



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

**INVITATION FOR BID**  
**BID SOLICITATION DOCUMENT**

SOLICITATION INFORMATION			
Bid Number:	SP-21-0001	Solicitation Issued:	July 23, 2020
Description:	APC Manufactured Network-Critical Physical Infrastructure (NCPI) Solutions		
Agency:	Statewide		

SUBMISSION DEADLINE			
Bid Opening Date:	August 24, 2020	Bid Opening Time:	2:00 p.m., Central Time
Sealed bids must be delivered to the Office of State Procurement before the bid opening time and on or before the bid opening date. Sealed bids are opened contemporaneously at the bid opening time. Late bids shall be rejected as untimely. See section 1.2 for information regarding Live Bid Openings.			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address and Bid Opening Location:	Office of State Procurement 1509 West 7 <sup>th</sup> 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. <b>Prospective Contractors assume all risk for timely, properly submitted deliveries.</b>
Bid's Outer Packaging:	Seal outer packaging and properly mark with the following information. If outer packaging of bid submission is not properly marked, the package may be opened for bid identification purposes. <ul style="list-style-type: none"><li>• Bid number</li><li>• Date and time of bid opening</li><li>• Prospective Contractor's name and return address</li></ul>

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Tanya Freeman	Buyer's Direct Phone Number:	501-682-4140
Email Address:	<a href="mailto:tanya.freeman@dfa.arkansas.gov">tanya.freeman@dfa.arkansas.gov</a>	OSP's Main Number:	501-324-9316
OSP Website:	<a href="https://www.transform.ar.gov/procurement/">https://www.transform.ar.gov/procurement/</a>		

## SECTION 1 – REQUIREMENTS

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

### 1.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) to obtain pricing and a statewide contract(s) for American Power Conversion (APC) manufactured network-critical physical infrastructure (NCPI) solutions to include equipment, software, services, maintenance, technical support and training. Only NCPI equipment and software manufactured specifically by APC **shall** be considered.

### 1.2 LIVE BID OPENING

See instructions below to view the bid opening online.

Zoom Meeting Link:

<https://arkansas-gov.zoom.us/j/96595602265?pwd=dUN0VE9ZM2ZuUGJEOEVSc0dPZTBqQT09>

Meeting ID: 965 9560 2265

Meeting Password: 601867

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

888 475 4499 US Toll-free

### 1.3 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 July 30, 2020 to the OSP buyer as shown on page one (1) of this *Bid Solicitation*. 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.
1. For each question submitted, Prospective Contractor should reference the specific solicitation item number to which the question refers.
  2. Prospective Contractors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on August 5, 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 bid.
- C. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the bid opening.
- D. An oral Statement by OSP will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by OSP.
- E. Prospective Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

#### 1.4 DEFINITION OF TERMS

Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.

“Prospective Contractor” means a responsible bidder who submits a responsive bid in response to this solicitation.

The terms “Invitation For Bid”, “IFB,” “Bid Solicitation,” and “Solicitation” are used synonymously in this document.

“Responsive bid” means a bid submitted in response to this solicitation that conforms in all material respects to this IFB.

“Bid Submission Requirement” means a task a Prospective Contractor **must** complete when submitting a bid response. These requirements will be distinguished by using the term “**shall**” or “**must**” in the requirement.

“Requirement” means a specification that a Contractor’s commodity **must** and/or service **shall** meet or exceed in the performance of its contractual duties under any contract awarded as a result of this IFB. These specifications will be distinguished by using the terms “shall” or “must” in the requirement.

“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 Department using such a contract.

#### 1.5 MINIMUM QUALIFICATIONS

A. Prospective Contractors **shall** be an APC’s Premier, or better, ranking Reseller. The APC Reseller **shall** be able to provide the entire catalog of APC NCPI products, a wide variety of services, a wide variety of support, training, and all maintenance services. Prior to contract award, the APC Reseller **shall** submit a letter from APC certifying that the reseller is currently a Premier, or better, ranked Reseller in good standing.

Should a successful Reseller lose their Premier or better Reseller status with APC, the State reserves the right to immediately and without notice, terminate the contract.

B. The products and/or services in this IFB may be purchased by E-Rate eligible entities. Prospective Contractors **shall** be registered for participation in the E-Rate Program. Prospective Contractor(s) **shall** provide their E-Rate Service Provider Identification Number (SPIN) prior to contract award.

C. Prospective Contractors **shall** have an office location in one or more of the states listed below that is staffed and capable of providing products and services listed in this IFB.

- Arkansas
- Illinois
- Kansas
- Kentucky
- Louisiana
- Mississippi
- Missouri
- Oklahoma
- Tennessee
- Texas

#### 1.6 GENERAL REQUIREMENTS

A. All APC NCPI manufactured product solutions (including software), branded maintenance, technical support services, and training proposed **must** be listed in APCs current Global/ United States Price List.

- B. All Reseller branded maintenance (if applicable), technical support, and other related services **must** be listed in the Resellers current Retail Price List.
- C. The Prospective Contractor **shall** submit APC's current Global/ United States Price List as well as the Prospective Contractors current Retail Price List (if applicable for Technical or other related services), as it is published.
- D. The State reserves the right to determine the appropriateness of all products, equipment, software, maintenance, and services being offered on the Prospective Contractors proposed Price List and to remove any item that does not fall within the intended scope of this IFB.
- E. The Contractor **shall** be capable of providing appropriately skilled technical support staff on-site at the state agency's or ordering entity's location if needed for the provision of Technical Support Services. The support staff **must** be provided within eight (8) business hours of the requested on-site support services, unless otherwise authorized in writing by the requesting agency or entity.
- F. The Prospective Contractor **shall** establish one point of contact where all troubles will be reported for any of the services or facilities specified in this IFB. The personnel at this location **shall** be responsible for coordinating all efforts to correct the trouble and **shall** update the ordering agency or entity at intervals to be established by the agency or entity with the Contractor(s). Prospective Contractor(s) **shall** submit the process to obtain technical support with their response.
- G. The Prospective Contractor(s) **shall** describe how critical outages will be handled. A critical outage is any outage that the agency or entity feels severely impacts their ability to do business. Prospective Contractor(s) **shall** submit the description with their response.
- H. The Prospective Contractor(s) shall provide an escalation procedure with contact information (i.e. names, titles, phone numbers, and pager numbers) for 24/7 support. The state agency or entity must be able to initiate the escalation procedure 24 hours a day, 7 days a week for critical outages. Prospective Contractor(s) **shall** submit the escalation procedure with their response.

## 1.7 APC DISCOUNTS

- A. The Prospective Contractor **shall** identify the discounts for each product and service category listed below on Table 1 of the Official Bid Price Sheet. Prospective Contractors **shall** bid each category listed on Table 1 of the Official Bid Price Sheet.

Product Category
APC Hardware
APC Software
APC Hardware Maintenance
APC Software Maintenance
APC Services (Training, Installation, Other Technical Support Services)

**1.8 RESELLER BRANDED MAINTENANCE AND OTHER RELATED SERVICES DISCOUNTS**

- A. It is preferred that the Prospective Contractor identify pricing and any discounts for each service category listed below. If bid, the Prospective Contractor **shall** provide the discount and pricing structure (list price based on the unit of measure identified in Table 2 of the Official Bid Price Sheet) for those services bid.

Product Category
Reseller provided Hardware Maintenance
Reseller provided Software Maintenance
Reseller provided Services (Training, Installation, Other Technical Support Services)

**1.9 WARRANTY**

- A. Warranty **must** be included for all equipment and services for a period of no less than the manufacturer's standard warranty. Said warranty **must** begin on the date the product is accepted as operational and put into service by the purchasing agency or entity, or the date of service performance. If maintenance or support is purchased by the requesting agency or entity, it will run concurrently with the manufacturer's standard warranty.

**1.10 INSTALLATION**

- A. All Contractors **shall** have an Arkansas Contractors License for any installation services that modify existing building structures.

- B. State Agencies  
Installation will be allowed for state agencies for installation services that do not modify existing building structures as covered under Arkansas Building Authority (ABA) regulations.

Any installation services over \$35,000 that modify existing building structures **shall** be regulated by ABA.

- C. All Other Entities  
All other entities will follow their rules and regulations regarding installation services.

**1.11 PRICING**

- A. The overall Global/ United States Price List pricing and discount structure **shall** remain firm for the term of the contract. Volume discounts and promotions above the bid discounts are acceptable and encouraged. Promotional discounts will not necessitate a contract modification of the bid discounts.
- B. The Contractors **shall** extend promotional pricing and/or subsequent discounts to all qualified purchase orders received during the effective date of the price reduction or promotion. The State acknowledges that retail promotions offered by the contractor(s) to the general public will not apply to the discounts in this contract. Any promotion offered in conjunction to this contract will be limited to the items that are listed in the accepted Price List.
- C. The Contractor(s) **shall** accept all orders and furnish products and related services required under this IFB during the term of this contract unless other arrangements have been mutually agreed upon by the Contractor(s) and the Office of State Procurement.
- D. Discounts and Pricing Structure:
1. All discounts and pricing **must** be included on the *Official Bid Price Sheet* and **must** be valid for ninety (90) days following the IFB opening. The discounts and pricing **must** include all associated cost for the product and/or service being bid including any travel expenses, shipping/freight costs, non-recurring and/or one-time cost. All proposed discounts and pricing submitted **must** include the

full cost of standard ground delivery to any destination within Arkansas (discounts **must** reflect FOB destination). Do not include state or local sales taxes in the bid price.

2. APC products and support services **must** be a percentage discount off APC's current Global Price List(s) (Table 1-*Official Price Sheet*). A copy of APC's current Global Price List(s) **must** be provided with the vendor's IFB response. The Global Price List(s) **must** be provided on a flash drive.
3. If bidding reseller branded maintenance, technical, or other related services not provided within APC's current Global Price List, Prospective Contractor(s) **must** provide a percentage off list price amount based on the unit of measure specified on Table 2 of the *Official Bid Price Sheet*. A copy of the Reseller's current retail Price List(s) **must** be provided with the Prospective Contractors response. The Retail Price List(s) **must** be provided on a flash drive.

#### 1.12 TECHNOLOGY UPGRADES

- A. The State intends to obtain products that reflect the industry's latest technology for the duration of this contract. The State recognizes that there will be technological modifications and improvements that will become available during the life of this contract that will be unavailable on the date of contract award.
- B. The Contractor(s) may make new additions or upgrades consistent with the scope of this IFB. All items offered **must** be listed on the current APC or Reseller Price List.
- C. The State reserves the right to determine acceptability of new equipment and services offered, based on overall performance and specifications.

#### 1.13 PRODUCT AND SERVICE SUBSTITUTIONS, ADDITIONS, AND SERVICES

- A. The Contractor(s) **shall not** be allowed to substitute equipment or services without prior consent from the ordering agency or entity. If an item on order has been discontinued or is no longer available, the Contractor(s) may offer to substitute another item of equal or greater performance and value at the same price, only with the written permission of the ordering agency or entity. Email acknowledgement and acceptance of a substitution will constitute written permission.
- B. New products and/or services will be accepted only if they are added to the same category as equally specified product category and/or services and given the same or greater pricing discount rates.
- C. The State reserves the right to determine acceptability of new equipment and services offered, based on overall performance and specifications.

#### 1.14 REPORTING

- A. Contractor(s) **shall** provide a Semi-Annual Contract Activity Report, by the 15<sup>th</sup> of the month, detailing the activity of the prior six (6) months.
- B. The report **must** include all contract activity and list all orders received regardless of their fulfillment or shipping status.
- C. The Semi-Annual Contract Activity Report **must** be in Microsoft Excel format and include the following:
  - Customer Type
  - Agency Name
  - Agency Purchase Order Number
  - Purchase Order Date
  - Ship Date
  - Invoice Number

- Product/Service Number
- Product/Service Description
- List/MSRP Price
- Customer Price
- Quantity
- Total Price

- D. Reports outlined in this section **must** be sent to: [OSP.ITcontracts@dfa.arkansas.gov](mailto:OSP.ITcontracts@dfa.arkansas.gov) . After contract award, OSP will send out the report format that **must** be utilized to each successful Contractor.
- E. The Contractor **shall** submit reports according to the below reporting periods:

Reporting Period	Report Due
March - September	October 15th
October – February	March 15th

### 1.15 DELIVERY: FOB DESTINATION

- A. The agency requests delivery within 30 calendar days after ordering. If this delivery date cannot be met, the Prospective Contractor **must** state the alternate number of days required to begin the service and/or place the commodity in the ordering agency's designated location. (See Official Solicitation Price Sheet.) Failure to state the alternate delivery time obligates the Contractor to complete delivery by the agency's requested date. Extended delivery dates may be considered when in the best interest of the State.
- B. All deliveries **shall** be made during normal state work hours and within the agreed upon number of days unless otherwise arranged and coordinated with the agency. The Contractor **shall** give the agency immediate notice of any anticipated delays or plant shutdowns that will affect the delivery requirement.
- C. Loss or damage that occurs during shipping, prior to the order being received by the agency, is the Contractor's responsibility. All orders should be properly packaged to prevent damage during shipping.
- D. The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.

### 1.16 ACCEPTANCE STANDARDS

- A. Inspection and acceptance/rejection of product(s) will be made within thirty (30) days of receipt.
- B. The State has the option to return any product(s) within the thirty (30) day timeframe for any reason.
- C. Bid **must** include a "total satisfaction" return policy for all products and **must not** impose any liability on the State for such returns.

### 1.17 PERFORMANCE STANDARDS

- A. Performance Standards will be created by the ordering agency or entity for any order that includes services.
- B. State law requires that 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.
- C. The State may be open to negotiations of Performance Standards prior to the commencement of services, or at times throughout the contract duration. The Performance Standards **must** identify expected deliverables, performance measures, or outcomes; and defines the acceptable standards.

- D. 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 and mutually agreed upon.
- E. All changes made to the Performance Standards will become an official part of the contract.
- F. Performance Standards will continue throughout the aggregate term of the contract.
- G. Failure to meet the minimum Performance Standards as specified **shall** be considered a breach of any contract that gets awarded hereunder. The State may pursue any remedies it has at law, equity, and/or under such contract including, without limitation, termination or cancellation of contract and/or the imposition of liquidated damages.
- H. In the event a Performance Standard is not met, the Contractor may be allowed to defend or cure the insufficiency. The State has sole and final determination of the acceptability of any cure.

## SECTION 2 – GENERAL INSTRUCTIONS AND INFORMATION

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

### 2.1 ISSUING AGENCY

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

### 2.2 TYPE OF CONTRACT

- A. As a result of this IFB, OSP intends to award a contract to multiple Contractors.
- B. The anticipated starting date for any resulting contract is September 24, 2020, except that the actual contract start date may be adjusted unilaterally by the State for up to three calendar months. By submitting a signed bid in response to the IFB, the Prospective Contractor represents and warrants that it will honor its bid as being held open as irrevocable for this period.
- C. The initial term of a resulting contract will be for three (3) years. Upon mutual agreement by the Contractor and agency, the contract may be renewed by OSP for up to four (4) additional one-year terms or portions thereof, not to exceed a total aggregate contract term of seven (7) consecutive years.

### 2.3 CONTRACTOR SELECTION

- A. Award will be made to the lowest-bidding, responsible Prospective Contractor on a/an multiple contractor basis.

### 2.4 RESPONSE DOCUMENTS

#### A. *Bid Response Packet*

1. The following are Bid Submission Requirements and **must** be submitted in the original *Bid Response Packet*.
  - a. Original signed *Bid Signature Page*. (See *Bid Response Packet*.)
    - i. A signed Bid Signature Page included in the *Bid Response Packet*. The signature **must** be that of a person authorized to contractually bind the Prospective Contractor.
    - ii. *Bid Response Packet*, which **must** be in the English language.
  - b. One (1) original copy of the *Official Solicitation Price Sheet*. Pricing **must** be proposed in U.S. dollars and cents.
2. The following items should be submitted in the original *Bid Response Packet*, preferably on a flash drive and in PDF format.
  - a. One (1) copy of the *Official Solicitation Price Sheet*.
  - b. *EO 98-04 Disclosure Form*.
  - c. Copy of Prospective Contractor's *Equal Opportunity Policy*.
  - d. *Voluntary Product Accessibility Template* (VPAT).

e. *Proposed Subcontractors Form.*

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

**2.5 ACCEPTANCE OF REQUIREMENTS**

- A. Unless a Prospective Contractor expressly and conspicuously identifies any exception or exceptions to any of the Requirements in the Specifications Section(s) of this IFB by listing them on the *Exceptions Form* (See Bid Response Packet), Prospective Contractor understands its submission of a bid to represent that its bid meets all such Requirements.
- B. A Prospective Contractor's bid may be rejected if the Prospective Contractor takes exception to any Requirements in the Specifications Section(s) of this IFB.

**2.6 ADDITIONAL TERMS AND CONDITIONS**

- A. Any special terms and conditions included in this solicitation **shall** override the Solicitation Terms and Conditions located on the OSP website here:  
<https://www.transform.ar.gov/procurement/agencies/forms-and-reporting/>.
- B. Unless a Prospective Contractor expressly and conspicuously identifies any exception or exceptions to any of the terms in the General Instructions and Information Section of this IFB by listing them on the Exceptions Form (See Bid Response Packet), Prospective Contractor agrees and will adhere to all terms if selected as the successful Contractor. Items identified as non-negotiable may only be modified if the legal requirement is satisfied and approved by the State.

**2.7 PRICE ESCALATION**

Price changes may be negotiated at the time of contract renewal at the discretion of the State. Any request for a price increase must include supporting documentation demonstrating that the increase in contract price is based on an increased cost to the Contractor and that the proposed pricing is still competitive in the marketplace. The Department of Transformation and Shared Services, Office of State Procurement, has the right to approve or deny any request for a price adjustment.

**2.8 CONVENIENCE FEE**

A. Convenience Fee

Contractor **shall** remit a convenience fee in the amount of one percent (1%) of all Contract Sales made to State, State Departments, and to local entities as defined in Arkansas Code Annotated § 19-11-206 (i.e. local governments, cities, counties, school districts, water districts, and other participants, collectively "State"). The convenience fee is based on Contractor invoice date and is effective upon the date of execution of this amendment or July 1, 2020, whichever is earlier. Contract Sales is defined as gross sale amounts less credits, taxes, regulatory fees and separately stated shipping charges not included in the unit prices. The State, at its sole discretion, may expand the applicability of this fee after providing notice to Contractors.

Unit prices are inclusive of the convenience fee and Contractor is not to charge the fee directly to the State in the form of a separate line item. Contracts **shall not** have separate or different prices for State Agency customers and local entities as defined in Arkansas Code Annotated § 19-11-206 participants.

B. Quarterly Reporting and Fee Remittance

Contractor **shall** submit a Sales Report documenting all contract sales, made to State and such submission, including any supplemental information submitted, is deemed public record.

The Sales Report **shall** be submitted, and the related convenience fee **shall** be remitted no later than thirty (30) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report **must** contain the following information:

1. Complete and accurate details of all sales, credits, returns, refunds, and the like for the reporting quarter.
2. Purchasing entity.
3. Total of Convenience Fee amount due.
4. Such other information as the State may reasonably request.
5. If no Sales were made to State during the reporting quarter, then a report **shall** be submitted showing zero sales and zero convenience fees due.

C. Payment of Convenience Fee

The Contractor **shall** timely remit Convenience Fee via Automated Clearing House (ACH) transactions, unless otherwise directed by State, to the bank account directed by the State. Failure to remit convenience fees timely and accurately in accordance with State requirements may result in Contractor's goods and services being made ineligible for purchase by State or any other recourse available, including contract cancellation, or as further provided for by law.

D. Retention and Inspection of Records

The Contractor **shall** keep records of Sales to State in sufficient detail to enable the State to determine the Convenience Fee payable by the Contractor. State may examine and audit, at its own expense, Contractor's sales records and Sales Reports for completeness and accuracy. In the event that such examination reveals underpayment of the Convenience Fee, the Contractor **shall** immediately pay to the State the amount of deficiency. If the examination reveals an underpayment of 5% or more, then the Contractor **shall** reimburse the State for the cost of the audit.

## 2.9 INVOICING AND PAYMENT AFTER DELIVERY

Payment for the Commodities is due within thirty (30) days of the date of the Contractor's delivery of Commodities conforming to the Contract and receipt of the Contractor's invoice, whichever is later.

The Contractor should invoice the agency by an itemized list of charges. The Department's Purchase Order Number and/or the Contract Number should be referenced on each invoice.

## 2.10 TERMINATION AND CANCELLATION CLAUSES

- A. **Non-Appropriation Clause Pursuant to §19-11-1012(11).** In the event the State of Arkansas fails to appropriate funds or make monies available for any biennial period covered by the term of the Contract for the services to be provided by the Contractor, the Contract shall be terminated on the last day of the last biennial period for which funds were appropriated or monies made available for such purposes. This provision shall not be construed to abridge any other right of termination the agency may have.
- B. **For Convenience.** *The Department may terminate the Contract for any reason by giving the Contractor written notice of such termination no less than sixty (60) days prior to the date of termination.*
- C. **For Cause.** *The Department may cancel the Contract 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 may 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. The parties may endeavor to agree to reasonable modifications in the Contract to accommodate the causes of the cancellation for cause and avoid the cancellation, to the extent permitted by law, and at the discretion of each party individually.*

#### **2.11 NON-NEGOTIABLE GOVERNING LAW AND VENUE**

- A. The Contract shall be governed by and construed in accordance with the Laws of the State of Arkansas. Exclusive venue arising under the Contract is Pulaski County, Arkansas.
- B. Any legislation that may be enacted subsequent to the date of the Contract, which may cause all or any part of the Contract to be in conflict with the laws of the State of Arkansas, will be given proper consideration if and when the Contract is renewed or extended. At such time, the parties agree that the Contract shall be amended to comply with any applicable laws in effect.
- C. Under Arkansas law, the release of public records is governed by the Arkansas Freedom of Information Act found at Section 25-19-101 et. seq. of the Arkansas Code Annotated.

#### **2.12 NON-NEGOTIABLE SOVEREIGN IMMUNITY**

*Nothing in the Contract shall be construed as a waiver of the State's sovereign immunity. Any claims Contractor wishes to assert against the State in connection with the Contract shall be brought in the Arkansas State Claims Commission.*

#### **2.13 NON-NEGOTIABLE DISCLOSURE REQUIRED BY EXECUTIVE ORDER 98-04**

*Any contract or amendment to a contract executed by an agency which exceeds \$10,000 shall require the Vendor to disclose information as required under the terms of Executive Order 98-04 and the Regulations pursuant thereto. The Vendor shall also require the subcontractor to disclose the same information. The Contract and Grant Disclosure and Certification Form shall be used for this purpose. Contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from disclosure requirements.*

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose, or in violation, to all legal remedies available to the Agency under the provisions of existing law.

#### **2.14 COMPLIANCE**

*The Contractor shall ensure, in cooperation with the Department, that the Contract adheres to the requirements of Arkansas procurement law, including without limitation the inclusion of any mandatory language and the submission of the contract for any required review. The Contractor acknowledges that the Contractor is:*

- A. Equally responsible with the Department for adhering to the requirements of Arkansas Procurement Law related to the content and review of the Contract; and

B. Subject to the relevant ethical provisions of § 19-11-701 et seq.

**2.15 INDEMNITY**

The Contractor shall be fully liable for the actions of its agents, employees, partners, and assigns and shall fully indemnify, defend, and hold harmless the Department, and their officers, agents, and employees from third party suits, actions, damages, and costs of every name and description, including attorney's fees to the extent arising from or relating to personal injury and damage to real or personal property, caused in whole or in part by the negligence or willful misconduct of Contractor, its agents, employees, partners, or assigns.

**2.16 ASSIGNMENT/SUBCONTRACTING**

*Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under the Contract, in whole or in part, without the prior written approval of the Department.*

**2.17 AMENDMENTS**

*The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without written approval of both parties.*

Any amendment which contains a material change or involves major changes in the objectives and scope of the Contract may require review by Legislative Council or Joint Budget Committee.

**2.18 RECORDS**

*Financial and accounting records reasonably relevant to State of Arkansas transactions under the Contract shall be subject to examination by appropriate Arkansas government authorities for a period of five (5) years from the date of expiration, termination or cancellation and final payment under this Contract, provided, however, that such government authorities will provide thirty (30) days written notice to the Contractor of its intent to conduct such examination contemplated by this section; and provided that such examination occurs pursuant to a mutually agreed upon location, during normal business hours and subject to reasonable confidentiality obligations.*

**2.19 NON-WAIVER**

*The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of the Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.*

**2.20 SEVERABILITY**

*If any provision of the contract is held unenforceable, all remaining provisions of the Contract shall remain in full force and effect.*