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-18-0067	Solicitation Issued:	12/19/17
Description:	Drug Testing Kits		
Agency:	AR State Crime Lab		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	January 17, 2018	Bid Opening Time:	2:00 p.m., Central Time
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.			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	Office of State Procurement 1509 West 7th Street, Room 300 Little Rock, AR 72201-4222 Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address. **Prospective Contractors assume all risk for timely, properly submitted deliveries.**
Bid's Outer Packaging:	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. • Bid number • Date and time of bid opening • Prospective Contractor's name and return address

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Judy Shirley	Buyer's Direct Phone Number:	501-324-9314
Email Address:	Judy.shirley@dfa.arkanas.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

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

1.1 PURPOSE

The purpose of this solicitation is to obtain pricing and a contract for the Arkansas State Crime Laboratory to purchase Y-Chromosomal STR typing amplification kits.

1.2 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 February 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.

1.3 ISSUING AGENCY

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

1.4 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

1.5 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.

1.6 DEFINITION OF TERMS

A. The State Procurement Official has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.

B. 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.

1.7 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.*)

e. Proposed Subcontractors Form. (See Subcontractors.)

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

1.8 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.

1.9 SUBCONTRACTORS

A. Prospective Contractor should complete, sign and submit the *Proposed Subcontractors Form* included in the *Bid Response Packet*.

B. **Do not** attach any additional information to the *Proposed Subcontractors Form*.

C. The utilization of any proposed subcontractor is subject to approval by the State agency.

1.10 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. To allow time to review bids, prices **must** be valid for **90** days following the bid opening.

C. DO NOT submit any ancillary information not related to actual pricing on or with the Bid Price Sheet.

1.11 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.

1.12 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.

1.13 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.

1.14 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.

1.15 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.

1.16 AWARD PROCESS

A. Successful Contractor Selection

1. Award will be made to the lowest-bidding, responsible Prospective Contractor on an **All or None, Grand Total** basis.

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.

1.17 MINORITY BUSINESS POLICY

A. A minority-owned business is defined by Arkansas Code Annotated § 15-4-303 and Act 1080 of the 91st General Assembly Regular Session 2017 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
- A woman

B. The Arkansas Economic Development Commission conducts a certification process for minority businesses and disabled veterans. The Prospective Contractor's Certification Number should be included on the *Bid Signature Page*.

1.18 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 by to have an *EO Policy* **must** submit a written statement to that effect.

1.19 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

A. Pursuant to Arkansas Code Annotated § 19-11-105, 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.

1.20 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.

1.21 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.

1.22 TECHNOLOGY ACCESS

A. When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Prospective Contractor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

B. Accordingly, the Prospective Contractor expressly represents and warrants to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

1. Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means.

2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use.

3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

4. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means.

5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact.

6. Integrating into networks used to share communications among employees, program participants, and the public.

7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

C. State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies must evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product, including any required reasonable accommodations.

D. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired **shall** be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

E. If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

1.23 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM

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

1.24 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.

1.25 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.

1.26 RESERVATION

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

SECTION 2 – REQUIREMENTS

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

2.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for the Arkansas State Crime Laboratory to obtain pricing and a contract for Y-Chromosomal typing amplification kits. An estimated 2400 to 3000 Y-STR samples will be typed each calendar year.

Purchases are typically procured in quarterly installments based on the anticipated need at the time.

2.2 DELIVERY: FOB DESTINATION

Arkansas State Crime Lab
P. O. Box 8500
#3 Natural Resources Drive
Little Rock, AR 72215

A. The agency requests delivery within **30** calendar days after receipt of the order. If this delivery date cannot be met, the Prospective Contractor **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 Contractor to complete delivery by the agency's requested date. Extended delivery dates may be considered when in the best interest of the State.

Delivery: _____ days after receipt of order.

B. 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.

C. 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 SPECIFICATIONS

A. Accreditation

The contractor **must** have an accreditation recognized by the Arkansas State Crime Laboratory such as:

1. ISO/IEC 17025 standards, or be in compliance with ISO 18385 for all products included in the IFB.

2. Accreditation to be provided by the contractor, within (72) hours, when requested by OSP and/or Arkansas State Crime Laboratory, prior to award.

B. Data Requirements

1. The amplification kit **must** be NDIS approved for upload into the CODIS database system.

2. The amplification kit that is selected **must** have the ability to produce a profile that has a database Discrimination Potential greater than 90% as calculated by the National Center for Forensic Science using the US Y-STR Database, release 4.2.

3. Bid **must** include all components necessary to type Y-Chromosomal STRs on the 3500xL Genetic Analyzer including Reaction Master Mix components, Primer Sets, Allelic Ladders, Control DNA, Amplification-grade Water, and Internal Lane Sizing Standards.

C. Test Kit

1. The Y-Chromosomal STR amplification kit **must** have the ability to produce profiles with the following minimal loci: DYS19, DYS385, DYS389I, DYS389II, DYS390, DYS391, DYS392, DYS393, DYS437, DYS438, DYS439, DYS448, DYS456, DYS458, DYS481, DYS533, DYS570, DYS576, DYS635 (YGATAC4), YGATAH4.

2. The Y-Chromosomal STR amplification kit **must** have the ability to produce profiles from both casework and database samples.

3. The selected amplification kit **must** be able to directly amplify database samples on Bode Collector Filter paper or on FTA paper.

4. The casework samples will be separately extracted and quantitated prior to amplification. In order to maximize returns on samples with low concentrations of DNA, each 25l L amplification reaction **must** allow a minimum of 15 lL of template volume.

5. The test kits submitted **must** include all necessary requirements to produce the results as specified in this IFB. No additional cost for reagents, testing papers, or other required supplies are to be excluded from the submitted price.

2.4 ADDITION OF NEW ITEMS TESTED

The State intends to obtain for the duration of this contract or any contract extensions thereof, products that reflect the industry's latest Y-Chromosomal STR typing Amplification Kit technology. The State recognizes that there will be Y-Chromosomal STR typing Amplification Kit technology modifications and improvements that will become available during the life of this contract that will be unavailable on the date of the contract award.

A. New items, or items not previously tested, are to be available to the Arkansas State Crime Laboratory at discounted contract pricing.

B. New items will receive the same pricing parameters as other items listed in this IFB.

C. Drugs deemed to no longer require testing by the Arkansas State Crime Lab, will have the ability to be removed and returned to contractor, including any reference material, associated with the drug. No penalties will be incurred by the Arkansas State Crime Lab for the returned items.

2.5 ACCEPTANCE STANDARDS

Inspection and acceptance/rejection of product(s) will be made within thirty (30) days of receipt. The State has the option to return any product(s) within the thirty (30) day timeframe for any reason. Bid **must** include a "total satisfaction" return policy for all products and **must not** impose any liability on the State for such returns.

SECTION 3 – GENERAL CONTRACTUAL ITEMS

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

3.1 PAYMENT AND INVOICE PROVISIONS

A. Forward invoices to:

Arkansas State Crime Laboratory
Attention: Melissa Barlow
P. O. Box 8500
#3 Natural Resources Drive
Little Rock, AR 72215

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 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 or software and pay for any destruction, loss, or damage of the equipment or software while the State has such risk, when:

- The extent of liability for such risk is based upon the purchase price of the equipment or software at the time of any loss, and

- The contract has required the State to carry insurance for such risk.

3.3 CONDITIONS OF CONTRACT

A. 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 $882,000.00, 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 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.

3.8 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.

3.9 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.

3.10 SEVERABILITY

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the 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

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

1. **GENERAL**: Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.

2. **ACCEPTANCE AND REJECTION**: The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.

3. **BID SUBMISSION**: Original 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** agrees 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 Contactor 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.