



STATE OF ARKANSAS
OFFICE OF STATE PROCUREMENT
 1509 West 7th Street, Room 300
 Little Rock, Arkansas 72201-4222

INVITATION FOR BID
BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	SP-19-0074	Solicitation Issued:	August 14, 2019
Description:	Inmate Holiday Packages		
Agency:	Arkansas Division of Correction (ADC)		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	August 29, 2019	Bid Opening Time:	2:00 p.m., Central Time
<p>Deliver bid submissions for this Invitation for Bid to the Office of State Procurement on or before the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit bids at the designated location on or before the bid opening date and time. Bids received after the designated bid opening date and time may be considered late and may be returned to the Prospective Contractor without further review. It is not necessary to return "no bids" to OSP.</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p>Office of State Procurement 1509 West 7th Street, Room 300 Little Rock, AR 72201-4222</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address. Prospective Contractors assume all risk for timely, properly submitted deliveries.</p>
Bid's Outer Packaging:	<p>Seal outer packaging and properly mark with the following information. If outer packaging of bid submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none"> • Bid number • Date and time of bid opening • Prospective Contractor's name and return address

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Brandi Schroeder	Buyer's Direct Phone Number:	501-682-4169
Email Address:	Brandi.Schroeder@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx		

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

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

1.1 PURPOSE

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) on behalf of the Arkansas Division of Correction (ADC) to establish a contract(s) for an Inmate Holiday Package program.

1.2 TYPE OF CONTRACT

- A. As a result of this IFB, OSP intends to award a contract to up to two (2) Contractors.
- B. The anticipated starting date for any resulting contract is September 20, 2019, except that the actual contract start date may be adjusted forward unilaterally by the State for up to three (3) calendar months. By submitting a signed proposal in response to the IFB, the Prospective Contractor represents and warrants that it will honor its proposal as being held open as irrevocable for this period.
- C. The initial term of any resulting contract will be for one (1) year. Upon mutual agreement by Contractors and agency, the contract may be renewed by OSP for up to six (6) additional one-year terms or portions thereof, not to exceed a total aggregate contract term of seven (7) consecutive years.

1.3 ISSUING AGENCY

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

1.4 BID OPENING LOCATION

Bids will be opened at the following location:

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

1.5 ACCEPTANCE OF REQUIREMENTS

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

1.6 DEFINITION OF TERMS

- A. The State Procurement Official has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.
- B. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. "Bid Submission Requirement" means a task a Prospective Contractor **must** complete when submitting a bid response. These requirements will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- D. "Business Day" means a day occurring Monday through Friday excluding State Holidays. A current listing of State holidays may be found on the Arkansas Secretary of State's website at: <https://www.sos.arkansas.gov/news/state-holiday-calendar/>.
- E. "Commission" means a designated portion of Contractor's Net Sales as determined by the Commission Rate.
- F. "Commission Rate" means the fixed percentage of Net Sales Contractors pay to ADC.
- G. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- H. "Correctional Facility" means a facility specified under the *Delivery Locations* subsection of this IFB.
- I. "Holiday Package" means a care package containing an assortment of ADC-approved items offered for sale by Contractors during the established Sales Schedule timeframes and delivered by Contractors to the Correctional Facilities.

- J. "Inmate" means an individual who is incarcerated in a Correctional Facility.
- K. The terms "Invitation for Bid," "IFB," "Bid Solicitation," and "Solicitation" are used synonymously in this document.
- L. "Master Item List" means a list of food items offered by Contractors that have been approved by ADC for inclusion in the Holiday Package program as specified herein.
- M. "Net Sales" means the total charges received by Contractors from the sale of Holiday Packages minus applicable sales taxes, shipping and handling charges, and returned items.
- N. "Sales Schedule" means the schedule over a time period specified by ADC during which Contractors promote the Holiday Package program, offer Holiday Packages for sale, collect and process Holiday Package orders, and deliver Holiday Packages to Correctional Facilities.
- O. "Prospective Contractor" means a person who submits a bid in response to this solicitation.
- P. "Responsive bid" means a bid submitted in response to this solicitation that conforms in all material respects to this IFB.
- Q. "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.
- R. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.

1.7 **RESPONSE DOCUMENTS**

A. Bid Response Packet

1. The following are Bid Submission Requirements and **must** be submitted in the original *Bid Response Packet*.
 - a. Original signed *Bid Signature Page*. (See *Bid Response Packet*.)
 - i. An official authorized to bind the Prospective Contractors to a resultant contract **must** sign the *Bid Signature Page* included in the *Bid Response Packet*.
 - ii. Prospective Contractor's signature signifies agreement to and compliance with all Requirements in this IFB, and that any exception that conflicts with a Requirement or Bid Submission Requirement of this *Bid Solicitation* will cause the Prospective Contractor's bid to be rejected.
 - iii. Bid response **must** be in the English language.
 - b. One (1) original hard copy of the *Official Bid Price Sheet*. Pricing **must** be proposed in U.S. dollars and cents.
 - c. Evidence of general liability insurance coverage on an Association for Cooperative Operations Research and Development (ACORD) Certificate of Liability Insurance form. (See *Prospective Contractor Qualifications*.)
2. The following items should be submitted in the original *Bid Response Packet* as a hard copy and as an electronic copy, preferably on a flash drive and in PDF format.
 - a. One (1) copy of the *Official Bid Price Sheet*.
 - b. EO 98-04 *Contract and Grant Disclosure Form*. (See *Standard Terms and Conditions*, #25. *Disclosure*.)
 - c. Copy of Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
 - d. *Proposed Subcontractors Form*. (See *Subcontractors*.)
 - e. Holiday Package sample. (See *Holiday Package Sample*.)

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

1.8 **CLARIFICATION OF BID SOLICITATION**

- A. Submit any questions requesting clarification of information contained in this *Bid Solicitation* in writing via email by 4:00 p.m., Central Time on or before August 19, 2019 to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.
 1. For each question submitted, Prospective Contractor should reference the specific solicitation item number to which the question refers.
 2. Prospective Contractors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on August 22, 2019. If Prospective Contractor questions are unclear or non-substantive in nature, the State may request clarification of a question(s) or reserves the right not to respond to that question(s).
- B. Prospective Contractors should notify the OSP buyer of any term, condition, etc., that precludes the Prospective Contractor from submitting a compliant, responsive proposal. Prospective Contractors should note that it is the responsibility of the Prospective Contractor to seek resolution of all such issues, including those relating to the terms and conditions of the contract, prior to the submission of a bid.
- C. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the bid opening.
- D. An oral statement by OSP will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by OSP.
- E. Prospective Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

1.9 **SUBCONTRACTORS**

- A. Prospective Contractor should complete, sign and submit the *Proposed Subcontractors Form* included in the *Bid Response Packet*.
- B. **Do not** attach any additional information to the *Proposed Subcontractors Form*.
- C. The utilization of any proposed subcontractor is subject to approval by the State agency.

1.10 **PRICING**

- A. The resulting contract(s) will be at no cost to the State. (See *Introduction*.)
- B. Contractors **shall** bear all costs incurred in order to achieve successful operation of the Requirements of this bid.
- C. Prospective Contractors **shall** enter a Commission Rate in the blue-shaded cell of the *Official Bid Price Sheet* only.
 1. The Commission Rate entered **must** be entered as a percentage only.
 2. The Commission Rate entered **must** be at least fifteen percent (15%).
 3. The Commission Rate **must** apply to the Net Sales of each Holiday Package sold under a contract resulting from this IFB.
- D. The *Official Bid Price Sheet* is provided as a separate excel file posted with this *Bid Solicitation*.
- E. To allow time to review bids, Commission Rates **must** be valid for ninety (90) days following the bid opening.
- F. **DO NOT** submit any ancillary information not related to actual Commission Rates on or with the *Official Bid Price Sheet*.

1.11 PRIME CONTRACTOR RESPONSIBILITY

- A. A single Prospective Contractor **must** be identified as the prime Contractor.
- B. The prime Contractor **shall** be responsible for the contract and jointly and severally liable with any of its subcontractors, affiliates, or agents to the State for the performance thereof.

1.12 INDEPENDENT PRICE DETERMINATION

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

1.13 PROPRIETARY INFORMATION

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
- C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
- D. By so redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- E. Under no circumstances will pricing information be designated as confidential.
- F. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Bid Response Packet*. A CD is also acceptable. Do not submit documents via email or fax.
- G. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- H. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- I. The redacted copy will be open to public inspection under 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.

1.14 CAUTION TO PROSPECTIVE CONTRACTORS

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

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

1.15 REQUIREMENT OF ADDENDUM

- A. Only an addendum written and authorized by OSP will modify this *Bid Solicitation*.
- B. An addendum posted within three (3) calendar days prior to the bid opening may extend the bid opening and may or may not include changes to the *Bid Solicitation*.
- C. The Prospective Contractor is expected to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to bid opening.

1.16 AWARD PROCESS

A. Successful Contractor Selection

- 1. Award will be made to up to two (2) responsible Prospective Contractors who offer the highest Commission Rate.

B. Negotiations

- 1. If the State so chooses, negotiations may be conducted with up to two (2) Prospective Contractors. Negotiations are conducted at the sole discretion of the State.
- 2. If negotiations fail to result in a contract, the State may begin the negotiation process with the Prospective Contractor with the next highest Commission Rate. The negotiation process may be repeated until the anticipated successful Contractors have been determined, or until such time the State decides not to move forward with an award.

C. Anticipation to Award

- 1. Once the anticipated successful Contractors have been determined, the anticipated awards() will be posted on the OSP website at http://www.arkansas.gov/dfa/procurement/pro_intent.php.
- 2. The anticipated award(s) will be posted for a period of fourteen (14) days prior to the issuance of a contract(s). Prospective Contractors and agencies are cautioned that these are preliminary results only, and a contract(s) will not be issued prior to the end of the fourteen (14) day posting period.
- 3. OSP may waive the policy of Anticipation to Award when it is in the best interest of the State.
- 4. It is the Prospective Contractor's responsibility to check the OSP website for the posting of an anticipated award.

D. Issuance of Contract

- 1. Any resultant contract(s) of this *Bid Solicitation* is subject to State approval processes which may include Legislative review.
- 2. A State Procurement Official will be responsible for the solicitation and award of any resulting contract(s).

1.17 INTERGOVERNMENTAL/COOPERATIVE USE OF COMPETITIVELY BID PROPOSALS AND CONTRACTS

In accordance with Arkansas Code Annotated § 19-11-249, any State public procurement unit may participate in any contract resulting from this solicitation with a participating addendum signed by Contractor and approved by the chief procurement officer of the procurement agency issuing this solicitation.

1.18 MINORITY AND WOMEN-OWNED BUSINESS POLICY

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

1.19 EQUAL OPPORTUNITY POLICY

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP **must** 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. Contractors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that **must** also comply with this statute.
- D. Prospective Contractors who are not required by law to have an *EO Policy* **must** submit a written statement to that effect.

1.20 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

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

1.21 RESTRICTION OF BOYCOTT OF ISRAEL

- A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel.
- B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.
- C. By checking the designated box on the Bid Signature Page of the response packet, a Prospective Contractors agree and certify that they do not and will not, for the duration of the contract, boycott Israel.

1.22 PAST PERFORMANCE

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

1.23 VISA ACCEPTANCE

- A. Awarded Contractors should have the capability of accepting the State's authorized VISA Procurement Card (p-card) as a method of payment.
- B. Price changes or additional fee(s) **must not** be levied against the State when accepting the p-card as a form of payment.
- C. VISA is not the exclusive method of payment.

1.24 PUBLICITY

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

1.25 RESERVATION

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

SECTION 2 – REQUIREMENTS

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

2.1 INTRODUCTION

The Arkansas Division of Correction (ADC) is seeking to establish a contract for an Inmate Holiday Package program with up to two (2) Contractors.

Resulting contract(s) will be at no cost to the State. Ordering Individuals will place orders directly through Contractors, and Contractors **shall** pay ADC a Commission of the Net Sales from each order based on the Commission Rate submitted by Contractor on the *Official Bid Price Sheet*.

All Commission collected from a resulting contract will be paid to the Inmate Welfare Fund. According to ACA 12-29-107, Inmate Welfare Fund balances can only be spent on items that benefit inmates, such as personal grooming supplies, recreational supplies, and Inmate banking, so all Commission received by ADC from a resulting contract will benefit Inmates directly.

2.2 PROGRAM PURPOSE AND DESCRIPTION

The Inmate Holiday Package program provides the opportunity for individuals (hereinafter referred to as "Ordering Individuals") to purchase Holiday Packages to be shipped to Inmates remanded to ADC Correctional Facilities during the Sales Schedule.

ADC prefers to establish contracts with two (2) Contractors to allow Ordering Individuals to have access to the lowest possible price and/or best service for their needs, allowing for best possible competition. ADC prefers that Master Item List and shipping and delivery costs be kept at a minimum to ensure maximum contract benefit to Ordering Individuals and Inmates.

The Sales Schedule **must not** exceed twice per calendar year, typically a Spring/Summer period and a Fall/Winter period (see *Table A: Anticipated Sales Schedule*). Contractors **shall** be responsible for promoting the Inmate Holiday Package program, collecting and processing orders, collecting payments, packaging orders, and delivering orders to Correctional Facilities.

ADC estimates Net Sales of approximately \$800,000.00 per contract year based on historic usage from July and December of 2018. The State is providing this estimate as a courtesy to Prospective Contractors. Prospective Contractors **shall not** interpret this estimate, or any other estimate provided in this IFB or on the *Official Bid Price Sheet*, to be a guarantee of actual contract volume or conditions during the term(s) of any contract resulting from this IFB.

2.3 PROSPECTIVE CONTRACTOR QUALIFICATIONS

- A. Prospective Contractors **shall** have at least five (5) years of experience providing services similar in size and scope as specified in this IFB to correctional, law enforcement, or similar agency(s).
- B. For at least one (1) calendar year prior to the time of bid submission, the Prospective Contractor **shall** have had in place all facilities, equipment, inventory, staff, ordering capabilities, and other operations necessary for serving the needs of the State specified in this IFB.
- C. At the time of bid submission, the Prospective Contractor **shall** have general liability insurance with Warehouse Legal Liability with a minimum limit of \$1,000,000 per occurrence in full force and effect and **shall** maintain the general liability insurance throughout the aggregate term of a resulting contract.
 1. The Prospective Contractor **shall** submit evidence of the general liability insurance coverage on an Association for Cooperative Operations Research and Development (ACORD) Certificate of Liability Insurance form in the *Bid Response Packet*.
 2. Throughout the contract term(s), Contractor **shall** submit evidence of the general liability insurance coverage on an ACORD Certificate of Liability Insurance form to ADC each year if requested by ADC.
- D. The State reserves the right to investigate as necessary to determine if an apparent successful Contractor meets the Requirements of this IFB.
 1. If an apparent successful Contractor is determined by the State not to meet the Requirements of this IFB, the Prospective Contractor's bid may be rejected.

2. The State reserves the right to continue this process until up to two (2) responsive Prospective Contractors have been determined.
3. Upon request from OSP and for the purpose of investigation, apparent successful Prospective Contractors **shall** provide clarification, information, and documentation pertaining to the apparent successful Prospective Contractor's experience, ability, and qualifications to meet the Requirements described in the IFB prior to contract award.
4. Should the apparent successful Prospective Contractors fail to provide the clarification, information, and documentation requested within the timeframe specified by OSP, the Prospective Contractor's bid may be rejected.

2.4 HOLIDAY PACKAGE SAMPLE

- A. Prospective Contractors should provide a Holiday Package sample valued at approximately \$15 with their *Bid Response Packet* that includes items typical to the Prospective Contractor's Holiday Package selection.
- B. Should the Prospective Contractors choose not to include a Holiday Package sample with the *Bid Response Packet*, ADC may request a Holiday Package sample prior to contract award.
 1. The Prospective Contractors **shall** deliver the requested Holiday Package sample to OSP (see *Bid Opening Location*) within three (3) Business Days of the request.
- C. ADC will examine the Holiday Package sample submitted by the Prospective Contractors for compliance with the packaging Requirements of this solicitation (see *Packaging and Shipping Requirements*) including but not limited to the clear poly bag, the label affixed to the bag, and the pick list contained in the bag.
- D. Should the examination performed by ADC reveal the Holiday Package sample submitted by a Prospective Contractors does not adhere to the Requirements of this solicitation, the Prospective Contractor's bid will be rejected.
- E. ADC will continue this process until up to two (2) responsive Prospective Contractors has been determined.

2.5 GENERAL REQUIREMENTS

- A. Contractors **shall** operate a comprehensive Holiday Package program as specified in this IFB to benefit Inmates remanded to ADC for each year of any resultant contract.
 1. ADC will not be responsible for submitting orders or payments to Contractors.
- B. Contractors **shall** offer ADC-approved food and snack items for sale in Holiday Packages to be delivered to Inmates twice per year, according to the Sales Schedule set by ADC.
 1. Contractor **shall** ensure that only ADC-approved items are available for purchase and/or included in the Holiday Packages.
 2. Holiday Package orders **must** range in Net Price from a minimum of \$15 to a maximum of \$100 each.
 - a. The total dollar amount of all Holiday Packages delivered per inmate per each holiday season **must not** exceed \$100 before shipping and handling fees are applied. (See *Order Confirmation Process*.)
 - b. Within the \$100 limit, Inmates may receive multiple orders from multiple Contractors.
 - c. Contractors **shall** verify Inmate order amounts using ADC's eOMIS database.
- C. As part of the Holiday Package program, Contractors **shall** perform the following services:
 1. Develop documents necessary for Holiday Package program promotion and implementation, such as a program brochure, advertising posters, order forms, etc.
 2. Promote the Inmate Holiday Package program.
 3. Collect and process Holiday Package orders.
 4. Collect payments for Holiday Package orders.
 5. Package Holiday Package orders.

6. Deliver Holiday Package orders to Correctional Facilities.
 7. Provide electronic interface with ADC's web-based electronic Offender Management Information System, eOMIS.
 8. Provide and maintain a secure ordering website for Holiday Package orders.
- D. Packaging and shipping areas of Contractor's facility(s) **must** be monitored and recorded by high-resolution, closed circuit television (CCTV) or similar recording surveillance at all times.
1. Surveillance cameras **must** be strategically placed with a direct and uninhibited view of all personnel and their packing activities and **must** be set at various angles to enable facial recognition.
 2. Recordings of these areas **must** be maintained for at least thirty (30) calendar days.
 3. Recordings **must** contain an accurate date and time stamp.
- E. Contractors **shall** allow inspections of facilities and inventory by ADC personnel during Contractors regular working hours without notice during the aggregate term of a resulting contract.
- F. Contractors **shall** maintain a published catalog containing, at minimum, all food items offered by Contractors.
1. The published catalog **must** include an item number, item description, and list price for each item.
 2. As requested by ADC, Contractors **shall** provide the published catalog to ADC.
- G. Contractors **shall** maintain a minimum of \$250,000 (based on published catalog prices) worth of Holiday Package items in inventory at all times during the Sales Schedule timeframes to ensure order delivery deadlines are met.
- H. As determined by ADC, Contractors **shall** enforce item restrictions, limits on products and quantities ordered, and impose additional restrictions requested by ADC.
1. ADC reserves the right to revise spending limitations to comply with security and/or institutional requirements over the course of the contract and Contractors **shall** abide by revisions made by ADC.

2.6 KEY PERSONNEL AND CUSTOMER SERVICE

- A. Contractors **shall not** outsource to any entities, including but not limited to subcontractors or wholly-owned subsidiaries of Contractor that are located outside the Continental United States for any services which include but are not limited to customer service and/or technical support.
- B. Contractors **shall** provide a toll-free telephone number to address order status inquiries, order-related technical issues, and other general customer service questions for both Ordering Individuals and Correctional Facility representatives.
1. The toll-free telephone number **must** be answered by a live, English-speaking operator who is trained to answer ordering questions and issues and trained to mitigate order-related technical issues.
- C. At minimum, Contractors **shall** provide continuous, uninterrupted, toll-free access on Business Days during the hours of 8:00 a.m. to 5:00 p.m., Central Time.

2.7 IMPLEMENTATION

- A. After contract award and at ADC's discretion, ADC will schedule an introductory conference call to finalize the Sales Schedule (See Table A: *Anticipated Sales Schedule*), to request documents necessary for Holiday Package program implementation, and to provide requirements to Contractors regarding the electronic interface with eOMIS.
1. ADC anticipates scheduling the introductory conference call within ten (10) calendar days of contract award.
 2. Contractors **shall** attend the introductory conference call as scheduled by ADC.
 3. Should Contractors wish to propose an alternative Sales Schedule from the Anticipated Sales Schedule (see Table A), Contractor **shall** submit the proposed alternative schedule via email to ADC for review at least five (5) Business Days prior to the introductory conference call.

- a. ADC will review the alternative schedule and notify Contractors during the introductory conference call as to whether the alternative schedule is approved or denied.
 - b. In either case, Contractors **shall** adhere to all dates specified in the finalized Sales Schedule approved by ADC.
- B. According to the Sales Schedule, and in the manner specified by ADC, Contractors **shall** provide at least one (1) copy of each document necessary for Holiday Package program promotion and implementation including but not limited to:
1. Contractor's published catalog (from which ADC will choose and approve a Master Item List).
 2. Holiday Package program brochure and order forms.
 - a. Contractors **shall** develop a program brochure that **must** contain, at minimum:
 - i. Name and description of each item on the Master Item List.
 - ii. Cost of each item.
 - iii. Basic instructions for ordering items, including program restrictions.
 - iv. A list of forms of payment accepted by Contractors.
 - v. Contractors' phone number(s), fax number(s), mailing address, email address(es), and ordering website address.
 3. Proposed advertising posters.
 4. Proposed order forms.
 - a. Order forms **must** include, at minimum:
 - i. Name and description of each item to be included on the Master Item List.
 - ii. Cost of each item.
 - iii. Basic instructions for ordering items, including program restrictions.
 - iv. A list of forms of payment accepted by Contractors.
 - v. Contractors phone number(s), fax number(s), mailing address, email address(es), and ordering website address
 5. Proposed shipment manifests.
 6. Proposed sales report. (See Attachment A: *Inmate Holiday Package Sales Report*.)
 7. Proposed two (2) part, carbonless forms for damaged/missing items. (See *Delivery*.)
 8. Contractors' online ordering website address for ADC testing and approval.
- C. ADC will review the proposed documents submitted and ordering website and notify Contractors via email as to whether the proposed documents and ordering website are approved or whether revisions **must** be made to the proposed documents and/or ordering website.
1. If requested by ADC, Contractors **shall** revise the proposed documents and ordering website within the timeframe specified by ADC until all revisions are complete to the satisfaction of ADC.
 2. Contractors **shall** use only Holiday Package program documents that have been approved in writing by ADC.
- D. Prior to beginning Holiday Package promotion, Contractors **shall** perform all services necessary to interface electronically with ADC's eOMIS database as specified by ADC.
1. Contractors' electronic interface **must** comply with all requirements specified by ADC.

2. Contractors **shall** follow instructions provided by ADC in utilizing and interfacing with eOMIS.

E. Contractors **shall** begin promoting the Fall/Winter Holiday Package program by the dates determined by the finalized Sales Schedule.

TABLE A: ANTICIPATED SALES SCHEDULE

Spring/Summer Holiday	
May 3	Submit required items to ADC for approval of Master Item List, etc.
May 14	Deliver promotional items and begin collecting and processing orders
June 11	Email order summaries to Correctional Facility to verify location of inmates
June 25 - 29	Deliver orders
July 2 - 6	Re-route orders due to last minute Inmate transfers
July 16	Issue applicable refunds to Ordering Individuals
July 25	Deliver commission check
Fall/Winter Holiday	
September 28	Submit required items to ADC for approval of Master Item List, etc.
October 28	Deliver promotional items and begin collecting and processing orders
November 28	Email order summaries to Correctional Facility to verify location of inmates
December 12 - 16	Deliver orders
December 19 - 23	Re-route orders due to last minute Inmate transfers
January 10	Issue applicable refunds to Ordering Individuals
January 20	Deliver commission check

2.8 PROGRAM PROMOTION

- A. Contractors **shall not** have direct, physical contact with Inmates at any time.
- B. Contractors **shall** supply product brochures, order forms, and advertising posters to each Correctional Facility.
 - 1. Inmates **shall not** have access to place orders through the Holiday Package program.

2.9 COLLECTING AND VERIFYING ORDERS

- A. Contractors **shall** accept orders during the dates determined by the finalized Sales Schedule by various means, including but not limited to, phone and online ordering website.
 - 1. ADC anticipates most orders to be placed via phone and online ordering website.
- B. Each Contractor **shall** provide and maintain a secure ordering website which **must** provide online ordering capabilities unique to the ADC Holiday Package program including, at a minimum:
 - 1. Ability to browse and search ADC-approved items in Contractor’s product brochure.
 - 2. Ability to place and pay for orders.
 - 3. Other capabilities as determined by ADC.
- C. Contractors’ ordering website **must** clearly state basic instructions for ordering, program restrictions, and estimated delivery date(s).
- D. Contractors’ ordering website(s) **must** be accessible from any web browser and **must** be accessible twenty-four (24) hours a day, seven (7) days a week during the ordering dates determined by the finalized Sales Schedule.
 - 1. Contractors’ ordering website **must not** accept orders outside of the ordering dates determined by the finalized Sales Schedule.
- E. Contractors’ ordering website **must** meet the approval of ADC prior to accepting Holiday Package orders.

- F. Contractors **shall** accept, at minimum, cashier's checks, money orders, and VISA, Mastercard, and Discover credit/debit cards as forms of payment.
- G. Orders **must not** be collected after the dates determined by the finalized Sales Schedule.
- H. Contractors **shall** verify Inmate location and order amounts using eOMIS prior to picking and packaging orders.
- I. Contractors **shall** provide to each Correctional Facility an order summary via email containing the following information of each Inmate for whom an order has been placed:
 - 1. Inmate's ADC name.
 - 2. Inmate's ADC number.
 - 3. Inmate's Last Name and First Name.
 - 4. Inmate's Correctional Facility and housing unit.
 - 5. Total Net Sales of Holiday Packages ordered.
- J. The Correctional Facility will confirm the information provided on the order summary and will notify Contractor of any revisions that **must** be made to the orders, such as if an Inmate has been assigned to a different Correctional Facility or housing, if the Inmate has lost eligibility to participate in the Holiday Package program, or if the Inmate has exceeded his or her \$100 order limit, etc.
- K. Contractors **shall** revise Holiday Package orders as specified by the Correctional Facility.
 - 1. Should an Inmate no longer be eligible to receive Holiday Packages, Contractors **shall** cancel the Holiday Package order and refund payments made for Holiday Packages to be delivered to the ineligible Inmate, including all taxes and shipping and handling fees.
- L. Contractors **shall** begin packaging and shipping orders within the timeframes specified by the finalized Sales Schedule after receiving confirmation from ADC.

2.10 **PACKAGING AND SHIPPING REQUIREMENTS**

- A. Contractors **shall** process all orders using a Blind Fill picking process as described below:
 - 1. Contractors **shall** protect identifying information of Inmates and Ordering Individuals from all personnel responsible for picking and packaging orders.
 - 2. Personnel receiving orders, assigning purchase order numbers, and/or securing numerical identifiers **shall not** pick or package orders.
- B. Prior to being packed into the shipping container, each order **must** be sealed in a clear poly bag that includes:
 - 1. A label affixed to the outside of the bag stating the Inmate ADC number, last and first name, Correctional Facility, and housing unit.
 - 2. A pick ticket listing all items within the order.
- C. Whenever order quantity permits, Contractors **shall** pack orders into shipping containers by housing unit, with only orders being delivered to the same individual housing unit being packed together into a shipping container.
 - 1. Should orders being delivered to a housing unit require multiple shipping containers, shipping containers **must** be arranged together by housing unit.
 - 2. Should Contractors receive approximately five (5) or less orders for a housing unit, a shipping container may contain orders for multiple housing units, but orders **must** be arranged within the shipping container by housing unit for easy delivery.
 - 3. All orders for an Inmate **must** be arranged together within the shipping container.
- D. For each shipment, Contractors **shall** include a detailed shipment manifest with the shipment that lists the following Inmate information for each order contained in the shipment:

1. Inmate's ADC number.
2. Inmate's Last Name and First Name.
3. Inmate's Correctional Facility and housing unit.
4. Total Net Sales of Holiday Packages being delivered to each Inmate.

E. For each shipment, Contractors **shall** include two-part carbonless forms for Correctional Facilities to submit in the event of damaged/missing items received in the shipment, along with self-addressed, stamped envelopes for mailing damaged/missing item form(s).

2.11 **DELIVERY**

A. Contractors **shall** deliver shipments to all Correctional Facilities within the timeframes specified in the finalized Sales Schedule. (See *Delivery Locations*.)

1. Should Correctional Facilities be added throughout the term(s) of a resultant contract, Contractors **shall** deliver Holiday Packages to the Correctional Facilities added by ADC.

B. Contractors **shall** contact each Correctional Facility prior to shipment to coordinate deliveries with the Correctional Facility.

1. Some Correctional Facilities do not have forklifts for unloading shipping containers; Contractors **shall** provide whatever equipment is necessary for unloading shipments as specified by each Correctional Facility.
2. Contractors' personnel and/or subcontractors making deliveries to Correctional Facilities **shall** be subject to search by the Correctional Facility and **shall** follow all rules, policies, and guidelines required by the Correctional Facility upon entry.

C. All shipments to a Correctional Facility **must** be delivered together unless the Correctional Facility requests otherwise.

D. In the event an Inmate has been reassigned to another Correctional Facility, the Correctional Facility will notify Contractors as such, and Contractors **shall** bear the shipping and delivery costs for re-shipping the package to the correct Correctional Facility as specified by the Correctional Facility.

E. Upon delivery, should an Inmate no longer be eligible to participate in the Holiday Package program, the Correctional Facility will reject delivery of the Inmate's Holiday Package.

1. Contractors **shall** accept the Holiday Package order and refund payments made for the order, including all taxes and shipping and handling fees.
2. Contractors **shall not** charge restocking or return fees.

F. Should Inmates discover damaged/missing item(s) within a Holiday Package, Inmates will complete the damaged/missing item form(s) with ADC staff verifying the damaged/missing item claim and initialing the form. The Correctional Facility(s) will submit the original copy of the damaged/missing form(s) to Contractors and the Inmate will keep the duplicate.

G. Upon receipt of damaged/missing form(s) from Correctional Facility(s), Contractors **shall** package and ship replacement item(s) to the appropriate Correctional Facility(s) within seventy-two (72) hours of Correctional Facility(s) notification.

1. Contractors **shall** ship replacement item(s) directly to the Correctional Facility via United Postal Service (UPS) or other national delivery chain at Contractors expense.
2. Replacement items **must** be packaged according to the packaging and shipping Requirements of this IFB.

2.12 **DELIVERY LOCATIONS**

A. The estimated number of Inmates in each Correctional Facilities is based on the daily intake and release of those remanded to ADC.

- B. Not all Inmates will be eligible to participate in the Inmate Holiday Package program. The agency reserves the right to determine Inmate eligibility.

TABLE B: CORRECTIONAL FACILITY DELIVERY LOCATIONS

Correctional Facility Name	Address	City	ST	Zip	Estimated # of Inmates
Benton Unit	6701 Highway 67	Benton	AR	72015	325
Cummins Unit	3001 Hwy 388	Grady	AR	71644	1876
Delta Regional Unit	880 East Gaines	Dermott	AR	71638	599
East Arkansas Regional Unit	326 Lee 601	Brickeys	AR	72320	1624
Ester Unit	7500 Corrections Circle	Pine Bluff	AR	71603	1659
Grimes Unit	300 Corrections Drive	Newport	AR	72112	1012
Hawkins Unit	22522 Asher Road	Wrightsville	AR	72183	212
Hawkins Unit for Men	8400 Hwy. 386	Wrightsville	AR	72183	200
Maximum Security Unit	2501 State Farm Rd	Tucker	AR	72168	532
McPherson Unit	302 Corrections Drive	Newport	AR	72112	971
Mississippi County W/R Unit	727 North County Road 599	Luxora	AR	72358	121
North Central Unit	10 Prison Circle	Calico Rock	AR	72519	800
Northwest Arkansas W/R Unit	600 West Sunset Avenue	Springdale	AR	72764	100
Ouachita River Unit	100 Walco Lane	Malvern	AR	72104	1782
Pine Bluff Re-Entry	6841 West 13th Ave	Pine Bluff	AR	71602	54
Pine Bluff Unit	890 Free Line Drive	Pine Bluff	AR	71603	430
Randall L Williams Cor. Facility	7206 West 7th Avenue	Pine Bluff	AR	71603	562
Texarkana Regional W/R Unit	305 East 5th Street	Texarkana	AR	71854	128
Tucker Unit	2400 State Farm Rd	Tucker	AR	72168	1126
Varner/Varner Supermax Unit	Hwy 388	Grady	AR	71644	1714
Wrightsville Unit	8400 Hwy 386	Wrightsville	AR	72183	850

2.14 COMMISSION PAYMENT

- A. Contractors **shall** submit Commission check payments within the timeframes specified by the finalized Sales Schedule to the ADC Inmate Welfare Trust Fund at the following address:

Arkansas Division of Correction
 Inmate Welfare Fund
 PO Box 8909
 Pine Bluff, AR 71611

- B. Contractors **shall** submit sales report(s) (see Attachment A: *Inmate Holiday Package Sales Report*) with each Commission check payment and **must** include the following information for each Correctional Facility:
1. Correctional Facility name.
 2. Inmate name.
 3. Total number of orders.
 4. Total Net Sales amount.
 5. Total Commission amount.

2.15 ITEM SUBSTITUTIONS

- A. Contractors **shall not** cancel, remove, or otherwise discontinue offering any item on the Master Item List except as outlined below.
- B. Should Contractors need to substitute an item on the Master Item List during the Sales Schedule, Contractors **shall** complete the *Substitution Request Form* (Attachment B) for the requested substitution and **shall** submit the completed form to ADC via email.
 - 1. All substitutions **must** be intended for the duration of the applicable holiday season.
 - 2. All substitutions **must** be of equal to or better quality than the original item and **must** be provided at the same or lower original cost.
- C. Should ADC require further explanation of the substitution request, ADC will contact Contractors via email, and Contractors **shall** provide additional explanation as determined necessary by ADC.
- D. ADC will respond to the substitution request via email with an approval or rejection of the *Substitution Request Form*, along with confirmation of the effective date.
- E. All substitutions are subject to approval by ADC. Contractors **shall not** substitute any item prior to receiving ADC approval.
- F. If a substitution request is approved while Contractors is still accepting orders, Contractors **shall** update the ordering website to reflect the updated, substituted item and price within five (5) Business Days of receiving substitution approval from ADC.
- G. Emergency substitution requests will be handled on a case-by-case basis as determined by ADC and **must** still receive approval from ADC prior to substitution.

2.16 PERFORMANCE STANDARDS

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

TABLE C: PERFORMANCE STANDARDS

Criteria	Performance Standard	Damages
Timely Delivery	Contractors delivers all order shipments within the timeframes specified in the IFB.	1% increase in Commission Rate for the delayed shipment applied to the Commission check payment for each day the shipment is delayed.

SECTION 3 – GENERAL CONTRACTUAL ITEMS

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

3.1 PAYMENT AND INVOICE PROVISIONS

- A. Payment will not be made by the State under a resulting contract. Do not invoice the State for any goods or services. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.

3.2 GENERAL INFORMATION

- A. The State will not:

1. Lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a 30-day written notice to Contractor/lessor in the event funds are not appropriated.
2. Contract with another party to indemnify and defend that party for any liability and damages.
3. Pay damages, legal expenses or other costs and expenses of any other party.
4. Continue a contract once any equipment has been repossessed.
5. Agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
6. Enter a contract which grants to another party any remedies other than the following:
 - a. The right to possession.
 - b. The right to accrued payments.
 - c. The right to expenses of de-installation.
 - d. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - e. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.

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

- C. The laws of the State of Arkansas govern this contract.

- D. A contract is not effective prior to award being made by a State Procurement Official.

3.3 CONDITIONS OF CONTRACT

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

3.4 STATEMENT OF LIABILITY

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of Contractor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. Contractors will retain total liability for equipment, software and technical and business or operations literature. The State will not at any time be responsible for or accept liability for any Contractor-owned items.
- B. Contractors' liability for damages to the State will be limited to the value of the Contract or \$5,000,000, whichever is higher. The foregoing limitation of liability will not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of Contractors; 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. Contractors and the State will not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability will not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of Contractors; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

- C. Language in these terms and conditions **must not** be construed or deemed as the State's waiver of its right of sovereign immunity. Contractors agrees that any claims against the State, whether sounding in tort or in contract, will be brought before the Arkansas Claims Commission as provided by Arkansas law and governed accordingly.

3.5 **RECORD RETENTION**

- A. Maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, grant access to State or Federal Government entities or any of their duly authorized representatives.
- B. Make financial and accounting records available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

3.6 **PRICE ESCALATION**

- A. Commission Rate changes will not be considered at the time of contract renewal.

3.7 **CONFIDENTIALITY**

- A. Contractors, Contractor's subsidiaries, and Contractor's employees will be bound to all laws and to all Requirements set forth in this *Bid Solicitation* concerning the confidentiality and secure handling of information of which they may become aware of during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State has the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

3.8 **CONTRACT INTERPRETATION**

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

3.9 **CANCELLATION**

- A. For Cause. The State may cancel any contract resulting from this solicitation for cause when Contractors fails to perform its obligations under it by giving Contractors written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise Contractors in writing of the reasons why the State is considering cancelling the contract and provide Contractors with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. To the extent permitted by law and at the discretion of the parties, the parties may agree to minor amendments to the contract and avoid the cancellation for cause upon mutual agreement.
- B. For Convenience. The State may cancel any contract resulting from the solicitation by giving Contractors written notice of such cancellation sixty (60) days prior to the date of cancellation.
- C. If upon cancellation Contractors 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, Contractors may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

3.10 **SEVERABILITY**

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and Contractors will be relieved of all obligations arising under such

provision. If the remainder of the contract is capable of performance, it will not be affected by such declaration or finding and **must** be fully performed.

SECTION 4 – STANDARD TERMS AND CONDITIONS

- **Do not provide responses to items in this section.**
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
- 2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
- 3. **BID SUBMISSION:** Original Bid Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Bid Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be rejected. The person signing the bid should show title or authority to bind his firm in a contract. Multiple bids **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
- 4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
- 5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only and are not guaranteed. Contractor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
- 6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require Contractor to supply additional descriptive material. 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*. 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. Contractor **shall** further guarantee that if the items furnished hereunder are to be installed by Contractor, such items **shall** function properly when installed. Contractor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. Contractor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
- 8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with 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 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 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 Contractor.

14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if 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. 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 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:** Contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to Contractor hereunder or in contemplation hereof or developed by 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 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:** 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. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, Contractor agrees that: (a) 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, Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) 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 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) 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.
23. **CONTINGENT FEE:** Contractor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by Contractor for the purpose of securing business.
24. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, 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.
25. **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.