



STATE OF ARKANSAS

OFFICE OF STATE PROCUREMENT

1509 West 7th Street, Room 300
Little Rock, Arkansas 72201-4222

INVITATION FOR BID BID SOLICITATION DOCUMENT

| SOLICITATION INFORMATION | | | |
|--------------------------|-------------------|----------------------|------------|
| Bid Number: | SP-18-0018 | Solicitation Issued: | 10/12/2017 |
| Description: | Printed Envelopes | | |
| Agency: | Statewide | | |

| SUBMISSION DEADLINE FOR RESPONSE | | | |
|---|------------|-------------------|-------------------------|
| Bid Opening Date: | 10/26/2017 | Bid Opening Time: | 2:00 p.m., Central Time |
| <p>Deliver bid submissions for this Invitation For Bid to the Office of State Procurement on or before the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit bids at the designated location on or before the bid opening date and time. Bids received after the designated bid opening date and time may be considered late and may be returned to the Prospective Contractor without further review. It is not necessary to return "no bids" to OSP.</p> | | | |

| DELIVERY OF RESPONSE DOCUMENTS | |
|--------------------------------|--|
| Delivery Address: | <p>Office of State Procurement 1509 West 7th Street, Room 300 Little Rock, AR 72201-4222</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address. Prospective Contractors assume all risk for timely, properly submitted deliveries.</p> |
| Bid's Outer Packaging: | <p>Seal outer packaging and properly mark with the following information. If outer packaging of bid 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• Prospective Contractor's name and return address |

| OFFICE OF STATE PROCUREMENT CONTACT INFORMATION | | | |
|---|---|------------------------------|--------------|
| OSP Buyer: | Janet Quattlebaum | Buyer's Direct Phone Number: | 501-324-9319 |
| Email Address: | Janet.quattlebaum@dfa.arkansas.gov | OSP's Main Number: | 501-324-9316 |
| OSP Website: | http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx | | |

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

1.1 PURPOSE

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) with the intent to obtain competitive pricing for a term contract. This term contract is for printing and delivery of printed envelopes to Agencies, Universities, Colleges and Cooperative Purchasing Program participants within the State of Arkansas.

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 TYPE OF CONTRACT

- A. As a result of this IFB, OSP intends to award a contract to a single Contractor.
- B. The anticipated starting date for any resulting contract is November 1, 2017 except that the actual contract start date may be adjusted forward unilaterally by the State for up to three calendar months. By submitting a signed bid in response to the IFB, the Prospective Contractor represents and warrants that it will honor its bid as being held open as irrevocable for this period.
- C. The initial term of a resulting contract will be for one (1) year. Upon mutual agreement by the Contractor and agency, the contract may be renewed by OSP for up to six (6) additional one-year terms or portions thereof, not to exceed a total aggregate contract term of seven (7) consecutive years.

1.4 ISSUING AGENCY

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

1.5 BID OPENING LOCATION

Bids will be opened at the following location:

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

1.6 ACCEPTANCE OF REQUIREMENTS

- A. A Prospective Contractor **must** unconditionally accept all Requirements in the Requirements Section(s) of this IFB to be considered a responsive Prospective Contractor.
- B. A Prospective Contractor's bid will be disqualified if a Prospective Contractor takes exceptions to any Requirements in the Requirements Section(s) of this IFB.

1.7 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. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. "Prospective Contractor" means a person who submits a bid in response to this solicitation.
- D. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- E. The terms "Invitation for Bid", "IFB," "Bid Solicitation," and "Solicitation" are used synonymously in this document.

- F. "Responsive bid" means a bid submitted in response to this solicitation that conforms in all material respects to this IFB.
- G. "Bid Submission Requirement" means a task a Prospective Contractor completes when submitting a bid response. These requirements will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- H. "Requirement" means a specification that a Contractor's product and/or service **must** perform during the term of the contract. These specifications will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- I. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.

1.8 **RESPONSE DOCUMENTS**

A. Bid Response Packet

1. Bid Submission Requirements
 - a. Prospective Contractor **shall** provide the following:
 - i. Original signed *Bid Signature Page*. (See *Bid Response Packet*.)
 - An official authorized to bind the Prospective Contractor(s) to a resultant contract **must** sign the Bid Signature Page included in the Bid Response Packet.
 - Prospective Contractor's signature signifies agreement to and compliance with all Requirements in this IFB, and that any exception that conflicts with a Requirement or Bid Submission Requirement of this *Bid Solicitation* will cause the Prospective Contractor's bid to be disqualified.
 - ii. One (1) original hard copy of the *Official Bid Price Sheet*.
 - b. Bid response **must** be in the English language.
 - c. Pricing **must** be proposed in U.S. dollars and cents.
2. The following items should be submitted in the original *Bid Response Packet*.
 - a. One (1) electronic copy of the *Official Bid Price Sheet*, preferably on a flash drive. A CD will also be acceptable.
 - b. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions*, #27. *Disclosure*.)
 - c. Copy of Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
 - d. *Voluntary Product Accessibility Template* (VPAT). (See *Technology Access*.)
3. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

1.9 **CLARIFICATION OF BID SOLICITATION**

- A. The Prospective Contractor should notify the OSP buyer of any term, condition, etc., that precludes the Prospective Contractor from submitting a compliant, responsive proposal. Prospective Contractors should note that it is the responsibility of the Prospective Contractor to seek resolution of all such issues, including those relating to the terms and conditions of the contract, prior to the submission of a bid.
- B. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the bid opening.
- C. An oral statement by OSP will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by OSP.
- D. Prospective Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

1.10 **SUBCONTRACTORS**

No Subs will be allowed in the printing of this contract.

1.11 **PRICING**

- A. Prospective Contractor(s) **shall** include all pricing on the Official Bid Price Sheet(s) only. If any cost is not identified by the successful Contractor but is subsequently incurred in order to achieve successful operation, the Contractor **shall** bear this additional cost. The *Official Bid Price Sheet* is provided as a separate electronic file posted with this *Bid Solicitation*.
- B. All charges **must** be included on the Official Bid Price Sheet(s) and **must** include all associated costs for the goods being bid.
- C. To allow time to review bids, prices **must** be valid for 90 days following the bid opening.
- D. DO NOT submit any ancillary information not related to actual pricing on or with the Bid Price Sheet.

NOTE:

- The State **will not** be obligated to pay any costs not identified on the Official Bid Price Sheet(s).
- Any cost not identified by the contractor but subsequently incurred in order to achieve completion and delivery of items **shall** be borne by the bidder.
- **OFFICIAL BID PRICE SHEET(S)** may be reproduced as needed.
- **Limit your unit price to no more than two (2) decimal places (e.g., \$10.50)** Bids stated otherwise will be rounded up or down to the nearest cent (3.g., \$10.5304 rounded to \$10.53 or \$10.5308 rounded to \$10.54).
- Contractors may bid either virgin or recycled stock or may bid both virgin and recycled stock.
- **A ten percent (10%) preference will be given for recycled paper.** To receive the 10% Recycled Preference, contractor **must** bid recycled on all line items.

“Recycled paper”, as it applies to “**coated stock**”, **shall** mean any paper that contains no less than ten percent (10%) post-consumer material by fiber weight; as it applies to “**uncoated stock**”, it **shall** mean any paper that contains no less than twenty percent (20%) post-consumer material by fiber weight.

1.12 **PRIME CONTRACTOR RESPONSIBILITY**

- A. A single Prospective Contractor **must** 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 the State for the performance thereof.
- C. The contractor **shall** give OSP immediate notice, in writing, by certified mail of any action which, in the opinion of the contractor, may result in litigation related in any way to the contract or the State.

1.13 INDEPENDENT PRICE DETERMINATION

- A. By submission of this bid, the Prospective Contractor 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 warrants consideration of this bid by the Office of the Attorney General. All Prospective Contractors **shall** understand that this paragraph may be used as a basis for litigation.

1.14 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. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
- C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
- D. By so redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- E. Under no circumstances will pricing information be designated as confidential.
- F. 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 *Bid Response Packet*. A CD is also acceptable. Do not submit documents via email or fax.
- G. 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.
- H. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- I. The redacted copy will be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the Prospective Contractor.
- J. If a redacted copy of the submission documents is not provided with Prospective Contractor's *Bid Response Packet*, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- K. If the State deems redacted information to be subject to FOIA, the Prospective Contractor will be contacted prior to release of the documents.

- L. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

1.15 CAUTION TO PROSPECTIVE CONTRACTORS

- A. Prior to any contract award, address all communication concerning this *Bid Solicitation* through the OSP buyer.
- B. Do not alter any language in any solicitation document provided by the State.
- C. Do not alter the Official Bid Price Sheet.
- D. All official documents and correspondence related to this solicitation become part of the resultant contract.
- E. The State has the right to award or not award a contract, if it is in the best interest of the State to do so.
- F. As requested, provide clarification regarding Prospective Contractor's bid response to OSP.
- G. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- H. Prospective Contractors may submit multiple bids.

1.16 REQUIREMENT OF ADDENDUM

- A. Only an addendum written and authorized by OSP will modify this *Bid Solicitation*.
- 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 Prospective Contractor is expected to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to bid opening.

1.17 AWARD PROCESS

- A. Successful Contractor Selection
 - 1. Award will be made to the lowest-bidding, responsible Prospective Contractor on an ALL OR NONE basis and awarded by **GRAND TOTAL**. Prospective Contractor's **must** bid all line items to be considered.
- B. Negotiations
 - 1. If the State so chooses, negotiations may be conducted with the lowest-bidding Prospective Contractor. Negotiations are conducted at the sole discretion of the State.
 - 2. If negotiations fail to result in a contract, the State may begin the negotiation process with the next lowest-bidding Prospective Contractor. The negotiation process may be repeated until the anticipated successful Contractor has been determined, or until such time the State decides not to move forward with an award.
- C. Anticipation to Award
 - 1. Once the anticipated successful Contractor has been determined, the anticipated award will be posted on the OSP website at http://www.arkansas.gov/dfa/procurement/pro_intent.php.
 - 2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Prospective Contractors 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 may waive the policy of Anticipation to Award when it is in the best interest of the State.

4. It is the Prospective Contractor'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* is subject to State approval processes which may include Legislative review.
2. A State Procurement Official will be responsible for the solicitation and award of any resulting contract.

1.18 MINORITY AND WOMEN-OWNED BUSINESS POLICY

- A. A minority-owned business is defined by Arkansas Code Annotated § 15-4-303 as a business owned by a lawful permanent resident of this State who is:
- African American
 - American Indian
 - Asian American
 - Hispanic American
 - Pacific Islander American
 - A Service Disabled Veteran as designated by the United States Department of Veteran Affairs
- B. A women-owned business is defined by Act 1080 of the 91st General Assembly Regular Session 2017 as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.
- C. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses. If certified, the Prospective Contractor's Certification Number should be included on the *Bid Signature Page*.

1.19 EQUAL OPPORTUNITY POLICY

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP is required to have a copy of the anticipated Contractor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov, but should also be included as a hardcopy accompanying the solicitation response.
- C. The submission of an *EO Policy* to OSP is a one-time Requirement. Contractors 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. Prospective Contractors who are not required by law to have an *EO Policy* **must** submit a written statement to that effect.

1.20 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

- A. Pursuant to Arkansas Code Annotated § 19-11-105, Contractor(s) providing services **shall** certify with OSP that they do not employ or contract with illegal immigrants.
- B. By signing and submitting a response to this *Bid Solicitation*, a Prospective Contractor agrees and certifies that they do not employ or contract with illegal immigrants. If selected, the Prospective Contractor certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.

1.21 RESTRICTION OF BOYCOTT OF ISRAEL

- A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.
- B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.

- C. By checking the designated box on the Bid Signature Page of the response packet, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

1.22 PAST PERFORMANCE

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

1.23 VISA ACCEPTANCE

- A. Awarded Contractor 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) **must 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.

1.24 PUBLICITY

- A. Do not discuss the solicitation nor your bid response, nor issue statements or comments, nor provide interviews to any public media during the solicitation and award process.
- B. Failure to comply with this Requirement may be cause for a Prospective Contractor's bid to be disqualified.

1.25 RESERVATION

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

SECTION 2 – REQUIREMENTS

2.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for the (AGENCY) to obtain pricing and a contract(s) for (COMMODITY OR SERVICE).

2.2 DELIVERY: FOB DESTINATION (FOB DESTINATION, FREIGHT PAID, and NORMAL INSIDE DELIVERY)

Various delivery locations within the State of Arkansas will be specified on agency purchase order from the ordering entity. All transportation expenses for delivery will be the responsibility of the contractor.

- A. Delivery is limited to ONE (1) ADDRESS PER PURCHASE ORDER TO A DELIVERY LOCATION which meets the “Normal inside delivery” definition as stated below.
- B. Delivery locations falling in the perimeters of this definition will not be subject to additional delivery charges. Agencies are encouraged to check with the contractor prior to ordering to ascertain any possible additional delivery charge amounts.
- C. Delivery of the finished items must be made to the location specified on the ordering agency’s purchase order as outlined in the following delivery schedule.

| <u>Ink Colors(s)</u> | <u>Quantity</u> | <u>Delivery</u> After receipt of order (ARO) or production materials whichever is later. |
|--|-----------------------------------|---|
| Black Ink | 10,000 or fewer 10,001 or more | Within 15 working days Within 20 working days |
| 1 Color of Ink (not Black) | 10,000 or fewer 10,001 or more | Within 20 working days Within 25 working days |
| Black + 1 Color of Ink or 2 Colors of Ink (neither black) | 10,000 or fewer 10,001 or more | Within 20 working days Within 25 working days |

NOTE

- Envelopes requiring metal clasp, latex self-seal or special binding will be allowed an **additional ten (10) working days** of above delivery requirements.
- If an order requires new composition an **additional five (5) working days** to the above delivery will be allowed.
- Contractor will also be allowed an **additional two (2) working days** to produce and deliver proof to the ordering agency.
- If an order requires a special window (window selected from contractor’s die list) an **additional five (5) working days** to the above delivery will be allowed.
- D. “*Working days*” shall be defined as Monday through Friday (M-F) of each week exclusive of all official State holidays. The amount of time proof(s) is out of contractor’s hands for agency approval **shall** not count against production time.
- E. All deliveries **must** be made during normal state work hours and within the agreed upon number of days unless otherwise arranged and coordinated with the agency. The Contractor **shall** give the agency immediate notice of any anticipated delays or plant shutdowns that will affect the delivery requirement.
- F. All transportation expenses for delivery of finished products (printed envelopes) as well as all required proof(s) **shall** be the responsibility of the contractor to the designated shipping location.
- G. Loss or damage that occurs during shipping, prior to the order being received by the agency, is the contractor’s responsibility. All orders should be properly packaged to prevent damage during shipping.

2.3 **DEFINITION - NORMAL INSIDE DELIVERY**

Unit prices quoted include, at no additional charge, the contractor providing "*normal inside delivery*" service. "*Normal inside delivery*" is defined in this contract as: "The inside delivery to a building with an accessible dock to one (1) specific room or area by use of material handling equipment without breaking shipping container to hand truck deliver individual cartons."

2.4 **RUSH ORDERS**

- A. If a State agency requires delivery of an order in less than the specified time outlined in this contract, that agency must contact the contractor. The contractor may choose one (1) of the two (2) options stated below:
- B. **Option One (1)**
Waive the order from the contract, which will allow the agency to procure, following procurement law. Agency to forward a copy of any "*Rush*" orders to the Office of State Procurement, Attn: Janet Quattlebaum.
- C. **Option Two (2)**
Accept the order and meet delivery requested. The ordering agency should obtain a written document with the agreed delivery date stated. The contractor may charge one percent (1%) of the original contract price for each working day less than the prescribed time authorized by the contract, that the delivery schedule is reduced. Rush order upcharges **shall** not exceed twenty percent (20%) of the original contract price.
- D. If the contractor fails to meet the "*RUSH*" delivery, the rush charges will not be applied. If the contractor exceeds the delivery time for a normal inside delivery, the contractor may be charged late charges.

2.5 **SCOPE**

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) to obtain competitive pricing for a term contract. This term contract is for the printing and delivery of printed envelopes for all State Agencies and Cooperative Purchasing Program participants within the State of Arkansas.

2.6 **SUBSTITUTE OF BRANDS**

Any substitutions of brand under this contract after award **must** be approved in writing by the Office of State Procurement prior to delivery. Brand substitutes **must** be in the same or higher GRADE with same or better brightness level. Any delivery of unauthorized substitutions will be considered contract default.

2.7 **PROPERTY OF THE STATE**

All dies, electroplates, cuts, negatives and positives, engravings, furnished disk art or any other commodities used in the production of work under this contract are the property of the state and **shall** be delivered upon request to the ordering agency upon completion of this contract. All transportation expenses **shall** be paid by the contractor. Failure to comply with any part of this stipulation may result in delay of payment.

2.8 **MISCELLANEOUS CHARGES/ALLOWANCES**

Prior to any work being performed under this contract that will result in additional costs, written authorization **must** be obtained from the Office of State Procurement. Any other costs incurred in production and not provided for in these instructions and specifications may be invoiced at the "*fair market price*" as established by the Office of State Procurement. However, any additional costs incurred after contract award will not be used in determining the low bid. These costs may include, but are not limited to, halftones, author's alterations, extra composition, overruns, or any other unforeseen costs.

2.9 **LIQUIDATED DAMAGES**

All commodities furnished will be subject to inspection and acceptance after delivery. Failure to meet specifications authorizes the Office of State Procurement to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. It is expressly acknowledged by the Contractor that the damages to the State for the Contractor's failure to perform its responsibilities in any form as agreed upon in this Contract will result in damages to the State, damages which are difficult to calculate. Accordingly, damages will be imposed by the State against the contractor for failure to meet delivery schedule at the rate of one percent (1%) of the invoice amount for each working day beyond the specified delivery time as liquidated damages and not as a penalty. The contractor shall be relieved of delays due to causes beyond his control

such as acts of God, national emergency, strikes or fire. The Office of State Procurement will assess such liquidated damages for late delivery in all cases except those that relate to causes beyond the contractor's control. The contractor **must** notify in writing, on a timely basis, the Office of State Procurement of such developments stating reason, justification and extent of delay. Other liquidated damages provided for in this contract **must** be verified and approved in writing by the Office of State Procurement prior to application by the ordering agency.

When the time does not allow for reprinting or reordering, acceptance of an inferior commodity may result in liquidated damages of the greater of up to 20% of the invoice price or \$500.

2.10 SAMPLES

Contractors **shall** provide a minimum of three (3) samples when requested by the Office of State Procurement. Samples **must** be provided within 5 working days after request.

Send Samples to:

Office of State Procurement
ATTN: Janet Quattlebaum
1509 West 7th Street, Suite 300
Little Rock, AR 72201

2.11 QUANTITIES

The quantities stated within this IFB are estimated for bidding purposes only. The State may order more or less (+/-) as needed throughout the lifetime of the contract.

2.12 ORDERING PROCEDURE

All orders placed against this contract **shall** be in the form of an agency issued purchase order on an as-needed basis.

Note: Agency should provide a sample showing size, text, and orientation including flap location, and if applicable, window location, with each order.

SECTION 3 - ITEM SPECIFICATIONS

2.13 QUALITY

- A. ALL items provided under the scope of this contract **shall** be of GOOD quality. Concise registration, consistent ink coverage and density, accurate folding and binding are required. Accurate trimming is to be even with no jagged or torn edges. Obvious press or production defects such as roller marks, hickies, set-off, smudges, hollow or pitted type, hairlines, broken serifs, fluctuating alignment, varying density, ghosting and etc. are reasons for possible rejection of the printing job on a quality basis. Any procedure or technique not previously stated for construction of items in this contract **shall** meet industry standards for excellent quality.
- B. Envelopes **must** meet the minimum Federal Postal Regulations. The dimensions of envelopes **shall** not deviate more than plus or minus 1/16" from those given. All envelopes **must** be of the quality and construction to be machine inserted. Folding, cutting and gluing **shall** be positioned to insure sufficient width and strength of the envelopes. Squeeze out of excessive glue **must** not occur.
- C. Receipt of the merchandise does not necessarily constitute acceptance. The using agency will be granted a reasonable time in which to inspect the merchandise and to determine if its quality meets the requirements or standards of the contract. If quality problems are evident, the Office of State Procurement, in coordination with the using agency, will review the problems and if the specifications of the contract are not met, will assess any damages for the inferior merchandise. If, in the opinion of the Office of State Procurement and the using agency, the merchandise is unacceptable, the contractor may be offered an opportunity to reprint the material within a reasonable time. At the time authorization for the reprint is given, the Office of State Procurement will establish, in writing, a new delivery date.

2.14 SIZE

Various.

2.15 INK

- A. The use of a soybean oil ink product is REQUIRED and MUST be used for the printing of the items on this contract.
- B. All prices are to be based on printing in black ink.
- C. An upcharge will be allowed for color ink.

NOTE

- Color ink (not black) will be allowed on white envelopes only.

INDICATE BRAND OF SOY INK BID ON PRICING SHEET.

2.16 STOCK

See pricing sheet for various stocks.

INDICATE BRAND OF STOCKS BID ON PRICING SHEET.

2.17 ADHESIVE

Dry gum adhesive is required. Latex self-seal available on some envelopes with an upcharge allowed.

2.18 WINDOWS

- A. Windows **shall** meet transparency standards as prescribed by the U.S. Postal Service Regulations. Windows must be of sufficient strength to keep from being broken under ordinary use and machine insertion.
- B. Standard window located 7/8" from left side and 1/2" from bottom of the envelope.
- C. Agencies may place orders utilizing contractor's available die list. Contractor will be required to submit a copy of available die list at time of award.

2.19 ITEMS 1-7: Stock Envelopes – Green 1st Class Diamond Border, 28#, Brown Kraft

Items 1-7 **shall** be printed in black ink with a green first class diamond border format.

2.20 ITEMS 8-31: Regular Envelopes (No Windows), 24#, White Wove

Diagonal seams required.

2.21 ITEMS 32-58: Window Envelopes – 24#, White Wove

Diagonal seams required.

2.22 ITEM 59: No. 10 Window Envelope with 1/16" Edge Tight Glue and 8" Full Gum Adhesive, 24# White Wove

****For Department of Finance and Administration (DFA) Only****

Diagonal seams required.

NOTE

- A minimum order of 500,000 envelopes is required for this line item.

2.23 ITEMS 60-62: Color Ink – Upcharge for Color Ink / One Time Charge (Flat Fee) Per Order

This charge (flat fee) is charged on each order of envelopes requiring color ink. This fee does not apply to envelopes with black ink only. Color ink (not black) will be allowed on white envelopes only. Color ink, as outlined below, may be requested on items 8-58.

- One color of ink – not black
- Black plus one color of ink
- Two colors of ink – neither black

NOTE:

- Only one fee may be charged if multiple envelopes are ordered on one (1) purchase order. Provided that the envelopes are the same size, same copy, and have the same ink color.
- If multiple envelopes, which differ in size, copy, or ink color are ordered on one (1) purchase order a fee may be applied to each envelope order.

2.24 ITEMS 63-86: Color Ink – Additional Upcharge for Printing (Per/M Charge)

This is an upcharge for printing envelopes with color ink. It is to be added to the per thousand (M) price of items 8-58. This upcharge will be charged in addition to the flat fee for color ink (items 60-62).

2.25 ITEMS 87-90: Check Size Envelopes, Window, 24#, Manila, Buff or Tan Wove

INDICATE COLORS OF STOCK BID ON PRICING SHEET.

2.26 ITEMS 91-157: Brown Kraft, Unglazed, 24# and 28#**2.27 ITEMS 158-176: White Kraft, Unglazed, 28#****2.28 ITEMS 177-179: Color Ink – Additional Upcharge**

This charge (flat fee) is charged on each order of envelopes requiring color ink. This fee does not apply to envelopes with black ink only. Color ink (not black) will be allowed on white envelopes only. Color ink may be requested as outlined below:

- One color of ink (not black) on Items 158-176.
- Two colors of ink (black plus one) on Items 158-172. Not allowed on items 173-176.
- Two colors of ink (neither black) on Items 158-172. Not allowed on items 173-176.

NOTE:

- Only one fee may be charged if multiple envelopes are ordered on one (1) purchase order. Provided that the envelopes are the same size, same copy, and have the same ink color.
- If multiple envelopes, which differ in size, copy, or ink color are ordered on one (1) purchase order a fee may be applied to each envelope order.

2.29 ITEMS 180-203: Color Ink – Additional Upcharge for Printing (Per/M Charge)

This is an upcharge for printing envelopes with color ink. It is to be added to per thousand (M) price of items 158-176. This upcharge will be charged in addition to the flat fee for color ink (items 177-179).

2.30 ITEMS 204-209: Latex Self-Seal Adhesive – Additional Upcharge

This will replace the normal dry gum adhesive and **must** be self-sticking by pressure (no peel and seal). This is an upcharge to be added to per thousand (M) price of envelopes between the sizes of 6" x 9" and 12" x 15-1/2".

2.31 ITEMS 210-215: Metal Clasp – Additional Upcharge

This is an upcharge to be added to per thousand (M) price of Brown Kraft Envelopes, between sizes 6" x 9" and 12" x 15-1/2".

2.32 ITEMS 216-219: Envelope Banding – Additional Upcharge

Envelopes may be banded with paper, string, rubber band or by other similar means in lots of one hundred (100). This is an upcharge to be added to per thousand (M) price of envelopes between the sizes 6" x 9" and 12" x 15-1/2".

2.33 PRODUCTION MATERIALS

- A. Contractor **must** maintain and provide files to the State with production quality Compact Disc (CD) or flash drives for each envelope produced under this contract.
- B. After award of the contract, the contractor will receive production quality files that are to be used in the printing of reorders. The contractor is required to inspect the files and within ten (10) working days provide OSP with a letter acknowledging receipt and acceptance of the files. Any problems with the production materials **must** be noted in writing with acknowledgement of receipt. All of the files furnished to the contractor will remain the property of the State of Arkansas and any loss or damage to the items listed in the inventory sheet signed by the contractor will require replacement at no cost to the State.
- C. Contractor will keep the files in a secure location during the term of the contract. This location may be outside the boundaries of the State of Arkansas. Upon request of OSP, the contractor will be required to transfer the files to a location designated by the OSP. The transportation expenses will be paid by the contractor.
- D. At the conclusion of this contract, the files along with a complete inventory of those files (in hard copy, flash drive and/or CD format) **must** be delivered to the (new) contractor. At the same time, a complete inventory list of the files both hard copy, flash drive and/or CD, **must** be delivered to the OSP.
- E. If the new contractor receives the files and the aforementioned requirements have not been met, the previous contractor will be held responsible for correcting all deficiencies within a time period specified by the OSP. Failure to complete this portion of the contract will be considered default and could jeopardize the future bidding status of the previous contractor or action may be taken against the previous contractor's performance bond.
- F. These disks or flash drives will be the property of the State of Arkansas and the contractor is advised to take whatever steps deemed necessary to insure their safety and condition. These CD's or flash drive updates **must** be forwarded to OSP upon request.
- G. Contractor is required to inspect and make a determination as to the usability of all entity provided production materials, including CD's and flash drives. Problems encountered with materials **must** be reported immediately to the agency. If the contractor fails to comply with this requirement, the State may disallow, as a valid reason for failing to meet the required delivery schedule, any claim involving agency provided production materials.

2.34 COMPOSITION / ADDITIONAL FEES**A. Typesetting of Composition**

Contractor may charge up to \$10.00 for each order which requires the typesetting of composition. This charge will cover the cost of up to six (6) lines of type, the agency logo, a negative and proof to the agency. Additional composition may be charged at \$.50 per line. This amount may be charged only when the typesetting has been prepared and not photocopied. The contractor will provide type styles commonly used in the envelope industry. Non-standard type styles will be provided camera ready by the ordering agency.

B. Business Reply Envelope

Copy **must** be provided in PDF format by the ordering entity.

NOTE

- Postal Regulations limit areas on envelope where composition is allowed. Entity should work with Post Office to ensure correct bar coding, copy, and placement of copy.

C. Special Artwork or Logos

Must be provided camera ready by the ordering entity. This does not include the basic State Seal, which will be provided to the contractor in various sizes by the Office of State Procurement.

D. Recycle Logo

Envelopes printed on recycled stock under this contract **must** have the **recycle logo** printed on the envelope unless the using entity states on their purchase order that it is to be excluded. Placement of the logo will be determined by the contractor. Placement of the recycled logo **must** meet all postal regulations.

E. Corner Card Copy

Will be centered 3/8" from the left edge and 3/8" from the top edge of the envelope. Permissible error will be limited to 1/8" in either direction. Maximum of six (6) lines of copy.

F. Foreign Language

Any envelope which requires the setting of composition in a foreign language will be excluded from this contract. Agency may provide such copy in camera-ready form, in which case, the contractor **shall** be required to accept the order.

G. Printing on Back/Flap of Envelope

The contractor may charge up to 25% of the total cost of the envelope for back or flap printing on orders with a quantity of 10,000 or fewer. No additional charge will be allowed for back or flap printing on orders with quantities above 10,000.

2.35 PROOF

- A. Proofs **must** be furnished on all orders which are not an exact repeat or when not furnished camera-ready copy by agency, unless otherwise specified. Contractor should submit a proof any time the probability of error exists. Charge for author's alterations \$3.00 per line, not to exceed \$30.00 per page. No allowances will be made for contractor's errors, such as typographical error.
- B. Proofs required by agency on exact repeat will be \$10.00 each.
- C. Both the user and the Contractor are responsible for keeping accurate records showing time copy and proofs are mailed and received in order to calculate the final delivery date of the finished product. These records **must** show the dates proofs are mailed or delivered to the using agency and the date(s) they are returned. When the proofs are sent, the Contractor will provide a proofing document to sign indicating if corrections are necessary. The document will show the signature of the person reviewing the document, the date it was reviewed, and the necessary corrections to be made, if any. The contractor will not proceed without this signature.
- D. When proofs are submitted to the agency, it will be the agency's responsibility to make the necessary corrections. The notation "AA" (Author's Alterations) or "PE" (Printer's Error) will be made in the margin of the copy along with each correction. Additional time to review proofs needed because of contractor errors in setting composition will be counted as production time.
- E. Author's alterations are changes made by the originator after typesetting has been accomplished according to the original draft. If the printer makes errors in the setting composition, the correction of these errors is not chargeable to the agency. The "PE", "AA" designations will identify those charges for which the user should correctly be billed.
- F. The time that proofs are in agency's possession will not be counted as production time. Contractor **shall** be responsible for all transportation expenses for delivery of the proofs.

2.36 OVERRUN/UNDERRUN ALLOWANCE

Overruns/underruns will be allowed as outlined below. Overruns to be priced at 80% only of unit contract price. Underruns to be billed at full unit price and subtracted from the total bid price.

| <u>Allowance</u> | <u>Quantity</u> |
|------------------|-------------------|
| 5% | 1,000 – 25,000 |
| 4% | 25,001 – 75,000 |
| 3% | 75,001 – 150,000 |
| 2% | 150,001 – 250,000 |
| 1% | 250,001+ |

2.37 PACKAGING

- A. Envelopes packaged fifty (50) to a box.
- B. All shipping cartons should be of the same dimension. Envelopes should arrive at ordering agency in pristine condition and protected from any damage during shipping and handling (S/H).
- C. Each package slip should include the following information before placement on outside of shipping carton when delivering to ordering agency.
 - Purchase Order number
 - Quantity contained within
 - Name of item
- D. Carton shipping weight should not exceed thirty pounds (30 lb.) for ease of transporting and lifting.

1.28 PALLET REQUIREMENTS

- A. Each pallet should be forty by forty-eight inches (40" x 48") and **must** not exceed a maximum height of fifty-one inches (51") from the floor when loaded.
- B. Cartons **shall** be shrink wrapped and secured on each pallet in a manner acceptable to the freight line industry.

NOTE

- Pallets noncompliant with the above specified pallet requirements **shall** be rejected at the dock.

SECTION 3 – GENERAL CONTRACTUAL ITEMS**3.1 PAYMENT AND INVOICE PROVISIONS**

- A. Forward invoices to:

As specified on each individual agency's purchase order.
- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services by the agency.
- C. Do not invoice the State in advance of delivery and acceptance of any goods or services.

- D. Payment will be made only after the Contractor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The Contractor should invoice the agency by an itemized list of charges. The agency's Purchase Order Number and/or the Contract Number (SP-18-0018) should be referenced on each invoice.
- F. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- G. Selected Contractor **must** be registered to receive payment and future *Bid Solicitation* notifications. Contractors may register on-line at <https://www.ark.org/contractor/index.html>.

3.2 **GENERAL INFORMATION**

- A. The State will not:
 - 1. 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 Contractor/lessor in the event funds are not appropriated.
 - 2. Contract with another party to indemnify and defend that party for any liability and damages.
 - 3. Pay damages, legal expenses or other costs and expenses of any other party.
 - 4. Continue a contract once any equipment has been repossessed.
 - 5. Agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
 - 6. Enter a contract which grants to another party any remedies other than the following:
 - a. The right to possession.
 - b. The right to accrued payments.
 - c. The right to expenses of de-installation.
 - d. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - e. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- B. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- C. The laws of the State of Arkansas govern this contract.
- D. A contract is not effective prior to award being made by a State Procurement Official.
- E. In a contract with another party, the State will accept the risk of loss of the equipment and pay for any destruction, loss, or damage of the equipment while the State has such risk, when:
 - The extent of liability for such risk is based upon the purchase price of the equipment 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. 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. 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 Contractor.

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 Contractor-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 Contractor will retain total liability for equipment, software and technical and business or operations literature. The State will not at any time be responsible for or accept liability for any Contractor-owned items.
- B. The Contractor's liability for damages to the State will be limited to the value of the Contract or **\$5,000,000**, whichever is higher. The foregoing limitation of liability will 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 Contractor; 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 Contractor and the State will not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability will 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 Contractor; 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 **must not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, will be brought before the Arkansas Claims Commission as provided by Arkansas law and governed accordingly.

3.5 **RECORD RETENTION**

- A. 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, grant access to State or Federal Government entities or any of their duly authorized representatives.
- B. Make financial and accounting records 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 Contractor **must** provide to OSP 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. OSP has the right to require additional information pertaining to the requested increase.
- C. Increases will not be considered to increase profit or margins.
- D. OSP has the right to approve or deny the request.

3.7 **SUMMARY REPORTS/INSTRUCTIONS**

- A. The contractor is required to submit ONLINE Quarterly Reports reflecting usage activity utilizing the Recycled Online Paper Report at the following URL address: www.dfa.arkansas.gov/offices/procurement.
- B. Go to Forms/Reporting > Purchasing Forms and Reporting > Online Reporting > Title > Recycled Paper Report. Follow all prompts from that point, filling in all required information and then click on SUBMIT. The report will be emailed to the OSP mailbox.

- C. Quarterly reports are due the tenth (10th) of every month following the quarter's activity. This report **shall** contain: Contract Reference Number SP-18-0018, Item #, Quantity Ordered, and Total Cost Recycled and Virgin.

3.8 CONFIDENTIALITY

- A. The Contractor, Contractor's subsidiaries, and Contractor's employees will 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 has the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

3.9 CONTRACT INTERPRETATION

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

3.10 CANCELLATION

- A. For Cause. The State may cancel any contract resulting from this solicitation for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the contract and provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. To the extent permitted by law and at the discretion of the parties, the parties may agree to **minor amendments to** the contract and avoid the cancellation for cause upon mutual agreement.
- B. For Convenience. The State may cancel any contract resulting from the solicitation by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.
- C. If upon cancellation the Contractor has provided commodities or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

3.11 SEVERABILITY

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

SECTION 4 – STANDARD TERMS AND CONDITIONS

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 Bid Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Bid Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple bids **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Contractor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the Contractor to supply additional descriptive material. The Contractor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Contractors 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 Contractor 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 Contractor **shall** further guarantee that if the items furnished hereunder are to be installed by the Contractor, such items **shall** function properly when installed. The Contractor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The Contractor'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 Contractor'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 Contractor's expense. After reasonable examination, all demonstrators will be returned at Contractor'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 Contractor.
10. **AMENDMENTS:** Contractor's bids 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 Contractor. 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 Contractor.
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 Contractor 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 Contractor.

14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if the Contractor delivers within the time required and the agency cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting Contractor. The Contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the Contractors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The Contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Contractor hereunder or in contemplation hereof or developed by the Contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the Contractor's expense to the F.O.B. point provided by the agency or by OSP. Contractor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The Contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **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 Contractor 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 Contractor agrees that: (a) the Contractor **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 Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor 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 Contractor 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 Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.
25. **CONTINGENT FEE:** The Contractor 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 Contractor for the purpose of securing business.
26. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor named on the *Bid 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.