



State of Arkansas
OFFICE OF STATE PROCUREMENT
1509 West Seventh Street, Room 300
Little Rock, Arkansas 72201-4222

INVITATION FOR BID

IFB Number: SP-18-0011	Buyer: Julia Shackelford Email: Julia.shackelford@dfa.arkansas.gov
Commodity: Acorns & Seeds Agency: Arkansas Agriculture Department – Forestry Commission – Baucum Nursery	Bid Opening Date: August 17, 2017
Date Issued: August 1, 2017	Bid Opening Time: 2:00 p.m. Central Time

BIDS **WILL** BE ACCEPTED UNTIL THE TIME AND DATE SPECIFIED ABOVE. THE BID ENVELOPE, INCLUDING THE OUTSIDE OF OVERNIGHT PACKAGES, **MUST** BE SEALED AND SHOULD BE PROPERLY MARKED WITH THE BID NUMBER, DATE AND HOUR OF BID OPENING AND VENDOR'S RETURN ADDRESS. IT IS NOT NECESSARY TO RETURN "NO BIDS" TO THE OFFICE OF STATE PROCUREMENT.

Vendors are responsible for delivery of their bid documents to the Office of State Procurement prior to the scheduled time for opening of the particular bid. When appropriate, vendors should consult with delivery providers to determine whether the bid documents will be delivered to the OSP office street address prior to the scheduled time for bid opening. Delivery providers, USPS, UPS, and FedEx deliver mail to our street address on a schedule determined by each individual provider. These providers will deliver to our offices based solely on our street address.

MAILING ADDRESS: Office of State Procurement 1509 West Seventh Street, Room 300 Little Rock, AR 72201-4222 TELEPHONE NUMBER: 501-324-9316	BID OPENING LOCATION: Office of State Procurement 1509 West Seventh Street, Room 300 Little Rock, AR 72201-4222
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Company Name: _____

Name (type or print): _____

Title: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

Signature: _____

USE INK ONLY. UNSIGNED BIDS WILL NOT BE CONSIDERED

Business Designation
(check one):

Individual [☐]

Sole Proprietorship [☐]

Public Service Corp [☐]

Partnership [☐]

Corporation [☐]

Government/ Nonprofit [☐]

TYPE OF CONTRACT:	FIRM
AGENCY P.R. NUMBER	1000789272

1. 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_____

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

In compliance with Arkansas Code Annotated § 19-11-104, the Office of State Procurement is required to have a copy of the vendor's Equal Opportunity Policy prior to issuing a contract award. EO Policies may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov, or as a hard copy accompanying the solicitation response. The Office of State Procurement **will** maintain a file of all vendor EO policies submitted in response to solicitations issued by this office. The submission is a one- time requirement, but vendors are responsible for providing updates or changes to their respective policies, and for supplying EO policies upon request to other state agencies that **must** also comply with this statute. Vendors that do not have an established EO policy **will** not be prohibited from receiving a contract award, but are required to submit a written statement to that effect.

3. PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

- Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected vendor(s) **must** have a current certification on file with OSP stating that they do not employ or contract with illegal immigrants.
- OSP **will** notify the selected vendor(s) prior to award if their certification has expired or is not on file. Instructions for completing the certification process **will** be provided to the vendor(s) at that time.

4. ALTERATION OF ORIGINAL IFB DOCUMENTS

The original written or electronic language of the IFB documents **shall** not be changed or altered except by approved written addendum issued by the Office of State Procurement. This does not eliminate a Bidder from taking exceptions to non-mandatory terms and conditions, but does clarify that the Bidder cannot change the original document's written or electronic language. If the Bidder wishes to make exceptions to any of the original language, it **must** be submitted by the Bidder in separate written or electronic language in a manner that clearly explains the exceptions. If Bidder's/Contractor's submittal is discovered to contain alterations/changes to the original written or electronic documents, the Bidder's response may be declared as "non-responsible" and the response **shall** not be considered.

5. REQUIREMENT OF AMENDMENT

THIS IFB MAY BE MODIFIED ONLY BY AMENDMENTS WRITTEN AND AUTHORIZED BY THE OFFICE OF STATE PROCUREMENT. Bidders are cautioned to ensure that they have received or obtained, and responded to, any and all amendments to the bid prior to submission. There **will** be no addendums to a bid 72 hours prior to the bid opening. It is the responsibility of the vendor to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php> for any and all addendums up to that time.

6. 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 Office of State Procurement 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.

7. ADDITIONAL TERMS AND CONDITIONS

The Office of State Procurement objects to, and **shall** not consider, any additional terms or conditions submitted by a bidder, including any appearing in documents attached as part of a bidder's response. In signing and submitting his bid, a bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, **shall** have no force or effect. Failure to comply with terms and conditions, including those specifying information that **must** be submitted with a bid, **shall** be grounds for rejecting a bid.

8. ANTICIPATION TO AWARD

After complete evaluation of the solicitation, the anticipated award **will** be posted on the Office of State Procurement website. 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 Office of State Procurement reserves the right to waive the Anticipation to Award when it is determined to be in the best interest of the State.

9. PAST PERFORMANCE

In accordance with provisions of The 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 the evaluation of any bid 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 Office of State Procurement at the time of the bid opening. Documentation may be in the form of a written or an electronic report, VPR (Vendor Performance Report), memo, file or any other appropriate authenticated notation of performance to the vendor files.

10. 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 fees 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.

11. EO-98-04 GOVERNOR'S EXECUTIVE ORDER

Bidders should complete the Disclosure Forms issued with this bid.

12. CURRENCY

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

13. LANGUAGE

Bids **will** only be accepted in the English language.

SECTION 1 - GENERAL INFORMATION

1.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for the Arkansas Agriculture Department – Forestry Commission (AAD-FC) to obtain pricing and a contract for the purchase of acorns and seeds for Baucum Nursery located in North Little Rock, Arkansas.

1.2 ISSUING AGENCY

The issuing office is the sole point of contact in the State for the selection process. Vendor questions regarding IFB related matters should be made through the State's buyer, Julia Shackelford at 501-371-6079 or julia.shackelford@dfa.arkansas.gov. Vendor's questions **will** be answered as a courtesy and at vendor's own risk.

1.3 CAUTION TO BIDDERS

1. During the time between the bid opening and contract award, any contact concerning this IFB should be initiated by the issuing office or requesting entity and not the vendor. Specifically, the person named herein **will** initiate all contact.
2. **Vendors must submit one (1) signed original IFB response on or before the date specified on page one.** If the Office of State Procurement requests additional copies of the bid, they **must** be delivered within twenty-four (24) hours of request.
3. The State Procurement Official reserves the right to award a contract or reject a bid for any or all line items of a bid received as a result of this IFB, if it is in the best interest of the State of Arkansas to do so. Bids **will** be rejected for one or more reasons not limited to the following:
 - a. Failure of the vendor to submit his bid on or before the deadline established by the issuing office.
 - b. Failure to sign an Official Bid Document.
 - c. Failure to complete the Official Bid Price Sheet.
 - d. Any wording by the vendor in their response to this IFB, or in subsequent correspondence, that conflicts with or takes exception to a bid requirement in the IFB.
 - e. Failure of any proposed goods to meet or exceed the specifications.

1.4 BID FORMAT

Any statement in this document that contains the word “**will**”, “**must**”, or “**shall**” means that compliance with the intent of the statement is mandatory, and failure by the bidder to satisfy that intent **will** cause the bid to be rejected.

1.5 TYPE OF CONTRACT

Any resulting contract **will** be a **FIRM CONTRACT** with an anticipated start date of October 15, 2017.

1.6 PAYMENT AND INVOICE PROVISIONS

Payment **will** be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the agency. The State may not be invoiced in advance of delivery and acceptance of any goods. Payment **will** be made only after the vendor has successfully satisfied the agency as to the goods provided. The vendor should invoice the agency an itemized list of charges on a monthly basis. Purchase Order Number and/or Contract Number should be referenced on each invoice.

DO NOT INVOICE THE STATE OF ARKANSAS, OFFICE OF STATE PROCUREMENT.

Send invoice to:
Arkansas Agriculture Department
Attention: David Bowling
1402 Highway 391 North
North Little Rock, AR 72117

The selected vendor **must** be registered to receive payment and future bid notifications. If you are not a registered vendor you may register on-line at <https://www.ark.org/vendor/index.html>

1.7 RECORD RETENTION

The vendor **shall** be required to maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principals of accounting and other procedures specified by the State of Arkansas. Access **will** be granted upon request, to State or Federal Government entities or any of their duly authorized representatives.

Financial and accounting records **shall** be made available, upon request, to the State of Arkansas' 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.

1.8 PROPRIETARY INFORMATION

Proprietary information submitted in response to this Invitation For Bid **will** be processed in accordance with applicable State of Arkansas procurement procedures. Bids and documents pertaining to the Invitation For Bid become the property of the State and **shall** be open to public inspection subsequent to bid opening. It is the responsibility of the vendor to identify all proprietary information. **The vendor should submit one complete copy of the response from which any proprietary information has been removed, i.e., a redacted copy.** The redacted copy should reflect the same pagination as the original, show the empty space from which information was redacted, and should be submitted on a CD or flash drive. Except for the redacted information, the redacted copy **must** be identical to the original hard copy. The vendor is responsible for ensuring the redacted copy on CD/flash drive is protected against restoration of redacted data. The redacted copy **will** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor. If a redacted copy is not included, the entire bid **will** be open to public inspection with the exception of financial data (other than pricing). If the State of Arkansas deems redacted information to be subject to the FOIA the vendor **will** be contacted prior to sending out the information.

1.9 RESERVATION

This IFB does not commit the State Procurement Official to award a contract, to pay costs incurred in the preparation of a bid in response to this request, or to procure or contract for goods.

1.10 PRIME CONTRACTOR RESPONSIBILITY

The selected vendor **will** be required to assume prime contractor responsibilities for the contract and **will** be the sole point of contact with regard to all goods being provided.

If any part of the work **must** be subcontracted, the vendor should include a list of subcontractors, including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractor's organizational activities in their bid response.

The vendor **shall** give OSP immediate notice, in writing, by certified mail of any action which, in the opinion of the contractor, may result in litigation related in any way to the contract or the State.

1.12 CONDITIONS OF CONTRACT

The successful bidder **shall** at all times observe and comply with Federal and State laws, local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of the contract which in any manner affects the completion of the work. The successful bidder **shall** indemnify and save harmless the State 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, or representative of the successful bidder.

1.13 STATEMENT OF LIABILITY

The State **will** demonstrate reasonable care but **shall not** be liable in the event of loss, destruction, or theft of vendor-owned items to be delivered or to be used in the installation of deliverables. The vendor is required to retain total liability until the deliverables have been acceptable by the "authorized agency official." At no time **will** the State be responsible for or accept liability for any vendor-owned items.

1.14 AWARD RESPONSIBILITY

The State Procurement Official **will** be responsible for award and administration of any resulting contract.

1.15 AWARD CRITERIA

Award **shall** be made on a line item basis based on price per pounds.

NOTE: Species with quantities over 5,000 pounds can be bid in lots of 5,000 pounds minimum. On items 3, 5, 6, 8, and 10, the vendor **must** specify quantity and price on the official bid price sheet. (Example: Nuttall Oak quantity is 15,000 pounds and may be bid on 5,000 pounds if that is all the vendor can commit to).

On the items with quantities over 5,000 pounds, an award **will** be made to the lowest responsive, responsible bidder who bids the maximum quantity. If the maximum quantity is not fulfilled, the item **will** be awarded to the lowest responsive, responsible bidder who bids the 5,000 minimum quantity and the third lowest responsive, responsible bidder **will** be awarded, if necessary, to complete the delivery of the amount needed.

Bids **must** meet or exceed all defined specifications. Bidder **must** meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.

1.16 DELEGATION AND/OR ASSIGNMENT

The vendor **shall not** assign the contract in whole or in part or any payment arising there from without the prior written consent of the State Procurement Official. The vendor **shall not** delegate any duties under this contract to a subcontractor unless the State Procurement Official has given written consent to the delegation.

1.17 COST

All charges **shall** be included on the Official Bid Price Sheet and **shall** include all associated costs for the goods being bid. Bid pricing must be typed or printed in ink and must be valid for ninety (90) days following IFB opening to allow sufficient time to tabulate and evaluate bid responses.

NOTE:

1. The State **will not** be obligated to pay any costs not identified on the Official Bid Price Sheet.
2. Any cost not identified by the bidder, but subsequently incurred in order to achieve goods, **shall** be borne by the bidder.

1.18 DELIVERY – FOB DESTINATION

Arkansas Agriculture Department – Forestry Commission
Baucum Nursery
Attention: James Shelton
1402 Highway 391 North
North Little Rock, AR 72117

1.19 ACCEPTANCE STANDARDS

Inspection and acceptance/rejection of products **shall** be made within thirty (30) days of receipt. Arkansas Agriculture Department – Forestry Commission **shall** have the option to return any products within the thirty (30) day timeframe for any reason. Bid **must** include a “total satisfaction” return policy for all products and **shall** not impose any liability on the State for such returns.

1.20 CANCELLATION

a) For Cause. The State may cancel any contract resulting from this solicitation for cause when the contractor fails to perform its obligations under it by giving the contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State **will** advise the contractor in writing of the reasons why the State is considering cancelling the contract and provide the contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. To the extent permitted by law and at the discretion of the parties, the parties may agree to minor amendments to the contract and avoid the cancellation for cause upon mutual agreement.

Reasons for cancellation may include, but are not limited to, the following:

- 1) Not supplying specified quantities of any one species in a timely manner when that species is available.
- 2) Supplying acorns that are not fresh, pure, clean, cap free, moist and that do not sink in water when floated tested.
- 3) Not following specifications when collecting, cleaning, and handling, delivering or storing acorns and seeds.

b) For Convenience. The State may cancel any contract resulting from the solicitation by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.

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

SECTION 2 - SPECIFIC REQUIREMENTS

2.1 PRODUCT REQUIREMENTS

Acorns and Seeds **must**:

- a) Be pure and clean upon delivery.
- b) Be refrigerated at approximately 36° Fahrenheit, immediately after collection and prior to delivery to the Nursery.
- c) Be packaged in burlap and/or poly sacks and not weigh more than fifty (50) pounds. Sacks **must** be tagged to indicate species, weight, size (small, medium, or large) and county and State of harvest.
- d) Not contain any caps. Exception: Overcup acorns are the exception and caps **must** be present.
- e) Be floated, and all floaters **must** be removed. Exception: Overcup acorns cannot be floated.
- f) Acorns and seed deliveries **shall not** be accepted for, but is not limited to, the following reasons:
 - 1) Product is dirty or contains debris;
 - 2) Product containing floaters;
 - 3) Product is sprouted;
 - 4) Product not properly labeled;
 - 5) Product contains mixed species in the same bag.

2.2 REIMBURSEMENT

- a) Payment **shall** be based on pounds of fresh, pure, clean, moist, cap free acorns (with the exception of Overcup Acorns) that sink in water and delivered FOB Destination to Baucum Nursery in North Little Rock.
- b) Acorns **will** be weighed at the time of delivery at Baucum Nursery and payment **shall** be based on the weight as shown on the nursery scales.
- c) Overcup Acorns, with caps, **shall** be based on pounds of sound acorns.
 - 1) Sound acorns **shall** be calculated by multiplying the total pounds by the percentage of sound acorns.
 - 2) Percentage of sound acorns **shall** be determined by cutting representative samples of acorns at the nursery upon delivery.
 - 3) Overcup acorns with less than 70% sound acorns **shall** not be accepted.
- d) When acorns are delivered, weighed and accepted, each vendor **shall** sign and invoice for the number of pounds of acceptable acorns.
- e) Paperwork for payment **shall** be submitted to AAD-Forestry Commission State Office in Little Rock, Arkansas.

2.3 SPECIAL DELIVERY REQUIREMENTS

- a) The vendor **must** notify the agency before deliveries are made.
- b) Deliveries **must** be made within seven (7) days of harvest and refrigerated immediately after collection at approximately 36 degrees Fahrenheit.
- c) All products **must** be delivered by the agreed upon date.
- d) Vendors **shall** be responsible for unloading and storing unscheduled deliveries.
- e) Acorns and seeds **must** be packaged in burlap and/or poly sacks of no more than fifty (50) pounds per sack

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OFFICIAL BID PRICE SHEET
Bid pricing **must** be typed or printed in ink

Item	Description	Estimated Quantity	Price per pound
1	Cherrybark Oak Acorns	3,850 pounds	\$_____
2	Chinkapin Oak Acorns	1,000 pounds	\$_____
3	*Cow Oak Acorns	15,000 pounds	\$_____
3A	*Pounds able to be delivered (bid in 5,000 lb. lots minimum.)	_____ pounds	\$_____
4	Northern Red Oak Acorns	2,000 pounds	\$_____
5	*Nuttall Oak Acorns	15,000 pounds	\$_____
5A	*Pounds able to be delivered (bid in 5,000 lb. lots minimum.)	_____ pounds	\$_____
6	*Overcup Oak Acorns	12,000 pounds	\$_____
6A	*Pounds able to be delivered (bid in 5,000 lb. lots minimum.)	_____ pounds	\$_____
7	Pin Oak Acorns	2,000 pounds	\$_____
8	*Shumard Oak Acorns	7,500 pounds	\$_____
8A	*Pounds able to be delivered (bid in 5,000 lb. lots minimum.)	_____ pounds	\$_____
9	Water Oak Acorns	5,000 pounds	\$_____
10	*White Oak Acorns	5,500 pounds	\$_____
10A	*Pounds able to be delivered (bid in 5,000 lb. lots minimum.)	_____ pounds	\$_____

* Bidder **must** note the pounds of acorns that **shall** be available at the price bid. See section 1.15 for details.

OFFICIAL BID PRICE SHEET - Continued

Bid pricing **must** be typed or printed in ink

Item	Description	Estimated Quantity	Price per pound
11	Willow Oak Acorns	5,000 pounds	\$_____
12	Native Pecan	3,300 pounds	\$_____
13	Persimmon Seeds	1,500 pounds	\$_____
14	Water Hickory	2,750 pounds	\$_____
15	Southern Red Oak	500 pounds	\$_____

STANDARD TERMS AND CONDITIONS

1. **GENERAL:** Any special terms and conditions included in the invitation for bid 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.
2. **ACCEPTANCE AND REJECTION:** 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.
3. **BID SUBMISSION:** Bids **must** be submitted to the Office of State Procurement on this form, with attachments when appropriate, on or before the date and time specified for bid opening. 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 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.
4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices are firm and not subject to escalation unless otherwise specified in the bid invitation. 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 invitation.
5. **QUANTITIES:** Quantities stated in **term contracts** are estimates only, and are not guaranteed. 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:** Any catalog brand name or manufacturer's reference used in the bid invitation 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 reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the state may require the bidder to supply additional descriptive material. The bidder guarantees that the product offered **will** meet or exceed specifications identified in this bid invitation. If the bidder takes no exception to specifications or reference data in this bid he **will** be required to furnish the product according to brand names, numbers, etc., as specified in the invitation.
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 invitation. The bidder hereby guarantees that everything furnished hereunder **will** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **will** conform thereto and **will** serve the function for which it was furnished. The bidder further guarantees that if the items furnished hereunder are to be installed by the bidder, such items **will** function properly when installed. The bidder also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The bidder's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the state. Each sample should be marked with the bidder's name and address, bid number and item number. If samples are not destroyed during reasonable examination they **will** be returned at bidder's expense, if requested, within ten days following the opening of bids. All demonstrators **will** be returned after reasonable examination.
9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the bidder.
10. **AMENDMENTS:** The bid 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 bidder. 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 bidder.
13. **LENGTH OF CONTRACT:** The invitation for bid **will** show the period of time the term contract **will** be in effect.

14. **DELIVERY ON FIRM CONTRACTS:** The invitation for bid **will** show the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **will** be borne by the vendor.
15. **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., unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
16. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
17. **DEFAULT:** All commodities furnished **will** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the bidders list or suspension of eligibility for award.
18. **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.
19. **INVOICING:** The contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the invitation for bid, (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.
20. **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.
21. **PATENTS OR COPYRIGHTS:** 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.
22. **ASSIGNMENT:** Any contract entered into pursuant to this invitation for bid is not assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
23. **CLAIMS:** Any claims the Contractor may assert under this Agreement **shall** be brought before the Arkansas State Claims Commission ("Commission"), which **shall** have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor **shall** continue to provide the goods under this Agreement even in the event that the Contractor has a claim pending before the Commission.
24. **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 goods or services and there are no longer funds legally available to pay for the goods or services, the contractor may file a claim.
25. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that: (a) the bidder **will** not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the bidder **will** state that all qualified applicants **will** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder **will** furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the bidder **will** include the

provisions of items (a) through (d) in every subcontract so that such provisions **will** be binding upon such subcontractor or vendor.

- 26. CONTINGENT FEE:** The bidder guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business.
- 27. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this invitation for bid, the bidder named on the front of this invitation for bid, 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.
- 28. 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.