



STATE OF ARKANSAS

OFFICE OF STATE PROCUREMENT

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

REQUEST FOR PROPOSAL BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION

Bid Number:	SP-18-0053	Solicitation Issued:	1/2/2018
Description:	Flexible Spending Accounts / Health Savings Accounts, Cafeteria Plan, and COBRA Services		
Agency:	Arkansas Department of Finance and Administration – Employee Benefits Division		

SUBMISSION DEADLINE FOR RESPONSE

Bid Opening Date:	1/31/2018	Bid Opening Time:	2:00 p.m., Central Time
<p>Deliver proposal submissions for this Request for Proposal 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 proposals at the designated location on or before the bid opening date and time. Proposals 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>
Proposal's Outer Packaging:	<p>Seal outer packaging and properly mark with the following information. If outer packaging of proposal submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none">• Bid number• Date and time of bid opening• Prospective Contractor's name and return address

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION

OSP Buyer:	Angela Allman	Buyer's Direct Phone Number:	501-371-6156
Email Address:	angela.allman@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

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

1.1 PURPOSE

A. This Request for Proposal (RFP) is issued by the Office of State Procurement (OSP) on behalf of the Arkansas Department of Finance and Administration – Employee Benefits Division (EBD) to obtain pricing and a contract for the document preparation, administration, and management of the following:

1. For Arkansas State Employees:

a. Arkansas State Employees (ASE) Section 125 “Cafeteria Plan” (ARCap) which includes the following Benefit Package Options and Qualified Benefits available for pre-tax payments and/or contributions:

- General Purpose Flexible Spending Account (GPFSA)
- Limited Purpose Flexible Spending Account for Dental and Vision (LPFSA)
- Dependent Care Flexible Spending Account (DCAP)

b. COBRA Services for certain COBRA eligible products

2. For Arkansas State Employees and Public School Employees (PSE):

a. Health Savings Account (HSA)

B. The State’s main objectives regarding the ARCap and HSA Programs are to continue providing services to its Members, to reduce costs, and to enhance the Program with increased employee participation and improved communication.

1.2 TYPE OF CONTRACT

A. As a result of this RFP, OSP intends to award a contract to a single Contractor.

B. The anticipated starting date for any resulting contract is July 1, 2018 except that the actual contract start date may be adjusted forward unilaterally by the State for up to three (3) calendar months. By submitting a signed proposal in response to the RFP, the Prospective Contractor represents and warrants that it will honor its proposal as being held open as irrevocable for this period.

C. The initial term of a resulting contract will be for three (3) years. Upon mutual agreement by the Contractor and agency, the contract may be renewed by OSP for up to four (4) 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

Proposals 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 RFP to be considered a responsive Prospective Contractor.

B. A Prospective Contractor’s proposal will be disqualified if a Prospective Contractor takes exceptions to any Requirements in the Requirements Section(s) of this RFP.

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. The terms "Request for Proposal", "RFP," "Bid Solicitation," and "Solicitation" are used synonymously in this document.
- D. "Administration Services Start Date" means the date the Contractor **shall** begin providing all administrative, management, and other services required by this bid solicitation, anticipated to be January 1, 2019 and is anticipated to immediately follow the Implementation Period. EBD **shall** have the final determination of the Administrative Services Start Date.
- E. "ARCap" means the Arkansas State Employee Cafeteria Plan as established in accordance with Internal Revenue Code Section 125. For the purposes of this RFP, it includes General Purpose Flexible Spending Accounts, Limited Purpose Flexible Spending Accounts, and Dependent Care Flexible Spending Accounts.
- F. "ASE" means Arkansas State Employees.
- G. "Benefit Package Option" means a Qualified Benefit offered under the ARCap Program.
- H. "Business Day" means any day occurring Monday through Friday excluding State Holidays.
- I. "CDHP" means Consumer Driven Health Plan(s).
- J. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- K. "DCAP" means Dependent Care Flexible Spending Account.
- L. "Effective Date" means the date on which the ASE or PSE coverage under the Program(s) specified in this RFP commences.
- M. "Fiscal Year" means the accounting period used by the State of Arkansas and runs from July 1 through June 30 of the following year.
- N. "GPFSA" means General Purpose Flexible Spending Account.
- O. "HIR" means Health Insurance Representative.
- P. "HSA" means Health Savings Account.
- Q. "IIAS" means Inventory Information Approval System and is a point-of-sale technology used by retailers that accept debit cards issued for use with ARCap and HSA Programs.
- R. "Implementation Period" means the period of time beginning on the starting date of the contract, anticipated to be July 1, 2018 during which the Contractor **shall** perform all start up and implementation activities required to achieve full implementation by the Administration Services Start Date.
- S. "LPFSA" means Limited Purpose Flexible Spending Account.
- T. "Member" or "Membership" means an Arkansas State Employee(s) or Public School Employee(s) enrolled in a General Purpose Flexible Spending Account, Limited Purpose Flexible Spending Account, Dependent Care Flexible Spending Account, Health Savings Account, or COBRA.
- U. "Open Enrollment" means a time period occurring annually during which insured Arkansas State Employees or Public School Employees may make changes, additions, or deletions to their current coverage, and employees

without coverage may apply for coverage. Enrollment and changes made during this annual enrollment period become effective at the beginning of the new Plan Year.

- V. "Plan Document" means a collective term covering all official documents of the Programs described in this solicitation or to the ASE and PSE Health and Life Insurance Plans. A Plan Document contains important information about the Plan and/or Programs as applicable, such as how to access the benefits of coverage, covered services, exclusions & limitations, Member responsibilities, and rights to appeal or continue coverage.
- W. "Plan Participant" means any Arkansas State Employee or Public School Employee who has coverage under the Arkansas State Employee or Public School Employee Health Insurance Benefit Plan but is not enrolled in any one of the ARCap, HSA, or COBRA Programs.
- X. "Plan Year" means the benefit year for Arkansas State Employees, Public School Employees and Retirees Health Insurance and runs from January 1st to December 31st of each year.
- Y. "Plan" means the Arkansas State Employees and Public School Employees and Retirees Health and Pharmacy Insurance Benefit coverage, designed and administered by EBD.
- Z. "Program(s)" means the Arkansas State Employee Cafeteria Plan (ARCap) inclusive of its Benefits Package Options and Qualified Benefits, the Health Savings Account, and/or COBRA, individually and/or collectively.
- AA. "Proposal Submission Requirement" means a task a Contractor **must** complete when submitting a proposal response. These requirements are distinguished by using the term "**shall**" or "**must**" in the requirement.
- BB. "Prospective Contractor" means a person who submits a proposal in response to this solicitation.
- CC. "PSE" means Public School Employees.
- DD. "Qualified Benefit" means a benefit that is excludable from gross income under an express provision of IRS Section 125.
- EE. "Requirements" means specifications that a Contractor's product and/or service is responsible for performing during the term of the contract. These specifications will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- FF. "Responsive Proposal" means a proposal submitted in response to this solicitation that conforms in all material respects to this RFP.
- GG. "State Holiday" includes the following days during each year when State offices are closed:
 - 1. Christmas Day
 - 2. Christmas Eve
 - 3. Dr. Martin Luther King Jr.'s Birthday
 - 4. Independence Day
 - 5. Labor Day
 - 6. Memorial Day
 - 7. New Year's Day
 - 8. President's Day / Daisy Gatson Bates Day
 - 9. Thanksgiving Day
 - 10. Veterans Day
- HH. "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. Original Technical Proposal Packet

- 1. Proposal Submission Requirements

- a. Prospective Contractor **shall** provide the following:
 - i. Original signed *Proposal Signature Page*. (See *Technical Proposal Packet*.)
 - ii. Original signed *Conflict of Interest Affidavit*. (See *Technical Proposal Packet*.)
 - iii. One (1) original hard copy of the proposal response which includes:
 - *Technical Proposal* response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
 - *Response to the Official Bid Price Sheet*.
 - b. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". A Prospective Contractor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.
 - c. Proposal response **must** be in the English language.
 - d. Pricing **must** be proposed in U.S. dollars and cents.
2. The following items should be submitted in the original *Technical Proposal Packet*.
- a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions*, #27. *Disclosure*.)
 - b. Copy of Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
 - c. *Voluntary Product Accessibility Template* (VPAT). (See *Technology Access*.)
 - d. Proposed Subcontractors Form. (See *Subcontractors*.)
3. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

B. Additional Copies and Redacted Copy of the *Technical Proposal Packet* and *Official Bid Price Sheet*

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

1. Additional Copies of the *Technical Proposal Packet*
 - a. Three (3) complete hard copies (marked "COPY") of the *Technical Proposal Packet*.
 - b. Four (4) electronic copies of the *Technical Proposal Packet*, preferably on flash drives. CDs will also be acceptable. Do not send electronic copies via email or fax.
 - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy governs.
 - d. If OSP requests additional copies of the proposal, the copies **must** be delivered within the timeframe specified in the request.
2. Additional Copies of the *Official Bid Price Sheet*
 - a. Prospective Contractor should also submit one (1) electronic copy of the *Official Bid Price Sheet*, preferably on a flash drive. A CD will also be acceptable. Do not send electronic copies via email or fax.

- i. *The Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". Prospective Contractor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.
3. One (1) redacted (marked "REDACTED") copy the original *Technical Proposal Packet*, preferably on a flash drive. A CD will also be acceptable. Do not send electronic copies via email or fax. (See *Proprietary Information*.)

1.8 ORGANIZATION OF RESPONSE DOCUMENTS

- A. It is strongly recommended that Prospective Contractors adhere to the following format and suggestions when preparing their *Technical Proposal* response.
- B. The original *Technical Proposal Packet* and all copies should be arranged in the following order.
 - *Proposal Signature Page*.
 - *Signed Conflict of Interest Affidavit*
 - *Proposed Subcontractors Form*.
 - *Signed Addenda*, if applicable.
 - *E.O. 98-04 – Contract Grant and Disclosure Form*.
 - *Equal Opportunity Policy*.
 - *Voluntary Product Accessibility Template (VPAT)*.
 - *Technical Proposal* response to the *Information for Evaluation* section of the *Technical Proposal Packet*.

1.9 CLARIFICATION OF BID SOLICITATION

- A. Submit any questions requesting clarification of information contained in this *Bid Solicitation* in writing via email by 4:00 p.m., Central Time on or before January 8, 2018 to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.
 1. For each question submitted, Prospective Contractor should reference the specific solicitation item number to which the question refers.
 2. Prospective Contractors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on January 16, 2018. If Prospective Contractor questions are unclear or non-substantive in nature, the State may request clarification of a question(s) and/or reserves the right not to respond to those questions.
- B. The Prospective Contractor should notify the OSP designated contact(s) 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 proposal.
- C. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the bid opening.
- D. 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.
- E. Prospective Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

1.10 PROPOSAL SIGNATURE PAGE

- A. An official authorized to bind the Prospective Contractor(s) to a resultant contract **shall** sign the *Proposal Signature Page* included in the *Technical Proposal Packet*.

- B. Prospective Contractor's signature on this page signifies Prospective Contractor's agreement that any exception that conflicts with a Requirement or Proposal Submission Requirement of this *Bid Solicitation* will cause the Prospective Contractor's proposal to be disqualified.

1.11 **SUBCONTRACTORS**

- A. Prospective Contractor should complete, sign and submit the *Proposed Subcontractors Form* included in the *Technical Proposal Packet*.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Technical Proposal Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.

1.12 **CONFLICT OF INTEREST AFFIDAVIT**

- A. The Prospective Contractor **shall** provide a completed and signed *Conflict of Interest Affidavit* located in the *Technical Proposal Packet*.

1.13 **PRICING**

- A. Prospective Contractor(s) **shall** include all pricing on the Official Bid Price Sheet(s) only. If any cost not included by the successful Contractor is subsequently incurred in order to achieve successful operation, the successful Contractor **shall** bear this additional cost. The *Official Bid Price Sheet* is provided as a separate excel file posted with this *Bid Solicitation*.
- B. To allow time to evaluate proposals, prices **must** be valid for 90 days following the bid opening.
- C. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". DO NOT submit any ancillary information not related to actual pricing on the Official Bid Price Sheet or in the sealed pricing package.
- D. The Contractor **shall** provide the services required in this RFP to EBD for the benefit of ASE and PSE Plans. All work performed by the Contractor **must** address the particular needs of the ASE and PSE Plans, respectively. As a result, pricing **must** reflect the administration and management for all FSA/HSA services for both Plans.
- E. The Official Bid Price Sheet contains six (6) Tables for the purposes described below.
- **Table 1 – ARCap Administration and Management:** The Prospective Contractor **shall** provide pricing for the monthly administration and management of the ARCap Program for ASE listed on a Per Member Per Month (PMPM) basis. Table 1 **shall** be used for determining lowest cost.
 - **Table 2 – HSA Administration & Management:** The Prospective Contractor **shall** provide pricing for the monthly administration and management of the HSA Program for ASE and PSE on a Per Member Per Month (PMPM) basis. Table 2 **shall** be used for determining lowest cost.
 - **Table 3 – COBRA Administration and Management:** The Prospective Contractor **shall** provide pricing for the monthly administration and management of the COBRA Program on a Per Member per Month (PMPM) basis for ASE. Table 3 **shall** be used for determining lowest cost.
 - **Table 4 – Implementation:** The Prospective Contractor **shall** provide a one-time implementation fee. The one-time implementation fee **must** encompass all services required during the Implementation Period and will be payable at the end of the Implementation Period. Table 4 **shall** be used for determining lowest cost.
 - **Table 5 – Additional Services:** The Prospective Contractor should provide pricing for any additional services offered (beyond those services required by this RFP) should EBD choose to utilize any of the listed additional services during the term(s) of any contract resulting from this RFP. Table 6 **shall not** be used for determining lowest cost.
 - **Table 6 – Adding PSE to ARCap:** The Prospective Contractor **shall** provide pricing for a one-time implementation fee and a PMPM fee for the administration and management of the ARCap Programs for ASE and PSE combined should EBD choose to add PSE to the ARCap Programs during the

term(s) of any contract resulting from this RFP. The PMPM Fee **must** reflect pricing for the ASE and PSE combined Membership totals. The State of Arkansas is strictly providing enrollment and Membership information in Table 6 as an estimate only. The Prospective Contractor **shall not** interpret the approximate enrollment and/or Membership numbers provided in Table 6 to be a guarantee of the actual enrollment and/or Membership should EBD choose to add PSE to the ARCAP Program. Table 6 **shall not** be used for determining lowest cost.

Please note: The Official Bid Price Sheet contains two (2) tabs.

1.14 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.

1.15 INDEPENDENT PRICE DETERMINATION

- A. By submission of this proposal, the Prospective Contractor certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
 - The prices in the proposal have been arrived at independently, without collusion.
 - No prior information concerning these prices has been received from, or given to, a competitive company.
- B. Evidence of collusion warrants consideration of this proposal by the Office of the Attorney General. All Prospective Contractors **shall** understand that this paragraph may be used as a basis for litigation.

1.16 PROPRIETARY INFORMATION

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

1.17 **CAUTION TO PROSPECTIVE CONTRACTORS**

- A. Prior to any contract award, address all communication concerning this *Bid Solicitation* through OSP.
- 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 proposal 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 proposals.

1.18 **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.

1.19 **AWARD PROCESS**

A. Successful Contractor Selection

The Grand Total Score for each Prospective Contractor, which is the sum of the Technical Score and Cost Score, will be used to determine the ranking of proposals. The State may move forward to negotiations with those responsible Prospective Contractors determined, based on the ranking of the proposals, to be reasonably susceptible of being selected for award.

B. Negotiations

- 1. If the State so chooses, negotiations may be conducted with the highest ranking Prospective Contractors. 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 highest ranking 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.

1.20 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 *Proposal Signature Page*.

1.21 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.

1.22 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

- A. Pursuant to Arkansas Code Annotated § 19-11-105, Prospective Contractor(s) **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 illegal immigrants. If selected, the Prospective Contractor certifies that they will not employ illegal immigrants during the aggregate term of a contract.

1.23 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 Proposal 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.

1.24 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". Proposals submitted by Prospective Contractors determined to be non-responsible will be disqualified.

1.25 TECHNOLOGY ACCESS

- A. When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The 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.

1.26 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM

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

1.27 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.

1.28 PUBLICITY

- A. Do not discuss the solicitation nor your proposal 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 proposal to be disqualified.

1.29 RESERVATION

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

SECTION 2 – REQUIREMENTS

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

2.1 INTRODUCTION

- A. This Request for Proposal (RFP) is issued by the Office of State Procurement (OSP) on behalf of the Department of Finance and Administration – Employee Benefits Division (EBD) to obtain pricing and a contract for the document preparation, administration, and management of the following:
1. For Arkansas State Employees (ASE):
 - a. Arkansas State Employees Section 125 “Cafeteria Plan” (ARCap) which includes the following Benefit Package Options and/or Qualified Benefits available for pre-tax payments and/or contributions:
 - General Purpose Flexible Spending Account (GPFSA)
 - Limited Purpose Flexible Spending Account for Dental and Vision (LPFSA)
 - Dependent Care Flexible Spending Account (DCAP)
 - b. COBRA Services for certain COBRA eligible products
 2. For Arkansas State Employees and Public School Employees (PSE)
 - a. Health Savings Account (HSA)
- B. Currently the State only offers the ARCap Program to ASE, although both ASE and PSE are benefit eligible. The State reserves the right to offer the ARCap to PSE at a future date during the term(s) of any contract resulting from this RFP. Should EBD elect to provide the ARCap to PSE, the Contractor **shall** provide the same services to PSE as required in this RFP for ASE.
- C. The Arkansas State and Public School Life and Health Insurance Board has full policy-making authority for the Plans, and the Contractor **shall** adjust services based on any changes the Board makes during the term(s) of the contract.
- D. The contract start date is anticipated to be July 1, 2018 with an Administrative Services Start Date anticipated to be January 1, 2019. EBD reserves the right to have the final determination of the Administrative Services Start Date.

2.2 BACKGROUND AND CURRENT ENVIRONMENT

- A. As established in accordance with Internal Revenue Code Section 125, the Programs described in this RFP allow Qualified Benefits to be paid on a pre-tax basis.
- B. At a minimum, the benefits available for pre-tax payments/contributions include certain employee-paid health and life insurance premiums and qualified supplemental products (in regards to the Plan Document), HSAs, GPFSA, LPFSAs, DCAPs, and COBRA.
- C. The Programs described in this RFP **must** adhere to all State and federal laws. The Contractor **shall** maintain compliance with all applicable State and federal laws as they pertain to the administration and management of the Program(s) described herein. The Contractor **shall** create and modify all forms, Member communication and education pieces, and all other documents and services provided as needed to maintain compliance of applicable State and Federal Laws.
- D. Administrative and management services are currently provided by DataPath, Inc.
- E. Current employer contributions to Member's HSAs are as follows:
- ASE: \$300 / Year for Individuals and \$600 / Year for Family

- PSE: No Employer Contribution

F. Total Plan Enrollment, ARCap Membership, and HSA Enrollment and Membership Information:

Total Population & Plan Enrollment	ASE	PSE
Total Employee Population	44,071	79,443
Total Plan Enrollment	60,470	90,846
ARCap Membership	ASE	PSE
GPFSAs	3,500	0
LPFSAs	100	0
DCAP	360	0
HSA Qualified Plan Enrollment and HSA Membership	ASE	PSE
HSA Qualified Health Plan Enrollment	3,636	25,611
HSA Membership	2,500	20,000

- G. The State of Arkansas is strictly providing enrollment and Membership information as an estimate only. The Prospective Contractor **shall not** interpret the approximate enrollment and/or Membership numbers to be a guarantee of the actual enrollment and/or Membership numbers existing during the term(s) of any contract resulting from this RFP.
- H. For additional information, the Prospective Contractor may reference the 2017 Summary Plan Description listed as Attachment D to this RFP.

2.3 PROSPECTIVE CONTRACTOR QUALIFICATIONS

- A. The Prospective Contractor **must** have five (5) years' previous experience in each of the following and currently be administering and maintaining compliance of:
- Section 125 Cafeteria Plans
 - General Purpose Flexible Spending Accounts
 - Limited Purpose Flexible Spending Accounts
 - Dependent Care Flexible Spending Accounts
 - Health Savings Accounts
 - COBRA Administrative Services
- B. The Prospective Contractor **must** have a minimum of five (5) years' experience working with either State, Federal, or local public entities such as cities or counties (preferably in administering and managing a project of similar scope) and **must** be capable of serving the needs of a geographically diverse employer population.
- C. Prior to award, the Prospective Contractor **must** be authorized to conduct business in the State of Arkansas.
- D. Prior to award and throughout the life of any resultant contract including any extensions, the Contractor **shall** maintain the following insurance coverages listing the State of Arkansas as an additional insured:
1. Commercial General Liability insurance with policy limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.
 2. Cyber Liability Insurance with a minimum policy limit of \$600,000.

2.4 **GENERAL REQUIREMENTS**

- A. Throughout the term(s) of any contract resulting from this RFP and as requested by EBD and/or required by law, the State reserves the right to add or remove any services offered by the Contractor under the scope of any contract resulting from this RFP. These services may be additional services as offered in the Prospective Contractor's proposal and/or newly created services based on improving technology or changes in Federal and/or State mandates which fall under the scope of work. If pricing is not already submitted on the Official Bid Price Sheet, the Contractor **shall** negotiate pricing for these services with EBD if and when the services are added. Pricing **must** be consistent with current contract pricing for similar services and **must** be agreed upon in writing between EBD and the Contractor prior to implementation of the service.
- B. The State of Arkansas, EBD, or the Members **shall not** pay any costs the Prospective Contractor fails to include on the Official Bid Price Sheet, such as, but not limited to the following:
 - 1. All fees charged by third parties, including any subcontractors of the Contractor.
 - 2. Printing and mailing expenses.
 - 3. All expenses associated with the education and/or enrollment sessions provided to agencies.
 - 4. All travel costs associated with providing the services specified in this RFP including meals, lodging, and airfare.
- C. For all required services, the Contractor **shall** bear all costs not included on the Official Bid Price Sheet but subsequently incurred in order to achieve successful operation. If no specific pricing cell is provided for a particular cost of a required service, the Contractor **shall** bear such expense and **shall** figure that expense amount into the Per Member per Month Fee (Pricing Tables 1, 2, and 3 on the Official Bid Price Sheet) or One Time Fee (Table 4 of the Official Bid Price Sheet) to include that expense in the proposed pricing. **Do not alter, write, or mark on the Official Bid Price Sheet except to enter the pricing in the designated pricing cells.**
- D. The Contractor **shall** implement specific procedures to ensure adherence to and appropriate reporting for the Performance Standards as stated in Attachment A to this RFP.

2.5 **GENERAL PROGRAM REQUIREMENTS**

- A. The Contractor **shall** provide immediate written notification to EBD of any changes to the Contractor's representatives, management, and/or ownership relative to a resulting contract.
- B. The Contractor **shall** have their own bank account dedicated for COBRA administration and for making all required ARCap and HSA payments.
- C. The Contractor **shall** provide Members with an Electronic Payment Debit Card on a major card-processing platform that is Inventory Information Approval Systems (IIAS) Compliant.
- D. The Contractor **shall** accept enrollment information in a method specified by or acceptable to EBD. Technical details will be determined during contract negotiations or during the Implementation Period as determined by EBD.
- E. The Contractor **shall** correctly process all enrollment additions, changes, deletions and demographic changes within three (3) Business Days of receipt by the Contractor in accordance with applicable State and federal law as they relate to the Qualified Benefits administered and managed under any contract resulting from this RFP.
- F. The Contractor **shall** hold all COBRA, ARCap, and HSA account funds in an FDIC insured bank.
- G. The Contractor **shall** send an alert to the Member via the Member's chosen method of communication when any rejected, unexpected, and/or unintended funding has occurred on the Member's account and **shall** notify EBD within five (5) Business Days via the task system for each occurrence.
- H. For reporting purposes, the Contractor **shall** appropriately separate each Member account and categorize the Member accounts per the applicable funding source with each funding source having its own classification. The Contractor **shall** create a report based on the categorized information and **shall** arrange the report by Agency Number or other category arrangement determined necessary by EBD.

- I. The Contractor **shall** correctly credit ARCap and HSA Member accounts.
 - 1. The Contractor **shall** utilize accounting and business processes that provide for the correct crediting of Member accounts for all circumstances having the potential to result in the incorrect crediting of a Member's account, such as when a Member transfers between agencies, experiences a name change, and/or for other demographic and/or other changes that may affect proper crediting.
- J. During the Implementation Period, or other time as requested by EBD, and with EBD's assistance and approval, the Contractor **shall** establish procedures for Members to follow regarding the process for the submission of documentation and information to the Contractor.
 - 1. The Contractor **shall** provide the approved procedures as well as a list of eligible changes allowed by applicable federal law to each individual State agency's Health Insurance Representative (HIR) in a format requested by EBD or the agency's HIR which may include PDF format, emails, HIR alerts brochures, etc. Currently the State of Arkansas consists of 238 agencies with approximately 216 HIRs within those agencies.
- K. If requested to do so by the Member, the Contractor **shall** certify to the Member in writing that any qualified expense the Member may question as being "qualified" is in fact "qualified" and therefore eligible for tax-free distribution. The Contractor **shall** provide this service to the Member within five (5) Business Days of request by the Member.
- L. During the Implementation Period and at a minimum of thirty (30) calendar days prior to the implementation of any changes to the Contractor's website, the Contractor **shall** allow EBD or EBD's authorized representative to test the Contractor's website structure and pages and to review content for usability as determined by EBD.
 - 1. The Contractor **shall** resolve all usability concerns identified by EBD or EBD's authorized representative within two (2) Business Days of the Contractor's receipt of notification from EBD.
- M. The Contractor **shall** modify any Program design based upon EBD's needs, desires, utilization results, revenues, and/or surplus funds, or other necessity as directed by EBD.
- N. The Contractor **shall** routinely review (e.g. during monthly/quarterly on-site meetings) the overall effectiveness of the Program(s) and provide EBD with consultation and recommendations regarding Program(s) design and/or needed administrative adjustments.
- O. Prior to distribution, the Contractor **shall** coordinate with, submit to, and receive approval from EBD's Communications Manager for the following:
 - 1. All Member communications
 - 2. All education and enrollment material
- P. EBD will provide the contact information for the Communications Manager and other pertinent contacts during the Implementation Period.
- Q. EBD has no authority to force or recommend any existing ARCap or HSA Member move their active ARCap account or HSA from the outgoing Contractor to the awarded Contractor resulting from this RFP.
 - 1. Member ARCap accounts or HSAs established and existing with the outgoing Contractor at the expiration or termination of the outgoing Contractor's contract may stay in force at the discretion of the Member. Neither EBD, the employer, nor the State of Arkansas will contribute to accounts chosen by the Member to remain with the outgoing Contractor and will not pay any administrative fees associated with those ARCap accounts or HSAs.
 - 2. EBD, the employer, and the State of Arkansas will only pay fees and contributions to a new ARCap account or HSA created with the Contractor of this RFP or a transfer of an ARCap account or HSA from the outgoing Contractor to the Contractor of this RFP.

- R. The Contractor **shall** have administrative authority on new ARCap accounts and HSAs established after the Implementation Period as specified in this RFP as well as any existing ARCap accounts and HSAs with the outgoing Contractor by which the Member has facilitated a transfer to the Contractor of this RFP.
- S. The Contractor **shall** be liable for any penalty or interest payable to the Internal Revenue Service or Arkansas Department of Finance and Administration and assessed against EBD, the Plan, or Program(s) if the penalty and/or interest assessed results from the information or services provided by the Contractor, or the failure of the Contractor to provide information or services.

2.6 **IMPLEMENTATION**

- A. The Contractor **shall** perform all start-up and implementation activities necessary to achieve full implementation by the anticipated Administration Services Start Date, including but not limited to the following:
 - 1. Data transfer.
 - 2. Providing Members and Plan Participants with education and enrollment material, mail-outs, and outreach as necessary.
 - 3. Distributing the toll-free customer service telephone number to Members using mediums such as brochures to HIRs, Member alerts, and newsletters.
 - 4. Providing the process Members will use to transfer accounts from the out-going Contractor to the Contractor of this RFP using such mediums as brochures, Member alerts, and newsletters.
 - 5. Meeting in person with EBD staff, Members, Plan Participants, and/or HIRs at various regions throughout Arkansas to provide education and enrollment services as necessary and/or as requested by EBD. See 2.13 *Enrollment Services*.
 - 6. Distributing transition letters, instructional videos, and/or other tools to Members, Plan Participants, EBD staff, agency and public school HIRs, and/or other designated parties that effectively communicate the regulatory and administrative aspects of the Programs specified in this RFP and the ASE and PSE Plans.
 - 7. Other activities (including any additional education and enrollment activities) which cannot be effectively provided in this RFP but are needed for the successful implementation and performance of the services outlined in this RFP.
 - 8. Distributing the electronic payment debit card to Members via USPS.
- B. Prior to award, the Contractor **shall** provide EBD with the following information for each member of the implementation team:
 - 1. Name
 - 2. Title
 - 3. Telephone number
 - 4. Fax number
 - 5. Email address
- C. At the beginning of the Implementation Period, the Contractor **shall** attend an initial 1 to 3-day meeting(s) to be held at EBD offices located in Little Rock, Arkansas. At a minimum, the account manager assigned to the EBD account and the Contractor's implementation team **shall** attend the meeting(s) in person with exact date(s), time(s), and location to be determined by EBD prior to or upon contract award. It is anticipated the date(s) of the meeting(s) will coincide to some degree with the award date of any contract resulting from this RFP, anticipated to be July 1, 2018.
- D. During the Implementation Period, the Contractor **shall** meet with EBD and/or the Arkansas State and Public School Life and Health Insurance Board on a weekly basis or as requested by EBD. At a minimum, the account

manager assigned to the EBD account and the Contractor's implementation team **shall** attend meetings in person in Little Rock, Arkansas or may attend via telephone and/or video conferencing at EBD's discretion. However, the Contractor **shall** be prepared to attend meetings in person should EBD determine that is necessary. The dates, times, and specific location will be determined by EBD during the initial 1-3 day implementation meeting(s).

- E. The Contractor **shall** provide training to EBD staff, HIRs of State agencies and public schools, and other designated parties if requested by EBD during the Implementation Period. The Contractor **shall** provide training in person at EBD offices in Little Rock, Arkansas when in-person training is requested by EBD, or may provide training via webinar at EBD's discretion. EBD reserves the right to make the final determination regarding the method of training. At a minimum, the Contractor **shall** include the following in the training sessions:
1. Information about of the Contractor's company.
 2. A basic overview of the Programs the Contractor **shall** administer and manage under any contract resulting from this RFP with a graduation to the intricacies of the Program(s).
 3. Governmental guidelines pertaining to ARCap, HSA, and COBRA Programs.
 4. Best practices for providing quality customer service for the Program(s).
 5. Information that effectively communicates the regulatory and administrative aspects of the Programs specified in this RFP and the ASE and PSE Plans.
 6. Information that effectively communicates the advantages and benefits of participation in the Programs.
 7. Other topics determined necessary and requested by EBD.
- F. Neither EBD nor the State of Arkansas will pay any kind of administration or management fee during the Implementation Period for any reason. The State will pay applicable administration and management fees beginning the month of the Administration Services Start Date as stated in this RFP anticipated to be January 1, 2019. EBD reserves the right to have the final determination of the Administrative Services Start Date.
- G. The one-time implementation fee recorded in Table 4: *Implementation* will be payable at the end of the Implementation Period when all Implementation is complete and approved by EBD.

2.7 ARCap ADMINISTRATION

- A. The Arkansas State Employee Cafeteria Plan (ARCap) allows Qualified Benefits to be paid on a pre-tax basis. At a minimum, the Contractor **shall** administer and manage the following Benefit Package Options and Qualified Benefits contained under the umbrella of the ARCap:
1. General Purpose Flexible Spending Accounts
 2. Limited Purpose Flexible Spending Accounts for Dental and Vision
 3. Dependent Care Flexible Spending Accounts
- B. The Contractor **shall** establish, administer, and service the ARCap Program for the benefit of all ASE choosing to open one or more of the Benefit Package Option accounts.
- C. The Contractor **shall** maintain compliance of the ARCap Program with all applicable State and federal laws.
- D. The Contractor **shall** provide claims processing for the ARCap Program and **shall** allow for reimbursement options to the Member via check or direct deposit as elected by the Member.
- E. The Contractor **shall** provide processing and issuance of an electronic payment card (debit card) for all ASE ARCap Members.

- F. The Contractor **shall** process the contributions to and provide distribution and customer service assistance for the Member regarding the ASE Members' ARCap accounts.
- G. The Contractor **shall** facilitate Member's access to the GPFSAs, LPFSAs, and DCAPs funds.

2.8 **HSA ADMINISTRATION**

- A. Per Act 1135 of the Regular Session of 2015, any ASE or PSE who elects coverage on one of the Consumer Driven Health Plans (CDHP) is being advised to open a HSA. The intent of the law was to allow for both employer and employee contributions to the Member's HSA. As of the issuance of this RFP, the State of Arkansas only contributes to HSAs held by an ASE Plan Participant. PSE Members of an HSA may begin to receive employer contributions to their HSAs in the future. Should this occur, the Contractor **shall** service the HSAs of PSE Plan Participants per the requirements of this RFP.
- B. The Contractor **shall** maintain compliance of the HSA Program with all applicable State and federal laws.
- C. The Contractor **shall** provide claims processing for the Members' HSAs and **shall** allow for reimbursement options via check or direct deposit as elected by the Member.
- D. The Contractor **shall** provide processing and issuance of an electronic payment card (debit card) for all HSA Members.
- E. The Contractor **shall** process the contributions to, and provide distribution and customer service assistance for, the Member regarding the Members' HSAs.
- F. The Contractor **shall** make HSA funds available to the Member for investment purposes.
- G. The Contractor **shall** be responsible for the administration of individually owned Health Savings Accounts for both ASE and PSE that have separated employment with their respective employer for any reason. The Contractor **shall** maintain the investment options of such HSAs after account amounts reach certain levels which could vary by institution.
 - 1. Any fees incurred to administer any individually owned HSA **shall** be between Contractor and the individual who has separated employment. Neither EBD nor the State **shall** pay for any fees incurred to administer any individually owned HSA existing after employment has been separated.
- H. The Contractor **shall** assume full responsibility, including financial liability, to the HSA Member for any miscommunication(s) and/or erroneous information provided to the Member and related to the Member's HSA account. If corrective action(s) is required, the Contractor **shall** have the contemplated corrective action(s) approved by EBD prior to the implementation of the corrective action(s).

2.9 **COBRA ADMINISTRATION**

- A. As outlined in Title XXII of the Public Health Service (PHS) Act, 42 U.S.C. §§ 300bb-1 through 300bb-8, employees who terminate employment may be eligible to continue coverage of certain eligible Benefit Package Options and certain supplement products for a period of time which may be from 18 to 36 months.
- B. The Contractor **shall** provide COBRA Administration in the same manner as required in this RFP for ARCap Administration for Active and Retired (under age 65) Members for the following Benefit Package Options:
 - LPFSA
 - GPFSA
- C. Within thirty (30) calendar days of employment separation/termination, the Contractor **shall** mail COBRA packets to those who are COBRA eligible. The Contractor **shall** include documents as requested by EBD in the COBRA packets including but not limited to:
 - 1. Initial notice
 - 2. COBRA election form

3. Coupon book
4. Premium grace letter
5. Sixty (60) day notice for end of COBRA coverage
6. Qualified beneficiaries failure to accept notice
7. Short payment notice
8. Termination notice
9. Open Enrollment notices

2.10 SYSTEM AND WEBSITE REQUIREMENTS

- A. The Contractor **shall** have a comprehensive and technical administration system(s) capable of the full-service administration and management of the Programs described in this RFP.
- B. The Contractor **shall** have the comprehensive and technical administration system(s) required for successful rendering of services required by this RFP in full operation and production for a minimum of one (1) year prior to responding to this RFP. This one (1) year requirement does not apply to modifications, enhancements, or fixes to existing system(s).
- C. The Contractor **shall** submit advance written notice to EBD regarding any major conversion for, or related to, the Contractor's system(s) used to deliver the services required in this RFP. The Contractor **shall not** undertake any major conversion for, or related to, the Contractor's system(s) used to deliver services required in this RFP without prior approval from EBD. EBD reserves the right to reject any proposed conversion. This requirement does not apply to program fixes, modifications, or enhancements.
- D. The Contractor **shall** develop a single, secure, trusted link between the ARBenefits Member page and the Contractor's website for use by Members and Plan Participants.
- E. The Contractor **shall** provide website hosting with secure Member sign-on.
 1. The Contractor's website **must** have Member account information accessible to Members via the secure sign-on.
 2. The Contractor **shall** provide website maintenance only between the hours of 12 a.m. and 6 a.m. CST.

2.11 ELIGIBILITY AND TESTING

- A. The Contractor **shall** utilize Eligibility and Testing processes as required by applicable federal law(s).
- B. The Contractor **shall** perform all non-discrimination and HSA testing as required by applicable federal law(s).
- C. On an ongoing basis, the Contractor **shall** notify EBD via the task system or secure email and the Member via the Member's chosen notification method regarding the details of any failed test.
- D. On an ongoing basis, the Contractor **shall** provide recommendations to EBD regarding any failed test in order to prevent reoccurrence of such finding(s) and/or failure(s).

2.12 CUSTOMER SERVICE

- A. The Contractor **shall** provide all labor, equipment, facilities, supplies, and/or any other goods and/or services necessary to fulfill the requirements of this RFP and provide EBD, Members, and Plan Participants with quality administrative and customer service.
- B. The Contractor **shall** provide a call center with toll-free access to trained, live, English-speaking customer service representatives.

- C. The Contractor **shall** provide continuous, uninterrupted, toll-free customer service access Monday through Friday (excluding State Holidays) during the hours of 8:00 a.m. – 5:00 p.m. CST and **shall** return calls within one (1) Business Day.
- D. The Contractor **shall** record and archive 100% of telephone calls, including but not limited to telephone calls regarding enrollment and applications.
 - 1. The Contractor **shall** retain all archived telephone calls a minimum of eighteen (18) months after the end of each Plan Year.
 - 2. The Contractor **shall** retrieve any archived telephone call(s) and **shall** provide the archived call(s) to EBD in either WAV file, CD, or DVD format within seven (7) Business Days of request from EBD.
- E. For reporting purposes, the Contractor **shall** track all customer service calls in order to provide reporting to EBD for such items as call drivers and categories of call volume, or as requested by EBD.
- F. The Contractor **shall** provide comprehensive customer service to all ASE and PSE Plan Participants and Program Members.

2.13 **ENROLLMENT SERVICES**

- A. The Contractor **shall** provide education and enrollment services to Plan Participants, Members, EBD staff, HIRs located at individual State agencies and public schools, and other designated parties as determined necessary by EBD.
- B. The Contractor **shall** provide education and enrollment services beginning at least one (1) week prior to the Open Enrollment period each year during the term(s) of any resultant contract.
- C. The Contractor **shall** provide on-going education and enrollment services on an as needed basis throughout the Plan Year and as requested by EBD.
- D. The Contractor **shall** supply education and enrollment materials in the quantities requested by State agencies and school districts and **shall** make the education and enrollment materials available in paper and electronic format.
- E. If requested by EBD, the Contractor **shall** provide the education and enrollment materials in Spanish.
- F. The Contractor **shall** obtain approval of and/or specifications for all Member oriented education and enrollment materials from EBD prior to distribution.
- G. The Contractor **shall** be solely responsible for educating and enrolling Members and Plan Participants.
- H. The Contractor **shall** provide education and enrollment services for ASE and PSE new hires as follows:
 - 1. The Contractor **shall** design and produce education and enrollment materials as applicable to ASE and PSE new hires. At a minimum the education and enrollment materials for ASE and PSE new hires **must** include:
 - a. Eligibility Rules.
 - b. Enrollment Procedures.
 - c. Customer Service Contact Information.
 - d. Information that effectively communicates the advantages and benefits of ASE participation in the ARCap Program.
 - e. Information that effectively communicates the advantages and benefits of ASE and PSE participation in an HSA.
 - f. Procedures for submitting documentation and information.

- g. Listing of eligible status changes as allowed by applicable law.
 - h. Additional information as deemed necessary by EBD.
- 2. The Contractor **shall** supply the educational materials and forms to EBD to insert into new hire packets.
- I. Since it is imperative EBD staff understand the regulatory and administrative aspect of the Programs specified in this RFP as well as the ASE and PSE Plans, the Contractor **shall** provide education and enrollment services including training to EBD staff and/or other designated parties such as agency and public school HIRs as requested by EBD as follows:
 - 1. The Contractor **shall** provide training to EBD staff or other designated parties throughout the Plan Year as determined necessary and requested by EBD.
 - a. The Contractor **shall** conduct in-person training to be located on-site at EBD offices in Little Rock, Arkansas, when in-person training is requested by EBD. The Contractor **shall** also have training webinars available for instances when in-person training is not required. EBD reserves the right to make the final determination regarding the method of training.
 - 2. At a minimum, the Contractor **shall** include the following information in the training sessions:
 - a. Information about the Contractor's company.
 - b. A basic overview of the Programs the Contractor administers and manages under any contract resulting from this RFP with a graduation to the intricacies of the Programs.
 - c. Governmental guidelines pertaining to the ARCap, COBRA, and HSA Programs.
 - d. Best practices for providing quality customer service for the Programs.
 - e. Information that effectively communicates the advantages and benefits of ASE and PSE participation in the ARCap and/or HSA Programs.
 - f. Information that effectively communicates the administrative and regulatory aspects of the Programs.
 - g. Other topics as determined by EBD.
- J. The Contractor **shall** provide education and enrollment services to Members and Plan Participants as follows:
 - 1. The Contractor **shall** design and produce education and enrollment materials applicable to ASE and PSE Plan Participants and Members, and **shall** deliver the material to Plan Participants, Members, and other designated parties as determined by EBD, preferably via email.
 - 2. The Contractor **shall** partner with EBD to publish educational and enrollment materials in monthly newsletters, EBD social media sites, and the Member portal.
 - 3. The Contractor **shall** include payroll stuffers, pre-enrollment newsletters, enrollment booklets, and/or other items as determined necessary by EBD as part of the Member and Plan Participant oriented education and enrollment materials.
 - 4. At a minimum, the Contractor **shall** include the following in the education and enrollment services and materials provided:
 - a. Eligibility Rules.
 - b. Enrollment Procedures.
 - c. Customer Service Contact Information.

- d. Information that effectively communicates the advantages and benefits of ASE participation in the ARCap Program.
 - e. Information that effectively communicates the advantages and benefits of ASE and PSE participation in the HSA Program.
 - f. Procedures for submitting documentation and information.
 - g. Listing of eligible status changes as allowed by applicable law.
 - h. Additional information as deemed necessary by EBD.
- K. Each year during the Open Enrollment period, there are approximately twenty (20) Open Enrollment meetings conducted over a sixty (60) day period located in various regions of Arkansas.
- 1. The Contractor **shall** attend and participate in such meetings in person as requested by EBD, State agencies, and/or school districts and **shall** assist EBD and/or State agency and public school HIRs with education and/or enrollment for Plan Participants and Members.
 - 2. The Open Enrollment Meetings may be conducted with either a presentation style or benefit fair style format. EBD reserves the right to have the final determination of meeting format.

2.14 CLAIMS PROCESSING AND PAYMENTS

- A. The Contractor **shall** provide claims processing and payment services for the ARCap, HSA, and COBRA Programs.
- B. The Contractor **shall** complete the processing and payment of all eligible, qualified, and valid faxed claims, claims submitted on-line, and mailed claims within three (3) Business Days of receipt by the Contractor.
- C. The Contractor **shall** notify the Member within three (3) Business Days of receipt of any ineligible, suspended, or pending claim that is unprocessed. The Contractor **shall** notify the Member via the Member's preferred method of communication which may include telephone, fax, mail, web portal, mobile app, or email.
- 1. The Contractor **shall** include the following information in the notification to the Member:
 - a. Claim Amount
 - b. Date of Service
 - c. Reason for Payment Denial
- D. The Contractor **shall** process and correctly pay all claims in accordance with EBD's established policies, procedures, and practices as it relates to funding, check processing, payroll offsets for non-eligible debit card transactions, etc.
- 1. EBD's policies, procedures, and practices can be accessed by visiting the ARBenefits website at <http://portal.arbenefits.org/Pages/default.aspx>
 - 2. At some point, EBD may determine there is a need to adjust one or more of its policies, procedures, or practices. Should EBD make any of the aforementioned adjustments, the Contractor **shall** process and pay all claims in accordance with any adjusted and/or updated policy, procedure, and/or practice as defined by EBD.
- E. The Contractor **shall** correctly issue claims payments to Members via check or direct deposit as elected by the Member.
- F. The Contractor **shall** process pending claims and **shall** follow-up with Members as necessary in order to obtain information applicable to the correct processing of pending claims.
- G. The Contractor **shall** screen all claims to prevent payment duplication and **shall** maintain procedures that provide consistency of claims payments in accordance with the Plan and/or Program requirements.

2.15 MEETING REQUIREMENTS

- A. The Contractor **shall** attend meetings in person in Little Rock, Arkansas and/or at various locations throughout Arkansas or may attend via telephone and/or video conferencing at EBD's discretion. If not otherwise specified, the specific times and locations of meetings will be determined by EBD in advance.
- B. The Contractor **shall** attend meetings with EBD and/or the Arkansas State and Public School Life and Health Insurance Board in Little Rock, Arkansas for the purposes of providing general progress updates regarding the services provided, the interaction experienced with Members and Plan Participants, and/or other purposes as determined necessary by EBD and **shall** attend with the following frequencies:
 - 1. Weekly, beginning with the Implementation Period (after the initial 1-3 day(s) implementation meeting(s)), and/or during the first year the Contractor provides the administrative and management services required by this RFP, or with a frequency and duration determined appropriate by EBD and as requested by EBD.
 - 2. Monthly, beginning after the first full year of administrative and management services, or with a frequency beginning at a time determined appropriate by EBD and as requested by EBD.
- C. The Contractor **shall** attend HIR meetings as EBD's published schedule requires.
 - 1. EBD will publish the schedule for HIR meetings at least 30 days in advance and will send notifications via EBD alerts.
 - 2. Approximately 20-25 HIR meetings occur each year with the frequency typically increasing as Open Enrollment approaches to approximately three (3) meetings per week from September 1 through October 31 of each year.
 - 3. HIR Meetings occur at various locations throughout the State.
- D. EBD will provide the Contractor with a minimum of 72 hours advance notice regarding EBD's determined meeting place and time via email or telephone for any meeting specifics not previously published.

2.16 KEY PERSONNEL

- A. The Contractor **shall** provide and assign a dedicated account manager located in the Greater Little Rock area and solely dedicated to EBD and the contract resulting from this RFP. The Contractor **shall** provide the dedicated account manager with written authorization to perform certain functions which **shall** include but not be limited to the following:
 - 1. Overseeing all matters arising and resulting from the administration and management of the ARCap, COBRA, and HSA Programs.
 - 2. Working with EBD on the administration and management of the Programs as necessary to fulfill the requirements of this RFP and as requested by EBD.
 - 3. Making all final decisions regarding claims, administrative, and/or programmatic issues arising from the operation of the Programs and possessing the final decision making authority necessary to make such calls.
 - 4. Meeting weekly with EBD regarding topics such as the status of the operation of the Programs, escalated issues, and other topics as determined necessary and requested by EBD.
 - 5. Developing reports and files.
 - 6. Responding to EBD requests for data as needed.
- B. EBD reserves the right to meet and/or interview the dedicated account manager and/or other key personnel assigned by the Contractor to any contract resulting from this RFP prior to the Contractor officially assigning the dedicated account manager and/or other key personnel to the EBD account.

- C. At any time during the term(s) of any contract that may result from this RFP, the Contractor **shall** replace the dedicated account manager, key personnel, and/or any member of the Contractor's team having direct access to EBD, Members, and/or Plan Participants if requested by EBD.
 - 1. Upon receipt of request, the Contractor **shall** remove or facilitate the removal of the dedicated account manager, key personnel, or other team member from State property within one (1) Business Day of receipt of notification from EBD.
 - 2. The Contractor **shall** replace the dedicated account manager, key personnel, or team member with a person having equal or greater qualifications than the person being replaced.
 - 3. The Contractor **shall** perform the necessary replacement procedures without disruption to daily operations as they pertain to the requirements of this RFP.
- D. The Contractor **shall** provide written notification within one (1) Business Day to EBD regarding any assignment changes in the dedicated account manager, management team members, and other key personnel.

2.17 **PAYROLL REQUIREMENTS**

- A. During the Implementation Period, the Contractor **shall** provide payroll interface for the transfer of information to and from the Arkansas Administrative Statewide Information System (AASIS).
- B. The Contractor **shall** process various payroll files in multiple quantities to reconcile established deductions and/or elections. The Contractor **shall** have the capability to receive files from the State in electronic format.
- C. The exact guidelines regarding the process, procedure, and timeline for payroll processing may be negotiated and finalized with the Contractor during the Implementation Period or prior to award. However, EBD reserves the right to have the final determination and approval of the payroll processing guidelines.

2.18 **PLAN DOCUMENT**

- A. The Contractor **shall** provide a compliant and comprehensive Plan Document for the ARCap and HSA Programs to EBD for approval at least thirty (30) calendar days prior to the start of each new Plan Year. The Plan Document **must** be compliant with applicable federal guidelines.
- B. The Contractor **shall** provide a compliant and comprehensive Plan Document for the ARCap and HSA Programs to EBD for approval a minimum of thirty (30) calendar days prior to the date any applicable Plan or Program change necessitating a Plan Document amendment or edited restatement becomes effective.
- C. The Contractor **shall** provide a compliant and comprehensive Plan Document for the ARCap and HSA Programs to EBD for approval during the Implementation Period should the Implementation Period and the Administration Services Start Date occur at a time that is not in line with the new Plan Year.
- D. At a minimum, the Contractor **shall** provide a Plan Document for all Programs that includes the following information:
 - 1. Explanation of Program rules
 - 2. Annual contribution and rollover limits
 - 3. Eligible and ineligible expenses
 - 4. Program eligibility requirements
 - 5. How to access the benefits of coverage
 - 6. Member responsibilities
 - 7. Rights to appeal or continue coverage
 - 8. Other information as determined necessary by EBD

- E. Should EBD request changes or edits to any of the Plan Document(s), the Contractor **shall** make EBD's changes or edits and **shall** resubmit to EBD for approval.

2.19 **REPORTING REQUIREMENTS**

- A. The Contractor **shall** provide annual and quarterly reporting that accurately reflect the activity of the Programs in a format approved by EBD.
- B. Should EBD request additional information and/or clarification of the information and/or data contained in any report, the Contractor **shall** acknowledge receipt of EBD's request and **shall** provide a timeline for providing the additional information and/or clarification requested within one (1) Business Day via the secure email or task system.
- C. The Contractor **shall** provide separate monthly, quarterly, and year-end reporting for the ARCap, HSA, and COBRA Programs to EBD as determined necessary by EBD.
- D. The Contractor **shall** provide monthly statements to Members via the Member's chosen notification method, which may be email, standard mail, fax, etc.
- E. If requested by EBD, the Contractor **shall** provide ad hoc reporting during the period of the State's Fiscal Year end. Ad hoc reporting requirements **must** be established based on the needs of EBD and may vary from year to year according to the requirements placed on EBD by various State or Legislative entities.
- F. On an ad hoc basis, the Contractor **shall** provide a report to EBD regarding any cumulative finding(s) and/or failure(s) of any eligibility testing or other testing required by applicable law.

G. Annual Reports

- 1. The Contractor **shall** provide a detailed annual report to EBD on June 1st of each year. Should June 1st fall on a day that is not a Business Day, the Contractor **shall** provide a detailed annual report to EBD on the first Business Day following June 1st.
 - a. The account manager, whom the Contractor has assigned to the EBD account, **shall** present the annual report via a Power Point presentation format to EBD's management staff.
 - b. The account manager **shall** make the presentation in person at a location determined by EBD. The specific details regarding location and time will be supplied to the account manager via email within 2 weeks prior to the June 1st presentation date.
 - c. At a minimum, the Contractor **shall** include the following information in the annual report:
 - i. Activity of the Programs.
 - ii. Summary of the Contractor's operations.
 - iii. Contractor's performance and administration of the Programs.
 - iv. Any failure of the Contractor to comply with the Performance Standards and the applicable damages assessed.
 - v. Any penalties and/or interest assessed by the IRS and/or the Arkansas Department of Finance and Administration.

H. Quarterly Reports

- 1. The Contractor **shall** provide detailed, quarterly reports to EBD no later than forty-five (45) calendar days after the end of each quarter.
 - a. The Contractor **shall** provide a quarterly report that includes but is not limited to the following information:

- i. Summaries of the performance of the Programs.
 - ii. Satisfaction of the Members as determined by the total number of complaints received by the Contractor from Members or any surveys administered during each quarter.
 - iii. Activity of the Programs.
 - iv. Other information determined relevant by EBD.
- b. The account manager, whom the Contractor has assigned to the EBD account, **shall** present the quarterly report via a Power Point presentation to EBD's management staff.
- c. The account manager **shall** make the presentation in person, if requested to do so by EBD, at a location determined by EBD.
- d. The specific location and time of the presentation will be supplied to the account manager via email within 2 weeks prior to the quarterly report due date if EBD requires in-person attendance.
2. The Contractor **shall** provide a quarterly report of Member accounts to EBD if requested by EBD. The Contractor **shall** appropriately separate each Member account per the applicable funding source with each funding source having its own classification, and **shall** arrange and categorize the report by agency number as determined by EBD, or other category arrangement as requested by EBD.
3. The Contractor **shall** provide a quarterly reconciliation report organized by agency. In the report, the Contractor **shall** include the following:
 - a. Deductions received by the Contractor during the applicable quarter.
 - b. Credits to Member accounts for the applicable quarter.
4. The Contractor **shall** provide reporting for all customer service calls to EBD. At a minimum, the Contractor **shall** include the call drivers and categories of call volume in the report.

G. Monthly Reports

1. The Contractor **shall** provide a monthly pay back report for nonqualified debit card transactions.

2.20 COMPLIANCE, PRIVACY, AND SECURITY REQUIREMENTS

- A. Prior to award, the Contractor **shall** complete and sign the Business Associate Agreement. A sample Business Associate Agreement is posted as Attachment B to this RFP.
- B. The Contractor's employees and representatives **shall** complete and sign the System Confidentiality Agreement at EBD's request which may be prior to the start of the Implementation Period, prior to performing work on any contract resulting from this RFP, or prior to assessing any Member or Plan Participant information. A sample System Confidentiality Agreement is posted as Attachment C to this RFP.
- C. The data systems utilized by the Contractor or the Contractor's subcontractor(s) to transmit and/or warehouse any Member information **must** be SAS-70 Level II and/or SSAE-18 compliant. The Contractor **shall** provide evidence of such compliance to EBD upon request.
- D. The Contractor **shall** remove or mask a Member's social security number from any printed report, letter, or other form of communication.
- E. The Contractor **shall** use an alternate Member identification number, which **must not** be a social security number, for communication and reporting purposes.
 1. The Contractor and EBD **shall** mutually agree on the alternate Member identification number format.
 2. EBD reserves the right to have final approval of the alternate Member identification number format.

- F. The Contractor **shall not** use, sell, or otherwise disclose any Member, Plan Participant, Plan, or Program information to any outside party unless specifically provided in order to comply with the requirements and operations of the Programs specified in this RFP. The Contractor **shall** obtain written approval from EBD prior to any disclosure of Member, Plan Participant, Plan, or Program information.
- G. The Contractor **shall** comply with HIPAA and other federal and State laws and mandates including privacy, security, and electronic data transfer requirements.
- H. The Contractor **shall** notify EBD within two (2) calendar days via secure email of any security breaches or any suspected security breaches.
- I. The Contractor **shall** provide HIPAA training to all of the Contractor's current and future employees assigned to any contract resulting from this RFP prior to the employee performing work on any resultant contract and/or prior to accessing Plan, Program, Member, or Plan Participant records.
- J. The Contractor **shall** provide information regarding any HIPAA, Internal Revenue Code Sections, ADA and/or other regulatory training provided to the Contractor's staff if requested by EBD. At a minimum, the Contractor **shall** provide the following information:
 - 1. Staff's Qualifications
 - 2. Training
 - 3. Certifications
 - 4. Any other information determined necessary by EBD
- K. The Contractor **shall** have an emergency operations/disaster recovery plan currently in place including redundant systems in order to avoid loss of data.

2.21 DATA SHARING

- A. The Contractor **shall** utilize the secure email service as defined by EBD.
- B. The Contractor **shall** utilize secure file transfer protocol as defined by EBD.
- C. The Contractor **shall** release all data, records, files, and other information relating the services provided by the Contractor under any resultant contract within seven (7) Business Days of contract expiration, termination, or request from EBD. The Contractor **shall** release the aforementioned data in both printed and electronic format and the Contractor **shall** consider such data the property of EBD.

2.22 TRANSPARENT ADMINISTRATION AND AUDIT REQUIREMENTS

- A. The Contractor **shall** provide transparent administration of all Programs outlined in and required by this RFP.
- B. The Contractor **shall** perform all services required by this RFP, including but not limited to claims processing, financial reporting, administration, and reimbursement practices and procedures in a completely open and transparent environment.
- C. The Contractor **shall** provide any information or documentation pertaining to the services provided by the Contractor under the terms of any resultant contract to EBD within three (3) Business Days of request by EBD in a format acceptable to EBD.
- D. The Contractor **shall** make available to EBD, EBD's chosen representatives, and/or the Arkansas Division of Legislative Audit all records applicable to the administration and management of the ARCap, HSA, and COBRA Programs such as eligibility files, account balances, deduction reports, and invoices, etc. The Contractor **shall** have the applicable records available electronically and **shall** provide applicable records via the secure email task system.
 - 1. If the records data is too large to be sent via the secure email task system, the Contractor **shall** transport the information via a FTP site to be determined by EBD.

- E. The Contractor **shall** grant EBD, their chosen representatives, and/or the Arkansas Division of Legislative Audit the right to reasonable inspection of facilities, equipment, and system support operations to ensure the Contractor's continued ability to support the Programs and/or Plan and provide the services required by this RFP.
- F. The Contractor **shall** allow EBD, EBD's chosen representatives, and/or the Arkansas Division of Legislative Audit to conduct audits of all records relative to any contract resulting from this solicitation and maintained by the Contractor or the Contractor's subcontractor(s), if any.
- G. The Contractor **shall** allow any EBD or State of Arkansas internal auditor and/or any designated external auditor or their authorized representatives to audit and/or inspect all aspects of the Contractor's operation as it pertains to any contract resulting from this RFP and the services provided.
- H. EBD will notify the Contractor within one (1) Business Day of EBD receiving notification of an upcoming audit via secure email.
- I. The Contractor **shall** be available for all audits by EBD, EBD's chosen representatives, and/or Legislative Audit personnel to take place at a time and within an audit timeline designated by EBD, on Business Days during the hours of 8 a.m. through 5 p.m. CST. The Contractor **shall** abide by the audit timeline specified by EBD.
- J. The Contractor **shall** respond to any finding from an inspection and/or audit within thirty (30) calendar days of receipt of such finding.
- K. On an annual basis, the Contractor **shall** conduct an IT audit of the Contractor's system used to provide the services required by this RFP.

2.23 CONFLICTS OF INTEREST AND LITIGATION DISCLOSURES

- A. The Contractor **shall** adhere to the following conflict of interest and litigation disclosure requirements prior to and throughout the life of any awarded contract:
 - 1. The Prospective Contractor **shall** disclose any actual and/or potential conflict(s) of interest pertaining to the Prospective Contractor's company. The conflict of interest disclosure requirement **shall** include but is not limited to:
 - a. Any contract and/or financial arrangement between the Prospective Contractor and any entity and/or subcontractor that impacts, has the potential to impact, and/or directly conflicts with the Prospective Contractor's ability to effectively and impartially honor the terms of the contract resulting from this RFP.
 - b. Throughout the term(s) of any resultant contract, the Contractor **shall** notify EBD immediately upon knowledge of any such conflict of interest.
- B. Litigation and Bankruptcy
 - 1. The Prospective Contractor **shall** disclose all litigation (criminal or civil) and all bankruptcy petitions pertaining to the Prospective Contractor's company that impacts and/or has the potential to impact the Prospective Contractor's ability to effectively and impartially honor the terms of any contract resulting from this RFP.
 - a. Throughout the term(s) of any resultant contract, the Contractor **shall** notify EBD immediately upon knowledge of any such litigation or bankruptcy petition.
- C. Conflict of Interest Affidavit
 - 1. As a Proposal Submission Requirement, the Prospective Contractor **shall** disclose any actual and/or potential conflict(s) of interest, litigation (criminal or civil), and/or bankruptcy petition(s) pertaining to the Prospective Contractor's company by utilizing the *Conflict of Interest Affidavit* located in the *Technical Proposal Packet* and instructed therein.

2. Should the Prospective Contractor have any actual and/or potential conflict(s) of interest, litigation (criminal or civil), and/or bankruptcy petition(s) disclosures to make, the Prospective Contractor **shall** submit an additional document, as an attachment to the *Conflict of Interest Affidavit*, explaining the actual and/or potential conflict(s) of interest, litigation (criminal or civil), and/or bankruptcy petition(s).
 - a. The Prospective Contractor **shall** include all information necessary to fully communicate the nature of the actual and/or potential conflict(s) of interest, litigation (criminal or civil) and/or bankruptcy petition(s) including proposed mitigation measures and **shall** include the attachment with the *Conflict of Interest Affidavit* in the *Technical Proposal Packet* response.
3. EBD and/or EBD's legal counsel will review the disclosures submitted with *Conflict of Interest Affidavit*.
4. EBD reserves the right, in its sole discretion, to determine if any actual and/or potential conflict(s) of interest, litigation (criminal or civil), and/or bankruptcy petition(s) disclosed with the *Conflict of Interest Affidavit* will directly conflict, impact, and/or prevent the Prospective Contractor from effectively and impartially honoring the terms of the contract resulting from this RFP.
5. If EBD determines any actual and/or potential conflict(s) of interest, litigation (criminal or civil), and/or bankruptcy petition(s) disclosed with the *Conflict of Interest Affidavit* directly conflicts, impacts, and/or prevents the Prospective Contractor from effectively and impartially honoring the terms of the contract resulting from this RFP, the State reserves the right to disqualify the Prospective Contractor's proposal.
6. The *Conflict of Interest Affidavit* will not be scored as part of the RFP evaluation. However, the Prospective Contractor **shall** submit the *Conflict of Interest Affidavit* with the *Technical Proposal Packet* response. Should the Contractor fail to submit the *Conflict of Interest Affidavit* with *Technical Proposal Packet* response, the State reserves the right to disqualify the Prospective Contractor's proposal.

2.24 **TRANSITION SERVICES**

A. Transition Upon Contract Start

1. If the successful Contractor is one other than the current service provider, upon execution of a contract with EBD, the Contractor **shall** initiate, coordinate, and perform the transition of services from the current provider to the extent possible on their part.
2. Except for as specifically agreed to by the State, it is anticipated the State's main role will be supervisory in nature to ensure all of the State's needs are sufficiently and successfully met. However, the State reserves the right to have final authority regarding all actions taken to transition the services.

B. Transition Upon Termination or Expiration

1. Should any subsequent contract for the services outlined in this RFP be awarded to a Contractor other than the awardee of this RFP, then the Contractor awarded a contract from this RFP **shall**, to the greatest extent possible and reasonable, cooperate with EBD, and the new Contractor in initiating a smooth and orderly transition to the new Contractor.
2. The Contractor **shall** assist with the transition of services including data transfer to the new Contractor for no less than ninety (90) days after contract termination or expiration.
3. The Contractor **shall** provide a complete reconciliation of all Member ARCap accounts and HSAs within ninety (90) days of contract expiration or termination in an Excel spreadsheet via the task system.

2.25 **PERFORMANCE STANDARDS**

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

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

SECTION 3 – CRITERIA FOR SELECTION

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

3.1 TECHNICAL PROPOSAL SCORE

- A. OSP will review each *Technical Proposal Packet* to verify submission Requirements have been met. *Technical Proposals Packets* that do not meet submission Requirements will be disqualified and will not be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying Technical Proposals. Evaluation will be based on Prospective Contractor's response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
 1. Members of the Evaluation Committee will individually review and evaluate proposals and complete an Individual Score Worksheet for each proposal. Individual scoring for each Evaluation Criteria will be based on the following Scoring Description.

Quality Rating	Quality of Response	Description	Confidence in Proposed Approach
5	Excellent	When considered in relation to the RFP evaluation factor, the proposal squarely meets the requirement and exhibits outstanding knowledge, creativity, ability or other exceptional characteristics. Extremely good.	Very High
4	Good	When considered in the relation to the RFP evaluation factor, the proposal squarely meets the requirement and is better than merely acceptable.	High
3	Acceptable	When considered in relation to the RFP evaluation factor, the proposal is of acceptable quality.	Moderate
2	Marginal	When considered in relation to the RFP evaluation factor, the proposal's acceptability is doubtful.	Low
1	Poor	When considered in relation to the RFP evaluation factor, the proposal is inferior.	Very Low
0	Unacceptable	When considered in relation to the RFP evaluation factor, the proposal clearly does not meet the requirement, either because it was left blank or because the proposal is unresponsive.	No Confidence

2. After initial individual evaluations are complete, the Evaluation Committee members will meet to discuss their individual ratings. At this consensus scoring meeting, each member will be afforded an opportunity to discuss his or her rating for each evaluation criteria.
3. After committee members have had an opportunity to discuss their individual scores with the committee, the individual committee members will be given the opportunity to change their initial individual scores, if they feel that is appropriate.
4. The final individual scores of the evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each proposal.

5. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.

C. The *Information for Evaluation* section has been divided into sub-sections.

1. In each sub-section, items/questions have each been assigned a maximum point value of five (5) points. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
2. The agency has assigned Weighted Percentages to each sub-section according to its significance.

Information for Evaluation Sub-Sections	Maximum Raw Points Possible	Sub-Section's Weighted Percentage	* Maximum Weighted Score Possible
E.1 VENDOR QUALIFICATIONS AND CORPORATE STRUCTURE	40	5%	35
E.2 IMPLEMENTATION	25	10%	70
E.3 ARCAP AND HSA ADMINISTRATION	55	8%	56
E.4 COBRA ADMINISTRATION	15	2%	14
E.5 ADMINISTRATION SYSTEM	40	5%	35
E.6 CUSTOMER SERVICE	40	10%	70
E.7 EDUCATION AND ENROLLMENT SERVICES	25	7%	49
E.8 CLAIMS ADMINISTRATION	70	15%	105
E.9 KEY PERSONNEL AND STAFFING	20	5%	35
E.10 PAYROLL PROCESSING AND DOCUMENTATION SUBMISSION	10	5%	35
E.11 REPORTING	20	8%	56
E.12 COMPLIANCE, PRIVACY, AND SECURITY	60	10%	70
E.13 DEBIT CARD	60	10%	70
Total Technical Score	480	100%	700

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

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

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

A = Actual Raw Points received for sub-section in evaluation

B = Maximum Raw Points possible for sub-section

C = Maximum Weighted Score possible for sub-section

D = Weighted Score received for sub-section

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

F. Technical Proposals that do not receive a minimum weighted score of 300 may not move forward in the solicitation process. The pricing for proposals which do not move forward will not be scored.

3.2 **COST SCORE**

A. When pricing is opened for scoring, the maximum amount of cost points will be given to the proposal with the lowest three-year grand total from Tables 1, 2, 3, and 4 on the Official Bid Price Sheet. (See *Grand Total Score* for maximum points possible for cost score.

B. The amount of cost points given to the remaining proposals will be allocated by using the following formula:

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

- A = Lowest Total Cost
- B = Second (third, fourth, etc.) Lowest Total Cost
- C = Maximum Points for Lowest Total Cost
- D = Total Cost Points Received

3.3 **GRAND TOTAL SCORE**

The Technical Score and Cost Score will be added together to determine the Grand Total Score for the proposal. The Prospective Contractor's proposal with the highest Grand Total Score will be selected as the apparent successful Contractor. (See *Award Process*.)

	Maximum Points Possible
Technical Proposal	700
Cost	300
Maximum Possible Grand Total Score	1,000

3.4 **PROSPECTIVE CONTRACTOR ACCEPTANCE OF EVALUATION TECHNIQUE**

- A. Prospective Contractor **must** agree to all evaluation processes and procedures as defined in this solicitation.
- B. The submission of a *Technical Proposal Packet* signifies the Prospective Contractor's understanding and agreement that subjective judgments will be made during the evaluation and scoring of the Technical Proposals.

SECTION 4 – GENERAL CONTRACTUAL ITEMS

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

4.1 PAYMENT AND INVOICE PROVISIONS

A. Forward invoices to:

Department of Finance and Administration
Employee Benefits Division
Accounting
P.O. Box 15610
Little Rock, AR 72231-5610

- 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. Prospective Contractors may register on-line at <https://www.ark.org/contractor/index.html>.

4.2 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:
 - 1. 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
 - 2. The contract has required the State to carry insurance for such risk.

4.3 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.

4.4 STATEMENT OF LIABILITY

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of 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.

4.5 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.

4.6 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.

4.7 **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.

4.8 **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.

4.9 **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.

4.10 **SEVERABILITY**

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the 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 5 – 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 Proposal Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Proposal 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 proposals **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 proposals cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD:** Term Contract: A contract award will be issued to the successful 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 *Proposal Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
27. **DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any Contractor,

whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.