



STATE OF ARKANSAS
Arkansas Department of Veterans Affairs
 501 Woodlane Dr. Suite 401N
 Little Rock, Arkansas 72201-4222

Competitive Bid (CB)
BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	ADVA-21-0002	Solicitation Issued:	December 18, 2020
Description:	Skilled Nursing Facility Mock Surveys for CMS and VA Compliance		
Agency:	Arkansas Department of Veterans Affairs		

SUBMISSION DEADLINE FOR RESPONSE	
Bid Due Date:	January 15, 2021 3:00 PM Central Standard Time (CST)

DELIVERY OF RESPONSE DOCUMENTS	
Bid Submission:	<p>Email the Bid Response Packet to the buyer listed below on or before the designated bid due date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit bids on or before the bid due date and time. Bids received after the designated bid due date and time may be considered late and may not receive further review. It is not necessary to return "no bids" to ADVA.</p> <p>The submission email subject line should read: Bid Submission for ADVA-21-0002</p>

DEPARTMENT OF VETERANS AFFAIRS CONTACT INFORMATION			
ADVA Buyer:	Barry Goldman	Buyer's Direct Phone Number:	501-682-1954
Email Address:	Barry.goldman@arkansas.gov	ADVA's Main Number:	501-683-2382
ADVA Website:	www.veterans.arkansas.gov		

SECTION 1 – GENERAL INSTRUCTIONS AND INFORMATION

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

1.1 PURPOSE

This Competitive Bid (CB) is issued by the Department of Veterans Affairs to obtain pricing and a contract for Skilled Nursing Facility Mock Surveys for Centers for Medicare and Medicaid Services (CMS) and the U.S. Department of Veterans Affairs (VA) compliance.

1.2 TYPE OF CONTRACT

- A. As a result of this CB, ADVA intends to award a contract to a multiple Contractors.
- B. The anticipated starting date for any resulting contract is March 1, 2021, except that the actual contract start date may be adjusted forward unilaterally by the State for up to three calendar months. By submitting a signed bid in response to the CB, 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 one (1) year. Upon mutual agreement by the Contractor and agency, the contract may be renewed by ADVA for up to six (6) additional one-year terms or portions thereof, not to exceed a total aggregate contract term of seven (7) consecutive years.

1.3 ISSUING AGENCY

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

1.4 ACCEPTANCE OF REQUIREMENTS

- A. A Prospective Contractor **must** unconditionally accept all Requirements in the Requirements Section(s) of this CB to be considered a responsive Prospective Contractor.

1.5 DEFINITION OF TERMS

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

- H. "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.

1.6 **RESPONSE DOCUMENTS**

A. **Bid Response Packet**

1. The following should be submitted with the Bid Response *Packet*.
 - a. Signed *Bid Signature Page*. (See *Bid Response Packet*.)
 - i. An official authorized to bind the Prospective Contractor(s) to a resultant contract **must** sign the Bid Signature Page included in the *Bid Response Packet*.
 - ii. Prospective Contractor's signature signifies agreement to and compliance with all Requirements in this CB.
 - iii. Bid response **must** be in the English language.
 - b. *Official Bid Price Sheet*. Pricing **must** be proposed in U.S. dollars and cents.
2. The following items should be submitted with the original Bid *Response Packet*.
 - a. EO 98-04 Disclosure Form. (For bids exceeding \$25,000.)
 - b. Copy of Prospective Contractor's *Equal Opportunity Policy*. (Only for contracts for services exceeding \$25,000.)
 - c. Proposed Subcontractors Form, if applicable.

1.7 **SUBCONTRACTORS**

- A. Prospective Contractor should complete, sign and submit the *Proposed Subcontractors Form* included in the *Bid Response Packet*.
- B. The utilization of any proposed subcontractor is subject to approval by the State agency.

1.8 **PRICING**

- A. Prospective Contractor should include all pricing on the *Official Bid Price Sheet*. If any cost is not identified by the successful Contractor but is subsequently incurred in order to achieve successful operation, the Contractor **shall** bear this additional cost. The *Official Bid Price Sheet* may be provided as a separate file along with this *Bid Solicitation*.
- B. To allow time to review bids, prices **must** be valid for 90 days following the bid due date.

1.9 **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.

1.10 **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 may be submitted with the *Bid Response Packet*.
- G. Except for the redacted information, the redacted copy **must** be identical to the original, 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 redacted copy is protected against restoration of redacted data.
- I. The redacted copy will be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the Prospective Contractor.
- J. If a redacted copy of the submission documents is not provided with Prospective Contractor's *Bid Response Packet*, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- K. If the State deems redacted information to be subject to FOIA, the Prospective Contractor will be contacted prior to release of the documents.
- L. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

1.11 CAUTION TO PROSPECTIVE CONTRACTORS

- A. All official documents and correspondence related to this solicitation become part of the resultant contract.
- B. 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.
- C. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- D. Prospective Contractors may submit multiple bids.

1.12 **AWARD PROCESS**

A. *Successful Contractor Selection*

1. Award will be made to the two (2) lowest-bidding, responsible Prospective Contractor on a/an **all or none grand total** basis.

B. *Negotiations*

1. If the State so chooses, negotiations may be conducted with the lowest-bidding Prospective Contractor. 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 lowest-bidding 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.

1.13 **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 *Bid Signature Page*.

1.14 **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 for services exceeding \$25,000.

B. *EO Policies* should be included with 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.

1.15 **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.

1.16 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 Bid 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.

1.17 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". Bids submitted by Prospective Contractors determined to be non-responsible will be rejected.

1.18 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.

1.19 RESERVATION

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

SECTION 2 – REQUIREMENTS

2.1 INTRODUCTION

This Competitive Bid (CB) is issued by the Arkansas Department of Veterans Affairs (ADVA), to seek pricing for Centers for Medicare and Medicaid Services (CMS) and U.S. Veterans Affairs (VA) mock surveys to help the Arkansas State Veterans Homes (ASVH) located in Fayetteville and North Little Rock prepare for annual, unannounced certification surveys. Two (2) contracts may be issued to provide services, with contractors providing alternate mock surveys to each Veterans Home. It is anticipated that each Veterans home will receive one (1) CMS and one (1) VA mock survey each per calendar year.

2.2 MINIMUM SPECIFICATIONS

A. Qualifications

Prospective Contractors must provide documentation to support the following minimum qualifications to be considered:

Minimum three (3) years of experience with providing mock surveys for CMS in compliance with 42 CFR Part 483 Subpart B, and three (3) years of experience with providing mock surveys for VA in compliance with CFR Section 51.

Or

Minimum of three (3) years of experience operating State Veterans Homes in compliance with CMS and VA regulations.

B. Services will include, but are not limited to:

Clinical Record Reviews (both open and closed)
Resident Interviews and Observations
Resident Meeting
Medication and Treatment Administration Observations
Meal Service Observation
Discussion with QA/PI Coordinator (Need QA/PI definition)
Assessment of Infection Control practices
Occurrence/Investigation review
Assessment of follow-up on MRRs. (need definition of MMR)
Assessment of personal funds management
Review of resident complaints and grievances
Review of employee files
Review of employee files
Review of Liability Notice and Appeal Rights
Kitchen sanitation inspection
Life Safety inspection
Provide Exit Conference at the end of the mock survey/quality review to present identified concerns/findings to the administrative staff.
Within ten (10) day of conducting the mock survey/quality review, provide a detailed report of all individual consultant findings as well as a summary of F- tags that were identified.

2.3 DELIVERY: FOB DESTINATION

A. State Veterans Home Locations:

Arkansas State Veterans Home – Fayetteville
1179 N College Avenue
Fayetteville, AR 72703

Arkansas State Veterans Home – North Little Rock
2401 John Ashley Drive
North Little Rock, AR 72114

- B. The agency requires delivery as agreed upon by ADVA after receipt of the order. 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 Bid 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.
- C. All deliveries **must** 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.
- D. 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.

2.4 ACCEPTANCE STANDARDS

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

2.5 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. The table below: 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.

Performance Standards		
Service Criteria	Acceptable Performance	Damages for Insufficient Performance
Provide CMS and VA Mock Survey services as agreed upon by the Arkansas Department of Veterans Affairs	100% Compliance with the Service Criteria	1 st Offense – Corrective action plan will be requested. 2 nd Offense – Payment may be reduced by 25%. 3 rd Offense – Contract may be terminated and a sub-standard Vendor Performance Report (VPR) may be submitted with the Arkansas Office of State Procurement (OSP).

SECTION 3 – GENERAL CONTRACTUAL ITEMS

3.1 PAYMENT AND INVOICE PROVISIONS

- A. Forward invoices to:
Arkansas Department of Veterans Affairs
501 Woodlane Dr. Suite 401N
Little Rock, AR 72201
- Electronic Invoices should be sent to ADVAFiscal@arkansas.gov
- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods and services by the agency.
- C. Do not invoice the State in advance of delivery and acceptance of any goods or services.
- D. 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.
- E. 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.
- F. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- G. Selected Contractor **must** be registered to receive payment and future *Bid Solicitation* notifications. Contractors may register on-line at <https://www.ark.org/contractor/index.html>.

3.2 GENERAL INFORMATION

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

e. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.

- B. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- C. The laws of the State of Arkansas govern this contract.
- D. A contract is not effective prior to award being made by a State Procurement Official.

3.3 **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.

3.4 **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 \$X 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.

3.5 **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.

3.6 **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.

3.7 **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.

3.8 **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.

3.9 **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 4 – STANDARD TERMS AND CONDITIONS

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 contract entered into 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 Bid Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Bid 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 should show title or authority to bind his firm in a contract. Multiple bids **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 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 bids cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD:** Term Contract: A contract award will be issued to the successful Contractor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful Contractor.
13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the Contractor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **shall** be borne by the Contractor.
14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if the Contractor delivers within the time required and the agency cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting Contractor. The Contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the Contractors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The Contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Contractor hereunder or in contemplation hereof or developed by the Contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the Contractor's expense to the F.O.B. point provided by the agency or by OSP. Contractor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The Contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.

- 21. ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
- 22. DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the Contractor agrees that: (a) the Contractor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the Contractor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.
- 23. CONTINGENT FEE:** The Contractor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.
- 24. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor named on the *Bid Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
- 25. DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.