



# NATIONAL PARK COLLEGE

101 College Dr.  
Hot Springs National Park, AR 71913

## REQUEST FOR QUALIFICATION BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Solicitation Number:	NP-18-0011	Solicitation Issued:	April 19, 2018
Description:	Campus Housing Development		
Agency:	National Park College		

SUBMISSION DEADLINE FOR RESPONSE			
RFQ Submission Deadline:	May 7, 2018 4:30 p.m. Central	RFQ Opening Date/Time:	May 8, 2018 9:00 a.m. Central
<p>Responses <b>shall not</b> be accepted after the designated RFQ opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit responses at the designated location on or before the RFQ opening date and time. Responses received after the designated RFQ opening date and time <b>shall</b> be considered late and <b>shall</b> be returned to the vendor without further review. It is not necessary to return "no bids" to the Agency.</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p><b>National Park College Fisher Bldg, Suite 313 101 College Dr. Hot Springs National Park, AR 71913</b></p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to the Agency's street address on a schedule determined by each individual provider. These providers will deliver to the Agency based solely on the street address.</p>
Response's Outer Packaging:	<p>Outer packaging <b>must</b> be sealed and should be properly marked with the following information. If outer packaging of response submission is not properly marked, the package may be opened for RFQ identification purposes.</p> <ul style="list-style-type: none"> <li>• Solicitation number</li> <li>• Date and time of RFQ opening</li> <li>• Vendor's name and return address</li> </ul>

AGENCY CONTACT INFORMATION			
Agency Buyer:	Kurt Markish	Buyer's Direct Phone Number:	501-760-4351
Email Address:	kmarkish@np.edu	Agency's Main Number:	501-760-4222
Agency Website:	www.np.edu		

## **SECTION 1 – GENERAL INSTRUCTIONS AND INFORMATION**

### **1.1 GENERAL PURPOSE**

National Park College (herein known as “NPC,” “Agency,” “State”) issues this Request for Qualifications (“RFQ”) for the purpose of seeking to engage a developer (“Developer”) responsible for researching, financing, designing, building, furnishing, and maintaining on-campus housing facility to be located on the college main campus at 101 College Dr., Hot Springs National Park, AR 71913. The primary form of project agreement will be a ground lease from National Park College, along with any necessary ancillary agreements (“Agreement”).

### **1.2 TYPE OF CONTRACT**

- A. As a result of this RFQ, the Agency intends to award a contract to a single Contractor.
- B. The anticipated starting date for any resulting contract shall commence after successful contract negotiations. By submitting a signed response to the RFQ, the Prospective Contractor represents and warrants that it will honor its response as being held open as irrevocable for this period.

### **1.3 ISSUING AGENCY**

National Park College, as the issuing office, is the sole point of contact throughout this solicitation.

### **1.4 RFQ OPENING LOCATION**

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

**Fisher Building, Suite 313  
101 College Dr.  
Hot Springs National Park, AR 71913**

### **1.5 DEFINITION OF REQUIREMENT**

- A. The words “**must**” and “**shall**” signify a Requirement of this solicitation and that vendor’s agreement to and compliance with that item is mandatory.
- B. A Prospective Contractor **must** unconditionally accept all Requirements in the Requirements Section(s) of this RFQ to be considered a responsive Prospective Contractor.
- C. Prospective Contractor’s response will be disqualified if a Prospective Contractor takes exceptions to any Requirements in the Requirements Section(s) of this RFQ.

### **1.6 DEFINITION OF TERMS**

- A. The Agency has made every effort to use industry-accepted terminology in this *RFQ Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of RFQ Solicitation*.
- B. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. “Prospective Contractor” means a person who submits a response to this solicitation.
- D. “Developer,” “Vendor,” and “Contractor” means a person who sells or contracts to sell commodities and/or services.
- E. The terms “Request for Qualifications”, “RFQ,” “Bid,” “Bid Solicitation,” and “Solicitation” are used synonymously in this document.
- F. “Responsive” means a submission in response to this solicitation that conforms in all material respects to this RFQ.
- G. “Response Submission Requirement” means a task a Contractor **must** complete when submitting a response. These requirements will be distinguished by using the term “shall” or “must” in the requirement.

- H. "Requirement" means a specification that a Contractor's product and/or service **must** perform during the term of the contract. These specifications will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- I. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.

## 1.7 **RESPONSE DOCUMENTS**

### A. Original Response Packet

1. The original *Response* **must** be submitted on or before the bid opening date and time.
  2. The *Response* should be clearly marked "Original" and **must** include the following:
    - a. Original signed *Response Signature Page*. (See *Response Signature Page*.)
    - b. Response to the *Information for Evaluation* section.
    - c. Copy of Developer's insurances and licenses as expressed in this *Bid Solicitation*.
    - d. Other documents and/or information as may be expressly required in this *Bid Solicitation*.
  3. The following items should be submitted in the original *Response*.
    - a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions, #27. Disclosure*.)
    - b. Copy of Developer's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
  4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.
- B. Pricing is not requested for this solicitation and **must not** be submitted with the bidder's response.
- C. Additional Copies and Redacted Copy of the Response Packet

In addition to the original *Response Packet*, the following items should be submitted:

1. Additional Copies of the Response Packet
  - a. Five (5) complete hard copies (marked "COPY") of the *Response Packet*.
  - b. One (1) electronic copies of the Response, preferably on flash drives. CDs will also be acceptable.
  - 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 **shall** govern.
  - d. If the Agency requests additional copies of the response, the copies **must** be delivered within twenty-four (24) hours of request.
2. One (1) redacted copy (marked "REDACTED") the original *Response Packet*, preferably on a flash drive. A CD will also be acceptable. (See *Proprietary Information*.)

## 1.8 **ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that vendors adhere to the following format and suggestions when preparing their Response.

B. The original *Response Packet* and all copies should be arranged in the following order.

- *Response Signature Page.*
- Response to the *Submission Requirements and Evaluation* section.
- Copy of Developer's insurance and license.
- Signed Addenda, if applicable.
- Other documents and/or information as may be expressly required in this *Bid Solicitation*. Label documents and/or information so as to reference the *Bid Solicitation's* item number.
- E.O. 98-04 – *Contract Grant and Disclosure Form.*
- *Equal Opportunity Policy.*

#### 1.9 **CLARIFICATION OF BID SOLICITATION**

A. Vendors may submit written questions requesting clarification of information contained in this *Bid Solicitation*. Written questions **must** be submitted by **4:30 p.m.** (close of business), Central Time on **Friday, April 20, 2018**. Submit written questions by email to the Agency buyer as shown on page one (1) of this *Bid Solicitation*.

1. For each question submitted, vendor should reference the specific solicitation item number to which the question refers.
2. Vendors' written questions will be consolidated and responded to by the Agency. The Agency's consolidated written response is anticipated to be posted to the OSP website by the close of business on **Tuesday, April 24, 2018**.

B. Vendors may contact the Agency buyer with procurement-related questions at any time prior to the bid opening.

C. Answers to verbal questions may be given as a matter of courtesy and **must** be evaluated at vendor's risk.

#### 1.10 **RESPONSE SIGNATURE PAGE**

A. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Response Signature Page* included in the *Response Packet*.

B. Vendor's signature on this page **shall** signify vendor's agreement that either of the following **shall** cause the vendor's response to be disqualified:

- Additional terms or conditions submitted intentionally or inadvertently.
- Any exception that conflicts with a Requirement of this *Bid Solicitation*.

#### 1.11 **PRIME CONTRACTOR RESPONSIBILITY**

A. A joint response submitted by two or more vendors shall not be accepted.

B. The submitting contractor **shall** be held responsible for the contract and **shall** be the sole point of contact.

#### 1.12 **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. One (1) complete copy of the submission documents from which any proprietary information has been redacted may be submitted on a flash drive in the *Response Packet*. A CD is also acceptable.

C. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.

D. The vendor **shall** be responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.

E. The redacted copy **shall** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor.

F. If a redacted copy of the submission documents is not provided with vendor's response packet, a copy of the non-redacted documents, with the exception of financial data, **shall** be released in response to any request

made under the Arkansas Freedom of Information Act (FOIA). Courtesy calls shall not be made to vendors who do not submit redacted copies.

- G. If the State deems redacted information to be subject to FOIA, the vendor will be contacted prior to release of the documents.

### 1.13 **CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through the Agency.
- B. Vendor **must not** alter any language in any solicitation document provided by the Agency.
- C. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- D. Responses **must** be submitted only in the English language.
- E. Agency **shall** have the right to award or not award a contract, if it is in the best interest of the State to do so.
- F. Vendor **must** provide clarification of any information in their response documents as requested by the Agency.
- G. Qualifications **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- H. Vendors may submit multiple responses.

### 1.14 **REQUIREMENT OF ADDENDUM**

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by the Agency.
- B. An addendum posted within three (3) calendar days prior to the bid opening **shall** extend the bid opening and may or may not include changes to the Bid Solicitation.
- C. The vendor **shall** be responsible for checking the website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to bid opening.

### 1.15 **QUALIFICATION AND AWARD PROCESS**

#### A. Successful Vendor Selection

The contract(s) will be awarded to the vendor, firm, contractor, or Developer ("developer") who best satisfies all of the Agency's needs. The ranking of vendors **shall** be determined by the total score each *Response* receives in evaluation. Agency shall select up to the top three (3) qualifying vendors receiving the highest ranking average score for their *Response*. Selected vendors **shall** enter negotiations with the agency.

#### B. Negotiations

1. If the Agency so chooses, Agency **shall** also have the right to enter discussions with up to the top three (3) selected Developers to further define contract details. All negotiations **shall** be conducted at the sole discretion of the Agency. The Agency **shall** solely determine the items to be negotiated.
2. If the Agency and Developer cannot reach an agreement regarding contractual matters, including pricing, the State **shall** declare the vendor as non-responsive and will begin the negotiation process with the next highest ranking vendor. The negotiation process will be repeated until an anticipated successful Developer has been determined, or until such time the Agency decides not to move forward with an award.

#### C. Anticipation to Award

1. Once an anticipated successful vendor has been determined, the anticipated award will be posted on DFA website at [http://www.arkansas.gov/dfa/procurement/pro\\_intent.php](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. Vendors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen day posting period.
3. The Agency **shall** have the right to waive the policy of Anticipation to Award when it is in the best interest of the Agency.
4. It is the Developer's responsibility to check the website for the posting of an anticipated award.

D. Issuance of a Contract

1. Any resultant contract of this *Bid Solicitation* **may** be subject to State approval processes, which may include Legislative review and approval.
2. The Agency Procurement Official will be responsible for award and administration of any resulting contract(s).

1.16 **MINORITY BUSINESS POLICY**

A. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this State who is:

- African American
- American Indian
- Asian American
- Hispanic American
- Pacific Islander American
- A Service Disabled Veterans as designated by the United States Department of Veteran Affairs

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

1.17 **EQUAL OPPORTUNITY POLICY**

A. In compliance with Arkansas Code Annotated § 19-11-104, the Agency is required to have a copy of the vendor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.

B. EO Policies should also be included as a hardcopy accompanying the solicitation response.

C. Vendors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute.

D. Vendors who are not required by law by to have an *EO Policy* **must** submit a written statement to that effect.

1.18 **PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected vendor(s) **must** certify that they do not employ or contract with illegal immigrants. Bidders shall certify online at: <https://www.ark.org/dfa/immigrant/index.php/user/welcome>

1.19 **PAST PERFORMANCE**

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

1.20 **PUBLICITY**

A. Vendors **shall not** issue a news release pertaining to this *Bid Solicitation* or any portion of the project without the Agency's prior written approval.

B. Failure to comply with this Requirement **shall** be cause for a vendor's response to be disqualified.

1.21 **RESERVATION**

The Agency or the State of Arkansas **shall not** pay costs incurred in the preparation of a response.

## **SECTION 2 – SCOPE**

### **2.1 PURPOSE**

National Park College (herein known as “Agency,” “State”) issues this Request for Qualifications (“RFQ”) for the purpose of seeking to engage a developer (“Developer”) responsible for researching, financing, designing, building, furnishing, and maintaining an on-campus housing facility to be located on the college’s main campus at 101 College Dr., Hot Springs National Park, AR 71913. The primary form of project agreement will be a ground lease from National Park College, along with any necessary ancillary agreements (“Agreement”).

National Park College seeks to initiate a residential campus with housing for students. National Park College values the residential component of college life because it aids in the retention of students and amplifies its students’ college experience.

The goals of this RFQ include but are not limited to the following: housing that provides a safe, diverse, and well-maintained environment that complements and supports the academic mission of the Agency; a dynamic living/learning experience that promotes and inspires individuals to become empowered community members; and provide a revenue stream to the Agency.

The Agency seeks Qualification Statements that demonstrate the Developer’s ability to present the Agency, in the Negotiation and Finalization stage, with financing alternatives to build, furnish, and maintain the Project up to bearing full financial risk and for the timely delivery of the facility to receive its certificate of occupancy and be post punch list and ready for occupancy no later than the morning of August 1, 2019.

The Agency expects to enter into the Agreement with the Developer. The Agency will develop and refine the Agreement through the solicitation and negotiation process. At present, the Agency believes the Developer will be required to satisfy the requirements set forth in this section.

The Developer will maintain the facilities and be responsible for improvement activities within the facility and on the Project grounds, including but not limited to: security, landscape and maintenance, repairs and maintenance, and capital repairs. The Developer will bear the cost of all operations of the Project. The Developer will manage the programmatic side of the Project in the same manner as it manages other similar projects on other campuses.

The build site shall be up to three (3) acres on the National Park College main campus.

### **2.2 ABOUT THE AGENCY**

National Park College is located in Hot Springs, Arkansas, a beautiful resort community of over 35,000 approximately 45 minutes southwest of Little Rock. The local economy centers on tourism, manufacturing, retirement living, and medical sciences. Tourism attractions include the thermal waters of the National Park, hiking trails, horse racing at Oaklawn Park, five nearby lakes, outstanding golf courses, and a thriving art community.

The fourth largest community college in the state, National Park College serves approximately 7,500 students per year enrolled in college courses, workforce training, and adult education classes. National Park College offers two-year degrees and certificates both on campus and online.

### **2.3 FEASIBILITY STUDY**

Awarded Developer shall be responsible for providing a feasibility study. Results of feasibility study shall be reported to Agency may include, but not limited to:

- Number and type of rooms
- Furnishings
- Additional rooms
- Common lounge areas for social gatherings, meetings, group events, etc.
- Activity Rooms/Recreation Areas
- Informal learning spaces/Study Facilities for students to work individually, in groups, with tutors, etc.
- Suite Arrangements (unit types and unit mix)
- Rental Rates

- Laundry Facilities
- Ice Machines/Vending Areas and/or dining facilities
- Internet/Wifi for rooms/building
- Mail Service
- Suite Arrangements, unit type and unit mix which may or may not include kitchenette
- Proposed security plan
- Need for new sidewalks and parking lots or if existing ones can be used.

## 2.4 **PROJECT OWNERSHIP**

The project shall be owned, developed and financed, if necessary, by the Developer. Project will be built on real estate owned by the Agency. Said real estate may not be mortgaged or sublet by the developer.

## 2.5 **PROJECT MANAGEMENT/OPERATION**

The Project shall be operated, maintained, and managed by the developer in accordance to the guidelines set forth in the agreement between the Agency and the Developer. Developer shall be responsible for all aspects of the housing development.

## 2.6 **ADA COMPLIANCE**

The building shall comply with all ADA Code Requirements upon completion.

## 2.7 **FINANCING**

The Project shall be financed by the developer.

## 2.8 **DESIGN AND FUNCTIONALITY**

Selected Developer shall review any developed concepts, ideas, master plants, etc. with the Agency prior to implementation.

## 2.9 **PERFORMANCE BOND**

Selected Developer shall be required to obtain a performance bond.

## 2.10 **PERFORMANCE STANDARDS**

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. *Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **must** meet in order to avoid assessment of damages. Performance Standards shall be developed during negotiations with Selected Developer.
- B. The Agency may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration.
- C. The Agency **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the vendor so as to establish standards that are reasonably achievable.
- D. All changes made to the Performance Standards **shall** become an official part of the contract.
- E. Performance Standards **shall** continue throughout the term of the contract.
- F. Failure to meet the minimum Performance Standards as specified **shall** result in the assessment of damages.
- G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend or respond to the insufficiency. The Agency **shall** have the right to waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services. In these instances, the Agency **shall** have final determination of the performance acceptability.

H. Should any compensation be owed to the Agency due to the assessment of damages, vendor **shall** follow the direction of the Agency regarding the required compensation process.

**SECTION 3 – SUBMISSION REQUIREMENTS AND EVALUATION**

Developer shall submit the following for evaluation:

**3.1 DEVELOPER EXPERIENCE/PAST PERFORMANCE**

Developer shall provide a historical and contemporary overview of the company, particularly as it relates to the proposed work to be done. Experience provided should demonstrate experience working in educational arena (higher education preferred); experience in designs that encompass green architecture and LEED Certified building projects (if any); and experience working with similar sized projects.

**3.2 TEAM COMPOSITION**

Developer shall submit an overview of the Developer’s team composition.

**3.3 REFERENCES**

Developer shall submit with the proposal three (3) reference accounts including:

- Names of person(s) to contact
- University/college/business name and location
- Telephone number(s)

References must be located in the continental United States. The Agency reserves the right to request or obtain additional information. .

**3.4 ORGANIZATION, PROJECT DEVELOPMENT, AND COMMUNICATION**

Developer shall submit a detailed approach to project development, client communication and accomplishing the desired outcome.

**3.5 FINANCIAL CAPACITY**

Developer shall submit an overview of the Developer’s financial capacity including the availability for securing funding for said project.

**3.6 LICENSE AND INSURANCE**

A copy of Developer’s Insurance and license(s) proving the ability to perform such work in the State of Arkansas.

**3.7 RESPONSE SCORE**

- A. The Agency will review each Response to verify submission Requirements have been met. Responses that do not meet submission *Requirements* **shall** be disqualified and **shall not** be evaluated.
- B. An Agency-appointed Evaluation Committee will evaluate and score qualifying *responses*. Evaluation will be based on vendor’s response to the *Submission Requirements and Evaluation* section. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.

Information for Evaluation	Maximum Raw Points Possible	Weighted Percentage	Maximum Weighted Score Possible
Developer Experience/Past Performance	5	30	150
Team Composition	5	20	100
References	5	10	50
Organization, Project Development and Communication	5	20	100
Financial Capacity	5	20	100
Totals:	25	100%	500

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

C. The vendor'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

D. Developer's weighted scores for each section will be added to determine the Total Score for the Response.

### 3.8 **ORAL CLARIFICATIONS**

The Agency reserves the right to invite and converse with any or all Developer(s) for questions, clarifications, or general information at the discretion of the Agency.

### 3.9 **VENDOR ACCEPTANCE OF EVALUATION TECHNIQUE**

A. Vendor **must** agree to all evaluation processes and procedures as defined in this solicitation.

B. The submission of a *Response Packet* **shall** signify the vendor's understanding and agreement that subjective judgments **shall** be made during the evaluation and scoring of the Technical Proposals.

### 3.10 **SOLICITATION SCHEDULE**

The following schedule shall be used in this solicitation:

Event	Date
Release of RFQ	Thursday, April 19, 2018
Clarification Submission Deadline	Monday, April 23, 2018
Clarification Response*	Friday, April 27, 2018
RFQ Submission Deadline	Monday, May 7, 2018
RFQ Opening Date	Tuesday, May 8, 2018
Review Completion of Submitted RFQ's*	Monday, May 14, 2018
Contract Negotiations Start*	Tuesday, May 15, 2018
Anticipation to Award*	Thursday, May 31, 2018

*\*Dates are approximate*

### 3.11 **CONTRACT NEGOTIATIONS**

Contract Negotiations shall commence prior to contract execution. Contract Negotiations may include, but not limited to:

- Project and lease methods such as initial and extended lease period, sharing net profit, long-term ownership transferal, etc.
- AR Division of Building Authority's methods and laws.

## **SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS**

### 4.1 **GENERAL INFORMATION**

A. The Agency **shall not** lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the Agency Procurement Official upon a 30 day written notice to the vendor/lessor in the event funds are not appropriated.

B. The Agency **shall not** contract with another party to indemnify and defend that party for any liability and damages.

- C. The Agency **shall not** pay damages, legal expenses, or other costs and expenses of any other party.
- D. The Agency **shall not** continue a contract once any equipment has been repossessed.
- E. Any litigation involving the Agency or State of Arkansas **must** take place in Pulaski County, Arkansas.
- F. The Agency **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- G. The Agency **shall not** enter a contract which grants to another party any remedies other than the following:
- The right to possession.
  - The right to accrued payments.
  - The right to expenses of deinstallation.
  - The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  - The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- H. The laws of the State of Arkansas **shall** govern this contract.
- I. A contract **shall not** be effective prior to award being made by the Agency Procurement Official.

#### 4.2 **CONDITIONS OF CONTRACT**

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

#### 4.3 **STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of vendor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The vendor **shall** retain total liability for equipment, software and technical and business or operations literature. The State **shall not** at any time be responsible for or accept liability for any vendor-owned items.
- B. The vendor's liability for damages to the State **shall** be limited to the value of the Contract or \$5,000,000, whichever is higher. The foregoing limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The vendor and the State **shall not** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.
- C. Language in these terms and conditions **shall not** be construed or deemed as the Agency's waiver of its right of sovereign immunity as an agency of the State of Arkansas. The vendor agrees that any claims against the Agency, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

#### 4.4 **RECORD RETENTION**

- A. The Developer **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of

Arkansas Law. Upon request, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.

- B. Financial and accounting records **shall** be made available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

#### 4.5 **CONFIDENTIALITY**

- A. The Developer, Developer's subsidiaries, and Developer's employees **shall** be bound to all laws and to all Requirements set forth in this *RFQ* concerning the confidentiality and secure handling of information of which they may become aware 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 Agency **shall** have the right to cancel the contract on these grounds.
- C. Previous sections of this *RFQ* may contain additional confidentiality Requirements.

#### 4.6 **CONTRACT INTERPRETATION**

Should the Agency and Developer interpret specifications differently, either party may request clarification. However if an agreement cannot be reached, the determination of the State of Arkansas **shall** be final and controlling.

#### 4.7 **CANCELLATION**

- A. In the event the Agency no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding. The State **shall** give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination. The effective date of termination **shall** be 30 days from the date of notification, unless a longer timeframe is specified in the notification.
- B. Upon default of a Developer, the Agency **shall** not be responsible for goods and services received, accepted, or performed, which relate to the contract, up to and after cancellation of the contract.

#### 4.8 **SEVERABILITY**

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

## **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 Response Packets **must** be submitted to the Agency on or before the date and time specified for bid opening. The Response **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 responses **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
4. **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 vendor 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 vendor **shall** further guarantee that if the items furnished hereunder are to be installed by the vendor, such items **shall** function properly when installed. The vendor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling

and registration. The vendor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.

5. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the vendor'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 vendor's expense. After reasonable examination, all demonstrators will be returned at vendor's expense.
6. **AMENDMENTS:** Vendor's responses cannot be altered or amended after the bid opening except as permitted by regulation.
7. **AWARD:** Term Contract: A contract award will be issued to the successful vendor. It results in a binding obligation without further action by either party. This award does not authorize shipment or approval to start work. Commencement of any portion of the project is authorized by the Agency.
8. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Agency. 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.
9. **DEFAULT:** All commodities, services, product, etc. furnished **shall** be subject to inspection and acceptance of the Agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Agency 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 Agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the vendors list or suspension of eligibility for award.
10. **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. Vendor **shall** properly identify items being returned.
11. **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.
12. **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.
13. **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.
14. **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 vendor 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.**
15. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the vendor agrees that: (a) the vendor **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 vendor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the vendor 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 vendor 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 vendor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.
16. **CONTINGENT FEE:** The vendor 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 vendor for the purpose of securing business.
17. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the vendor named on the *Response 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.

18. **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.