant contract of this Bid Solicitation shall be subject to State approval processes which may include Legislative review.
2. An Office of Procurement Official will be responsible for award and administration of any resulting contract.

1.17 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*.

1.18 EQUAL EMPLOYMENT OPPORTUNITY POLICY

- A. In compliance with Arkansas Code Annotated § 19-11-104, OP is required to have a copy of the vendor's *Equal Opportunity (EO) Policy* included with the solicitation response.
- B. *EO Policies* may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov, but **shall** 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.

1.19 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 the Office of State Procurement (OSP) stating that they do not employ or contract with illegal immigrants.
- B. OP 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.

1.20 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.

1.21 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.

1.22 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.

1.23 PUBLICITY

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

1.24 RESERVATION

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

1.25 BIDDER'S QUESTIONS

It is DHS intent that this IFB have adequate information for any/all vendors to respond. However, should a potential bidder have questions, they **shall** complete attachment G and send to Buyer shown on page 1, per the instruction below. The question and answer period is as follows:

- All written question from potential vendors are due in our office by: see section 1.26
- All written questions with their answers will be posted on the following websites on or about: see section 1.26
http://www.arkansas.gov/dfa/procurement/pro_intent.php
<http://humanservices.arkansas.gov/Pages/default.aspx>
<https://www.medicaid.state.ar.us/provider/logon.aspx>

Verbal responses to questions are given as a courtesy; vendors are cautioned to use at their own discretion.

1.26 SCHEDULE OF EVENTS

Public Notice of IFB	May 08, 2017
Deadline for Receipt of Written Questions	May 15, 2017 Noon Central Time
Response to Written Questions, On or About	May 19, 2017
Date and Time for Bid Submission	May 26, 2017 10:00 a.m.
Date and time for Opening Bids	May 26, 2017 11:00 a.m.
Intent to Award Announced, On or About	May 30, 2017
Contract Start, (Subject to State Approval)	08/01/2017

1.27 STATE HOLIDAYS

Holidays are those days as declared legal state holidays by authority of Act 304 of 2001. Those days are as follows:

New Year's Day	January 1
Dr. Martin Luther King Birthday	Third Monday in January
George Washington Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Eve	December 24
Christmas Day	December 25

Additional days can be proclaimed as holidays by the Governor through executive proclamation. State offices are normally closed on holidays; however there are occasions (i.e. during legislative sessions) when it may become

necessary to keep state offices open on holidays. The Contractor shall maintain adequate staff on such working holidays.

SECTION 2 – MINIMUM REQUIREMENTS

2.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of Procurement (OP) for the Department of Human Services (DHS), for the Division of Medical Services (DMS), to obtain pricing and a contract for developing and managing the program evaluation, data mining, and utilization analysis activities for DMS. Additionally, the selected contractor will aggregate and evaluate Health Plan Employer Data Information Set (HEDIS) measures.

2.2 SERVICE DELIVERY LOCATION

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

2.3 MINIMUM QUALIFICATION

The Contractor **must** meet the following requirements:

- 1) Evidence of the qualifications and credentials of the respondent in terms of proven successful experience through similar projects of like size and scope.
- 2) Bidders must include a Dun & Bradstreet SQR report with a minimum score of 4, report to be dated within 1 year of bid submittal
- 3) Submit Company Profile to include background and qualifications of management team that demonstrates the required experience in the Health Care field.

2.4 SCOPE OF WORK

The contractor will develop and manage the data mining and utilization data analysis activities for DMS. The analyses shall use claim, utilization, and performance data to improve service delivery, develop policy, or identify areas in need of policy change or clarification, quality improvement, and for other related matters. The contractor will also provide consulting services for statistical analysis concerning fraud, waste, and abuse and present testimony if necessary.

Survey data will be provided to the contractor for program evaluations electronically. Distribution of utilization and performance data to providers and distribution of other data/materials will be by mail. Contractor should include postage and distribution costs in their bid.

The contractor will regularly update and maintain communication with DMS regarding activities, data mining, and program evaluation progress, and potential additional projects. The contractor will perform additional data mining and program evaluation activities at the request of DMS. All Medicaid data must be maintained according to Federal regulations. The contractor will not use DMS data for any purpose without the express consent of DMS.

The contractor will also conduct program evaluations of Tax Equity and Fiscal Responsibility Act (TEFRA), the evaluation requires quarterly updates with an annual report based on the federal calendar year. The new contractor will begin the evaluation on July 1, 2017. The design of the evaluation is up to the contractor, DMS, and CMS.

These evaluations will be sent to oversight agencies and used by DMS to assess program effectiveness. The contractor will also conduct an annual analysis of the Early, Periodic, Screening, Diagnosis and Treatment program and well-child screens. These evaluations will involve quantitative data analysis of claims data from Medicaid Management Information Systems (MMIS), and qualitative evaluation of current program policies, procedures, and monitoring mechanisms.

Additionally, the selected contractor will aggregate and evaluate Health Plan Employer Data Information Set (HEDIS) measures. The contractor must have a system in place to collect and analyze the HEDIS measures acceptable to DMS and publish and print an annual HEDIS Booklet. The majority of current measures collected use administrative data and do not require medical record collection and review. However, a small number of measures may require hybrid data collection. The HEDIS booklet includes summary data and conclusions and is prepared for public distribution. Approximately 200 booklets will be printed.

DMS will contract with one respondent to this IFB to provide these services statewide. The contractor must conduct activities related to this contract from an office located in Pulaski County, Arkansas. The respondent must have a physical presence in Pulaski County, Arkansas in which key personnel, decision-makers, or both, are located. The contractor may not be an organization that delivers any health care services to Medicaid beneficiaries.

At a minimum, the contractor will:

- Complete one data mining project including related analysis summaries
- Provide program support for calculation of the Adult and Child Core Measures
- Supply required program evaluation on the Tax Equity and Fiscal Responsibility Act (TEFRA)
- Submit special reports, including monthly and final reports, to DMS within the negotiated timeframes
- Submit final evaluations for at least two other programs as selected by DMS, of which the upper limit is four (not including the specific evaluations addressed in this IFB. These evaluations will be in approximate size and scope to the TEFRA evaluations.)
- Conduct an annual analysis of the Early, Periodic, Screening, Diagnosis and Treatment program and well-child screens
- Provide consulting services for statistical analysis concerning fraud, waste, and abuse and present testimony if necessary
- Publish and print the annual HEDIS measure reports and submit to DMS
- Ensure that the HEDIS Report reflects the results of the measure and analysis by geographic region and beneficiary demographics

2.5 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. *Attachment D: Performance Based Contracting* identifies expected 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 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 **may** result in the assessment of damages or termination of the contract.
- G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend, respond to, or cure to as determined by the State, the insufficiency. The State **may** waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services or it is in the best interest of the State. In these instances, the State **shall** have final determination of the performance acceptability.

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.

SECTION 3 – GENERAL CONTRACTUAL REQUIREMENTS

3.1 PAYMENT AND INVOICE PROVISIONS

- A. All invoices **shall** be forwarded to: See Attachment E
- 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 **must** be registered to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/vendor/index.html>.

3.2 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 **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 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.

3.3 **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.
- C. The vendor agrees to DHS Standard Terms and Conditions as presented in Attachment A, and the Business Associate Agreement as presented in Attachment B, a pro forma contract as presented in Attachment C, and the Performance Based Contracting standards as presented in Attachment D.

3.4 **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 \$5,000,000, 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 State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

3.5 **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.

3.6 **PRICE ESCALATION**

- A. Price increases will be considered at the time of contract renewal.
- B. The vendor **must** provide to OP a written request for the price increase. The request **must** include supporting documentation demonstrating that the increase in contract price is based on an increase in market price. OP **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. OP **shall** have the right to approve or deny the request.

3.7 **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.
- D. OP shall have the right to approve or deny the request.

3.8 **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.

3.9 **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.
- C. In addition to other remedies, including without limitation damages, provided for under the contract, failure of a vendor to satisfy any Performance Standard is grounds for the State to terminate the contract. Before the State exercises its right to terminate the contract for failure of a vendor to satisfy a Performance Standard, the vendor may be given an opportunity to defend, respond to, or cure as determined by the State, the identified insufficiency in Performance Standards if it is determined to be in the best interest of the State. The effective date of termination shall be 30 days from the date of notification, unless a longer timeframe is specified in the notification.

3.10 **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.