



Arkansas Department of Human Services

DIVISION OF BEHAVIORAL HEALTH SERVICES

INVITATION FOR BID (IFB) NOTICE

NOVEMBER 17, 2014

The Arkansas Department of Human Services (DHS), Contract Support Section is seeking bids from vendors qualified to provide the following service/commodity.

NURSING SERVICES

The deadline for bidders' questions is **November 21, 2014 at 4:00pm CDT**.

Answers to bidders' questions will be posted on the Office of State Procurement (OSP) website by **November 25, 2014**.

Bid Opening Date and Time: **December 16, 2014 at 10:00am CDT**

BIDS WILL BE ACCEPTED UNTIL THE TIME AND DATE SPECIFIED ABOVE. VENDORS ARE RESPONSIBLE FOR DELIVERY OF THEIR BID DOCUMENT(S) TO THE DEPARTMENT OF HUMAN SERVICES / CONTRACT SUPPORT DIVISION PRIOR TO THE SCHEDULED TIME FOR THE BID OPENING. THE BID ENVELOPE MUST BE SEALED AND SHOULD BE PROPERLY MARKED WITH THE BID NUMBER, DATE, HOUR OF BID OPENING AND THE BIDDER'S RETURN ADDRESS.

Note: When Arkansas Department of Human Services (DHS) is closed for any unforeseen reason (i.e. inclement weather, fire or other natural disaster), all bid openings shall be postponed until 2:00 p.m. the next fully open & operational work day. (8:00 a.m. – 4:30 p.m., M-F).

BIDS SHALL NOT BE FAXED OR EMAILED

If you have any questions regarding this Invitation for Bid (IFB) you may contact:

CHORSIE BURNS
DEPARTMENT OF HUMAN SERVICES
700 MAIN ST
PO BOX 1437 / SLOT W345
LITTLE ROCK, AR 72203
PHONE: (501)682-6327
FAX: (501)682-6304
EMAIL: chorsie.burns@dhs.arkansas.gov

**STATE OF ARKANSAS
DEPARTMENT OF HUMAN SERVICES
COVER SHEET**

Contract Support Section

Invitation for Bid (IFB) for

NURSING SERVICES

AASIS MATERIAL GROUP #94864

Invitation for Bid Number:

HS15-0001

ISSUANCE DATE:

NOVEMBER 17, 2014

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GENERAL INFORMATION

BID OVERVIEW: DHS, Contract Support Section is soliciting bids to provide a supplemental **NURSING SERVICES** contract for the Arkansas Health Center (AHC) in Benton, AR. The AHC is seeking to contract with multiple vendors to provide highly qualified, skilled nursing personnel for the positions of: Licensed Practical Nurse (LPN) and Certified Nurse Assistant (CNA). To adequately staff the nursing positions twenty-four (24) hours per day, which includes weekdays and/or weekends and holidays; it is imperative that AHC have access to a number of vendors who can provide needed personnel at a moment's notice, and that no position(s) critical to AHC operations is left unattended.

AHC is a 290-bed long term care facility operated by DHS/Division of Behavioral Health Services. AHC provides services to patients who have a combination of physical and mental conditions that require the care of nurses who have specialized training.

NOTE: All DHS facilities are designated as **NON-SMOKING**

TYPE OF CONTRACT: This will be a **TERM** contract. The contract is anticipated to be from date of signed award thru June 30, 2015 with the option to renew. The renewal for this supplemental contract will work in conjunction with the current contract (HS13-0013). Upon mutual agreement, in writing, between both parties the contract may be renewed on a year-to-year basis or a portion thereof. In no event shall the total contract term be more than six (6) years.

DHS notifies the contractor at least ninety (90) days prior to the contract expiration. If notification is not made, the contract will terminate at the end of the contract period or current extension thereof.

CRITERIA FOR AWARD: The contract will be awarded as an **ALL or NONE (by adding both nursing discipline together)** to the lowest responsible/responsive bidder meeting the minimum qualifications as set out herein. To be considered, all bids must meet or exceed the specifications contained in this IFB. This contract shall be a multiple contract award, DHS plans to award contracts to all respondents who meet the minimum qualifications, not to exceed twelve (12), to ensure there is adequate coverage by any discipline for the agency.

Awarded vendors will be ranked by the lowest priced vendor for both nursing discipline added together; the lowest overall vendor shall be listed first and then the next lowest listed second and so forth. It is the intent of the agency to contact the first lowest vendor, and if the first vendor cannot provide the requested service required at that time, then the second vendor will be contacted, and so on. However, this contract is being issued as a supplemental contract to the current contract (HS13-0013). The current vendors for contract (HS13-0013); AR Healthcare Personnel, Inc., Medical Staffing Network Healthcare, LLC, and Annette's Nursing Services will be utilized first and then vendors listed on the supplemental contract (HS15-0001) shall be contacted next, based on vendor's ranking.

PAYMENT AND INVOICING: AHC must authorize any services rendered which are not in the ordinary course of the contractor's business in writing. In no instance shall any payment be made for services that are not in accordance with the quoted prices on the contractor's Official Price Sheet(s).

All invoices must be submitted in duplicate and no more than once weekly for services provided. The invoices are subject to DHS invoice requirements. Invoices must be accurate and match the employee's time sheet – time in and time out and date worked must be listed on the invoice. All time sheet(s) **MUST** contain employee's full name, date worked, actual hours worked (i.e. time in and time out) and the Unit/Agency where employee worked. Inaccurate invoices/time sheets will be returned to the contractor without payment. Payment of invoice will normally be 30-45 days after receipt of invoice(s). Invoices/timesheets are to be sent to:

Arkansas Health Center
Attn: Purchasing
6701 Hwy 67
Benton AR 72015

Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by DHS. DHS may not make payment in advance of delivery and acceptance of any equipment or service.

PRICING: All hourly rates are capped as follows:

Licensed Practical Nurse (LPN)	\$33.00 per hour
Certified Nurse Assistant (CNA)	\$21.50 per hour

The capped rates are the **maximum** that AHC will pay for any personnel requirements. This includes shift differential. Rates are to remain the same for the duration of the contract not subject to price escalation. AHC will pay only for hours worked and **will not** pay for show ups or call pay. AHC will pay time and a-half for approved overtime. AHC will pay time and a-half for the following holidays only:

New Year's Day (January 1)
Memorial Day (last Monday in May)
Independence Day (July 4),
Labor Day (first Monday in September)
Thanksgiving Day (fourth Thursday in November)
Christmas Eve (December 24)
Christmas Day (December 25)

Holiday pay will only be paid for the hours worked from midnight of the holiday until 11:59 p.m. the same day and not for the entire shift.

Approval of overtime will be at the discretion of the nursing home administrator or delegate and will only be paid for hours worked in excess of 40 hours per pay period. Pay periods will begin at midnight on Sunday and run through Saturday, 11:59 p.m.

STAFF HOUR USAGE: Current man hours for the requested services are approximately 108,000 per year.

QUALIFICATIONS: Vendors **must** include in their bid package the following:

- Copy of the vendor(s) license/registration certificate/permit of operation. (general business license)
- Proof of a minimum of two (2) verifiable years in business within the State of Arkansas. (Arkansas income tax filing)
- A roster listing all named personnel with their respective qualification(s). Vendors must have a minimum pool of ten (10) LPN's and ten (10) CNA's on staff and available for AHC utilization.
- Provide a list of at least two (2) current accounts, either commercial or governmental, preferably nursing home or hospital environment, for which you are furnishing this type of service. The references must include the following: organization name, address, contact person name, email address, phone and fax numbers.

Failure to include ALL above listed qualification documents, within your bid package(s), will be cause for bid rejection.

BID OPENING LOCATION: All bid openings are subject to public viewing. All attendees are required to obtain security clearance upon entrance to the building. This is done by submitting a current, valid photo ID, preferably a driver's license, to the Security Officer at the reception area in the Donaghey Plaza South Building, 700 Main Street, 1st floor, Little Rock, Arkansas. The Security Officer will issue a Visitor's Badge which must be worn at all times. Before leaving the Donaghey complex, visitor shall return the Visitor's Badge to the Security Officer and his/her ID will be returned.

Visitors shall request the receptionist to contact Chorsie Burns 501-682-6327 or Karen Hicks at 501-682-6544 for more detailed directions to the bid opening location.

DELIVERY OF RESPONSE DOCUMENTS: In accordance with the Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit bids at the place, and on or before the date and time, set in the bid solicitation documents. Bid documents received at the Arkansas Department of Human Services / Office of Finance & Administration after the date and time designated for bid opening are considered late bids and shall not be considered. Bid documents arriving late, which are to be returned and are not clearly marked, may be opened to determine for which bid the submission is intended.

Bids, and any supporting documentation, if applicable, may be hand-delivered to:

**ATTN: CHORSIE BURNS
OFFICE OF FINANCE & ADMINISTRATION / SLOT W345
AR DEPT OF HUMAN SERVICES
700 SOUTH MAIN
LITTLE ROCK, AR 72201**

OR mailed by regular delivery United States postal mail to:

**ATTN: CHORSIE BURNS
OFFICE OF FINANCE & ADMINISTRATION / SLOT W345**

AR DEPT OF HUMAN SERVICES
PO BOX 1437
LITTLE ROCK, AR 72203-1437

OR mailed by USPS EXPRESS OR ANY OTHER COMMERCIAL mail to:

ATTN: CHORSIE BURNS
OFFICE OF FINANCE & ADMINISTRATION / SLOTW345
AR DEPT OF HUMAN SERVICES
112 WEST 8th STREET
LITTLE ROCK, AR 72201

DIVISION/OFFICE CONTRACT: Contract awardee will coordinate with the following Division/Office Contract Administrator in execution of this contract: Monica Moore

MINORITY BUSINESS POLICY: Minority participation is encouraged in this and in all other procurements by state agencies. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this state who is: African American, Hispanic American, American Indian, Asian American, Pacific Islander American or a Service Disabled Veteran as designated by the United States Department of Veterans Affairs. The Arkansas Economic Development Commission conducts a certification process for minority business. Bidders unable to include minority-owned business as subcontractors “may explain the circumstances preventing minority inclusion”.

Check minority type:

African American___ Hispanic American___ American Indian___ Asian American___
Pacific Islander American___ Service Disabled Veteran___

Arkansas Minority Certification Number_____

CAUTION TO BIDDER: Bidders are cautioned to ensure that they have received or obtained and responded to any and all addenda to the bid prior to submission. Addenda will be posted at the following website:
http://www.arkansas.gov/dfa/procurement/pro_index.html

ARKANSAS DEPARTMENT OF HUMAN SERVICES

Bid Form

Service/Commodity: NURSING SERVICES

IFB# HS15-0001

1. Name and Address of Vendor:

2. Name, Email Address, Fax Number and Phone Number of the Respondent's Contact Person:

3. Respondent proposes to do the work described in the "Scope of Work" of this IFB at the following proposed rate during the anticipated contract period:

Nursing Discipline	Estimated Monthly Hour	Unit Price Per Hour
Licensed Practical Nurse (LPN) or (LPTN)	3600	\$
Certified Nurse Assistant (CNA)	5400	\$
TOTAL		\$

NOTE: Bids from the current three vendors of contract HS13-0013 will not be considered, in that these vendors are currently being utilized and this would not be advantageous in alleviating the nursing shortage AHC is currently experiencing.

By my signature below, I certify that the aforementioned statements are true and correct, that I accept the Terms and Conditions as presented in this IFB, I am authorized by the respondent to submit this bid on his/her behalf.

Signature of Bidder

Date

SCOPE OF WORK, including Minimum Qualifications:

General Requirements

Providing proper nursing care is a health and welfare need. As such, all vendors are cautioned that once they are awarded a contract, they must adhere to all provisions contained within the contract. Vendors must especially maintain a pool of the minimum, ten (10), qualified LPN's and CNA's to fill requests from AHC.

Under the direction of the supervisor of nursing services, agency staff will perform functions as specified at AHC, in accordance with all federal, State, institutional procedures, policies, guidelines, administrative orders, directives and applicable regulations.

Certification

Contractor must provide certification in advance that all provided personnel are current/valid in the following:

1. Drug/Alcohol Screening – Must be within 10 calendar days of AHC receiving profile of new personnel. (Inactive personnel will be treated as new profiles. ***)
2. Purified Protein Derivative (PPD) /TB skin test results*
3. Flu Immunization-from October 1-April 1 of the current year*
4. Hepatitis B Record
5. OLTC Background Check (CNA)*
6. Arkansas State Police Background Check (LPN &CNA)*-Must be within 30 calendar days of AHC receiving profile on new personnel.
7. CPR- American Heart Association-Health Care Provider Basic Life Saver (HCPBLS)**
8. Registry screening checks as follows:
 - a. Child Maltreatment Registry**
 - b. Adult Maltreatment Registry**
 - c. OLTC Employment Clearance Registry-Must be within 10 calendar days of AHC receiving profile on new personnel*.
 - d. Registry Records for LPN's**

*** Required Annually**

**** Required Every 2 Years**

*****Anytime personnel are placed in an inactive status a drug screen is required before returning to the active status. Drug screening must be done within a ten (10) calendar day's timeframe of being placed in active status.**

- Drug testing is required for: **All** new hires, **All** those in new positions and **All** those that are inactive.
- Contractor must provide proof for **CNA's** continued residence in Arkansas for the past five (5) years or provide a federal background check (FBI fingerprint card).
- Contractor must provide proof that all licensed/certified personnel are graduates of an accredited medical program and that their licenses/certifications are current.
- Licensed/Certified personnel must provide evidence that they have a minimum of one (1) year full time experience in the appropriate area of practice (i.e. ventilator care, behavioral care, etc...) and that no disciplinary actions are pending or in progress with their licensing boards.
- All personnel are required to possess and maintain current licenses and certifications, as required by the State of Arkansas. The Contractor will be required to furnish copies of licenses and certifications before personnel can be assigned to work. Each contractor must provide the required information for all personnel prior to any employee being assigned to work at AHC.
- All personnel assigned to perform work shall be physically able to do the assigned work and shall be in good health.
- All personnel must successfully complete AHC orientation course prior to starting work. This course will be conducted by AHC.

Other Essential Requirements

- LPN's must complete eight (8) hour orientation with med pass (on site); at the contractor's expense prior to beginning work at AHC.
Please note: AHC DOES NOT PAY FOR ORIENTATION.
- All personnel must also complete the twenty (20) hour MANDT training to be provided by AHC prior to beginning work at AHC; additionally eight (8) hours of training is required annually to maintain certification. MANDT training is mandatory. AHC will document all training. Contractor will be responsible for 100% of the MANDT training cost. **AHC DOES NOT PAY FOR MANDT.**
- Additional orientation may be required at the discretion of AHC Nursing Department; if required the cost shall be borne by AHC.

Contractor must provide written documentation that each employee has read the facility job description and orientation manual, to also include AHC policy and procedure manual. All contractor employees will adhere to and abide by AHC policy and procedures. Failure to do so will result in the employee being immediately relieved of duty. The contractor will be informed that the employee could be barred from future employment by AHC. Employees must review and demonstrate an understanding of AHC orientation manual and updates prior to working at AHC. All agency staff will be held to the same standards as AHC employees -including but not limited to the following: Disciplines, Attendance, and Inclement weather.

Contractor must provide written documentation that each employee has completed all AHC Nursing department competencies.

Employees must be capable of demonstrating competency for treatment of adult and geriatric clients.

Employees must demonstrate:

- a. the ability to observe and evaluate psychiatric conditions
- b. the ability to use good judgment and to maintain confidentiality related to patient and information.
- c. the ability to perform in a high level stimulated environment.
- d. the ability to react calmly and effectively in emergency situations.
- e. the ability to work as a team player.
- f. the ability to demonstrate tact, resourcefulness, patience, and dedication
- g. the ability to adhere to and to apply skills to policy and procedures.
- h. the ability to work different shift times/flexible-staffing times.
- i. effective oral and written communication skills
- j. organizational skills
- k. a basic knowledge of computers.
- l. provide written documentation that the employee has completed HIPPA training.
- m. the ability to adhere to HIPPA standards (Provide written documentation that the employee has completed HIPPA training).
- n. the ability to perform nursing duties commensurable to level of nursing qualifications.

Contractor's Liability

AHC **will not** schedule/accept any nurse(s), LPN or CNA, who are employed by the State of Arkansas in any capacity.

Agency employee cannot be active with more than one agency while working at AHC. All agency employees shall commit to work only on AHC premises for one agency during any ninety (90) day period set up by AHC. For example: The first period might be July 1, 2014 through September 30, 2014. Each employee would declare which Agency they will be working for while on AHC premises during this period. The effect is that an employee cannot work on AHC premises for both Agency A and Agency B during this period. However, they may work for more than one Agency at other hospitals.

Call-ins or Cancellations

All call-in(s) - or cancellation(s) must be communicated to the nursing scheduler or the nurse on duty a minimum of two (2) hours prior to the start of any required shift. Specifically, for the shifts that start at 6:30 am, call-ins must be communicated prior to 4:30 am; for shifts that start at 6:30 pm, call-ins must be communicated prior to 4:30 pm. There will be **NO EXCEPTIONS.**

If the contractor fills a shift and then cancels the shift, the contractor shall be responsible for filling that shift even if it puts their employee in an overtime status. If this happens AHC shall not bear the overtime expense.

If a trend is noted whereby a contractor's personnel is consistently late or at the last minute calls in without justification, this may be grounds for termination of the contractor's contract with AHC.

If an agency and/or employee calls and cancels less than two (2) hours prior to the beginning of a shift more than three(3) times and if the agency fails to replace a cancelled employee for a shift on three(3) separate occasions, a Vendor Performance Report (VPR) will be written on the agency.

If an agency employee's performance is less than satisfactory, the employee will be required to either

1. Go through re-education on the subject,
2. Face possible suspension for a specified time or
3. The agency will make a DO NOT RETURN (DNR) report to the facility; through ANY agency, based on that incident.

Response Time

Contractors' response time to a staffing request **MUST BE TIMELY** which is determined, for the purpose of this document, to mean:

- IMMEDIATE NEED-FIFTEEN (15) MINUTES OR LESS,
- ROUTINE NEED –THIRTY(30) MINUTES OR LSS
- AND PROJECTED NEED- FOUR (4) HOURS OR LESS.

IMMEDIATE NEED=**CRISIS**
ROUTINE NEED=**NEXT SHIFT**
PROJECTED NEED=**TWENTY-FOUR (24) HOURS OR GREATER**

Duties:

The following duties, described as a minimum, are to be performed by the LPN and CNA in providing nursing services under this contract.

Licensed Practiced Nurse (LPN)

LPNs are to be constantly aware of safety considerations and well-being of patients as well as the cleanliness and sanitation of the environment. Patients are never to be left unattended or in unsafe situations. Patients shall be under personnel supervision at all times, unless otherwise specified in the treatment plan.

At the direction of the head nurse, or as advised, LPN's will perform functions as specified in all federal, State, departmental and institutional procedures, policies, guidelines, administrative orders, directives, and applicable regulations.

All goals for patients on LPNs assigned unit are to be implemented and documented as required. Nurses are to ensure that activity schedules are current and followed by all assigned personnel. LPN's will work closely with the physician, unit personnel, and other health team members to provide optimum care for each client in the assigned units, including a safe environment.

LPNs are to be always alert for safety concerns and/or unusual events and will promptly report them. Any deviation or suspected deviation from the norm for a client will be immediately assessed and reported to the assigned supervisor.

LPNs shall use the steps of nursing process in all client care areas. These steps include assessment, planning, implementation or intervention, and evaluation. Although LPNs are not responsible for writing formal client care plans, the LPNs professional knowledge, skills, and judgment are essential for accurate client assessment, a realistic plan of care, effective intervention, and ongoing client evaluation. All medications and treatments prescribed by the physician will be transcribed, prepared, administered and recorded with 100% accuracy. LPNs will use all means available to ensure accurate identification of each client for each medication administration. Errors, actual or suspected, will be reported immediately.

Certified Nurses Aid (CNA)

- Obtain data regarding the physical and psychiatric (behavioral) status of the patient (i.e., temperature, pulse, respiration and weight), at prescribed interval(s), whether the patient is oriented, confused, or a behavioral problem.
- Report changes in patient's physical status to RN in charge.
- Report changes in mental status of patient (this is attitude and behavior) to the nurse in charge.
- Interact in a therapeutic way with patient.
- Assist general hospital personnel with lifting and moving, carrying out programs of exercise, recreation and social activities.
- Submit accurate oral reports to their supervisor at end of the tour of duty.
- Assist patients with letter writing, phone calls, and other personal social tasks.
- Supervise and/or assist patients, as appropriate, with meals.
- Provide one-to-one supervision for psychiatric patients temporarily transferred to other local hospitals for medical and/or surgical services not available at AHC.

Required Equipment

The Contractor must have access to or use of a fax machine and/or e-mail capability in order to receive nursing requirements and be able to send responses to the requesting department.

E-mail will be the primary way of communicating with the Contractor, including sending monthly staffing schedule requests for services to the Contractor and for receiving correspondence from the Contractor.

E-mail messages will be used to document communication requests.

Personnel

The Contractor's personnel shall complete and sign AHC time sheets, when required to do so by AHC. The Contractor personnel are not required to complete AHC application forms. The Contractor shall provide screening of their personnel and verify the following:

- Work records relative to attendance.
- Reasons for leaving last employment.
- Background checks of all prior employment, inclusive of criminal records check.

Unsatisfactory Personnel

AHC shall have the right to remove contracted personnel with or without just cause. When requested, immediate action will be taken by the Contractor to remove the employee. AHC shall have the right to report any un-appropriate behavior to the proper authority if required - such as the Department of Health or the police. AHC may also maintain a data base of unsatisfactory personnel. Once the Contractor's employee is removed for cause, the Contractor shall not assign that employee to AHC in the future.

Shift Information

Services may be required on a seven (7) day per week basis and cover all shifts and/or during a 12 hour shift. Assignments by day or shift including starting time and hours will be at the discretion and needs of AHC.

Present Nursing Shifts: (subject to change)

Day: 0630 – 1900

Night: 1830 – 0700

Shift Modifications

Modifications may be made to shifts on an individual basis but only when agreed upon by both parties. For example if a Contractor has been requested to fill shifts totaling 24 continuous hours, a Contractor may offer to fill the requirement with two (2) twelve hour shifts. Billing will remain the same as the present nursing shifts.

Order Procedures

Whenever AHC requires nursing services that are known, whether it be long term or immediate need, an e-mail/fax will be sent to the 1st listed lowest priced contractor for the required job classification. The e-mail/fax will provide a response cut-off time. If the 1st lowest contractor responds by the cut-off time, then the lowest priced contractor will be used first. For immediate need notice, an email/fax will be sent to all listed contractors and the contractor who responds first that they can fill the request, within the requested time frame, will be awarded the job.

Contractors must also have a means of after normal business hour, weekend and holiday communication. This can be accomplished with an alternate email, fax, phone or an after-hours call service.

Employee Conduct

All Contractor personnel must observe all AHC regulations in effect at the location where the work is being performed. While on AHC property, the Contractor's personnel shall be subject to oversight by the Director of Nursing or his/ her designee. Under no circumstances shall the Contractor's or any subcontractor's personnel be deemed employees of AHC. Contractor or subcontractor personnel shall not represent themselves to be employees of AHC.

Contractor's personnel will at all times make their best efforts to be responsive, polite, and cooperative when interacting with representatives of AHC or any other AHC employees.

The Contractor's personnel shall be required to work in a harmonious manner with AHC employees as well as outside contractors, if applicable. Nothing contained in this IFB shall be construed as granting the Contractor the sole right to supply personal or contractual services required by AHC.

The Contractor agrees that, upon request by Director of Nursing or his/her designee, the Contractor shall remove from the work site any of its personnel who are, in the opinion of AHC, guilty of improper conduct or who are not qualified or needed to perform the work assigned to them. Examples of improper conduct include, but are not limited to, insobriety, sleeping on the job, insubordination, tardiness, or substandard performance. Director of Nursing or his/her designee or their representative is empowered to request that the Contractor replace offending personnel immediately.

Director of Nursing or his/her designee may require replacement and removal from the work site any employee who is identified as a potential threat to the health, safety, security, general well-being, or operational mission of the facility and its population.

Licenses and Permits

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The Contractor shall supply AHC with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to the contract award, in the event that it had not been required as part of the Contractor's bid.

Employees of the Contractor

All parties must clearly understand that all Contractor personnel provided by the Contractor or any of his/her subcontractors shall be considered employees of the Contractor or subcontractor. Under no circumstances shall these people be considered employees of AHC or as independent Contractors. Therefore, the Contractor and any of his/her subcontractors must provide all functions related to these personnel with respect to their classification as employees. These functions will include such services as salary, benefits and proper payroll deductions such as federal and state income taxes, disability and unemployment insurance, etc

Contractor's personnel will be in uniform, clearly indicating name of firm and identifying their affiliation with the firm. In addition, personnel shall bear identification cards at all times with their name and photo as well as the firm name listed on the card.

Contractor's personnel will be required to purchase AHC parking decal and display from vehicle.

Standard INVITATION FOR BID Terms and Conditions

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

Accept as otherwise required by law, the terms and conditions are non-negotiable and will be transferred to the contract as written.

The State has determined that any attempt by any bidder to reserve the right to alter or amend the terms and conditions via negotiation is an exception to the terms and conditions that may result in rejection of the bid.

2. **LEGAL CONSIDERATIONS:** The contract shall be construed according to the laws of the State of Arkansas. Any legal proceedings against the State shall be brought in the State of Arkansas's administrative or judicial forums and the rights and remedies of the parties hereunder shall be determined in accordance with such laws. Venue for all legal proceedings shall be in Pulaski County, Arkansas.

Nothing in this contract may be construed as a waiver of the State's sovereign immunity.

In no event shall the initial term of this contract extend beyond the end of the current biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for such purpose.

3. **ACCEPTANCE AND REJECTION OF BIDS:** The state reserves 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.
4. **BID SUBMISSION:** Bids must be submitted in time to be received by the DHS Contract Support Unit on the designated form, with attachments when appropriate, on or before the date and time specified as the deadline for receipt of bids. If this form is not used, the bid may be rejected. The bid must be typed or printed in ink. The signature must be in ink. Unsigned bids will be disqualified. The person signing the bid should show title or authority to bind his/her firm in a contract. Each bid should be placed in a separate envelope completely and properly identified. Late bids will not be considered under any circumstances.

Bids must be complete when submitted and should clearly describe the bidder's ability to meet the requirements of the Invitation for Bid (IFB). The bid proposal must include a discrete listing of cost components. In case of conflict between the bidder's proposal and the IFB, the terms of the IFB shall prevail. Failure of the contractor to accept these obligations may result in cancellation of his/her selection.

DHS is not liable for cost incurred by respondents or the eventual contractor in the preparation or submission of proposals.

5. **CONFIDENTIAL INFORMATION IN THE BID:** If the bid package contains material that is considered by the respondent to be confidential under Arkansas law, the respondent must so designate the material and state the basis for the claim of confidentiality. In responding to any requests under the Freedom of Information Act (FOI) for materials so designated, DHS shall review the basis for the claim of confidentiality to determine if the claim of confidentiality appears justified.
6. **EQUAL EMPLOYMENT OPPORTUNITY POLICY:**
In compliance with **Act 2157 of 2005**, for all contracts exceeding \$25,000.00, the Office of State Procurement (OSP) is required to have a copy of the vendor's Equal Employment Opportunity (EEO) policy prior to issuing a contract award to the vendor. The vendor may submit its EEO policy as a

hard copy accompanying vendor's response to this solicitation or in electronic format to DHS at the following e-mail address: chorsie.burns@arkansas.gov DHS will submit the successful respondent's EEO policy to OSP and OSP will maintain a file of all vendor EEO policies received. The submission by the successful respondent is a one-time requirement but vendors are responsible for providing updates or changes to their respective policies as necessary. Vendors that do not have an established EEO policy will not be prohibited from receiving a contract award, but are required to submit a written statement attesting that they do not have an EEO policy.

7. **PRICES:** Respondent shall bid the unit price. In case of errors in extension, unit prices shall govern. Prices are firm and not subject to escalation unless otherwise specified in the IFB. 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 IFB.

The bid shall include all costs to be incurred in the provision of the service/commodity. No additional costs may be charged to DHS or clients.

Respondents' bid shall be arrived at independently without collusion, consultation, communication, or agreement with any other respondent or with any competitor.

8. **QUANTITIES:**

- **Term Contracts:** Quantities stated in **term contracts** are estimates only, and are not guaranteed. Respondent shall bid the 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.
- **Firm Contracts:** Quantities stated on **firm contracts** are actual requirements of the ordering agency.

9. **AMENDMENTS:** The bid cannot be altered or amended after the bid opening except as permitted by regulation.

10. **TAXES AND TRADE DISCOUNTS:** Respondent shall 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.

11. **AWARD:** Contract liability will be based on the needs of the Division/Office. This determination will be made at the sole discretion of the Division/Office.

- **Term Contracts:** A contract award will be issued to the successful bidder. It results in a binding obligation without further action by either party. This award does not authorize shipment or provision of service. Shipment or provision of service is authorized by the receipt of an order for purchase from DHS.
- **Firm Contracts:** A written state purchase order authorizing shipment or provision of service will be furnished to the successful bidder.

12. **LENGTH OF CONTRACT:** The IFB shows the period of time the contract will be in effect.

13. **CURRENCY:** Respondent shall bid all pricing and cost in United States dollars and cents.

14. **LANGUAGE:** Respondent shall submit bid in the English language.

15. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this IFB, the bidder, 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.

16. **CONTINGENT FEE:** The bidder guarantees that he/she has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage brokerage or

contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business.

17. **OUTSTANDING TAX LIABILITY:** Bidders must disclose the existence, as of the date of bid submission, of any unsatisfied lien, certificate of indebtedness, certificate of assessment, writ of execution, writ of garnishment, business closure order, civil action, or other indication of delinquency against Bidders for any outstanding tax liability owed by Bidders to any state taxing authority. Bidders acknowledge that a search of public records may be conducted to discover the existence of any unsatisfied tax assessments. Bidders further acknowledge that any unsatisfied liens, certificates of indebtedness, certificates of assessment, writs of execution, writs of garnishment, business closure orders, civil action, or other indication of delinquency for any outstanding tax liability owed by Bidders may result in Bidders being deemed non-responsible and their bids rejected.
18. **VISA ACCEPTANCE:** Awarded contractors should have the capability of accepting the State's authorized VISA Procurement Card (p-card) as a method of payment. Price changes or additional fee(s) may not be assessed when accepting the p-card as a form of payment. The successful bidder may receive payment from the State by the p-card in the same manner as other VISA purchases. VISA acceptance is preferred but is not the exclusive method of payment.
19. **PAST PERFORMANCE:** In accordance with provisions of State Procurement Law, R7 19-11-229 Competitive Sealed Bidding – Bid Evaluation paragraph (E)(I) & (ii): a vendor's past performance with the state may be used in evaluation of any offer made in response to this solicitation. The past performance should not be greater than three years old and must be supported by written documentation on file in the OSP at the time of the bid opening. Documentation may be in the form of either written or electronic report, Vendor Performance Report, memo, file or any other appropriate authenticated notation of performance to the vendor files.
20. **ANTICIPATION OF AWARD:** After complete evaluation of the bid or proposal, the anticipated award(s) will be posted on the OSP website http://www.arkansas.gov/dfa/procurement/pro_index.html). The purpose of the posting is to establish a specific time in which vendors and agencies are aware of the anticipated award. The bid results will be posted for a period of fourteen (14) days prior to the issuance of any award. Vendors and agencies are cautioned that these are preliminary results only, and no official award will be issued prior to the end of the fourteen day posting period. Accordingly, any reliance on these preliminary results is at the agency's/vendor's own risk.

The OSP reserves the right to waive this policy, the Anticipation to Award, when it is in the best interests of the State.
21. **ALTERATION OF ORIGINAL IFB DOCUMENTS:** The original written or electronic language of the IFB shall not be changed or altered except by approved written addenda issued by DHS. This does not eliminate a respondent from making exception(s) to these documents, but does clarify that the respondent cannot change the original document's written or electronic language. If the respondent wishes to make exception(s) to any of the original language, it must be submitted by the respondent in separate written or electronic language in a manner that clearly explains the exception(s). If respondent's submittal is discovered to contain alterations/changes to the original written or electronic documents, the respondent's response may be declared as "non-responsible" and the response shall not be considered.
22. **ETHICAL STANDARDS:** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

Contractual Terms and Conditions

1. **INSPECTION OF WORK PERFORMED:** The State of Arkansas and its authorized representatives shall, at all reasonable times, have the right to enter the contractor's work areas to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work, services, or both, that have been or are being performed.
2. **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, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned. Property, including intellectual property, acquired or created by the contractor as a contract deliverable, is the property of the State. The contractor shall be responsible for the proper custody and care of all state owned property, including State owned property used in connection with the performance of this contract and the contractor agrees to reimburse the State for its loss or damage due to negligence, theft, vandalism, or Acts of God.
3. **PATENTS OR COPYRIGHTS:** Except as otherwise required by law, the contractor agrees to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
4. **ASSIGNMENT:** Any contract entered into pursuant to this IFB is not assignable nor the duties thereunder delegable by either party without the written consent of the other party to the contract.
5. **OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the State have the right to pursue any other remedy permitted by law or in equity.
6. **LACK OF FUNDS:** The State may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. 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. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.
7. **DISCRIMINATION:** In order to comply with the provision of A.C.A. § 25-17-101, relating to unfair employment practices, the contractor shall not discriminate against any qualified employee or qualified applicant for employment because of race, color, creed, national origin or ancestry and shall will include a similar provision binding upon all subcontractors.
8. **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.
9. **CONTRACTOR:** It is expressly agreed that the contractor, officers, and employees of the contractor or subcontractor in the performance of this contract shall act in an independent capacity and not as officers or employees of the State. It is further expressly agreed that the State shall exercise no managerial responsibility over the contractor nor shall this contract be construed as a partnership or joint venture between the contractor or any subcontractor and the State or the State of Arkansas. The contractor hereby represents and warrants to the State that as of the execution date of this contract:
 - a. The contractor has been duly organized and is validly existing and in good standing under the laws of the State of Arkansas, with power, authority, and legal right to enter into this contract.
 - b. There are no proceedings or investigations pending or threatened, before any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the

contractor or its properties (i) seeking to prevent the consummation of any of the transactions contemplated by this contract; or (ii) seeking any determination or ruling that might materially and adversely affect the performance by the contractor of its obligations hereunder, or the validity or enforceability of this contract.

- c. All approvals, authorizations, consents, orders or other actions of any person or of any governmental body or official required to be obtained on or prior to the date hereof in connection with the execution and delivery of this contract and the performance of the services contemplated by this contract and the fulfillment of the terms hereof have been obtained.
 - d. The contractor and the executive officers of the contractor have not been the subject of any proceeding under Chapter 7 of the United States Bankruptcy Code.
10. **FORCE MAJEURE:** The contractor will not be liable for any cost to the State if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, Acts of God, fires, quarantine restriction, strikes and freight embargoes.
11. **DISPUTES:** In the event of any dispute concerning any performance by the State under the contract, the contractor shall notify the State Procurement Director in writing. The State Procurement Director or a designee, prior to commencement of an action in court or any other action provided by law, will attempt to negotiate a settlement of the dispute with the parties in accordance with A.C.A. § 19-11-246. If the claim or controversy is not resolved by mutual agreement, and after reasonable notice to the parties in accordance with A.C.A. § 19-11-246 (c)(1), the State Procurement Director or his designee shall promptly issue a decision in writing stating the reason for the actions taken and a copy of the decision shall be mailed or otherwise furnished to the contractor. This decision will be final and conclusive. Pending final determination of any dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the State Procurement Director's instructions.
12. **PUBLIC DISCLOSURE:** Upon signing of the contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of Ark. Code Ann., § 25-19-101 et seq.
13. **SUBCONTRACTS:** The contractor is fully responsible for all work performed under the contract. The contractor may, with the prior written consent of the State, enter into written subcontract(s) for performance of certain of its functions under the contract. No subcontract under this contract shall in any way relieve the contractor of any responsibility for performance of its duties. The contractor agrees that all subcontracts shall adhere to State policies. The contractor shall give the State immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the contractor or any subcontractor which may result in litigation related in any way to the contract or the State.

In accordance with Executive Order 98-04, IF the agreement between the contractor and the subcontractor is greater than \$25,000.00:

- The contractor shall require the subcontractor to complete a **Contract and Grant Disclosure and Certification Form**. This form must be signed no later than 10 days after entering into any agreement with a subcontractor and the contractor shall transmit a copy of this form to the agency.
- The contractor shall include the following in the contract between the Contractor and that Subcontractor:

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 subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

14. **INDEMNIFICATION:** Except as otherwise required by law, the contractor agrees to indemnify, defend, and save harmless the State, its officers, agents and employees from any and all damages,

losses, claims, liabilities and related costs, expenses, including reasonable attorney's fees and disbursements awarded against or incurred by the State arising out of or as a result of:

- Any claims or losses resulting from services rendered by any person, or firm, performing or supplying services, materials, or supplies in connection with the performance of the contract;
 - Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts (including without limitation disregard of Federal or State regulations or statutes) of the contractor, its officers or employees in the performance of the contract;
 - Any claims or losses resulting to any person or firm injured or damaged by the contractor, its officers or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by Federal or State regulations or statutes;
 - Any failure of the contractor, its officers or employees to observe local, federal or State of Arkansas laws, including but not limited to labor laws and minimum wage laws.
 - The contractor shall agree to hold the State harmless and to indemnify the State for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the State may sustain as a result of the contractor's or its subcontractor's performance or lack of performance.
15. **WAIVER:** No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence. If any provision of the contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the State and the contractor 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. If any one or more of the covenants, agreements, provisions or terms of this contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this contract and shall in no way affect the validity or enforceability of the other provisions of this contract.
16. **ATTORNEY'S FEES:** In the event that either party to this contract deems it necessary to take legal action to enforce any provision of the contract, and the State prevails, the contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.
17. **ACCESS TO CONTRACTOR'S RECORDS:** The contractor will grant access to its records upon request by state or federal government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers or records of the contractor which are related to any services performed under the contract. The contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the records of subcontractors.
18. **SET-OFF:** The parties agree that the State, in its sole discretion, shall have the right to set-off any money contractor owes the State from the State's payment to contractor under this contract.
19. **STATE AND FEDERAL LAWS:** Performance of this contract by both parties must comply with State and Federal laws and regulations. If any statute or regulation is enacted which requires a change in this contract or any attachment, then both parties will deem this contract and any attachment to be automatically amended to comply with the newly enacted statute or regulation as of its effective date.

20. **ACCESSIBILITY ACT 1227 OF 1999:** The contractor expressly acknowledges that state funds may not be expended in connection with the purchase of information technology unless that system meets certain statutory requirements, in accordance with State of Arkansas technology policy standards, relating to accessibility by persons with visual impairments. Accordingly, the contractor represents and warrants to the State 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 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; and (3) after being made accessible, it can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this paragraph, 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 or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If requested, the contractor must provide a detailed plan for making the purchase accessible and/or a validation of concept demonstration.

21. **ENTIRE CONTRACT:** The parties acknowledge that each have read this contract, understand it and agree to be bound by the terms. The parties further agree that this contract is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes all prior proposals, representations, arrangements, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This contract may not be modified, amended, or in any way altered except by a written agreement duly executed by the parties and approved in accordance with the laws and established procedures of the State of Arkansas.
22. **SURVIVAL OF RIGHTS AND OBLIGATIONS:** The rights and obligations of the parties under this contract shall survive and continue after the ending or expiration of the term of this contract, and shall bind the parties, and their legal representatives, successors, heirs and assigns.
23. **TERM OF THE CONTRACT:** This contract may be extended in accordance with the terms stated in the procurement, by written mutual agreement of both parties and subject to approval of the Arkansas Department of Finance and Administration/Director of Office of State Procurement, appropriation of necessary funding, and review by any necessary state or federal authority. The State shall notify the contractor at least thirty (30) days prior to the end of the contract period or extension thereof if the State intends to renew the contract. If notification is not made, the contract will terminate at the end of the contract period or current extension thereof.
24. **TERMS OF PAYMENT/BILLING:** Payment will be made after commodities or services are delivered, accepted, received, and invoiced according to Accounts Payable requirements. No payment will be made prior to delivery of commodities or services.

An original invoice must be submitted to Accounts Payable. Each invoice must include the purchase order number, if applicable.

The contractor agrees to submit all billing invoices within sixty days of the expiration of the contract. Any billings for services rendered during a particular state fiscal year which are not submitted within ninety days of the end of the fiscal year will not be paid.

25. **TERMINATION OF CONTRACT:** The State may cancel this contract unilaterally at any time, for any reason including unavailability of federal funds, state funds or both by giving the other party thirty (30) calendar days written notice, and delivering notice of cancellation either in person or by

certified mail, return receipt requested, restricted delivery. Availability of funds will be determined at the sole discretion of the State. Payments for completed services or deliverables satisfactorily delivered to and approved by the State shall be at the contract price. Payment for partially completed services or deliverables satisfactorily delivered to and not yet approved by the State shall be at a price mutually agreed upon by the Contractor and the State. In addition to any other law, rule or provision which may authorize complete or partial contract termination, the State may terminate this contract in whole or in part when the State determines that the contractor or subcontractor has failed to satisfactorily perform its contractual duties and responsibilities.

26. **PROCEDURE ON EXPIRATION OR TERMINATION:** Upon delivery by certified mail to the contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the contractor shall:
- a. Stop work under the contract on the date and to the extent specified in the Notice of Termination,
 - b. Place no further orders or enter into any additional subcontracts for services,
 - c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination,
 - d. Assign to the State in the manner and to the extent directed by the State representative all of the right, title and interest of the contractor in the orders or subcontracts so terminated. The State shall have the right, in its discretion, to settle or pay any and all claims arising out of the termination of such orders and subcontracts,
 - e. With the approval or ratification of the State representative, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or part, in accordance with the provisions of this contract.
 - f. Transfer title to the State and deliver in the manner, at the time, and extent directed by the State representative, all files, data, information, manuals, or other documentation, or property, in any form whatsoever, that relate to the work terminated by the Notice of Termination.
 - g. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.
 - h. Take such action as may be necessary, or as the State representative may direct, for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire an interest.

The contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable price under this clause.

27. **TERMINATION CLAIMS:** After receipt of a Notice of Termination, the contractor shall submit to the State all outstanding claims within ten (10) working days. The Contractor and the State may agree upon the amounts to be paid to the Contractor by reason of the total or partial termination of work as described in this section. In the event of the failure of the Contractor and the State to agree in whole or in part as to the amount with respect to costs to be paid to the Contractor in connection with the total or partial termination of work as described in this section, the State shall determine, on the basis of information available, the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.
28. **CONFIDENTIALITY OF INFORMATION:** In connection with this contract, the Contractor will receive certain Confidential Information relating to DHS clients. For purposes of this contract, any information furnished or made available to the Contractor relating to DHS clients, the financial condition, results of operation, business, customers, properties, assets, liabilities or information relating to recipients and providers including but not limited to protected health information as defined by the Privacy Rule promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, is collectively referred to as "Confidential Information". The Contractor shall comply with all DHS policies governing privacy and security of Confidential Information, including the contracting division's designation of the Confidential Information as required by the Arkansas Data and System Security Classification Standards, and shall implement and maintain reasonable security procedures and practices appropriate to the nature of the

Confidential Information as required by A.C.A. § 4-11-104, the Personal Information Protection Act ("the Act"). In addition, the Contractor shall comply with the Business Associate Agreement between the parties, incorporated herein by reference, and shall disclose any breaches of privacy or security by contacting the Information Technology Security Officer within one (1) business day of the breach by notification to the following e-mail address: dhs-it-security@arkansas.gov.

The contractor shall treat all Confidential Information which is obtained by it through its performance under the contract as Confidential Information as required by state and federal law and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations. The parties acknowledge that the disclosure of Confidential Information in contravention of the provisions hereof would damage the party to whom the information disclosed relates and such party has the right to seek all remedies at law or equity to minimize such damage and to obtain compensation therefore. The Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for six (6) years or as otherwise required by HIPAA.

The contractor shall safeguard the use and disclosure of information concerning applicants for or recipients of Title XIX services in accordance with 42 CFR Part 431, Subpart F, and shall comply with 45 CFR Parts 160 and 164 and shall restrict access to and disclosure of such information in compliance with federal and state laws and regulations.

29. **RECORDS RETENTION:** The contractor agrees to retain all records for five (5) years (or six years, for protected healthcare information) after final payment is made under this contract or any related subcontract. In the event any audit litigation or other action involving these records is initiated before the end of the five or six year period, the contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five or six year period, whichever is later.
30. **AUDIT REQUIREMENT:** Contractor shall comply with the state audit requirements as outlined in "Arkansas State of Human Services Audit Guidelines". Copies may be obtained from:
Arkansas Department of Human Services
Office of Quality Assurance
P.O. Box 1437 – Slot S270
Little Rock, Arkansas 72203-1437
31. **USE AND OWNERSHIP OF SOFTWARE:** The contractor will have access to all applications software that the State requires the contractor to use in the performance of the services covered in the contract, subject to customary confidentiality and other license terms and conditions. No changes in the applications software may be made without the written consent of the Contract Administrator if the change would have the effect of causing the State to incur additional costs for either hardware or software upgrades or both. Any applications software developed by the contractor in the performance of the services under this contract must become the property of the State of Arkansas at no additional cost. Any existing software applications owned by the contractor and used in the performance of the services under this contract must be granted to the State of Arkansas at no additional cost, subject to customary confidentiality and other license terms and conditions.
32. **LIABILITY:** In the event of non-performance of a contractual obligation by the contractor or his agents which results in the determination by Federal authorities of noncompliance with Federal regulations and standards, the contractor will be liable to the State in full for all penalties, sanctions and disallowances assessed against the State.
33. **CRIMINAL HISTORY CHECK/CENTRAL REGISTRY CHECK:** Contractor shall comply with Arkansas Code Annotated (A.C.A.) §21-15-101 et seq, or any amendments thereto, which requires all employees of state agencies, in designated positions including those providing care, supervision, treatment or any other services to the elderly, mentally ill or developmentally disabled

persons, to individuals with mental illnesses or to children who reside in any state-operated facility or a position in which the applicant or employee will have direct contact with a child, to have a criminal history check and a central registry check. Should an applicant or employee be found to have been convicted of a crime listed in A.C.A. §21-15-101 et seq, that employee shall be prohibited from providing services in a designated position as defined by Arkansas law or being present at the facility.

34. **COMPLIANCE WITH STATE POLICY ISSUANCES:** The contractor agrees to deliver the services authorized by this contract or any attachment in accordance with all manuals and other official issuances of the State promulgated through the Administrative Procedures Act.
35. **NOTICES:** All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if mailed by first class mail, postage prepaid, to the name and address of contractor's identified contact person or such other name or address as may hereafter be furnished to State in writing by the contractor.

Notices to the State should be mailed to:

ARKANSAS DEPARTMENT OF HUMAN SERVICES
OFFICE OF FINANCE & ADMINISTRATION
PO BOX 1437 / SLOT W345
LITTLE ROCK, AR 72203

36. **CERTIFICATION REGARDING LOBBYING:** The contractor will comply with public law 101-121, section 319 (section 1352 of Title 31 U.S.C.) for an award in excess of \$100,000.00 by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with the awarding of any federal contract, grant, loan or cooperative agreement. If the contractor has paid or will pay for lobbying using funds other than federal appropriated funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included as an attachment to this contract.
37. **CERTIFICATION REGARDING DEBARMENT:** The contractor, as a lower tier recipient of \$25,000.00 or more in federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions).

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state agency if the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions" without modification in all lower tier covered transactions.

Contractor certifies that the contractor is in compliance with Public Law 101-121 (Certification Regarding Lobbying) and Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions).

38. **CERTIFICATION PRIOR TO AWARD:** Pursuant to Act 157 of 2007, all respondents must certify prior to award of the contract that they do not employ or contract with any illegal immigrants in their contract with the State. Respondents shall certify online at:
http://www.arkansas.gov/dfa/procurement/pro_index.html