



# NATIONAL PARK COLLEGE

101 College Dr.  
Hot Springs National Park, AR 71913

## **REQUEST FOR QUALIFICATION** BID SOLICITATION DOCUMENT

### SOLICITATION INFORMATION

Bid Number:	NP-22-0005	Solicitation Issued:	July 28, 2021
Description:	Bond Underwriting Services		
Agency:	National Park College		

### SUBMISSION DEADLINE FOR RESPONSE

Submission Deadline:	August 16, 2021	Submission Deadline Time:	4:30 p.m., Central
Bid Opening Date:	August 17, 2021	Bid Opening Time:	9:00 a.m., Central

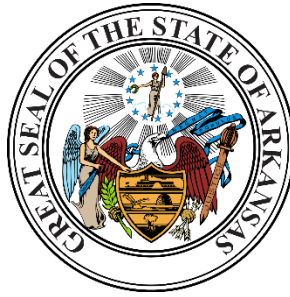
Responses **shall not** be accepted after the designated submission deadline date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit responses at the designated location on or before the submission deadline date and time. Responses received after the designated submission deadline date and time **shall** be considered late and **shall** be returned to the vendor without further review. It is not necessary to return "no bids" to the Agency.

### DELIVERY OF RESPONSE DOCUMENTS

Delivery Address:	<b>National Park College Fisher Bldg, Suite 313 101 College Dr. Hot Springs National Park, AR 71913</b>  Delivery providers, USPS, UPS, and FedEx deliver mail to the Agency's street address on a schedule determined by each individual provider. These providers will deliver to the Agency based solely on the street address.
Response's Outer Packaging:	Outer packaging <b>must</b> be sealed and should be properly marked with the following information. If outer packaging of response 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>• Vendor's name and return address</li></ul>

### AGENCY CONTACT INFORMATION

Agency Buyer:	Kurtis L. Markish	Buyer's Direct Phone Number:	501-760-4351
Email Address:	kmarkish@np.edu	Agency's Main Number:	501-760-4222



## **ARKANSAS SOVEREIGN IMMUNITY**

### **NON-NEGOTIABLE**

#### **SOVEREIGN IMMUNITY:**

Language in these terms and conditions, and the terms and conditions of any resulting contract, 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.

#### **GOVERNING LAW AND VENUE:**

- A. This contract shall be governed by and construed in accordance with the Laws of the State of Arkansas. Exclusive venue arising under this Contract is Pulaski County, Arkansas.
- B. Any legislation that may be enacted subsequent to the date of this 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 this 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.

#### **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.

## **SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION**

### **1.1 PURPOSE**

National Park College ("NPC," "Agency," "State") issues this Request for Qualifications (RFQ) to obtain qualifications and a contract for Bond Underwriting Services.

### **1.2 TYPE OF CONTRACT**

- A. A Term contract will be awarded to a single vendor.
- B. The term of this contract **shall** be for one (1) year. Upon mutual agreement by the vendor and agency, the contract may be renewed by the Agency on a year-to-year basis, for up to six (6) additional one-year terms or a portion thereof.
- C. The total contract term shall not be more than seven (7) years.

### **1.3 ISSUING AGENCY**

The Agency (NPC), as the issuing office, is the sole point of contact throughout this solicitation.

### **1.4 AGENCY CONTACT**

The Agency Buyer listed on page one (1) of this RFP shall be the sole point of contact for this RFP. At no time shall a Prospective Contractor attempt to contact other Agency departments or employees in regards to this RFP during the solicitation process.

### **1.5 BID OPENING LOCATION**

Responses submitted by the submission deadline time and date **shall** be opened at the following location on the bid opening time noted on page one (1):

National Park College  
Fisher Building, Board Room  
101 College Dr.  
Hot Springs, AR 71913

### **1.6 DEFINITION OF REQUIREMENT**

- A. The words "**must**" and "**shall**" signify a Requirement of this solicitation and that vendor's agreement to and compliance with that item is mandatory.
- B. Exceptions taken to any Requirement in this *Bid Solicitation*, whether submitted in the vendor's response or in subsequent correspondence, **shall** cause the vendor's response to be disqualified.
- C. Vendor may request exceptions to NON-mandatory items. Any such request **must** be declared on, or as an attachment to, the appropriate section's *Agreement and Compliance Page* in the *Response Packet*. Vendor **must** clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies.

### **1.7 DEFINITION OF TERMS**

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

- F. "Responsive proposal" means a proposal submitted in response to this solicitation that conforms in all material respects to this RFP.
- G. "Proposal Submission Requirement" means a task a Contractor **must** complete when submitting a proposal response. These requirements will be distinguished by using the term "shall" or "must" in the requirement.
- H. "Requirement" means a specification that a Contractor's product and/or service **must** perform during the term of the contract. These specifications will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- I. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.
- J. "OSP" means the Arkansas Office of State Procurement.
- K. "Price" and "Cost" are used synonymously to refer to any monies to be spent on the software, services, reimbursable, and other expenses.

## 1.8 **RESPONSE DOCUMENTS**

### A. Original Technical Proposal Packet

1. Responses must be submitted digitally, preferably on a flash drive. CDs will also be acceptable. **Do not send electronic copies via email, fax, ftp, Dropbox or other digital media transfer method.**
2. Technical Proposal. The following **MUST** be included in your *Technical Proposal*.
  - a. Signed *Proposal Signature Page* included with this solicitation.
  - b. Technical Proposal response to the Submission Requirements section. Proposal response **must** be in the English language.
  - c. Pricing **must** be proposed in U.S. dollars and cents
    - Pricing **must** be saved as a **separate file** from the *Technical Proposal* and should be clearly marked as "PRICING". A Prospective Contractor **shall not** include any pricing in the electronic copies of their *Technical Proposal*.
3. The following items **should** be submitted in the original *Technical Proposal Packet*.
  - a. EO 98-04 Disclosure Form
  - b. Copy of Prospective Contractor's *Equal Opportunity Policy*
4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information, if not requested to do so in this RFQ.

## 1.9 **ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that vendors adhere to the following format and suggestions when preparing their Response.
- B. The original submission and all copies should be arranged in the following order.
  - Scanned Signed Response Signature Page.
  - Information required for submission as listed in Section 3.1
  - Fees
  - E.O. 98-04 – *Contract Grant and Disclosure Form*.
  - *Equal Opportunity Policy*.
  - Other documents and/or information as may be expressly required in this *Bid Solicitation*. Label documents and/or information so as to reference the *Bid Solicitation's* item number.

**1.10 CLARIFICATION OF BID SOLICITATION**

Vendors may contact NPC buyer with procurement-related questions at any time prior to the bid opening.

**1.11 RESPONSE SIGNATURE PAGE**

- A. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Response Signature Page* included in the *Response Packet*.
- B. Vendor's signature on this page **shall** signify vendor's agreement that either of the following **shall** cause the vendor's response to be disqualified:
  - Additional terms or conditions submitted intentionally or inadvertently.
  - Any exception that conflicts with a Requirement of this *Bid Solicitation*.

**1.12 PRICING**

- A. Prospective Contractor(s) **shall** include all pricing within bid submissions. If any price is not included by the successful Contractor but is subsequently incurred, without prior knowledge and agreement of NPC, in order to achieve successful operation, the Contractor **shall** bear this additional cost.
- B. To allow time to evaluate proposals, prices **must** be valid for 120 days following the bid opening.
- C. NPC reserves the right to negotiate the pricing with the apparent successful vendor after the evaluation of responses.

**1.13 PRIME CONTRACTOR RESPONSIBILITY**

- A. A joint response submitted by two or more vendors shall not be accepted.
- B. A single Prospective Contractor **must** be identified as the prime Contractor. 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.
- C. Awarded Contractor shall be responsible for completing services.

**1.14 CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through NPC.
- B. Vendor **must not** alter any language in any solicitation document provided by NPC.
- C. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- D. Responses **must** be submitted only in the English language.
- E. NPC **shall** have the right to award or not award a contract, if it is in the best interest of the State to do so.
- F. Vendor **must** provide clarification of any information in their response documents as requested by NPC within 48 hours.
- G. Qualifications **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.

**1.15 REQUIREMENT OF ADDENDUM**

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by NPC.
- B. An addendum posted within three (3) calendar days prior to the bid opening **shall** extend the bid opening and may or may not include changes to the Bid Solicitation.
- C. The vendor **shall** be responsible for checking the Office of State Procurement website, <http://www.arkansas.gov/dfa/procurement/bids/index.php> for any and all addenda up to solicitation deadline.

**1.16 QUALIFICATION AND AWARD PROCESS****A. Successful Vendor Selection**

The ranking of vendors **shall** be determined by the total score each *Response* receives in evaluation. The vendor receiving the highest ranking average score for their *Response* **shall** be selected as the apparent successful vendor and **shall** enter negotiations with NPC.

**B. Negotiations**

1. NPC will enter pricing and process negotiations with the highest ranking vendor.
2. If NPC so chooses, it **shall** also have the right to enter discussions with the highest ranking vendor to further define contract details. All negotiations **shall** be conducted at the sole discretion of NPC. NPC **shall** solely determine the items to be negotiated.
3. If NPC and vendor cannot reach an agreement regarding contractual matters, including pricing, NPC **shall** declare the vendor as non-responsive and will begin the negotiation process with the next highest ranking vendor. The negotiation process will be repeated until an anticipated successful vendor has been determined, or until such time NPC decides not to move forward with an award.

**C. Anticipation to Award**

1. Once an anticipated successful vendor has been determined, the anticipated award will be posted on the Office of State Procurement website at <http://www.arkansas.gov/dfa/procurement/bids/index.php>.
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Vendors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen day posting period.
3. NPC **shall** have the right to waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the vendor's responsibility to check the listed website for the posting of an anticipated award.

**D. Issuance of a Contract**

1. Any resultant contract of this *Bid Solicitation* **shall** be subject to NPC and/or State approval processes which may include Legislative review and approval.
2. The Agency Procurement Official will be responsible for award and administration of any resulting contract(s).
3. This contract shall be subject to NPC board approval. Failure to attain NPC board approval shall negate any potential contract.

**1.17 MINORITY BUSINESS POLICY**

A. Minority is defined by Arkansas Code Annotated § 15-4-303 as 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. The Arkansas Economic Development Commission conducts a certification process for minority businesses and disabled veterans. The vendor's Certification Number should be included on the vendor's *Response Signature Page*.

**1.18 EQUAL OPPORTUNITY POLICY**

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

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

- C. Vendors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute.
- D. Vendors who are not required by law to have an *EO Policy* **must** submit a written statement to that effect.

#### 1.19 **PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected vendor(s) **must** certify that they do not employ or contract with illegal immigrants. Bidders shall certify online at: <https://www.ark.org/dfa/immigrant/index.php/user/login>

#### 1.20 **PAST PERFORMANCE**

In accordance with provisions of State Procurement Law, specifically OSP Rule R5:19-11-230(b)(1), a vendor's past performance with the State and NPC may be used to determine if the vendor is "responsible". Responses submitted by vendors determined to be non-responsible **shall** be disqualified.

#### 1.21 **PUBLICITY**

- A. Vendors **shall not** issue a news release pertaining to this *Bid Solicitation* or any portion of the project without NPC's prior written approval.
- B. Failure to comply with this Requirement **shall** be cause for a vendor's response to be disqualified.

#### 1.22 **RESERVATION**

NPC **shall not** pay costs incurred in the preparation and/or submission of a response.

## **SECTION 2 – SCOPE**

#### 2.1 **INTRODUCTION**

National Park College ("NPC," "Agency," "State") issues this Request for Qualifications (RFQ) to obtain qualifications and a contract for Bond Underwriting Services from qualified investment banking firms. Underwriting services will be for bond issuances related to providing funding for the development and construction of new welding facilities, physical plant facilities, site preparation for future student housing facility, and construction of future student housing facility.

#### 2.2 **PURPOSE AND PLAN OF BONDS**

National Park College expects to issue a General Obligation Bonds (the "GO Bonds") to provide funds for construction projects including new welding facilities, physical plant facilities, and site preparation to construct an additional student housing facility. The approximately \$3 million in bank qualified, tax-exempt bonds are to have a term of thirty (30) years. Targeted closing date shall be approximately December 1, 2021.

National Park College expects to issue a Tuition/Fees/Revenue Bonds (the "TFR Bonds") to provide funds to construct the College's additional student housing facility (Phase 2 Dogwood Hall Housing Project). The approximately \$12 million in bank qualified, tax-exempt bonds are currently structured to have a term of thirty (30) years. To-be-constructed housing to open in the estimated fall of 2023.

Use of Bond Underwriting Services shall be dependent upon Method of Finance approval from Legislative Council as well as National Park College Board of Trustees approval. No work is guaranteed if required approvals are not met.

#### 2.3 **UNDERWRITING SERVICES**

Proposers should provide evidence of their ability and qualifications to provide the following scope of services for NPC College Administration. Services to be rendered include, but are not limited to, the following:

- A. Participation as a key team member in the anticipated financing; including but not limited to making recommendations on all aspects of the assigned financing including the timing of the bond sale, call provisions, marketing, credit enhancement and other structuring aspects;

- B. Review and preparation of sale documents and other relevant financing documents; including procuring the bonds upon terms and conditions mutually acceptable to the College and the underwriters pursuant to the Bond Purchase Agreement;
- C. Assistance in preparations, discussions and presentations with rating agencies, as requested;
- D. Assessment of alternative deal structures as needed and/or proposed;
- E. Assistance in the procurement and negotiation of credit support mechanisms, as needed;
- F. Participate in the drafting of the Official Statement and other bond documents, as required.
- G. Obtain estimates for credit enhancements and other services as necessary, included but not limited to attendance at various working groups and other appropriate meetings, as requested;
- H. Provide the Agency an analysis of the market conditions prior to, during and subsequent to the sale of bonds, summarizing the reception of bonds in the market and evaluating performance relative to the market and other securities of similar credit;
- I. Develop computer analysis and models to be used in conjunction with the plan of finance;
- J. Coordinate the work of the underwriting team, if applicable, to include co-managers and a selling group, if desired and implement the designation rules and allocation guidelines established by the Agency;
- K. Marketing and selling the bonds with quality execution according to the expectations developed during pre-pricing discussions with the Agency administrative staff. As a part of this process, the Agency will require the senior manager to use electronic order platform, to maintain its book of orders and to provide access to the full order information, including order details for each maturity, to the Agency administrative staff;
- L. Preparing a closing memorandum and closing the transaction on time as well as preparing a post pricing analysis; and other related services as required.

## **SECTION 3 – SUBMISSION REQUIREMENTS**

### **3.1 SUBMISSION REQUIREMENTS**

Vendor responding to this RFQ shall provide the following information regarding qualification of their firm in the order presented below. Please initiate each response by restating the question listed below.

- A. **HISTORY AND EXPERIENCE:** Describe the history and experience of the firm, including overall underwriting experience and size of sales force. Proposers should provide evidence of their ability and qualifications to provide the following scope of services in conjunction with the College's Municipal Advisor.
- B. **HIGHER EDUCATION BOND AND FINANCING TRANSACTIONS:** Provide detailed descriptions of three recent Arkansas higher education bond and financing transactions for which the firm served as underwriter. Transactions should be selected to demonstrate experience with issues similar to those that can be expected in representing the Agency. Names, addresses and phone numbers of a contact person for the responding vendor should be provided.
- C. **CONFLICTS OF INTEREST:** Describe in detail any potential conflicts of interest (if any) that your firm, affiliates, or parent may have for this engagement. What are your methods of dealing with conflicts of interest?
- D. **INTEREST FORECAST:** What is your firm's forecast for interest rates over the next year?
- E. **IMPORTANT QUESTION:** What is the most important question that we haven't asked you? Include the answer to this question?
- F. **FIRM'S ADVANTAGE:** Why should we hire you instead of some other firm? Explain why your firm's underwriting, sales and trading teams are more capable than other firms.



- G. **FEES:** Provide all fees including percentages, flat fees and discounts to provide underwriter services for bond issuances. Any costs not identified by the successful contractor but subsequently incurred in order to achieve successful operation shall be borne by the vendor.

### 3.2 **SUBMISSION CHECKLIST**

It is the vendor's responsibility to ensure the following has been submitted with their submission. Failure to submit required documentation shall disqualify RFQ submission from consideration.

- ☐ Signed Response Signature Page
- ☐ Submission Requirements (Section 3.1)
- ☐ E.O. 98-04 – *Contract Grant and Disclosure Form*
- ☐ *Equal Opportunity Policy*
- ☐ Fees (Section 3.1) (Saved as separate file from Technical Proposal)

## **SECTION 4 – CRITERIA FOR SELECTION**

### 4.1 **RESPONSE SCORE**

- A. NPC will review each submission to verify submission requirements have been met. Submissions that do not meet submission requirements **shall** be disqualified and **shall not** be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying responses. Evaluation will be based on vendor's response to the *Information for Evaluation* section included in the *Response Packet*. Other agencies, consultants, and experts may also examine documents at the discretion of NPC.
1. Members of the Evaluation Committee will individually review and evaluate proposals and complete an Individual Score Worksheet for each proposal. Individual scoring for each Evaluation Criteria will be based on the following Scoring Description.

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

2. After initial individual evaluations are complete, the Evaluation Committee members will meet to discuss their individual ratings. At this consensus scoring meeting, each member will be afforded an opportunity to discuss his or her rating for each evaluation criteria.

3. After committee members have had an opportunity to discuss their individual scores with the committee, the individual committee members will be given the opportunity to change their initial individual scores, if they feel that is appropriate.
4. The final individual scores of the evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each proposal.
5. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.

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

1. In each sub-section, items/questions have each been assigned a maximum point value. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
2. NPC has assigned Weighted Values to each section according to its significance.

Information for Evaluation Sub-Sections of 3.1 Submission Requirements	Max raw points	Sub-Section's weight	Max weighted score possible
A. Company's History and Experience	5	10	50
B. Higher Education Bond and Financing Transactions	5	10	50
C. Conflicts of Interest	5	5	25
D. Interest Forecast	5	5	25
E. Important Question	5	5	25
F. Firm's Advantage	5	5	25
<b>MAXIMUM TOTAL POINTS POSSIBLE:</b>			<b>200</b>

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

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

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

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

E. The proposal's weighted scores for sub-sections will be added to determine the total technical score for the proposal.

F. Individual evaluator scores shall be averaged for final technical score for each potential contractor.

#### 4.2 **COST SCORE**

A. When pricing is opened for scoring, the maximum amount of cost points will be given to the proposal with the BEST VALUE.

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

#### 4.3 **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.

	Maximum Points Possible
Technical Proposal	200
Cost	100
<b>Maximum Possible Grand Total Score</b>	<b>300</b>

#### 4.4 **PROSPECTIVE CONTRACTOR ACCEPTANCE OF EVALUATION TECHNIQUE**

- A. Vendor **must** agree to all evaluation processes and procedures as defined in this solicitation.
- B. The submission of a *Response Packet* **shall** signify the vendor's understanding and agreement that subjective judgments **shall** be made during the evaluation and scoring of the Technical Proposals.

#### 4.5 **SOLICITATION SCHEDULE**

The following schedule shall be used for this RFQ.

Event	Date
Release of RFQ	July 28, 2021
Proposal Submission Deadline	August 16, 2021
Bid Opening Date	August 17, 2021
Review of Submitted Bids*	August 23, 2021
Anticipation to Award Posted*	August 24, 2021
ALC Review*	September 17, 2021
Contract Award*	September 20, 2021

\*Dates are approximate

## **SECTION 5 – GENERAL CONTRACTUAL REQUIREMENTS**

### 5.1 **PAYMENT AND INVOICE PROVISIONS**

- A. All invoices **shall** be forwarded via email to:
- accountspayable@np.edu
- B. Payment will be made in accordance with applicable NPC accounting procedures upon acceptance of goods and services by NPC.
- C. NPC **shall not** be invoiced in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the vendor has successfully satisfied NPC as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The vendor should invoice NPC by an itemized list of charges. The NPC 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.

### 5.2 **GENERAL INFORMATION**

- A. The State **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- B. The State **shall not** pay damages, legal expenses, or other costs and expenses of any other party.

- C. The State **shall not** continue a contract once any equipment has been repossessed.
- D. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- E. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- F. The laws of the State of Arkansas **shall** govern this contract.
- G. A contract **shall not** be effective prior to award being made by the Agency Procurement Official.
- H. In a contract with another party, the State will accept the risk of loss of the equipment and pay for any destruction, loss or damage of the equipment while the State has such risk, when:
  - The extent of liability for such risk is based upon the purchase price of the equipment at the time of any loss, and
  - The contract has required the State to carry insurance for such risk.

### 5.3 **CONDITIONS OF CONTRACT**

- A. The vendor **shall** at all times 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. The vendor **shall** indemnify and save harmless NPC 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 vendor.

### 5.4 **STATEMENT OF LIABILITY**

- A. The vendor's liability for damages to NPC **shall** be limited to the value of the Contract. The foregoing limitation of liability **shall 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 vendor; 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 vendor and NPC **shall not** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall 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 vendor; 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.
- B. Language in these terms and conditions **shall not** be construed or deemed as NPC's waiver of its right of sovereign immunity. The vendor agrees that any claims against NPC, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

### 5.5 **RECORD RETENTION**

- A. The vendor **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.
- B. Financial and accounting records **shall** be made available, upon request, to NPC and the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for a minimum of 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.

**5.6 CONFIDENTIALITY**

- A. The vendor, vendor's subsidiaries, and vendor's employees **shall** 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 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 NPC **shall** have the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

**5.7 CONTRACT INTERPRETATION**

Should NPC and vendor interpret specifications differently, either party may request clarification. However, if an agreement cannot be reached, the determination of NPC **shall** be final and controlling.

**5.8 CANCELLATION**

- A. In the event NPC no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, NPC **shall** give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination. The effective date of termination **shall** be 30 days from the date of notification, unless a longer timeframe is specified in the notification.
- B. Upon default of a vendor, NPC **shall** agree to pay only sums due for goods and services received and accepted up to cancellation of the contract.

**5.9 SEVERABILITY**

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

## **SECTION 6 – 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 Response Packets **must** be submitted to the Agency on or before the date and time specified for bid opening. The Response 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 disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple responses **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. Vendor **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 vendor to supply additional descriptive material. The vendor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Vendors 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 vendor 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 vendor **shall** further guarantee that if the items furnished hereunder are to be installed by the vendor, such items **shall** function properly when installed. The vendor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The vendor'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 vendor'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 vendor's expense. After reasonable examination, all demonstrators will be returned at vendor'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 vendor.
10. **AMENDMENTS:** Vendor's responses 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 vendor. 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 vendor.
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 vendor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Agency **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 vendor.
14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Agency. 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 Agency 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 Agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the vendors 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. Vendor **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. **CLAIMS:** Any claims the Contractor may assert under this Agreement shall be brought before the Arkansas State Claims Commission ("Commission"), which shall have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor shall continue to provide the Services under this Agreement even in the event that the Contractor has a claim pending before the Commission.
23. **CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the

right to cancel the contract or purchase order by giving the vendor written notice of such cancellation thirty (30) days prior to the date of cancellation.

Any delivered but unpaid for goods will be returned in normal condition to the contractor by the State. If the State is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the contractor has provided services which the State has accepted, the contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**

- 24. DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the vendor agrees that: (a) the vendor **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 vendor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the vendor 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 vendor 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 vendor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.
- 25. CONTINGENT FEE:** The vendor 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 vendor for the purpose of securing business.
- 26. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the vendor named on the *Response 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.
- 27. 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.



PROSPECTIVE CONTRACTOR'S INFORMATION					
Company:					
Address:					
City:		State:		Zip Code:	
Business Designation:	<input type="checkbox"/> Individual <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Public Service Corp <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Nonprofit				
Minority and Women-Owned Designation*:	<input type="checkbox"/> Not Applicable <input type="checkbox"/> American Indian <input type="checkbox"/> Asian American <input type="checkbox"/> Service Disabled Veteran <input type="checkbox"/> African American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Pacific Islander American <input type="checkbox"/> Women-Owned				
	AR Certification #: _____ * See <i>Minority and Women-Owned Business Policy</i>				
PROSPECTIVE CONTRACTOR CONTACT INFORMATION					
<i>Provide contact information to be used for bid solicitation related matters.</i>					
Contact Person:			Title:		
Phone:			Alternate Phone:		
Email:					
ILLEGAL IMMIGRANT CONFIRMATION					
By signing and submitting a response to this <i>Bid Solicitation</i> , 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.					
ISRAEL BOYCOTT RESTRICTION CONFIRMATION					
By signing and submitting a response to this <i>Bid Solicitation</i> , a Prospective Contractor agrees and certifies that they do not boycott Israel, and if selected, will not boycott Israel during the aggregate term of the contract.					

The signature below signifies agreement that any exception that conflicts with a Requirement of this *Bid Solicitation* **will cause the Prospective Contractor's proposal to be disqualified.**

Printed/Typed Name: \_\_\_\_\_ Date: \_\_\_\_\_