



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

INVITATION FOR BID

IFB Number: SP-17-0128	Buyer: Judy Shirley, CPPB Email: judy.shirley@dfa.arkansas.gov
Commodity or Service: Mosquito Larvicide Agency: Arkansas Department of Health	Bid Opening Date: June 13, 2017
Date Issued: May 19, 2017	Bid Opening Time: 2:00 p.m. Central Time

BIDS WILL BE ACCEPTED UNTIL THE TIME AND DATE SPECIFIED ABOVE. THE BID ENVELOPE, INCLUDING THE OUTSIDE OF OVERNIGHT PACKAGES, MUST BE SEALED AND SHOULD BE PROPERLY MARKED WITH THE BID NUMBER, DATE AND HOUR OF BID OPENING AND VENDOR'S RETURN ADDRESS. IT IS NOT NECESSARY TO RETURN "NO BIDS" TO THE OFFICE OF STATE PROCUREMENT.

Vendors are responsible for delivery of their bid documents to the Office of State Procurement prior to the scheduled time for opening of the particular bid. When appropriate, vendors should consult with delivery providers to determine whether the bid documents will be delivered to the OSP office street address prior to the scheduled time for bid opening. Delivery providers, USPS, UPS, and FedEx deliver mail to our street address on a schedule determined by each individual provider. These providers will deliver to our offices based solely on our street address.

MAILING ADDRESS: Office of State Procurement 1509 West Seventh Street, Room 300 Little Rock, AR 72201-4222 TELEPHONE NUMBER: 501-324-9316	BID OPENING LOCATION: Office of State Procurement 1509 West Seventh Street, Room 300 Little Rock, AR 72201-4222
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Company Name:

Name (type or print):

Title:

Address:

City:

State:

Zip Code:

Telephone Number:

Fax Number:

E-Mail Address:

Signature:

USE INK ONLY. UNSIGNED BIDS WILL NOT BE CONSIDERED

Business Designation
(check one):

Individual []

Sole Proprietorship []

Public Service Corp []

Partnership []

Corporation []

Government/ Nonprofit []

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TYPE OF CONTRACT:	Term
AGENCY P.R. NUMBER	1000782967

1. **MINORITY BUSINESS POLICY**: Minority participation is encouraged in this and in all other procurements by state agencies. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this state who is: African American, Hispanic American, American Indian, Asian American, Pacific Islander American or a Service Disabled Veteran as designated by the United States Department of Veterans Affairs. The Arkansas Economic Development Commission conducts a certification process for minority business. Bidders unable to include minority-owned business as subcontractors "may explain the circumstances preventing minority inclusion".

Check minority type:

African American____ Hispanic American____ American Indian____ Asian American____
Pacific Islander American____ Service Disabled Veteran____

Arkansas Minority Certification Number_____

2. **EQUAL EMPLOYMENT OPPORTUNITY POLICY**: In compliance with Arkansas Code Annotated § 19-11-104, the Office of State Procurement is required to have a copy of the vendor's Equal Opportunity Policy prior to issuing a contract award. EO Policies may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov, or as a hard copy accompanying the solicitation response. The Office of State Procurement will maintain a file of all vendor EO policies submitted in response to solicitations issued by this office. The submission is a one- time requirement, but vendors are responsible for providing updates or changes to their respective policies, and for supplying EO policies upon request to other state agencies that must also comply with this statute. Vendors that do not have an established EO policy will not be prohibited from receiving a contract award, but are required to submit a written statement to that effect.

3. **PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

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

4. **ALTERATION OF ORIGINAL IFB DOCUMENTS**: The original written or electronic language of the IFB documents shall not be changed or altered except by approved written addendum issued by the Office of State Procurement. This does not eliminate a Bidder from taking exception(s) to non-mandatory terms and conditions, but does clarify that the Bidder cannot change the original document's written or electronic language. If the Bidder wishes to make exception(s) to any of the original language, it must be submitted by the Bidder in separate written or electronic language in a manner that clearly explains the exception(s). If Bidder's/Contractor's submittal is discovered to contain alterations/changes to the original written or electronic documents, the Bidder's response may be declared as "non-responsible" and the response shall not be considered.

5. **REQUIREMENT OF AMENDMENT**: THIS IFB MAY BE MODIFIED ONLY BY AMENDMENTS WRITTEN AND AUTHORIZED BY THE OFFICE OF STATE PROCUREMENT. Bidders are cautioned to ensure that they have received or obtained, and responded to, any and all amendments to the bid prior to submission. There will be no addendums to a bid 72 hours prior to the bid opening. It is the responsibility of the vendor to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php> for any and all addendums up to that time.

6. **DELIVERY OF RESPONSE DOCUMENTS**: In accordance with the Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit bids at the place, and on or before the date and time, set in the bid solicitation documents. Bid documents received at the Office of State Procurement after the date and time designated for bid opening are considered late bids and shall not be considered. Bid documents arriving late, which are to be returned and are not clearly marked, may be opened to determine for which bid the submission is intended.

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- 7. ADDITIONAL TERMS AND CONDITIONS:** The Office of State Procurement objects to, and shall not consider, any additional terms or conditions submitted by a bidder, including any appearing in documents attached as part of a bidder's response. In signing and submitting his bid, a bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a bid, shall be grounds for rejecting a bid.
- 8. ANTICIPATION TO AWARD:** After complete evaluation of the solicitation, the anticipated award will be posted on the Office of State Procurement website. The purpose of the posting is to establish a specific time in which vendors and agencies are aware of the anticipated award. The bid results will be posted for a period of fourteen (14) days prior to the issuance of any award. Vendors and agencies are cautioned that these are preliminary results only, and no official award will be issued prior to the end of the fourteen-day posting period. Accordingly, any reliance on these preliminary results is at the agency's/vendor's own risk.
- The Office of State Procurement reserves the right to waive the Anticipation to Award when it is determined to be in the best interest of the State.
- 9. PAST PERFORMANCE:** In accordance with provisions of The State Procurement Law, R7: 19-11-229 Competitive Sealed Bidding - Bid Evaluation paragraph (E) (i) & (ii): a vendor's past performance with the state may be used in the evaluation of any bid made in response to this solicitation. The past performance should not be greater than three years old and must be supported by written documentation on file in the Office of State Procurement at the time of the bid opening. Documentation may be in the form of a written or an electronic report, VPR (Vendor Performance Report), memo, file or any other appropriate authenticated notation of performance to the vendor files.
- 10. VISA ACCEPTANCE:** Awarded contractors should have the capability of accepting the State's authorized VISA Procurement Card (p-card) as a method of payment. Price changes or additional fee(s) may not be assessed when accepting the p-card as a form of payment. The successful bidder may receive payment from the State by the p-card in the same manner as other VISA purchases. VISA acceptance is preferred but is not the exclusive method of payment.
- 11. EO-98-04 GOVERNOR'S EXECUTIVE ORDER:** Bidders should complete the Disclosure Forms issued with this bid.
- 12. CURRENCY:** All bid pricing must be United States dollars and cents.
- 13. LANGUAGE:** Bids will only be accepted in the English language.

SECTION 1 - GENERAL INFORMATION

1.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for the Arkansas Department of Health (ADH) to obtain pricing and a contract for the purchase of mosquito larvicide.

1.2 OPEN-ENDED COOPERATIVE PURCHASING AGREEMENT

Any contract resulting from this solicitation is an open-ended state public procurement unit contract that is made available to local public procurement units. The contractor shall sell its goods or services to any public procurement unit, state or local, under the terms and conditions of the contract that results from this solicitation. Any public procurement unit, state or local that wishes to purchase goods or services from the contractor under the terms and conditions of the contract that results from this solicitation may do so.

1.3 ISSUING AGENCY

The issuing office is the sole point of contact in the State for the selection process. Vendor questions regarding IFB related matters should be made through the State's buyer, Judy Shirley at 501-329-9316 or by email: judy.shirley@dfa.arkansas.gov. Vendor's questions will be answered as a courtesy and at vendor's own risk.

1.4 CAUTION TO BIDDERS

1. **During the time between the bid opening and contract award, any contact concerning this IFB should be initiated by the issuing office or requesting entity and not the vendor.** Specifically, the person named herein will initiate all contact.
2. **Vendors must submit one (1) signed original IFB response on or before the date specified on page one.**
3. The State Procurement Official reserves the right to award a contract or reject a bid for any or all line items of a bid received as a result of this IFB, if it is in the best interest of the State to do so. Bids will be rejected for one or more reasons not limited to the following:
 - a. Failure of the vendor to submit his bid(s) on or before the deadline established by the issuing office.
 - b. Failure to sign an Official Bid Document.
 - c. Failure to complete the Official Bid Price Sheet(s).
 - d. Any wording by the vendor in their response to this IFB, or in subsequent correspondence, which conflicts with or takes exception to a requirement in the IFB.
 - e. Failure of any proposed goods or service to meet or exceed the specifications.

1.5 BID FORMAT

Any statement in this document that contains the word "**will**", "**must**" or "**shall**" means that compliance with the intent of the statement is mandatory, and failure by the bidder to satisfy that intent will cause the bid to be rejected.

1.6 TYPE OF CONTRACT

The contract will be a one (1) year **TERM** contract from the date of award. Upon mutual agreement by the contractor and OSP, the contract may be renewed one (1) additional term. In no event shall the total contract term be more than two (2) years.

1.7 PAYMENT AND INVOICE PROVISIONS

All invoices should be forwarded to the:
Arkansas Department of Health
Attention: Accounts Payable
4815 W. Markham
Little Rock, Arkansas 72205

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

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

1.8 RECORD RETENTION

The Contractor **shall** be required to maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Arkansas. Access will be granted upon request, to State or Federal Government entities or any of their duly authorized representatives.

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

1.9 PROPRIETARY INFORMATION

Proprietary information submitted in response to this (IFB) will be processed in accordance with applicable State of Arkansas procurement procedures. Bids and documents pertaining to the (IFB) become the property of the State and shall be open to public inspection subsequent to bid opening. It is the responsibility of the Vendor to identify all proprietary information. **The vendor should submit one complete copy of the response from which any proprietary information has been removed, i.e., a redacted copy.** The redacted copy should reflect the same pagination as the original, show the empty space from which information was redacted, and should be submitted on a CD or flash drive. Except for the redacted information, the redacted copy must be identical to the original hard copy. The vendor is responsible for ensuring the redacted copy on CD/flash drive is protected against restoration of redacted data. The redacted copy will be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor. If a redacted copy is not included, the entire bid will be open to public inspection with the exception of financial data (other than pricing). If the State of Arkansas deems redacted information to be subject to the FOIA the vendor will be contacted prior to sending out the information.

1.10 RESERVATION

This IFB does not commit the State Procurement Official to award a contract, to pay costs incurred in the preparation of a bid in response to this request, or to procure or contract for commodities or services.

1.11 PRIME CONTRACTOR RESPONSIBILITY

The selected vendor **will** be required to assume prime contractor responsibility for the contract and will be the sole point of contact with regard to all commodities, services and support.

Sub-Contractors are not permitted on this bid.

1.12 CONTRACT INFORMATION

1. The State of Arkansas may not contract with another party:
 - a. To indemnify and defend that party for any liability and damages. However, the State Procurement Official may agree to hold the other party harmless from any loss or claim resulting directly from and attributable to the State's use or possession of equipment or software and reimburse that party for the loss caused solely by the State's uses or possession.
 - b. Upon default, to pay all sums to become due under a contract.
 - c. To pay damages, legal expenses or other costs and expenses of any party.
 - d. To continue a contract once the equipment has been repossessed.
 - e. To conduct litigation in a place other than Pulaski County, Arkansas
 - f. To agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
2. A party wishing to contract with the State of Arkansas should:
 - a. Remove any language from its contract which grants to it any remedies other than:
 - i. The right to possession.
 - ii. The right to accrued payments.
 - iii. The right to expenses of de-installation.
 - iv. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - v. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
 - b. Include in its contract that the laws of the State of Arkansas govern the contract.
 - c. Acknowledge that contracts become effective when awarded by the State Procurement Official.

1.13 CONDITIONS OF CONTRACT

The successful bidder shall at all times observe and comply with Federal and State laws, local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of the contract which in any manner affect the completion of the work. The successful bidder shall indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the successful bidder.

1.14 STATEMENT OF LIABILITY

The State will demonstrate reasonable care but shall not be liable in the event of loss, destruction, or theft of contractor-owned items to be delivered or to be used in the installation of deliverables. The vendor is required to retain total liability until the deliverables have been accepted by the "authorized agency official." At no time will the State be responsible for or accept liability for any vendor-owned items.

1.15 AWARD RESPONSIBILITY

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

1.16 AWARD CRITERIA

This Invitation for Bid shall be awarded to the lowest responsible, responsive bidder, on an **ALL or NONE** basis, per the **Grand Total Cost** as shown on the Official Bid Price Sheet. **Consideration will be given only to those who bid all line items.**

Bids must meet or exceed all defined specifications. Bids must meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.

1.17 DELEGATION AND/OR ASSIGNMENT

The vendor shall not assign the contract in whole or in part or any payment arising there from without the prior written consent of the State Procurement Official. The vendor shall not delegate any duties under the contract to a subcontractor unless the State Procurement Official has given written consent to the delegation.

1.18 COST

All charges **must** be included on the Official Bid Price Sheet and **must** include all associated cost for the goods being bid. Bid pricing must be valid for ninety (90) days following IFB opening to allow sufficient time to tabulate and evaluate bid responses.

NOTE:

1. The State will not be obligated to pay any costs not identified on the Official Bid Price Sheet.
2. Any cost not identified by the bidder but subsequently incurred in order to achieve completion and delivery of items **shall** be borne by the bidder.
3. Shipping/Freight charges will be billed per order.
4. The agency will only pay the exact amount of the shipping/freight cost.
5. Shipping/freight charges may not be marked up.
6. Vendor must include a copy of the shipping/freight bill with each invoice.
7. Invoices will not be paid until a copy of the related freight bill is received.

1.19 PRICE CHANGE CLAUSE

All prices bid **shall** be firm for twelve (12) months of this contract. Thereafter, at the time of optional renewal, a request for increase for the items being bid **must** be submitted in writing, (30) days prior to the Office of State Procurement with supporting manufacturer's documentation indicating percentage of increase and effective date. This increase **must** be reflective of an increase to all distributors, not to this contract alone. **Justifiable increases are based on manufacturer costs due to increase of raw materials.** The State further reserves the right to reject any proposed price increase, cancel the contract and re-bid if determined to be in the best interest of the State. After receipt of required documentation and in the event a price change is authorized thereafter, said prices **will** remain firm for the period of stated renewal.

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1.20 DELIVERY:

As shown on purchase order.

The agency requests delivery within three (3) working days from receipt of order. If this delivery date cannot be met, the bidder must state the number of days required to place the commodity in the ordering agency's designated location. Failure to state the delivery time obligates the bidder to complete delivery by the agency's requested date. Extended delivery dates may be considered when in the best interest of the state.

Delivery _____ working days after receipt of order.

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

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

1.21 CANCELLATION

In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, the State may cancel the contract or purchase order by giving the contractor written notice of such cancellation thirty (30) days prior to the date of cancellation.

SECTION 2 - SPECIFIC REQUIREMENTS

2.1 SCOPE: The intent of the IFB is to establish a contract for the purchase and statewide delivery of mosquito larvicide. In no event shall the total contract term be more than two (2) years.

2.2 LICENSED/CERTIFICATION:

- A. Vendors **must** be properly licensed by the State of Arkansas for the sell and distribution of the required larvicides.
- B. Vendors **must** provide a valid, up-to-date copy of their Arkansas license to sell and distribute chemical larvicides, when requested by ADH.

2.3 SHIPPING METHODS:

- A. Vendor **must** be authorized, by the manufacturer/distributor of the product, to sell and ship product to the entire state of Arkansas.
- B. Shipping methods **must** meet and follow all Federal regulations for transportation based on the category of the chemical.

2.4 ACTIVE INGREDIENTS:

The broad categories of active ingredients cannot be altered or substituted. Active Ingredient and Active Ingredient Concentration **must** be formulated as shown on the Official Price Sheet. The larvicide products are as follows:

- Bacillus Thuringiensis subsp. Israelensis
- Spinosad (a combination of Spinosyn A and Spinosyn D)
- (S)-Methoprene – a growth regulator

NOTE: All active ingredients listed are approved under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Arkansas State Plant Board. See Official bid Price Sheet for specific product specifications.

2.5 ESTIMATED QUANTITIES:

- A. First year estimated quantities are unknown at the time of this IFB. Quantities are based on the seasonal requirements and environmental conditions surrounding the season.
- B. Dollar amount sales are estimated to be between \$200,000.00 and \$250,000.00. Subsequent year terms are contingent upon receipt of funding.

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OFFICIAL BID PRICE SHEET						
Item	Product	Active Ingredient	Formulation	Active Ingredient Concentration	Unit Of	Unit Cost
1	Larvicide	Bacillus thuringiensis subsp. israelensis	Aqueous Suspension	1.2 Billion ITU/L	Per Gallon	
2	Larvicide	Bacillus thuringiensis subsp. israelensis	Aqueous Suspension	11.61%	Per Gallon	
3	Larvicide	Bacillus thuringiensis subsp. israelensis	Fine Granule	6%	Per Pound	
4	Larvicide	Bacillus thuringiensis subsp. israelensis	Granule	0.2 billion ITU/KG	Per Pound	
5	Larvicide	Bacillus thuringiensis subsp. israelensis	Tablet	37%	Per Each	
6	Larvicide	Bacillus thuringiensis subsp. israelensis	Granule	2.8-3 %	Per Pound	
7	Larvicide	Bacillus thuringiensis subsp. israelensis	Water Dispersible Granule	37.40%	Per Pound	
8	Larvicide	Spinosad (Spinosyn A and Spinosyn D)	Tablet	7.48%	Blister pak 12 (Twelve)Count	
9	Larvicide	Spinosad (Spinosyn A and Spinosyn D)	Tablet	7.48%	Blister pak 50 (Fifty) Count	
10	Larvicide	Spinosad (Spinosyn A and Spinosyn D)	Liquid Emulsifiable Concentrate	20.60%	Per Gallon	
11	Larvicide	Spinosad (Spinosyn A and Spinosyn D)	Granule	0.50%	Per Pound	
12	Larvicide	Spinosad (Spinosyn A and Spinosyn D)	30 day Tablet	8.33%	Per Each	
13	Larvicide	Spinosad (Spinosyn A and Spinosyn D)	Extended Release Granule	2.50%	Per Pound	
14	Larvicide	Spinosad (Spinosyn A and Spinosyn D)	Extended Release Tablet	6.25%	Per Each	
15	Larvicide	Spinosad (Spinosyn A and Spinosyn D)	Extended Release Granule	6.25%	Per Pound	
16	Larvicide	(S)-Methoprene - Growth Regulator	Tablet	8.62%	Per Each	
17	Larvicide	(S)-Methoprene - Growth Regulator	Extended Release Tablet	2.10%	Per Each	
18	Larvicide	(S)-Methoprene - Growth Regulator	Liquid	5.00%	Per Gallon	
19	Larvicide	(S)-Methoprene - Growth Regulator	Liquid Concentrate	20%	Per Gallon	
20	Larvicide	(S)-Methoprene - Growth Regulator	Liquid	5%	Per Gallon	
21	Larvicide	(S)-Methoprene - Growth Regulator	Pellets	4.25%	Per Pound	
GRAND TOTAL COST						

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STANDARD TERMS AND CONDITIONS

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

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- 14. DELIVERY ON FIRM CONTRACTS:** The invitation for bid will show the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost will be borne by the vendor.
- 15. DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery shall be made during agency work hours only 8:00 a.m. to 4:30 p.m., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.
- 16. STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
- 17. DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor must give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the bidders list or suspension of eligibility for award.
- 18. VARIATION IN QUANTITY:** The state assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
- 19. INVOICING:** The contractor shall be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the invitation for bid, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary state agencies. Invoices must be sent to the "Invoice To" point shown on the purchase order.
- 20. STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned.
- 21. PATENTS OR COPYRIGHTS:** The contractor agrees to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
- 22. ASSIGNMENT:** Any contract entered into pursuant to this invitation for bid is not assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
- 23. CLAIMS:** Any claims the Contractor may assert under this Agreement shall be brought before the Arkansas State Claims Commission ("Commission"), which shall have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor shall continue to provide the Services under this Agreement even in the event that the Contractor has a claim pending before the Commission.
- 24. LACK OF FUNDS:** The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. Any delivered but unpaid for goods will be returned in normal condition to the contractor by the state. If the state is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.
- 25. DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that: (a) the bidder will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the

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bidder will include the provisions of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

- 26. CONTINGENT FEE:** The bidder guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business.
- 27. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this invitation for bid, the bidder named on the front of this invitation for bid, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this state for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
- 28. DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.