



STATE OF ARKANSAS

OFFICE OF STATE PROCUREMENT

1509 West 7th Street, Room 300
Little Rock, Arkansas 72201-4222

REQUEST FOR PROPOSAL BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION

| | | | |
|----------------------|--|----------------------|------------|
| Solicitation Number: | SP-19-0039 | Solicitation Issued: | 12/19/2018 |
| Description: | On-Site Lab System Services | | |
| Agency: | Arkansas Department of Health – Public Health Laboratory | | |

SUBMISSION DEADLINE FOR RESPONSE

| | | | |
|------------------------|-----------------|------------------------|-------------------------|
| Proposal Opening Date: | January 8, 2019 | Proposal Opening Time: | 1:00 p.m., Central Time |
|------------------------|-----------------|------------------------|-------------------------|

Deliver proposal submissions for this Request for Proposal to the Office of State Procurement on or before the designated proposal opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit proposals at the designated location on or before the proposal opening date and time. Proposals received after the designated opening date and time may be considered late and may be returned to the Prospective Contractor without further review. It is not necessary to return "no bids" to OSP.

DELIVERY OF RESPONSE DOCUMENTS

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

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION

| | | | |
|----------------|---|------------------------------|--------------|
| OSP Buyer: | Stephanie Cellers | Buyer's Direct Phone Number: | 501-371-6065 |
| Email Address: | Stephanie.Cellers@dfa.arkansas.gov | OSP's Main Number: | 501-324-9316 |
| OSP Website: | http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx | | |

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

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

1.1 PURPOSE

The Office of State Procurement (OSP) issues this Request for Proposals (RFP) on behalf of Arkansas Department of Health (ADH) to obtain proposals and a contract to accommodate ADH and provide maintenance and upgrade support for the STARLIMS Lab Information Management System (LIMS) in the Public Health Laboratory (PHL). The LIMS upgrade is from STARLIMS version 9 to the Public Health 12 (PH12) version. Maintenance and operations support is required for lab areas already on PH12, while upgrade support is needed for areas to be migrated from version 9. STARLIMS, a product of Abbott Informatics, is a web-based, off-the-shelf LIMS. STARLIMS is used by the CDC and many state public health labs for tracking and reporting lab testing information. It is critical that STARLIMS is upgraded to maintain the necessary data for regulatory compliance with governing bodies including the College of American Pathologists (CAP), the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA).

1.2 TYPE OF CONTRACT

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

1.3 ISSUING AGENCY

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

1.4 PROPOSAL OPENING LOCATION

Proposals will be opened at the following location:

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

1.5 ACCEPTANCE OF REQUIREMENTS

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

1.6 DEFINITION OF TERMS

- A. The State Procurement Official has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.
- B. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. "Prospective Contractor" means a person who submits a proposal in response to this solicitation.
- D. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- E. The terms "Request for Proposal", "RFP," "Bid Solicitation," and "Solicitation" are used synonymously in this document.

- F. "Responsive proposal" means a proposal submitted in response to this solicitation that conforms in all material respects to this RFP.
- G. "Proposal Submission Requirement" means a task a Prospective Contractor **must** complete when submitting a proposal response. These requirements will be distinguished by using the term "shall" or "must" in the requirement.
- H. "Requirement" means a specification that a Contractor's product and/or service **must** perform during the term of the contract. These specifications will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- I. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.
- J. Acronyms used throughout the solicitation:

| <u>Acronym</u> | <u>Description</u> |
|----------------|---|
| ADH | Arkansas Department of Health |
| CAP | College of American Pathologists |
| CLIA | Clinical Lab Improvement Amendment |
| EPA | Environmental Protection Agency |
| FDA | Food and Drug Administration |
| HIPAA | Health Insurance Portability & Accountability Act of 1996 |
| HL7 | Health Level 7 Electronic Messaging Standard |
| IT | Information Technology |
| LIMS | Lab Information Management System |
| PHL | Public Health Laboratory |
| PWS | Public Water System |
| QA | Quality Assurance |
| RDBMS | Relational Database Management System |
| SDMS | STARLIMS Scientific Data Management System |
| SQL | Structured Query Language |

1.7 RESPONSE DOCUMENTS

A. Original Technical Proposal Packet

1. The following items are Proposal Submission Requirements and **must** be submitted in the original *Technical Proposal Packet*.
 - a. Original signed *Proposal Signature Page*. (See *Technical Proposal Packet*.)
 - b. One (1) original hard copy of the proposal response which includes:
 - i. Technical Proposal response to the Information for Evaluation section included in the *Technical Proposal Packet*. Proposal response **must** be in the English language.
 - ii. Response to the *Official Bid Price Sheet*. Pricing **must** be proposed in U.S. dollars and cents
 - The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". A Prospective Contractor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.
2. The following items should be submitted in the original *Technical Proposal Packet*.
 - a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions*, #27. *Disclosure*.)
 - b. Copy of Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)

- c. Proposed Subcontractors Form. (See Subcontractors.)
 - d. Signed *Attachment A: ADH Business Associate Agreement*.
3. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

B. Additional Copies and Redacted Copy of the *Technical Proposal Packet* and *Official Bid Price Sheet*

In addition to the original *Technical Proposal Packet* and the *Official Bid Price Sheet*, the following items should be submitted:

1. Additional Copies of the *Technical Proposal Packet*
 - a. Three (3) complete hard copies (marked "COPY") of the *Technical Proposal Packet*.
 - b. Four (4) electronic copies of the *Technical Proposal Packet*, preferably on flash drives and in PDF format. CDs will also be acceptable. Do not send electronic copies via email or fax.
 - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy governs.
 - d. If OSP requests additional copies of the proposal, the copies **must** be delivered within the timeframe specified in the request.
2. Additional Copies of the *Official Bid Price Sheet*
 - a. Prospective Contractor should also submit one (1) electronic copy of the *Official Bid Price Sheet*, preferably on a flash drive and in PDF format. A CD will also be acceptable. Do not send electronic copies via email or fax.
 - i. *The Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". Prospective Contractor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.
3. One (1) redacted (marked "REDACTED") copy the original *Technical Proposal Packet*, preferably on a flash drive and in PDF format. A CD will also be acceptable. Do not send electronic copies via email or fax. (See *Proprietary Information*.)

1.8 ORGANIZATION OF RESPONSE DOCUMENTS

- A. It is strongly recommended that Prospective Contractors adhere to the following format and suggestions when preparing their *Technical Proposal* response.
- B. The original *Technical Proposal Packet* and all copies should be arranged in the following order.
 - *Proposal Signature Page*.
 - *Proposed Subcontractors Form*.
 - Signed Addenda, if applicable.
 - E.O. 98-04 – *Contract Grant and Disclosure Form*.
 - *Equal Opportunity Policy*.
 - *Technical Proposal* response to the *Information for Evaluation* section of the *Technical Proposal Packet*.

1.9 CLARIFICATION OF BID SOLICITATION

- A. Submit any questions requesting clarification of information contained in this *Bid Solicitation* in writing via email by 11:59 p.m., Central Time on or before Friday, December 28, 2018 to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.

1. The Prospective Contractor **shall** submit questions using *Response Template O-1 Written Questions*. The questions **must** be submitted in the original file format "Microsoft Excel" as denoted in *Template O-1*. For each question submitted, Prospective Contractor should reference the specific solicitation item number to which the question refers.
 2. Prospective Contractors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on Monday, December 31, 2018. If Prospective Contractor questions are unclear or non-substantive in nature, the State may request clarification of a question(s) or reserves the right not to respond to that question(s).
- B. The Prospective Contractor should notify the OSP buyer of any term, condition, etc., that precludes the Prospective Contractor from submitting a compliant, responsive proposal. Prospective Contractors should note that it is the responsibility of the Prospective Contractor to seek resolution of all such issues, including those relating to the terms and conditions of the contract, prior to the submission of a proposal.
- C. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the proposal opening.
- D. An oral statement by OSP will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by OSP.
- E. Prospective Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

1.10 PROPOSAL SIGNATURE PAGE

- A. An official authorized to bind the Prospective Contractor(s) to a resultant contract **must** sign the *Proposal Signature Page* included in the *Technical Proposal Packet*.
- B. Prospective Contractor's signature on this page signifies Prospective Contractor's agreement to and compliance with all Requirements of this RFP, and that any exception that conflicts with a Requirement or Proposal Submission Requirement of this *Bid Solicitation* will cause the Prospective Contractor's proposal to be rejected.

1.11 SUBCONTRACTORS

- A. Prospective Contractor should complete, sign and submit the *Proposed Subcontractors Form* included in the *Technical Proposal Packet*.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Technical Proposal Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.
- C. The utilization of any proposed subcontractor is subject to approval by the State agency.

1.12 PRICING

- A. Prospective Contractor(s) **shall** include all pricing on the Official Bid Price Sheet(s) only. If any cost is not included by the successful Contractor but is subsequently incurred in order to achieve successful operation, the Contractor **shall** bear this additional cost. The *Official Bid Price Sheet* is provided as a separate excel file posted with this *Bid Solicitation*.
- B. To allow time to evaluate proposals, prices **must** be valid for 90 days following the proposal opening.
- C. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". DO NOT submit any ancillary information not related to actual pricing on the Official Bid Price sheet or in the sealed pricing package.

1.13 PRIME CONTRACTOR RESPONSIBILITY

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

1.14 INDEPENDENT PRICE DETERMINATION

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

1.15 PROPRIETARY INFORMATION

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
- C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
- D. By so redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- E. Under no circumstances will pricing information be designated as confidential.
- F. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Technical Proposal Packet*. A CD is also acceptable. Do not submit documents via email or fax.
- G. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- H. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- I. The redacted copy will be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the Prospective Contractor.
- J. If a redacted copy of the submission documents is not provided with Prospective Contractor's response packet, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- K. If the State deems redacted information to be subject to FOIA, the Prospective Contractor will be contacted prior to release of the documents.
- L. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

1.16 CAUTION TO PROSPECTIVE CONTRACTORS

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

1.17 REQUIREMENT OF ADDENDUM

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

1.18 AWARD PROCESS**A. Successful Contractor Selection**

The Grand Total Score for each Prospective Contractor, which is the sum of the Technical Score and Cost Score, will be used to determine the ranking of proposals. The State may move forward to negotiations with those responsible Prospective Contractors determined, based on the ranking of the proposals, to be reasonably susceptible of being selected for award.

B. Negotiations

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

C. Anticipation to Award

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

D. Issuance of Contract

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

1.19 INTERGOVERNMENTAL/COOPERATIVE USE OF COMPETITIVELY BID PROPOSALS AND CONTRACTS

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

1.20 MINORITY AND WOMEN-OWNED BUSINESS POLICY

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

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

B. A women-owned business is defined by Act 1080 of the 91st General Assembly Regular Session 2017 as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.

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

1.21 EQUAL OPPORTUNITY POLICY

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

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

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

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

1.22 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

A. Pursuant to Arkansas Code Annotated § 19-11-105, Contractor(s) providing services **shall** certify with OSP that they do not employ or contract with illegal immigrants.

B. By signing and submitting a response to this *Bid Solicitation*, a Prospective Contractor agrees and certifies that they do not employ or contract with illegal immigrants. If selected, the Prospective Contractor certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.

1.23 RESTRICTION OF BOYCOTT OF ISRAEL

A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.

C. By checking the designated box on the Proposal Signature Page of the response packet, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

1.24 PAST PERFORMANCE

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

1.25 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM

The Prospective Contractor's solution **must** comply with the State's shared Technical Architecture Program which is a set of policies and standards that can be viewed at: <https://www.dfa.arkansas.gov/intergovernmental-services/state-technology-cost-analysis/architecture-compliance/>. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.

1.26 VISA ACCEPTANCE

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

1.27 PUBLICITY

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

1.28 PRIVACY REQUIREMENTS

- A. The Contractor **shall** comply with the requirements of the Arkansas Personal Information Protection Act and any other State/Federal laws, regulations, rules, and policies regarding the privacy and security of information. The Arkansas Personal Information Protection Act can be found here: <https://law.justia.com/codes/arkansas/2017/title-4/subtitle-7/chapter-110/>.
- B. The Contractor **shall** provide for physical and electronic security of all Protected Health Information generated or acquired by the Contractor in implementation of the contract, in compliance with Health Insurance Portability and Accountability (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, and consistent with the Business Associate Agreement executed between the parties.
- C. Prior to contract award, the Contractor **shall** sign *Attachment A: ADH Business Associate Agreement*.

1.29 RESERVATION

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

SECTION 2 – REQUIREMENTS

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

2.1 INTRODUCTION

ADH is seeking on-site resource(s) to accommodate ADH and provide maintenance and upgrade support for the STARLIMS Lab Information Management System (LIMS) in the Public Health Laboratory (PHL). The LIMS upgrade is from STARLIMS version 9 to the Public Health 12 (PH12) version. Maintenance and operations support is required for lab areas already on PH12, while upgrade support is needed for areas to be migrated from version 9. Contractor will assist ADH in maintaining STARLIMS to comply with any new mandates, test methods, or reporting requirements issued throughout the life of the contract. Knowledge transfer to ADH's lab IT team and training to interdepartmental lab users is required to ensure successful transition to STARLIMS PH12.

PHL areas include, but may not be limited to: Clinical Microbiology, Immunology, Molecular Biology, Tuberculosis/Mycology, Inorganic Chemistry, Organic Chemistry, Radiochemistry, Milk Bacteriology, Water Bacteriology, Food Bacteriology and Food Chemistry. Currently, Immunology and Food Bacteriology labs are using STARLIMS PH12.

2.2 CONTRACTOR PERSONNEL

- A. Prospective Contractor **must** propose personnel to deliver services under the direction of the ADH IT lab supervisor.
1. Prospective Contractor should propose no more than two (2) personnel.
 2. Each proposed personnel **shall** meet the Minimum Mandatory Qualifications.
 3. ADH's lab IT team includes programming staff with broad experience in STARLIMS v9. The lab IT team is responsible for maintenance and operations support of the LIMS and will be available to work with the Contractor as needed.
- B. Contractor's personnel **shall** work an estimated forty (40) hours per week. Hours may vary depending on the need for services.
1. ADH **must** approve hours for personnel prior to rendering services. ADH reserves the right to accept or decline hours requested.
 2. This should not preclude additional hours if two (2) Contractor personnel are assigned and working concurrently.
 3. Regular business hours are 8:00 a.m. to 4:30 p.m. Monday thru Friday, excluding weekends and holidays. Contractor **shall** perform work on-site at ADH offices during regular business hours with some exceptions for technical support, subject to approval by the ADH lab IT supervisor. (See G. *Technical Support*)
 4. Any travel related expenses **shall** be the responsibility of the Contractor.
- C. Minimum Mandatory Qualifications
At a minimum, each Prospective Contractor's proposed personnel **shall** have:
1. Five (5) years personnel experience providing LIMS services to government agencies;
 2. Five (5) years personnel experience with STARLIMS V9;
 3. Five (5) years personnel experience with STARLIMS V10/11;
 4. Three (3) years personnel experience with Crystal Reports;
 5. Five (5) years personnel experience with MSSQL RDBMS; and

6. Three (3) years personnel experience with the implementation and integration of the SDMS software and STARLIMS to automate the population of results from analytical instrumentation with varying outputs.

D. Changes and Replacements of Contractor Personnel

1. Contractor **shall** seek and receive ADH approval before hiring or replacing any proposed personnel. Changes to the proposed personnel **shall** require prior written permission from ADH. The Contractor **shall** provide ADH with written notification of anticipated vacancies of personnel within two (2) business days of receiving the individual's resignation notice, the Contractor's notice to terminate an individual, or the position otherwise becoming vacant.
2. Replacements for personnel **shall** have qualifications that meet or exceed the Minimum Mandatory Qualifications of this RFP. The Contractor **shall** provide the ADH lab IT supervisor with status update reports every week on the progress of the replacement candidate recruiting process until a qualified candidate is hired. The Contractor should have in place a qualified candidate within thirty (30) calendar days of the written notification of anticipated vacancies.
3. ADH has the right to require Contractor replacement of personnel for any reason not limited to inadequate skills, team work, and responsive attitude etc. barring EEO guidelines.

2.3 SCOPE OF WORK

A. System Upgrade

1. Contractor **shall** lead the effort to upgrade the existing legacy LIMS from STARLIMS v9 to STARLIMS PH12.
 - a. The LIMS upgrade **must** be done by lab area prioritized by the ADH lab IT supervisor.
 - b. Contractor **shall** work under the direction of the ADH IT lab supervisor to ensure effort is allocated properly to the specified lab areas.
 - c. At present, the primary focus is to upgrade all clinical labs. Environmental labs are anticipated to be upgraded later, subject to available funding. Refer to *Attachment B: PHL Areas – Tests and Methods* for a listing of the clinical and environmental labs and their respective testing methods.
2. Each lab's tests and methods **must** be migrated to STARLIMS PH12.
3. Each lab's static data such as dropdown selections **must** be migrated to STARLIMS PH12.

B. Ongoing Support

Currently, the Immunology and Food Bacteriology labs are already implemented in STARLIMS version PH12. Contractor **shall** provide maintenance and operations support for those labs while upgrades are underway in other lab areas.

C. Development and Testing

1. Contractor **shall** use agile methodology to lead development efforts to configure STARLIMS PH12 for lab areas still using version 9. Contractor **shall** utilize MSSQL RDBMS, SDMS, and Crystal Reports as needed for database management, interfacing, and report creation.
2. Contractor **shall** work collaboratively with ADH lab supervisors, analysts, and IT staff to identify and clarify detailed system requirements for enhancing the LIMS based on established lab processes.
3. Contractor **shall** lead testing and validation efforts to meet regulatory requirements. Testing includes any necessary adjustments to meet requirements and complete error-free scripted final validation and approval by ADH IT lab supervisor. Contractor **shall** provide documentation of testing and validation efforts. Contractor **shall** perform system configuration according to requirements, assist users with testing, and document final scripted validation efforts per the lab's regulatory requirements.

D. Integration

1. STARLIMS PH12 **must** be integrated with existing data management systems, including but not limited to:
 - a. Health Records system interface
 - b. Business Objects
 - c. HL7 Configuration
 - d. Various instrument data management applications such as Evolis and GeneExpert
2. Additional integrations may be needed but are subject to future mandates and available funding.

E. Training and Documentation

1. **ADH IT Lab Team:**

- a. Contractor **shall** provide knowledge transfer and training of ADH lab IT staff which currently consists of five (5) personnel but is subject to change over the term of the contract.
- b. Contractor **shall** ensure proper knowledge transfer throughout the life of the contract. As determined by the ADH lab IT supervisor, this includes “shoulder- to-shoulder” work with ADH resources so that knowledge about STARLIMS PH12 is transferred to ADH lab IT staff.
- c. Contractor **shall** provide training on configuration and development of new applications and data management functions of the system.
- d. Contractor **shall** provide appropriate documentation to cover the material involved.
 - i. Documentation **must** describe the general steps for configuring the LIMS using Starlims PH12 with sufficient detail that the ADH lab IT staff can reasonably follow the process and become familiar with the PH12 configuration tools used.
 - ii. Training and documentation materials are subject to the approval of the ADH lab IT supervisor.
 - iii. Printable materials are sufficient, to be saved in electronic format (e.g. PDF or Word).

2. **ADH Interdepartmental Lab End Users:**

- a. Contractor **shall** provide training to sixty (60) to eighty (80) ADH interdepartmental lab end users. Contractor may utilize “train-the-trainer” where appropriate.
- b. Contractor **shall** provide on-site training workshops for end users upon ADH request. Facility space and equipment will be provided by ADH.
- c. Contractor **shall** develop and provide end-user training including written reference materials specific to each area of the lab.
 - i. As each lab area prepares for go-live, training **shall** be provided to the lab staff from that area who will be using the system. During the development process for any particular lab area, individualized training may be necessary to familiarize key staff with the system. The degree of individualized training needed for each lab area will vary depending on work flow complexity and number of analysts working in that area.
 - ii. Contractor **shall** provide a ‘quick start’ guide for each lab area. This guide will serve as a basis for the supervisor of the lab area as they create a more detailed, formal Standard Operating Procedure (SOP).
 - iii. Training and documentation materials are subject to the approval of the ADH lab IT supervisor.

- iv. Printable materials are sufficient, to be saved in electronic format (e.g. PDF or Word).

F. Reporting

1. Contractor **shall** submit time sheets to the lab IT supervisor on a weekly basis. Time sheets **must** include details about the week's activities, progress towards goals, and any issues that arose that might affect the schedule.
2. As determined by the lab IT supervisor, the Contractor **shall** develop and provide a Work Plan. The Contractor **shall not** perform any work until the Work Plan is approved by the lab IT supervisor. The Work Plan **must** include all key elements, such as details of responsibilities, timelines, durations, milestone dates, deliverables, Contractor personnel hours, and all critical dependencies.

G. Technical Support

1. Contractor **shall** provide ongoing LIMS technical support during the contract term as needed by the PHL for issues arising related to the PH12 upgrade.
2. Contractor **shall** resolve bugs in the Public Health Lab as soon as possible to avoid missing lab turnaround times, which vary depending on the test being done.
3. Contractor **shall** identify and correct application defects, perform and document problem resolution.
4. Contractor **shall** assist with system administration, monitoring and file maintenance as needed.
5. Contractor **shall** provide technical support during regular ADH business hours, excluding State holidays. Technical support may be on-site, remote-access, and/or by phone as directed by ADH.
6. Some technical support may be required outside regular business hours. As the need arises, Contractor **shall** provide technical support under the direction of the lab IT supervisor. Technical support provided outside regular business hours may be provided via remote access subject to approval of the lab IT supervisor. Contractor **shall not** charge any additional fees for work performed outside of regular business hours.

2.4 **SECURITY REQUIREMENTS**

- A. Data **must** reside and remain within the United States of America.
- B. Data at rest and in transit **must** be encrypted and, at minimum, **must** be compliant with Federal Information Processing Standard (FIPS) Publication 140-2 level 1. Encryption methodologies **must** meet current standards of the National Institute of Standards and Technology (NIST) and FIPS which can be found at: <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.140-2.pdf>

2.5 **OWNERSHIP OF DATA**

- A. The State **shall** retain sole ownership, right, title and interest to all data stored in the web-based system. At the end of the contract (including cancellation or expiration), the Contractor **shall** make available an encrypted export of data.
- B. Data collected and stored within the system **must** be available throughout the duration of the contract.

2.6 **PERFORMANCE STANDARDS**

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided that a Contractor **shall** meet in order to avoid assessment of damages.
- B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration.
- C. The State has the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance

standards will be made in good faith following acceptable industry standards, and may include the input of the Contractor so as to establish standards that are reasonably achievable.

- D. All changes made to the Performance Standards will become an official part of the contract.
- E. Performance Standards will continue throughout the aggregate term of the contract.
- F. Failure to meet the minimum Performance Standards as specified will result in the assessment of damages.
- G. In the event a Performance Standard is not met, the Contractor will have the opportunity to defend or respond to the insufficiency. The State has the right to waive damages if it determines there were extenuating factors beyond the control of the Contractor that hindered the performance of services. In these instances, the State has final determination of the performance acceptability.
- H. Should any compensation be owed to the State agency due to the assessment of damages, Contractor **shall** follow the direction of the State agency regarding the required compensation process.

SECTION 3 – CRITERIA FOR SELECTION

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

3.1 TECHNICAL PROPOSAL SCORE

- A. OSP will review each *Technical Proposal Packet* to verify submission Requirements have been met. *Technical Proposals Packets* that do not meet submission Requirements will be rejected and will not be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying Technical Proposals. Evaluation will be based on Prospective Contractor's response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
 1. Members of the Evaluation Committee will individually review and evaluate proposals and complete an Individual Score Worksheet for each proposal. Individual scoring for each Evaluation Criteria will be based on the following Scoring Description.

| Quality Rating | Quality of Response | Description | Confidence in Proposed Approach |
|----------------|---------------------|---|---------------------------------|
| 5 | Excellent | When considered in relation to the RFP evaluation factor, the proposal squarely meets the requirement and exhibits outstanding knowledge, creativity, ability or other exceptional characteristics. Extremely good. | Very High |
| 4 | Good | When considered in the relation to the RFP evaluation factor, the proposal squarely meets the requirement and is better than merely acceptable. | High |
| 3 | Acceptable | When considered in relation to the RFP evaluation factor, the proposal is of acceptable quality. | Moderate |
| 2 | Marginal | When considered in relation to the RFP evaluation factor, the proposal's acceptability is doubtful. | Low |
| 1 | Poor | When considered in relation to the RFP evaluation factor, the proposal is inferior. | Very Low |
| 0 | Unacceptable | When considered in relation to the RFP evaluation factor, the proposal clearly does not meet the requirement, either because it was left blank or because the proposal is unresponsive. | No Confidence |

2. After initial individual evaluations are complete, the Evaluation Committee members will meet to discuss their individual ratings. At this consensus scoring meeting, each member will be afforded an opportunity to discuss his or her rating for each evaluation criteria.
3. After committee members have had an opportunity to discuss their individual scores with the committee, the individual committee members will be given the opportunity to change their initial individual scores, if they feel that is appropriate.
4. The final individual scores of the evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each proposal.
5. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.

C. The *Information for Evaluation* section has been divided into sub-sections.

1. In each sub-section, items/questions have each been assigned a maximum point value of five (5) points. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
2. The agency has assigned Weighted Percentages to each sub-section according to its significance.

| Information for Evaluation Sub-Sections | Maximum Raw Points Possible | Sub-Section's Weighted Percentage | * Maximum Weighted Score Possible |
|---|-----------------------------|-----------------------------------|-----------------------------------|
| 1. Minimum Mandatory Qualifications | 5 | 40% | 280 |
| 2. Resumes | 5 | 25% | 175 |
| 3. Collaboration | 5 | 25% | 175 |
| 4. Performance Standards | 5 | 10% | 70 |
| Total Technical Score | 20 | 100% | 700 |

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

D. The proposal's weighted score for each sub-section will be determined using the following formula:

$$(A/B) \times C = D$$

A = Actual Raw Points received for sub-section in evaluation
 B = Maximum Raw Points possible for sub-section
 C = Maximum Weighted Score possible for sub-section
 D = Weighted Score received for sub-section

- E. The proposal's weighted scores for sub-sections will be added to determine the Total Technical Score for the Proposal.
- F. The Prospective Contractors with the top three technical proposal scores after the completion of the technical proposal evaluation will move forward in the solicitation process. The pricing for proposals which do not move forward will not be scored.

3.2 **COST SCORE**

- A. When pricing is opened for scoring, the maximum amount of cost points will be given to the proposal with the lowest Total Annual Price as shown in Table One (1) on the Official Bid Price Sheet. (See *Grand Total Score* for maximum points possible for cost score.)
- B. The amount of cost points given to the remaining proposals will be allocated by using the following formula:

$$(A/B) \times (C) = D$$

A = Lowest Total Cost
 B = Second (third, fourth, etc.) Lowest Total Cost
 C = Maximum Points for Lowest Total Cost
 D = Total Cost Points Received

3.3 GRAND TOTAL SCORE

The Technical Score and Cost Score will be added together to determine the Grand Total Score for the proposal. The Prospective Contractor's proposal with the highest Grand Total Score will be selected as the apparent successful Contractor. (See *Award Process*.)

| | Maximum Points Possible |
|---|-------------------------|
| Technical Proposal | 700 |
| Cost | 300 |
| Maximum Possible Grand Total Score | 1,000 |

3.4 PROSPECTIVE CONTRACTOR ACCEPTANCE OF EVALUATION TECHNIQUE

- A. Prospective Contractor **must** agree to all evaluation processes and procedures as defined in this solicitation.
- B. The submission of a *Technical Proposal Packet* signifies the Prospective Contractor's understanding and agreement that subjective judgments will be made during the evaluation and scoring of the Technical Proposals.

SECTION 4 – GENERAL CONTRACTUAL ITEMS

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

4.1 PAYMENT AND INVOICE PROVISIONS

A. Forward invoices to:

Arkansas Department of Health
Attn: Accounts Payable
4815 West Markham Street, Slot #28
Little Rock, AR 72205

- B. Invoices submitted to ADH **must** match the approved number of hours. Inaccurate invoices will be returned to the Contractor for revision.
- C. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services by the agency.
- D. Do not invoice the State in advance of delivery and acceptance of any goods or services.
- E. Payment will be made only after the Contractor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- F. The Contractor should invoice the agency by an itemized list of charges. The agency's Purchase Order Number and/or the Contract Number should be referenced on each invoice.
- G. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- H. Selected Contractor **must** be registered to receive payment and future *Bid Solicitation* notifications. Prospective Contractors may register on-line at <https://www.ark.org/contractor/index.html>.

4.2 GENERAL INFORMATION

A. The State will not:

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

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

- C. The laws of the State of Arkansas govern this contract.
- D. A contract is not effective prior to award being made by a State Procurement Official.

4.3 **CONDITIONS OF CONTRACT**

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

4.4 **STATEMENT OF LIABILITY**

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

4.5 **RECORD RETENTION**

- A. Contractor **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, Contractor **shall** grant access to State or Federal Government entities or any of their duly authorized representatives.
- B. Contractor **shall** make financial and accounting records available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Contractor **shall** maintain all pertinent protected health information, as defined by the Privacy Rule promulgated pursuant to HIPAA, available for six (6) years or as otherwise required by HIPAA.
- D. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

4.6 **PRICE ESCALATION**

- A. Price increases will be considered at the time of contract renewal.
- B. The Contractor **shall** provide to OSP a written request for the price increase. The request **must** include supporting documentation demonstrating that the increase in contract price is based on an increase in market price. OSP has the right to require additional information pertaining to the requested increase.

- C. Increases will not be considered to increase profit or margins.
- D. OSP has the right to approve or deny the request.

4.7 CONFIDENTIALITY

- A. The Contractor, Contractor's subsidiaries, and Contractor's employees will be bound to all laws and to all Requirements set forth in this *Bid Solicitation* concerning the confidentiality and secure handling of information of which they may become aware of during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State has the right to cancel the contract on these grounds.
- C. Section 20-13-819 (c): "All information shall be treated in a manner consistent with all state and federal privacy requirements, including without limitation, the federal Health and Portability and Accountability Act of 1996 privacy rule, 45 C.F.R. Section 164.512(i)."
- D. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

4.8 CONTRACT INTERPRETATION

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

4.9 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.
- 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.
- C. If upon cancellation the Contractor has provided commodities or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

4.10 SEVERABILITY

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

SECTION 5 – STANDARD TERMS AND CONDITIONS

- **Do not provide responses to items in this section.**
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any resulting contract if any or all parts of the bid are accepted by the State of Arkansas.
- 2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
- 3. **BID SUBMISSION:** Original Proposal Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Proposal Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be rejected. The person signing the bid shall have title or authority to bind his firm in a contract. Multiple proposals **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
- 4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
- 5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Contractor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
- 6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and is used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the Contractor to supply additional descriptive material. The Contractor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Contractors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.
- 7. **GUARANTY:** All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The Contractor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The Contractor **shall** further guarantee that if the items furnished hereunder are to be installed by the Contractor, such items **shall** function properly when installed. The Contractor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The Contractor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
- 8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the Contractor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at Contractor's expense. After reasonable examination, all demonstrators will be returned at Contractor's expense.
- 9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the Contractor.
- 10. **AMENDMENTS:** Contractor's proposals cannot be altered or amended after the bid opening except as permitted by regulation.
- 11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
- 12. **AWARD:** Term Contract: A contract award will be issued to the successful Contractor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful Contractor.
- 13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the Contractor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **shall** be borne by the Contractor.

14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if the Contractor delivers within the time required and the agency cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting Contractor. The Contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the Contractors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The Contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Contractor hereunder or in contemplation hereof or developed by the Contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the Contractor's expense to the F.O.B. point provided by the agency or by OSP. Contractor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The Contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the Contractor agrees that: (a) the Contractor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the Contractor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.
23. **CONTINGENT FEE:** The Contractor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.
24. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor named on the *Proposal Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
25. **DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.