STATE OF ARKANSAS

Department of Human Services
Office of Procurement
700 Main Street,
Little Rock, AR 72201

INVITATION FOR BID

BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	710-19-1042	Solicitation Issued:	04-22-2019
Description:	Pharmacy Services		
Agency:	Division of Developmental Disabilities Services (DDS)		

SUBMISSION DEADLINE FOR RESPONSE			
Submission Date:	May 15, 2019	Bid Opening Time:	2:30 PM CT

Bids **shall not** be accepted after the designated bid submission date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit proposals at the designated location on or before the bid submission date and time. Bids received after the designated bid submission date and time **shall** be considered late and **shall** be returned to the vendor without further review. It is not necessary to return "no bids" to the Office of Procurement.

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address: Drop off (walk in):	Arkansas Department of Human Services Attn: Office of Procurement 700 Main Street Slot W345 Little Rock, AR 72201
United States mail (USPS):	Arkansas Department of Human Services Attn: Office of Procurement P.O. Box 1437 Slot W345 Little Rock, AR 72203-1437
Commercial Carrier (UPS, FedEx or USPS Exp):	Arkansas Department of Human Services Attn: Office of Procurement 112 West 8th Street, Slot W345 Little Rock, AR 72201 Delivery providers, USPS, UPS, and FedEx deliver mail to OP's street address on a schedule determined by each individual provider. These providers will deliver to OP based solely on the street address.
Bid's Outer Packaging:	Outer packaging **must** be sealed and should be properly marked with the following information. If outer packaging of proposal submission is not properly marked, the package may be opened for bid identification purposes. • Bid number • Date and time of bid opening • Vendor's name and return address

Department of Human Services CONTACT INFORMATION			
OP Buyer:	Chorsie Burns	Buyer Number	501-682-6327
Email Address:	chorsie.burns@dhs.arkansas.gov	DHS's Main Number:	501-682-1001
DHS Website: OSP Website: DMS Website:	http://humanservices.arkansas.gov/Pages/default.aspx http://www.arkansas.gov/dfa/procurement/bids/index.php https://medicaid.mmis.arkansas.gov/General/Rfp/Rfq.aspx		

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

1.1 PURPOSE

This Invitation for Bid (IFB) is issued by the Arkansas Department of Human Services (DHS), Office of Procurement (OP) to obtain pricing and a contract for provision of medication dispensing systems for all five (5) Human Development Centers (HDCs). The Pharmacy Service **must** supply products in compliance with applicable local, state, and federal laws for the residents of the HDC's. The locations and licensed capacity of the five (5) HDCs are as follows:

HUMAN DEVELOPMENT CENTERS (HDC's)	LICENSED CAPACITY
Arkadelphia Human Development Center 216 Lower Dam Pike Road Arkadelphia, AR 71923-0070	125
Booneville Human Development Center Highway 116 South Booneville, AR 722927	138
Conway Human Development Center 150 E. Siebenmorgan Road Conway, AR 72032	518
Jonesboro Human Development Center 4701 Colony Drive Jonesboro, AR 72401	109
Southeast Arkansas Human Development Center #1 Center Circle Warren, AR 71671	100

The HDC's are Intermediate Care Facilities for Mentally Retarded (ICFs/MR), they operate on a full-time basis, three hundred sixty-five (365) days per year, with total care available twenty-four (24) hours per day.

1.2 TYPE OF CONTRACT

A. A Term contract will be awarded to a single vendor.

B. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review.

C. The term of this contract **shall** be for one (1) year. The anticipated starting date for the contract is July 1, 2019. Upon agreement by the vendor and agency the contract may be renewed by the Office of Procurement (OP) on a year-to-year basis, for up to six (6) additional one-year terms or a portion thereof not to exceed a total aggregate contract term of seven (7) years.

1.3 ISSUING AGENCY

The OP, as the issuing office, is the sole point of contact throughout this solicitation process. Vendor questions regarding this Bid Solicitation should be made through the State's buyer as shown on page two of this document. Vendor's questions will be answered as a courtesy and at vendor's own risk.

1.4 BID OPENING LOCATION

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

Department of Human Services
Office of Procurement
700 Main Street
Little Rock, AR 72201

Vendors wishing to attend the bid opening must report to the main entrance location, Arkansas Department of Human Services, Donaghey Plaza South Building, 700 Main Street, Little Rock, Arkansas 72201 and check in with the receptionist. All attendees are required to obtain security clearance upon entrance to the building by submitting

a current, valid photo ID, preferably a driver's license, to the Security Officer at the reception area. The Security Officer will issue a visitor's badge which must be worn at all times. Before leaving the bid opening visitors are required to return the visitor's badge to the Security Officer and retrieve their ID.

The receptionist is to contact the buyer, for the vendor, for more detailed directions to the bid opening location.

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. Exceptions taken to any Requirement in this *Bid Solicitation*, whether submitted in the vendor's bid or in subsequent correspondence, **shall** cause the vendor's bid to be disqualified.

C. Vendor may request exceptions to NON-mandatory items. Any such request must be declared on, or as an attachment to, the appropriate section's *Agreement and Compliance Page*. Vendor must clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies. (See *Agreement and Compliance Page.*)

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. The words "bidder," "vendor," and "contractor" are used synonymously in this document.

C. The terms "Invitation for Bid", "IFB" and "Bid Solicitation" are used synonymously in this document.

1.7 RESPONSE DOCUMENTS

A. *Bid Response Packet*

1. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Bid Signature Page*.

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

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

3. The following items **shall** be submitted with the *Bid Response Packet in a sealed envelope*:

   a. EO 98-04 Disclosure Form (Attachment A).
   b. Copy of Vendor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
   c. Signed addenda to this IFB, if applicable. (See Requirement of Addendum.)
   d. Documentation that vendor meets the minimum qualifications outlined in this IFB. (See *Minimum Qualifications*.)

4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information. **Submit one (1) electronic copy of the response packet, excluding the *Official Bid Price Sheet*, preferably on a flash drive and one (1) hard copy. To the extent possible, all electronic files should be a single document in PDF format.**

B. *Official Bid Price Sheet*. (See *Pricing.)*

1. Vendor's original *Official Bid Price Sheet* **must** be submitted in hard copy format.
2. Vendor should also submit one (1) electronic copy of the *Official Bid Price Sheet*, preferably on a flash drive, in a single PDF file.

3. The *Official Bid Price Sheet*, including the hard copy and electronic copy, must be separately sealed from the *Bid Response Packet* and should be clearly marked as "Pricing." Vendor must not include any pricing in the hard copies or electronic copies of the *Bid Response Packet*.

1.8 AGREEMENT AND COMPLIANCE PAGES

A. Vendor **must** sign all *Agreement and Compliance Pages* relevant to each section of the *Bid Solicitation Document.* The *Agreement and Compliance Pages* are included in the Bid *Response Packet*.

B. Vendor's signature on these pages **shall** signify agreement to and compliance with all requirements within the designated section.

1.9 CLARIFICATION OF BID SOLICITATION

A. Contractor may submit written questions requesting clarification of information contained in this *Bid Solicitation*. Written questions should be submitted by 4:00 p.m., Central Time on April 29, 2019. Submit written questions by email to the buyer as shown on page one (1) of this *Bid Solicitation*.

B. The attached response template (*Attachment B*) **must** be used for submission of all written questions. All questions should include the information specified in the response template. Written questions submitted in a different format may not be answered by DHS.

C. Contractor's written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OP website by the close of business on May 6, 2019.

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

1.10 SUBCONTRACTORS

A. Vendor **must** complete, sign and submit the *Proposed Subcontractors Form* included in the *Bid Response Packet* to indicate vendor's intent to utilize, or to not utilize, subcontractors.

B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.

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

1.11 PRICING

A. Vendor(s) **must** include all pricing on the Official Bid Price Sheet(s) only. Any cost not identified by the successful vendor but subsequently incurred in order to achieve successful operation **shall** be borne by the vendor. The *Official Bid Price Sheet* is provided in the Bid Response Packet.

B. A justification of prices quoted should be attached to the *Official Bid Price Sheet*.

C. To allow time to evaluate bids, prices **must** be valid for one hundred twenty (120) days following the bid opening.

D. Failure to complete and submit the *Official Bid Price Sheet* **shall** result in disqualification.

E. All bid pricing **must** be in United States dollars and cents.

F. The Official Bid Price Sheet may be reproduced as needed.

G. The *Official Bid Price Sheet* and accompanying price justification **must** be separately sealed from the *Bid Response Packet*.

1.12 PRIME CONTRACTOR RESPONSIBILITY

A. A joint bid submitted by two (2) or more vendors is acceptable. However, a single vendor **must** be identified as the prime contractor.

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

1.13 INDEPENDENT PRICE DETERMINATION

A. By submission of this bid, the vendor certifies, and in the case of a joint response, each party thereto certifies as to its own organization, that in connection with this bid:

1. The prices in the bid have been arrived at independently, without collusion.

2. No prior information concerning these prices has been received from, or given to, a competitive company.

B. Evidence of collusion **shall** warrant consideration of this bid by the Office of the Attorney General. All vendors **shall** understand that this paragraph may be used as a basis for litigation.

1.14 PROPRIETARY INFORMATION

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

B. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.

C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.

D. By redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.

E. Under no circumstances will pricing information be designated as confidential.

F. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Bid Response Packet*. A CD is also acceptable. Do not submit documents via email or fax.

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

H. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.

I. The redacted copy will be open to public inspection under FOIA without further notice to the Prospective Contractor.

J. If a redacted copy of the submission documents is not provided with Prospective Contractor's *Bid Response Packet*, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under FOIA.

K. If the State deems redacted information to be subject to FOIA, the Prospective Contractor will be contacted prior to release of the documents.

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

1.15 CAUTION TO VENDORS

A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through OP.

B. Vendor **must not** alter any language in any solicitation document provided by the State.

C. Vendor **must not** alter the Official Bid Price Sheet.

D. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.

E. Bids **must** be submitted in the English language.

F. The State **shall** have the right to award or not award a contract, if it is in the best interest of the State to do so.

G. Vendor **must** provide clarification of any information in their response documents as requested by OP.

H. Bids **must** meet or exceed all defined specifications as set forth in this *Bid Solicitation*.

I. Bids **must** meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.

J. Vendors may submit multiple bids.

1.16 REQUIREMENT OF ADDENDUM

A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by OP.

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 following websites for any and all addenda up to bid opening:
http://www.arkansas.gov/dfa/procurement/bids/index.php,
http://humanservices.arkansas.gov/about-dhs/op/procurement-announcements
https://medicaid.mmis.arkansas.gov/General/Rfp/Rfq.aspx

1.17 AWARD PROCESS

A. Vendor Selection

1. Award **shall** be made on an ALL OR NONE basis to the lowest responsive bidder. Bidders must meet minimum qualifications. Bids must meet or exceed all defined specifications. Bids must meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.

2. Contract award, extension, or renewal is contingent upon approval by DHS officials, subsequent approval by the OP, review by the Legislative Council and the availability of State funds. Changes to any non-financial portion of this agreement may be made with the agreement of both DHS and the Contractor.

B. Negotiations

1. If the State so chooses, negotiations may be conducted with the lowest responsive bidder. Negotiations are conducted at the sole discretion of the State.

2. If negotiations fail to result in a contract, the State may begin the negotiation process with the next lowest responsive bidder. The negotiation process may be repeated until the lowest responsive vendor has been determined, or until such time the State 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 the following websites:
http://www.arkansas.gov/dfa/procurement/bids/index.php,
http://humanservices.arkansas.gov/about-dhs/op/procurement-announcements
https://medicaid.mmis.arkansas.gov/General/Rfp/Rfq.aspx

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 (14) day posting period.

3. OP **shall** have the right to waive the policy of Anticipation to Award when it is in the best interest of the State.

4. It is the vendor's responsibility to check the above referenced websites for the posting of an anticipated award.

D. Issuance of Contract

1. Any resultant contract of this Bid Solicitation shall be subject to State approval processes which may include Legislative review.

2. An Office of Procurement Official will be responsible for award and administration of any resulting contract.

1.18 COST SCORES

A. The Maximum amount of cost points (500) will be given to the Contractor with the lowest total bid for onsite pharmacists for all regions.

B. The Maximum number of cost points (250) will be given to the contractor with the highest average percentage discount off National Average Drug Acquisition Cost (NADAC) for Prescription Medication not covered by Medicaid for all regions.

C. The Maximum number of cost points (250) will be given to the contractor with the highest average percentage discount off NADAC for Over-the-Counter Medication, with blister pack where appropriate for all regions.

D. The amount of cost points given to the remaining contractors for each of the above scores (A-C) 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

National Average Drug Acquisition Cost, found at https://data.medicaid.gov/Drug-Pricing-and-Payment/NADAC-National-Average-Drug-Acquisition-Cost-/a4y5-998d

1.19 GRAND TOTAL SCORE

The Cost Scores will be added together to determine the Grand Total Score for the bid. The Contractor with the highest Grand Total Score will be selected as the apparent successful contractor. (See *Award Process.)*

	Maximum Points Possible
Onsite Pharmacists (all regions)	500
% Discount Prescription Medication (all regions)	250
% Discount Over-the-Counter Medication (all regions)	250
Maximum Possible Grand Total Score	**1,000**

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 that is at least fifty-one percent (51%) 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 Veterans Affairs

B. A woman-owned business is defined by Arkansas Code Annotated § 15-4-303(9) as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.

C. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses. If certified, the Prospective Contractor's Certification Number should be included on the *Bid Signature Page*.

1.21 EQUAL EMPLOYMENT OPPORTUNITY POLICY

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

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

C. The submission of an *EO Policy* to the OP is a one-time requirement. 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.

1.22 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

A. Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected vendor(s) **must** have a current certification on file with the OP stating that they do not employ or contract with illegal immigrants.

B. OP will notify the selected vendor(s) prior to award if their certification has expired or is not on file. Instructions for completing the certification process will be provided to the vendor(s) at that time.

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 Bid Signature Page of the response packet, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

1.24 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." Proposals submitted by vendors determined to be non-responsible **shall** 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 respondent’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://dis.publishpath.com/policies-standards. 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 vendor 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) **shall 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. Vendors **shall not** issue a news release pertaining to this *Bid Solicitation* or any portion of the project without OP's prior written approval.

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

1.29 RESERVATION

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

1.30 SCHEDULE OF EVENTS

Public Notice of IFB	04/22/2019
Deadline for Receipt of Written Questions	04/29/2019
Response to Written Questions	05/06/2019
Date and time for Opening Bids	05/15/2019 @ 2:30pm CDT
Intent to Award Announced, On or About	05/21/2019
Contract Start (Subject to State Approval)	07/01/2019

1.31 STATE HOLIDAYS

Holidays are those days as declared legal state holidays by authority of Act 304 of 2001. Those days are as follows:

New Year's Day	January 1
Dr. Martin Luther King Jr.'s Birthday	Third Monday in January
George Washington's Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Eve	December 24
Christmas Day	December 25

Additional days can be proclaimed as holidays by the Governor through executive proclamation. State offices are normally closed on holidays however, there are occasions (i.e. during legislative sessions) when it may become necessary to keep state offices open on holidays. The Contractor shall maintain adequate staff on such working holidays.

SECTION 2 – MINIMUM REQUIREMENTS

2.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of Procurement (OP) for the Division of Developmental Disabilities Services (DDS) to obtain pricing and a contract for Pharmacy Services at the five (5) Human Development Centers (HDCs) located throughout the State of Arkansas (locations listed in Sec. 1.1).

This service shall include labeling all medications and providing all the necessary facilities and equipment for an electronic medication administration record system (MARS). The Pharmacy Service **must** be able to provide routine medications as well as having a system in place for floor stock medications, as needed (prn) medications, and emergency/urgently needed medications.

2.2 SERVICE DELIVERY LOCATION

The Vendor **must** have professional staff available to fulfill the requirements of this IFB which includes nights, weekends, and holidays as requested by each of the five (5) HDCs (locations listed in Section 1.1).

All services **must** be provided during normal state work hour and within the agreed upon number of days unless otherwise arranged and coordinated with the agency. The Vendor shall give the agency immediate notice of any anticipated delays that will affect the service delivery requirement.

2.3 MINIMUM QUALIFICATIONS

The Contractor **must** meet the following requirements:

A. Vendor must have five (5) years' experience providing services substantially similar to the requirements of this IFB. For verification purposes Vendor **must** provide an overview of prior work, within the past five (5) years and which **must** include the following:

1) Scope of work.
2) Time period of contract.
3) Contract amounts.
4) Contact information for staff who can verify Vendor's experience which shall including the following information without limitation: staff member's name, title, current phone number, email address, and mailing address.

Proposals may be disqualified from respondents whose references do not respond within five (5) business days of the request for verification.

B. Vendor **must** certify that he/she has not received any sanctions or corrective actions by a State or Federal government with the last ten (10) years. However, failure to certify may not disqualify a Vendor's bid submission if Vendor provides detailed documentation of each sanction and any corresponding corrective action received from a State or Federal government within the last ten (10) years. Documentation must include in status of all corrective actions within the last ten (10) years, including corrective actions completed to the satisfaction of the issuing government agency.

C. Vendor and all Vendor Subcontractors, if any, **must** certify that Vendor and all Vendor Subcontractors have read the Organizational or Personal Conflict of Interest Clause (see Attachment G). If Vendor or any Vendor Subcontractor does have an actual, apparent, or potential conflict of interest, Vendor **must** disclose all relevant information pertaining to such conflict of interest. Vendors disclosing a potential, actual or apparent conflicts of interest **must** submit a conflict of interest mitigation plan at the time of bid. The Arkansas Department of Human Services (DHS), in its sole discretion, will determine if a conflict exists and whether it can be mitigated or waived. Bidders with conflicts of interest that cannot be mitigated or waived shall be disqualified.

D. Vendor **must** be bondable. As proof of meeting this requirement the Vendor **must** submit a Letter of Bondability from an admitted Surety Insurer with its bid submission. The letter shall unconditionally offer to guarantee to the extent of one hundred percent (100%) of the annual contract price the bidder's performance in all respects of the terms and conditions of the IFB and the resultant contract.

2.4 INSURANCE REQUIREMENTS

A. Prior to contract awarding, the Vendor must furnish an approved "Certificate of Insurance" and must maintain the insurance requirements throughout the contract and any/all extensions.

B. The Insurance shall not be modified without DHS approval.

C. The Vendor shall maintain insurance for the contract period and any resultant renewals in the minimum amount:

1. One million dollars ($1,000,000) per occurrence, general liability.
2. Three million dollars ($3,000,000) aggregate, for professional liability, negligence, errors and omissions and public liability.

D. The insurance must have limits sufficient to cover losses resulting from or arising out of vendor's action or inaction in the performance of the contract by the vendor, its agents, servants, employees, or subcontractors.

E. The insurance shall cover and continue to cover all occurrences during the term of this contract and any extensions thereof.

F. All insurance policies shall be with a company licensed by the State of Arkansas to do business and to provide such policies.

G. The Vendor shall notify DHS, not less than forty-five (45) days in advance of any non-renewal, cancellation, or expiration of the vendor's insurance policy. In the event DHS receives a notice of non-renewal, the vendor shall provide DHS with an insurance policy from another carrier at least thirty (30) days prior to the expiration of the insurance policy then in effect.

H. DHS shall have the right to inspect the original insurance policies held by the vendor.

2.5 CREDENTIALS/LICENSURE

The Vendor shall ensure the Pharmacist(s) assigned maintains the appropriate credentials and/or licenses. DHS shall be immediately notified in the event of a lapse.

2.6 SCOPE OF WORK

A. Vendor shall provide pharmacy services, including accepting and filling prescriptions for residents of five (5) Human Development Centers located across the state.

B. A blister pack system for unit dose delivery of medications shall be used as the method for drug dispensing for both prescription and over-the-counter medications. However, it is understood that not all medications will be able to be provided in a blister pack delivery system for a variety of reasons. The Contractor shall be expected to provide information on situations when it is anticipated that blister packs cannot be used.

C. Contractor shall have the Medication Administration Record (MAR) computerized system in place and it shall be readily available and capable of providing and maintaining drug profiles on individual clients for medical staff, consulting pharmacists, and the regulatory agency. The MAR computerized system shall allow for an effective interface between the staff of various medical facilities and with the Contractor. This computerized system **must** be responsive to medical staff and Pharmacist needs while adhering to the regulations for protection of patient privacy, including without limitation the Health Insurance Portability and Accountability Act (HIPAA).

D. Vendor shall ensure that all OTC medications supplied by Vendor shall be purchased from the wholesaler in the most economical bulk or cost-saving method available.

E. The Vendor shall be responsible for the payment of state and federal taxes and Federal Insurance Contributions Act (FICA) with regards to wages received.

F. The Vendor shall be responsible for all meals, lodging and any other expenses accrued during required travel.

G. The Vendor shall be responsible for providing all equipment necessary to perform the pharmacy services contract as specified within this IFB.

H. The Vendor **must** maintain good interpersonal skills and professional business appearance.

I. The Vendor shall maintain reliable transportation, to include insurance, for the beneficial and expeditious provision of pharmacy service and delivery.

J. The Vendor **must** have knowledge and experience in Federal and State regulations for pharmacies (i.e. Office of Long-Term Care, Medicaid, Medicare). The Vendor **must** have the appropriate credentials that apply to their profession.

K. Due to the critical and sensitive nature of the work at the HDCs, the successful Vendor and any/all subcontractors **must** undergo a criminal history background checks prior to implementation of the contract.

2.7 ORDERING AND DELIVERY

A. The Vendor **must** be able to monitor the ordering and receiving of medications to ensure they are ordered and received from the pharmacy accurately and timely.

B. Pharmacy services **must** be available twenty-four (24) hours per day, seven (7) days per week for urgent and emergency medication orders. This shall include back-up plans for urgent/emergency drug delivery in the event of (for example) hazardous road conditions or after hours' drug delivery.

C. Non-cycle refill requests in the mornings shall be delivered that same day.

D. New orders shall be delivered on the same day as ordered. These orders **must** be delivered as soon as possible on the order's next scheduled med pass.

E. To accommodate non-cycle refills, new orders and the current HDC nursing schedules, the first daily delivery **must** occur not later than 2:00 p.m. CT.

F. Late morning and afternoon new orders or refill requests that are needed that day shall be delivered in an evening delivery that meets Long Term Care (LTC) guidelines for a next med pass start, no later than 7:30 p.m. CT, to accommodate med pass schedules.

G. The Vendor **must** have the ability to provide for stat or now orders in a manner that meets Long Term Care (LTC) guidelines, twenty-four (24) hours daily, seven (7) days a week.

H. The Vendor **must** provide routine checking of medication lists for allergies or drug interactions, especially when new medications or medication changes are ordered.

2.8 PHARMACIST RESPONSIBILITIES

A. The Vendor **must** provide a partial or full support on-site Pharmacist, in accordance with the needs of each HDC. The Pharmacist is required at a minimum of the following:

Human Development Center (HDC)	Minimum Hours
Arkadelphia	Eight (8) hours per month.
Booneville	Eight (8) hours per month.
Conway	Forty (40) hours per week.
Jonesboro	Eight (8) hours per month.
Southeast Arkansas (Warren)	Eight (8) hours per quarter.

B. The Pharmacist shall act as liaison between the facility, its nursing staff, and the pharmacy service.

C. The Pharmacist shall be responsible for monitoring the ordering and receiving of medications to ensure they are ordered in a timely schedule and are received from the pharmacy accurately and timely.

D. The Pharmacist shall provide miscellaneous services such as working with nursing services regarding nursing needs in drug distribution.

E. The Pharmacist shall preform required duties such as annual staffing reports, drug destruction, and control drug returns.

F. The Pharmacist shall work with a Consultant Pharmacist in educating the nursing staff. Specific requirements include but are not limited to the following:

1. Directing the daily operation of the drug delivery system and monitor the ordering, receiving, and accuracy of delivery of all medications.
2. Monitoring the proper storage of medications.
3. Reviewing all pharmacy charges to the facility.
4. Attending meetings with facility administrative staff, in an effort, to find ways to keep pharmacy costs as low as possible.
5. Making recommendations for changing drug therapy to medications that may be billed to other payer sources or change to the lowest cost products with the same therapeutic effectiveness.
6. Assisting the nursing staff with pharmacy questions, assistance with order entry, and questions of drug compatibility.
7. Monitoring for the proper utilization of medications. Develop a report and provide it to the Director of Nursing and consultant Pharmacist.
8. Coordinating with nursing staff and the attending physicians to obtain medication orders and changes in orders to comply with the established facility formulary and perform follow-up to ensure the order change was appropriately transcribed to the orders and Medication Administration Record (MAR).
9. Assisting nursing staff on transcribing medication orders into the computer or creation of the computer printed orders and MAR
10. Providing a method of medication management for client visits to home.

G. The Pharmacy Service Contractor shall be available to assist the Consultant Pharmacist as needed.

H. The on-site Pharmacist **must** have immediate access to the out-sourcing pharmacy's actual dispensing system with the ability to look up client drug histories, drug reports, dispensing records, etc.

2.9 RECORD RETENTION

A. The Vendor shall be required to maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and specified by the State of Arkansas Law. Vendor shall grant access to records immediately to State or Federal Government entities or any of their duly authorized representatives upon request by such entities.

B. Vendor shall make available all financial and accounting records, upon request, to the State of Arkansas or its 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.

2.10 DATA SECURITY

A. The Vendor shall be responsible for maintaining a data base within a Vendor-provided secure environment. All data in the database shall belong to DHS/DDS and is to be maintained in accordance with industry standard and the state's data security and data privacy requirements, including without limitation HIPAA.

B. The Vendor shall be responsible for purchasing any computer hardware and software (approved by DHS/DDS) that will be used for data collection and reporting.

C. All data **must** be encrypted with 256-Bit SSL or higher encryption before transmission and must comply with all laws regarding computing.

D. DDS currently uses Worx, a Mediware product, as its electronic pharmacy system. The current version/update used by Arkansas State Hospital (ASH) is Worx 2003 R3. The State also currently uses Omnicell drug dispensing cabinets, as well as MediMar, a module of the pharmacy system that provides the electronic MAR and bar code scanning.

2.11 DIVISION'S RESPONSIBILITY

A. DDS shall provide a Pharmacy Consultant, who shall be independent of the Pharmacy Service contract, to perform regular reviews of client medication lists. A primary objective will be to ensure that systems are in place

to determine efficacy and toxicity of behavioral medications. Also, the consultant shall review policies and procedures as needed.

B. The HDCs shall have a Pharmacy and Therapeutic committee which will be responsible for formulary management, facilities policies, and procedures affecting facility-specific pharmacy services, medication error review, adverse drug reaction review, and other pharmacy, nursing and physician related issues of drug therapy. The Pharmacy Service Contractor shall be responsive to this committee and, if unavailable, be willing to provide a liaison to respond to the committee.

C. The HDC's shall allow the Vendor to have full access to the HDC's client medical records for purposes of delivery and monitoring of medications.

2.12 PERFORMANCE STANDARDS

A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. *Attachment C: Performance-Based Contracting* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **must** meet 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.

C. The State **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 **may** result in the assessment of damages or termination of the contract.

G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend, respond to, or cure to as determined by the State, the insufficiency. The State **may** waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services or it is in the best interest of the State. In these instances, the State **shall** have final determination of the performance acceptability.

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 – GENERAL CONTRACTUAL REQUIREMENTS

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

3.1 PAYMENT AND INVOICE PROVISIONS

A. All invoices shall be forwarded in quadruplicate to the HDC address location as indicated on the purchase order.

B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services by the agency.

C. The State **shall not** be invoiced in advance of delivery and acceptance of any goods or services.

D. Payment will be made only after the vendor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.

E. The vendor should invoice the specific HDC 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 vendor **must** be registered to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at https://www.ark.org/vendor/index.html.

3.2 GENERAL INFORMATION

A. The State **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 State Procurement Official upon a 30-day written notice to the vendor/lessor in the event funds are not appropriated.

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

C. The State **shall not** pay damages, legal expenses or other costs and expenses of any other party.

D. The State **shall not** continue a contract once any equipment has been repossessed.

E. Any litigation involving the State **must** take place in Pulaski County, Arkansas.

F. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.

G. The State **shall not** enter a contract which grants to another party any remedies other than the following:

1. The right to possession.
2. The right to accrued payments.
3. The right to expenses of deinstallation.
4. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
5. 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 a State Procurement Official.

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

3.3 CONDITIONS OF CONTRACT

A. The vendor **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 vendor **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 vendor.

C. The Contractor agrees to the Performance-Based Contracting standards as presented in Attachment C, DHS Standard Terms and Conditions as presented in Attachment D, a pro forma contract as presented in Attachment E, the Business Associate Agreement as presented in Attachment F, and the Organizational or Personal Conflict of Interest policy as presented in Attachment G.

ALL VENDOR STAFF MAY BE MANDATED REPORTERS UNDER STATE AND FEDERAL MANDATES

3.4 STATEMENT OF LIABILITY

A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of 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 five million dollars ($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 State's waiver of its right of sovereign immunity. The vendor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

3.5 PERFORMANCE BONDING

A. The Contractor shall be required to obtain performance and payment bonds when necessary to protect the State's interest, as determined by the state.

B. The following situations may warrant a performance bond:

1. The State's property or funds are to be provided to the contractor for using in performing the contract.

2. Substantial progress payments are made before delivery of end items is complete.

3. The duties of the Contractor, if breached, could expose the State to liabilities.

C. When it is determined that a performance bond is required, the Contractor **shall** obtain a performance bond as follows:

1. The amount of the performance bonds shall be one hundred percent (100%) of the original contract price, unless the State determines that a lesser amount would be adequate for the protection of the State.

2. The State may require additional performance bond protection when a contract price is increased or modified.

3. The performance bond must be delivered to the Arkansas Department of Human Services Chief Procurement Officer within fourteen (14) days of contract execution.

4. Failure to provide is a breach of contract and may result in immediate contract termination.

D. The Contractor **shall** submit documentation to the satisfaction of the State that a performance bond has been obtained. The contractor **shall** notify the State of any changes, modification, or renewals for the performance bond during the term of the contract.

3.6 RECORD RETENTION

A. The vendor **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.

3.7 PRICE ESCALATION

A. Price increases will be considered at the time of contract renewal.

B. The vendor **must** provide to the Office of Procurement (OP) 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. OP **shall** have the right to require additional information pertaining to the requested increase.

C. Increases **shall not** be considered to increase profit or margins.

D. OP **shall** have the right to approve or deny the request.

3.8 CONFIDENTIALITY

A. The vendor, vendor's subsidiaries, and vendor's employees **shall** 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 while 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 **shall** have the right to cancel the contract on these grounds.

C. Previous sections of this *Bid Solicitation* may contain additional confidentiality requirements.

3.9 CONTRACT INTERPRETATION

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

3.10 CANCELLATION

A. For Cause. The State may cancel any contract resulting from this solicitation for cause at the discretion of the Arkansas Department of Human Services. The State shall give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination.

B. For Convenience. The State may cancel any contract resulting from the solicitation by giving the Contractor written notice of such cancellation no less than thirty (30) days prior to the date of cancellation.

C. If upon cancellation the Contractor has provided commodities or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

3.11 SEVERABILITY

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the 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 4 – STANDARD TERMS AND CONDITIONS

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

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

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

3. **BID SUBMISSION**: Original Bid Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Bid Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind the firm in a contract. Multiple bids **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.

4. **PRICES**: Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty (30) 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. Contractors **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 (1) year from the date of delivery, unless otherwise specified herein.

8. **SAMPLES**: Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the Contractor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at Contractor's expense. After reasonable examination, all demonstrators will be returned at Contractor's expense.

9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE**: Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specifications, the cost of the sample used, and the reasonable cost of the testing **shall** be borne by the Contractor.

10. **AMENDMENTS**: Contractor's bids cannot be altered or amended after the bid opening except as permitted by regulation.

11. **TAXES AND TRADE DISCOUNTS**: Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.

12. **AWARD**: *Term Contract*: A contract award will be issued to the successful Contractor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. *Firm Contract*: A written State purchase order authorizing shipment will be furnished to the successful Contractor.

13. **DELIVERY ON FIRM CONTRACTS**: This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the Contractor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere, and any additional cost **shall** be borne by the Contractor.

14. **DELIVERY REQUIREMENTS**: No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours (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; (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 all claims that the Contactor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor **shall** continue to provide the Services under this Agreement even if 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 no one has been retained 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 securing business.

26. **ANTITRUST ASSIGNMENT**: As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor named on the *Bid Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.

27. **DISCLOSURE**: Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.

28. **See SPECIAL CONTRACT TERMS AND CONDITIONS** this attachment to the contract will be required to be signed and will become a part of the contract. **See Attachment ?**