



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-20-0093	Solicitation Issued:	June 16, 2020
Description:	Pharmacy Benefit Manager		
Agency:	Arkansas Insurance Department		

SUBMISSION DEADLINE FOR RESPONSE			
Proposal Opening Date:	July 31, 2020	Proposal Opening Time:	2:00 p.m., Central Time
<p>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.</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p>Office of State Procurement 1509 West 7th Street, Room 300 Little Rock, AR 72201-4222</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address. Prospective Contractors assume all risk for timely, properly submitted deliveries.</p>
Proposal's Outer Packaging:	<p>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.</p> <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:	Brandi Schroeder	Buyer's Direct Phone Number:	501-682-4169
Email Address:	Brandi.schroeder@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx		

SECTION 1 – GENERAL INSTRUCTIONS AND INFORMATION

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

1.1 PURPOSE

The Office of State Procurement issues this Request for Proposals (RFP) on behalf of the Arkansas Insurance Department (AID) to obtain pricing and a contract for a Pharmacy Benefit Manager (PBM) for the Public Employee Claims Division (PECD).

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 March 1, 2021, except that the actual contract start date may be adjusted unilaterally by the State for up to three (3) calendar months beyond the anticipated starting date. 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 two (2) years. Upon mutual agreement by the Contractor and agency, the contract may be renewed by OSP for up to five (5) 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

The proposal opening may be viewed online as follows:

Zoom Meeting Link: <https://zoom.us/j/95890634405?pwd=amNpeEw5MmIDcm04NEN2ZGc1aVN6dz09>

Meeting ID: 958 9063 4405

Meeting Password: 067284

Dial-In Information: 877 853 5257 US Toll-free

888 475 4499 US Toll-free

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. "Business Day" means a day occurring Monday through Friday excluding State holidays as listed on the Arkansas Secretary of State's website at <https://www.sos.arkansas.gov/news/state-holiday-calendar/>.
- D. "Business Hour" means an hour occurring between 8:00 a.m. and 5:00 p.m., Central Time on Business Days.
- E. "Claimant" means a Public Employee determined by PECD as eligible to receive workers' compensation prescription benefits through the Pharmacy Program described in this RFP.
- F. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- G. "Entity" means a State agency, institution, authority, department, and other agencies of the State determined by applicable State laws, rules, and participation procedures to receive benefits through the Pharmacy Program described in this RFP.
- H. "Go-Live Date" refers to the date immediately following the Implementation Period whereby the Contractor **shall** begin providing all Pharmacy Benefit Management services required by this solicitation, anticipated to be July 1, 2021.
- I. "Implementation Period" refers to the period of time beginning on the starting date of the contract, anticipated to be March 1, 2021 during which the Contractor **shall** perform all the start-up and implementation activities required to achieve full implementation by the Go-Live Date.
- J. "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.
- K. "Prospective Contractor" means a person who submits a proposal in response to this solicitation.
- L. "Public Employee" means employees of a State agencies, public colleges or universities (regardless of injury date), employees of a cities or counties in the State with injury dates prior to July 1, 1986, and employees of public-school districts with injury dates prior to July 1, 1994.
- M. The terms "Request for Proposal," "RFP," "Bid Solicitation," and "Solicitation" are used synonymously in this document.
- N. "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.
- O. "Responsive Proposal" means a proposal submitted in response to this Solicitation that conforms in all material respects to this RFP.
- P. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this Solicitation, that obligation is limited to the State agency using such a contract.

1.7 RESPONSE DOCUMENTS

- A. Each proposal submitted **must** include one (1) original hardcopy of the *Technical Proposal Packet* in the English language that **must** include:
 - 1. One (1) original signed *Proposal Signature Page* that **must** be signed by an official authorized to bind the Prospective Contractor to a resultant contract.
 - 2. Prospective Contractor's response to the *Information for Evaluation* items/questions.

3. Completed *Official Bid Price Sheet* (with pricing proposed in the U.S. dollars and cents) sealed separately and clearly marked as *Pricing*.
- B. The following items should be submitted in the original *Technical Proposal Packet*.
 1. Four (4) additional complete hardcopies of the *Technical Proposal Packet* marked *Copy*.
 2. Electronic copies, preferably in PDF format and on a flash drive of the following:
 - a. Five (5) copies of the *Technical Proposal Packet*.
 - b. One (1) copy of the *Official Bid Price Sheet*.
 - c. One (1) redacted copy of the original *Technical Proposal Packet*. (See *Proprietary Information*.)
 - d. EO 98-04: *Contract and Grant Disclosure Form*. (See *Standard Terms and Conditions*, #24. *Disclosure*.)
 - e. Copy of Prospective Contractor's Equal Opportunity Policy. (See *Equal Opportunity Policy*.)
 - f. *Proposed Subcontractors Form*. (See *Subcontractors*.)
 - g. Signed addenda, if applicable. (See *Requirement of Addendum*.)
 - h. Arkansas Vendor Number, if known. (See *Vendor Registration*.)
- C. Prospective Contractor's signature on *Proposal Signature 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.
- D. Prospective Contractors **shall not** include any pricing in any copy of the *Technical Proposal Packet*.
- E. Prospective Contractors should not include any other documents or ancillary information, such as a cover letter or promotional/marketing information.
- F. Prospective Contractors should not send any bid submission documents via email or fax.
- G. All additional submitted copies **must** be identical to the original copy. In case of a discrepancy, the original copy governs.
 1. If OSP requests additional copies of the proposal, the copies **must** be delivered within the timeframe specified in the request.

1.8 VENDOR REGISTRATION

- A. Prior to award, the selected Contractor **shall** be registered as an Arkansas vendor to receive payment.
- B. For a \$25 annual fee, Prospective Contractors may register online at <https://www.ark.org/contractor/index.html> and will receive a Vendor Number upon registering. Online registration allows vendors to receive email notifications for future bid solicitations posted to the OSP website.
- C. Contractors not wishing to register online **shall** submit an updated copy of the Contractor's Form W-9 to the Agency prior to award.

1.9 CLARIFICATION OF BID SOLICITATION

- A. Submit any questions requesting clarification of information contained in this Bid Solicitation in writing via email by 4:00 p.m., Central Time on or before June 23, 2020 to the OSP buyer as shown on page one (1) of this Bid Solicitation.
 1. Prospective Contractors **shall** submit questions using *Template O-1: Written Questions*.
 2. For each question submitted, Prospective Contractor should reference the specific Solicitation item number to which the question refers.
 3. 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 July 1, 2020. 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 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.

1.11 PRICING

- A. Prospective Contractor(s) **shall** include all pricing on the *Official Bid Price Sheet* only.
- B. The *Official Bid Price Sheet* is provided as a separate excel file posted with this Bid Solicitation and includes two (2) tables for the following purposes:
 1. For Table A, Prospective Contractors **shall** enter the per prescription cost to provide Pharmacy Benefits Manager services for the estimated 7,600 prescriptions per year in the yellow-shaded cell of the Per Prescription Cost column.
 - a. The per prescription cost **must** include all costs associated with providing services under a resultant contract as required by this RFP (except those entered in Table B).
 - b. Table A will be used in low-cost determination.

2. For Table B, Prospective Contractors **shall** enter the per review cost to provide coordination of third-party utilization review and the per day cost to provide clinical review services. (See *Optional Services*.)
 - a. Should the Contractor charge additional costs to provide more complex third-party utilization review (such as for additional pages or additional time over a standard amount), the Contractor **shall** enter those additional costs in the Additional Per Unit Cost column and **shall** enter the unit by which those additional costs will be applied (such as additional pages or additional time).
 - b. Table B will not be used in low-cost determination.
- C. 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.
- D. To allow time to evaluate proposals, prices **must** be valid for ninety (90) days following the proposal opening.
- E. 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.

1.12 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.

1.13 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.

1.14 PROPRIETARY INFORMATION

- A. Submission documents pertaining to this Bid Solicitation become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
- C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.

- D. By 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 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 FOIA.
- K. If the State deems redacted information to be subject to FOIA, the Prospective Contractor will be contacted prior to release of the documents.
- L. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

1.15 CAUTION TO 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.

1.16 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.

1.17 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 (14) day posting period.
3. OSP may waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the Prospective Contractor's responsibility to check the OSP website for the posting of an anticipated award.

D. Issuance of Contract

1. Any resultant contract 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.

1.18 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.

1.19 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*.

1.20 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.

1.21 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.

1.22 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.

1.23 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.

1.24 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.

1.25 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.

1.26 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.

1.27 RESERVATION

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

1.28 ETHICAL STANDARDS

It **shall** be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.

SECTION 2 – REQUIREMENTS

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

2.1 INTRODUCTION

The purpose of this contract is to provide Pharmacy Benefits Management (PBM) for workers' compensation claims involving Public Employees of the State of Arkansas under the Public Employee Claims Division (PECD) Pharmacy Program.

The mission of the PECD is to administer the workers' compensation program for the State by providing accurate application of Arkansas's workers' compensation laws and regulations so that all Public Employees are served in a fair and efficient manner. For more information about the current Pharmacy Program, visit <https://insurance.arkansas.gov/pages/consumer-services/employee-claims/pharmacy-program/>.

PECD will support and enable the Contractor to perform the services required under a resulting contract by performing back-office, management functions to facilitate claims management necessary to carry out the Pharmacy Program, such as administrative support, electronic eligibility work, verifying the accuracy of electronic billing files, formulary management tasks, and other related services.

Currently, PECD has a contract with the University of Arkansas for Medical Sciences (UAMS) College of Pharmacy Evidence-Based Medicine Program (EBRx) to manage its formulary management, drug utilization review, and clinical review services.

The Pharmacy Program bifurcates the responsibility for handling pre-authorization of medications not meeting all of the requirements for approval between the PECD claims examiners and EBRx. EBRx handles approvals and denials of medications that are not on formulary. PECD claims examiners handle approvals and denials based on unauthorized physician, denied claims, and closed claims.

PECD anticipates that approximately 7,600 prescriptions will be filled per year under a resulting contract. These figures are estimates only and are provided primarily as a courtesy to the Prospective Contractor for bidding purposes.

2.2 MINIMUM PROSPECTIVE CONTRACTOR QUALIFICATIONS

- A. Prospective Contractors **shall** have a minimum of five (5) years' experience in providing PBM services including but not limited to claims processing and network administration similar in size and scope to the services specified in this RFP.
- B. Prospective Contractors **shall** have a minimum of three (3) years' experience in processing workers' compensation claims within the past five (5) years.
- C. Prospective Contractors **shall** be licensed/legally authorized to conduct business as a PBM in the State of Arkansas at the time of proposal submission.

2.3 GENERAL REQUIREMENTS

- A. The Contractor **shall** have completed all implementation activities and **shall** begin providing the Pharmacy Program services required by this Solicitation by the Go-Live Date, anticipated to be July 1, 2021.
- B. The Contractor **shall** provide a pharmacy network, medications, database management, and administration of point of sale (POS) transactions of medications involving workers' compensation claims.
 1. The Contractor **shall** provide medications via mail order service in workers' compensation claims as specified by PECD.

2. It is anticipated that mail order services will account for less than ten percent (10%) of all prescriptions under a resulting contract with over ninety percent (90%) being through the retail pharmacy network.
- C. While UAMS provides most formulary management, drug utilization review, and call center for PECD, the Contractor **shall** confer and coordinate with UAMS to assist in providing these services as mutually agreed upon by the Contractor and UAMS with PECD having final approval of the agreement.
- D. The Contractor **shall** mail permanent prescription cards to Claimants within forty-eight (48) hours of receiving the request from PECD.
 1. The Contractor **shall** create and supply the electronic template for temporary cards to be printed by PECD.
- E. Within a ten (10) day processing time, the Contractor **shall** provide review and reduction of paper bills provided by its network pharmacies and/or out-of-network pharmacies not having been identified as subject to a resulting contract to ensure appropriate pricing.
- F. The Contractor **shall** attend stewardship meetings with PECD via video or conference call at least once per quarter as determined by PECD.
 1. As needed and requested by PECD, the Contractor **shall** attend a stewardship meeting in person at the Little Rock office and **shall** be responsible for all travel-related expenses for such meetings.
- G. Unless prior written approval is given by PECD, the Contractor **shall not** outsource to any entities, either Subcontractors or wholly owned subsidiaries of Contractor, located outside the continental United States for any services that involve customer service, data storage, or access to prescription data or personal health information (PHI).
- H. The Contractor **shall** comply with all applicable rules and regulations of the Arkansas Workers' Compensation Commission and the laws of the State.
 1. Reimbursement logic for all PECD claims **must** adhere to Arkansas laws pertaining to Workers' Compensation prescription drug claims.
 2. PECD requires the "lower of" logic regarding the Pharmacy Program's reimbursement of prescriptions.
 3. The reimbursement amount will be the "lower of" the submitted, calculated, usual and customary, or contracted price.
- I. The Contractor **shall** comply with all rules and regulations governing PBM practices, including, but not limited to Act 769 of 2009 and Arkansas Code Annotated § 4-88-801, et seq.
- J. The Contractor **shall** cooperate with auditors and **shall** provide all reasonable and necessary information for conducting Pharmacy Program audits as set forth under A.C.A. § 17-92-1201 et seq., and as specified by PECD.
 1. PECD will pay for audits and conduct all audits pursuant to State law.

2.4 SYSTEM REQUIREMENTS

- A. During the Implementation Period, the Contractor **shall** establish an Electronic Data Interchange (EDI) and Secure File Transfer Protocols (SFTP) for eligibility data and billing via secure portal.
 1. The Contractor **shall** provide hardcopies or .pdf files of data as requested by PECD.

- B. The Contractor **shall** establish the appropriate hierarchy of PECD's assigned Entity codes (which may include up to 800 4-character codes) in their databases to appropriately handle pre-authorizations, track claims utilization, and manage payment processes.
- C. The Contractor **shall** provide access to areas of its databases through the secure portal that are necessary to efficiently operate the Pharmacy Program, such as processing pre-authorizations and accessing reports, to the following as authorized by the Director of PECD (hereinafter referred to as "Authorized Personnel"):
 - 1. PECD and AID staff.
 - 2. Additional contractors working with PECD including, but not limited to, the managed care company providing nurse case management services and EBRx personnel.
 - 3. Access for medications not meeting automatic approval **must** be given within one (1) hour of the prescription being submitted by the pharmacies.
- D. The secure portal **must** include self-service reporting capabilities for clinical support and operational and plan performance parameters.
- E. The Contractor's claims adjudication system **must** interface with a drug database approved by PECD for use under a resulting contract.
 - 1. PECD prefers the Contractor to use the First Databank or Medispan Master Drug Database; however, should the Contractor prefer to use an alternate drug database, the Contractor **shall** submit a rationale to PECD for using an alternate database.
 - 2. The alternate database **must** meet or exceed all relevant functions of the Medispan Master Drug Database.
- F. The Contractor's secure portal and claims adjudication system **must** be fully operational and available at least 99% of Business Hours.

2.5 BILLING

- A. The Contractor **shall** provide fully Transparent financial pricing to the State.
 - 1. "Transparent" refers to financial arrangements that represent a direct and complete pass-through of all elements of negotiated provider pricing, such as discounts and dispensing fees.
 - 2. Transparent financial pricing **must** apply for all transactions and **must** be applicable regardless of the State fee schedule reimbursement rate.
- B. The Contractor **shall** assume one hundred percent (100%) of the risk for the first dose of newly prescribed medications (from hereinafter referred to as "First Fill") up to ten (10) days following the report of injury.
- C. Should a claim be denied or not reported, the Contractor **shall** accept liability for all charges incurred with dispensing the First Fill.
 - 1. The Contractor **shall** only invoice PECD for such claims when appropriate eligibility documentation is submitted through EDI.
- D. Should PECD provide paper pharmacy bills to the Contractor, the Contractor **shall** convert paper pharmacy bills to the Contractor's system.
- E. The Contractor **shall** attempt to convert out of network bills to future in-network billing.

- F. The Contractor **shall** provide the full and complete amount of all discounts received by the Contractor from all pharmacies under the Pharmacy Program.
- G. The Contractor **shall not** retain a differential (i.e. spread) between the amount reimbursed to the network pharmacies and the amount billed to PECD regardless of distribution channel (i.e. mail, retail) and/or network pharmacy ownership.
- H. On transactions whereby the Contractor aggregates prescription claims data and receives prescription drug rebates, the Contractor **shall** provide a means to reimburse or reduce costs to PECD to allow PECD to receive an amount equivalent to the rebates received as a result of the medications purchased under a resulting contract.
- I. The Contractor **shall** submit all compound prescription transactions and special formulations by mail order to UAMS for prior authorization and **shall** only process such transactions after receiving approval for both necessity and cost.
 - 1. Billing for such charges will be individual net paid claim and will be subject to approval by UAMS.
- J. The Contractor **shall** present amounts paid to network pharmacies for prescriptions to EBRx and PECD, pursuant to a mutually agreed upon process, with PECD having final approval.
 - 1. Pricing **must** be presented using an average wholesale price (AWP), National Average Drug Acquisition Cost (NADAC), or wholesale acquisition cost (WAC) pricing model based on one of the nationally recognized databases.
 - 2. The Contractor **shall not** pay network pharmacies less than the contracted rate between the Contractor and the pharmacies.
- K. The Contractor **shall** reimburse network pharmacies within thirty (30) days after receipt of payment from PECD.

2.6 FORMULARY MANAGEMENT

- A. The Contractor **shall** comply with formulary management protocols as directed by PECD.
- B. The Contractor **shall** provide a procedure for requesting pre-authorization and **shall** require pre-authorization for all prescriptions falling outside the established formularies.
 - 1. Formularies will be developed by UAMS with PECD having final approval.
 - a. Prescriptions falling outside the established formularies **must** be referred to PECD or UAMS, as applicable, for pre-authorization within two (2) Business Hours after the complete record has been received from the submitting pharmacy.
 - 2. The Contractor **shall** implement all formulary changes and updates as specified by UAMS and approved by PECD.
 - 3. The Contractor **shall** provide a means for UAMS to update the formularies within seventy-two (72) hours of the request.
 - 4. After formulary update, the Contractor **shall** communicate the update to PECD, **shall** test and validate the formulary change, and **shall** implement formulary change after receiving approval from PECD.
 - 5. The Contractor **shall** attend formulary meetings once per quarter via conference or video call as determined by PECD.

- a. Formulary meetings and stewardship meetings may be combined as agreed upon by both parties and approved in advanced by PECD.
- C. The Contractor **shall** limit prescriptions to physicians and clinics for various Entities as specified by PECD.
 - 1. PECD will provide information regarding Entities and the authorized physicians and clinics after contract award, and the Contractor **shall** update this information throughout the term(s) of a resulting contract as specified by PECD.
 - 2. Outside of the First Fill Program, prescriptions by unauthorized prescribers **must** trigger a pre-authorization requirement.
- D. The Contractor **shall** give PECD ultimate approval or denial of all prescription transactions, outside of the First Fill Program, that do not meet the preset authorizations and limits, such as authorized treating physician, medication on formulary, denied claim, and closed claim.
 - 1. Approvals **must** be obtained from the applicable Entity or PECD prior to dispensing the prescription.
- E. Where an Entity has not limited prescriptions to specified physicians and clinics, a pre-authorization limitation **must not** apply to the First Fill Program but **must** apply to the subsequent fill program.
- F. The Contractor **shall** provide edits in its POS transactions for limitation by injury-specific formularies and First Fill Program formularies as specified by UAMS.
- G. The Contractor **shall** provide a First Fill Program that can be varied by the number of days (PECD anticipates utilizing a ten-day program).
- H. The Contractor **shall** refer all dispute resolution issues from a Claimant or his/her doctor or agent regarding the appropriateness of medication to the UAMS call center.
- I. The Contractor **shall** refer all prescriptions that do not meet the authorized treating physician limitation to the PECD claims manager handling the claim.
- J. All compound medications **must** be submitted to UAMS for approval prior to dispensing.
 - 1. The Contractor **shall** be responsible for payment for all compound medications not approved by UAMS.
- K. The Contractor **shall** provide pre-authorization services within the following timeframes:
 - 1. Pre-authorization for medications with all necessary data received from the pharmacy for processing **must** be presented to PECD or UAMS within two (2) hours of receipt of the necessary information to process the medication bill.
 - 2. The Contractor **shall** process pre-authorizations received from PECD or UAMS within one (1) hour of Contractor receipt of the pre-authorization.

2.7 IMPLEMENTATION AND TRANSITION SERVICES

- A. The Contractor **shall** establish an implementation plan that **must** ensure the Pharmacy Program is fully in service by the Go-Live Date.
- B. The Contractor **shall** provide training for PECD claims examiners and UAMS during implementation and throughout the aggregate contract term as requested by PECD and mutually agreed upon by both parties.

- C. The Contractor **shall** perform all configurations needed to address established rules, exclusions, and limitations needed to implement the Pharmacy Program by the Go-Live Date as specified by this RFP.
- D. In the event the resulting contract should be terminated, cancelled, or should expire, the Contractor **shall** assist PECD and the new Contractor, to the extent PECD determines necessary, to ensure an orderly transfer of responsibility and the continuity of those services required under the terms of the contract to another organization designated by PECD.
- E. The Contractor **shall** provide at no charge to PECD, all records, documentation, reports, data, recommendations, and/or printing elements, etc., produced under a resulting contract to PECD or to PECD's designee, within seven (7) days of PECD's request, contract termination, or contract cancellation.
 - 1. The Contractor **shall** follow the method of delivery determined by PECD.
 - 2. This Requirement does not refer to the Contractor's intellectual property.
- F. The Contractor **shall** provide all services to execute the successful transition of services data.
 - 1. Except as specifically agreed to by PECD, it is anticipated that PECD's main role will be supervisory to ensure that all of PECD's needs are sufficiently and successfully met.
- G. All data, records, files, and other information relating to the PECD account **must** remain the property of PECD and **must** be released to PECD in the event the contract is ended.
- H. At the time of contract termination, all information relating to membership information **must** be made available to PECD in both a secure electronic (electronic images of paper documentation and data extract) and printed format.

2.8 STAFFING REQUIREMENTS

- A. Upon contract award, the Contractor **shall** assign a designated account manager to be the PECD's primary point of contact and to administer and manage all services and operations for the PECD account as necessary to fulfill the Requirements of this Solicitation.
 - 1. At the request of PECD, the Contractor **shall** replace the account manager with an account manager having equal to or greater qualifications than the account manager being replaced within a timeframe specified by PECD.
- B. The Contractor **shall** provide a toll-free telephone number to PECD that **must** be answered by the Contractor's personnel from 8:00 to 5:00 pm, Central time on Business Days to handle prescription processing issues.
- C. Prior to performing services under a resulting contract, the Contractor's personnel **shall** be licensed, registered, certified, and/or trained to perform such services as applicable under State law.

2.9 REPORTING

- A. The Contractor **shall** submit monthly reports of the number of prescriptions filled, total amount billed to PECD, and the return on investment for PECD.
- B. The monthly reports **must** include line item reports of the following information for each prescription handled by the Contractor for PECD:
 - 1. The total amount paid to pharmacies.
 - 2. Administrative cost.

3. PECD Claim number and Claimant's name.
 4. Total administrative fees.
 5. Individual payments per prescription paid to the pharmacy
 6. Individual billed amounts per prescription to PECD.
- C. Monthly reports **must** distinguish mail order prescription data from POS prescription data.
- D. The Contractor **shall** provide additional reports as determined by PECD to support necessary operations of the Pharmacy Program.
- E. Reports **must** be submitted in formats and within timeframes specified by PECD.

2.10 OPTIONAL SERVICES

- A. Throughout the term(s) of a resulting contract, as requested by AID or as required by law, the State **shall** have the right to add or remove any services offered by the Contractor under the scope of this contract.
1. These services may be existing optional services as offered in the Contractor's Proposal, such as those currently handled by UAMS, peer to peer outreach, drug testing monitor services, and/or Prior Transaction services, or they may be newly created services based on improving technology or federal or State mandates which fall under the scope of work.
 - a. Prior Transactions refer to medications from claims occurring before the resulting contract award date that PECD has approved to be purchased from other vendors.
 2. The Contractor **shall** negotiate pricing for all requested services that are not already submitted on the *Official Bid Price Sheet* if/when the services are added.
 3. Negotiated pricing **must** be consistent with current contract pricing for similar services and **must** be agreed upon in writing between AID and the Contractor prior to implementation of the service.
- B. Should at any point during the term(s) of a resulting contract PECD request the Contractor to perform coordination of third-party utilization review and/or clinical review services that are currently performed by UAMS, the Contractor **shall** perform these services upon mutual agreement by both parties, and as directed and approved by PECD.
1. PECD has never required additional clinical review services and does not anticipate needing such services from the Contractor.

2.11 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided that a Contractor **must** meet in order to avoid assessment of damages.
- B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration. *Table 1: Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards.
- C. The State has the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards and may include the input of 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.

TABLE 1: PERFORMANCE STANDARDS

Criteria	Standard	Damages
Implementation	Completes all implementation activities by the Go-Live Date.	\$100 for each calendar day beyond the Go-Live Date whereby the Contractor fails to complete all implementation activities.
Pre-authorization	Refers prescriptions requiring pre-authorization to PECD or UAMS, as applicable, within the timeframes specified in the RFP.	<p>\$50 for each instance whereby the Contractor fails to refer prescriptions requiring pre-authorizations within the timeframes specified.</p> <p>Additional \$10 per Business Hour beyond the initial timeframes specified whereby the Contractor fails to refer prescriptions requiring pre-authorizations</p>
System Requirements	Secure portal and claims adjudication system are fully operational and available as specified in the RFP.	<p>1% of the total monthly invoice for each instance whereby the Contractor's secure portal or claims adjudicated system falls below the operational and availability Requirements as specified.</p> <p>Operational and availability falling below 75% may be grounds for contract termination.</p>
Reimbursements	Reimburses network pharmacies within the timeframes specified in the RFP.	The total of all penalty amounts assessed to PECD due to the Contractor's failure to reimburse network pharmacies within the timeframes specified.

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 Proposal 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 subsections.

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

Information for Evaluation Subsections	Maximum Raw Points Possible	Subsection's Weighted Percentage	* Maximum Weighted Score Possible
E.1 Organizational Profile	35	10	70
E.2 Account Management and Support	40	20	140
E.3 Network and Pharmacy Program Management	85	25	175
E.4 Implementation	25	10	70
E.5 Reporting	15	10	70
E.6 Technology and Security	40	15	105
E.7 Database Pricing and Performance Standards	15	10	70
Total Technical Score	255	100%	700

*Subsection's Percentage Weight x Total Weighted Score = Maximum Weighted Score Possible for the subsection.

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

$$(A/B)*C=D$$

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

E. The proposal's weighted scores for subsections will be added to determine the Total Technical Score for the Proposal.

F. Technical Proposals receiving the top seventy-five percent (75%) of weighted scores will move forward in the Solicitation process.

1. The pricing for proposals that 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 Estimated Total Cost for Initial Term as shown 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:

$$(A/B)*C=D$$

A = Lowest Estimated Total Cost for Initial Term

B = Second (third, fourth, etc.) Lowest Total Cost for Initial Term

C = Maximum Points for Lowest Estimated Total Cost for Initial Term

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

- Forward electronic invoices to PECD twice per month via SFTP as mutually agreed upon and approved by PECD.
- Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods and services by the agency.
- Do not invoice the State in advance of delivery and acceptance of any goods or services.
- 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.
- 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.
- Other sections of this Bid Solicitation may contain additional Requirements for invoicing.
- Payment by the State may be by warrant, automated clearing house (ACH), or P-Card.

4.2 GENERAL INFORMATION

- The State will not:
 - Lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a thirty (30) day written notice to the Contractor/lessor in the event funds are not appropriated.
 - Contract with another party to indemnify and defend that party for any liability and damages.
 - Pay damages, legal expenses or other costs and expenses of any other party.
 - Continue a contract once any equipment has been repossessed.
 - Agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
 - Enter a contract which grants to another party any remedies other than the following:
 - The right to possession.
 - The right to accrued payments.
 - The right to expenses of deinstallation.
 - The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- The laws of the State of Arkansas govern this contract.
- 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 or \$5,000,000, whichever is higher. The foregoing limitation of liability will not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of 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. Maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, grant access to State or Federal Government entities or any of their duly authorized representatives.
- B. Make financial and accounting records available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this Bid Solicitation may contain additional Requirements regarding record retention.

4.6 PRICE ESCALATION

- A. Price increases will be considered at the time of contract renewal.
- B. The Contractor **must** 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. 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.
- 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. 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.
- 24. 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.