



# NATIONAL PARK COLLEGE

101 College Dr.  
Hot Springs National Park, AR 71913

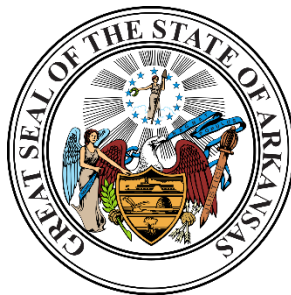
## **INVITATION FOR BID** BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Solicitation Number:	NP-23-0016	Solicitation Issued:	April 24, 2023
Description:	Vehicle - New Ford Explorer XLT		
Agency:	National Park College		

SUBMISSION DEADLINE FOR RESPONSE			
Submission Deadline:	May 1, 2023	Submission Deadline Time:	9:00 a.m., Central
Bid Opening Date:	May 1, 2023	Bid Opening Time:	9:30 a.m., Central
<p>Responses <b>shall not</b> 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 <b>shall</b> be considered late and <b>shall not</b> be reviewed. It is not necessary to return "no bids" to the Agency.</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p><b>National Park College Fisher Bldg, Suite 327 101 College Dr. Hot Springs National Park, AR 71913</b></p> <p>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.</p>
Response's Outer Packaging:	<p>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.</p> <ul style="list-style-type: none"><li>• Bid number</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, shall 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 INFORMATION**

### **1.1 PURPOSE**

National Park College ("NPC," "Agency") is seeking bids to obtain pricing and purchase one (1) new 2023 Ford Explorer XLT SUV ("SUV").

### **1.2 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 April 27, 2023, to the NPC buyer as shown on page one (1) of this *Bid Solicitation*.
- B. For each question submitted, Prospective Contractor should reference the specific solicitation item number to which the question refers.
- C. The Prospective Contractor should notify the NPC 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.
- D. Prospective Contractors may contact the NPC buyer with non-substantive questions at any time prior to the bid opening.
- E. An oral statement by NPC 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 NPC.

### **1.3 TYPE OF CONTRACT**

Any resulting contract shall be a firm contract awarded to a single vendor. Prospective Contractors entering into a contract with the Agency **shall** comply with all the terms and conditions contained herein.

### **1.4 ISSUING AGENCY**

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

### **1.5 AGENCY CONTACT**

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

### **1.6 BID OPENING LOCATION**

Responses submitted by the opening time and date shall be opened at the following location:

National Park College  
Fisher Bldg, Suite 327  
101 College Dr.  
Hot Springs National Park, AR 71913

### **1.7 DEFINITION OF REQUIREMENT**

- A. The words "**must**," "**shall**" and "**will**" 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 and included with a Contractor's submission. Contractor must clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies.

**1.8 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" or "Vendor" means a person who sells or contracts to sell commodities and/or services.
- E. The terms "Invitation for Bid", "IFB," "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 IFB.
- 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, commodities, or other expenses.

**1.9 RESPONSE DOCUMENTS**

Response documents must include the items as listed in Section 3.1 as well as the completed Response Signature Page at the end of this document. Responses must be submitted either on paper hard copy or digitally, email, flash drive or CDs shall be accepted.

**Do not send digital copies via fax, ftp, Dropbox or other digital media transfer method.**

If emailing a bid:

- Email bid documents to kmarkish@np.edu.
- Bid number (NP-23-0016) must be placed in the subject line of the email. Failure to place bid number in the subject line may cause bid to not be received properly.
- NPC shall not be responsible internet delays, email server errors, junk-mail filters, etc. that may occur which may cause delivery delays or cause delivery failure.
- Contractor may contact agency buyer (listed on page 1 of this solicitation) to confirm receipt of bid submission.

**1.10 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 IFB.
- B. Vendor's signature on the response signature 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*.

**1.11 PRIME CONTRACTOR RESPONSIBILITY**

- A. A joint response submitted by two or more vendors shall not be accepted.
- B. A single prime contractor shall be awarded and held responsible for the contract and shall be the sole point of contact.

**1.12 FOIA**

Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).

**1.13 CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through the Agency.
- B. Vendor **must not** alter any language in any solicitation document provided by the State.
- 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. National Park College shall have the right to award or not award a contract, if it is in the best interest of the Agency or State to do so.
- F. Vendor must provide clarification of any information in their response documents as requested by the Agency.
- G. Submissions must meet or exceed the required specifications as set forth in this *Bid Solicitation*.

**1.14 REQUIREMENT OF ADDENDUM**

- A. This Bid Solicitation shall be modified only by an addendum written and authorized by the Agency.
- 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 solicitations website, <https://www.arkansas.gov/tss/procurement/bids/index.php>, for any and all addenda up to bid opening.

**1.15 AWARD PROCESS**

- A. Award  
Contract shall be awarded to a responsive, responsible bidder meeting or exceeding specification requirements.  
  
Award shall be based on best value for the price (price vs features) submitted which suites the needs of the Agency. The Agency hereby reserves the right not to award a contract if it is in the best interest of the Agency to do so.  
  
Other than awarded vendor, other vendors shall not be notified of ranking or award. Award shall be posted to the Arkansas Office of State Procurement website. Vendors that wish to inquire about awarded vendor may submit a FOIA request via email to the buyer as listed on page one (1) of this solicitation.
- B. Negotiations
  - 1. If the Agency so chooses, the Agency has the right to enter pricing negotiations with the highest ranking vendor.
  - 2. If the agency 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 the Agency. The Agency shall solely determine the items to be negotiated.
  - 3. If the agency and vendor cannot reach an agreement regarding contractual matters, including pricing, the Agency shall declare the vendor as non-responsive and shall 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 the Agency decides not to move forward with an award.

**C. Issuance of a Contract**

1. Any resultant contract of this *Bid Solicitation* shall be subject to State approval processes, which may include Legislative review and approval as well as the Agency's Board of Trustees.
2. The Agency Procurement Official shall be responsible for award and administration of any resulting contract(s).

**1.16 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/tss/immigrant/index.php/user/welcome>

**1.17 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 may be used to determine if the vendor is "responsible". Responses submitted by vendors determined to be non-responsible **shall** be disqualified.

**1.18 PUBLICITY**

A. Vendors **shall not** issue a news release pertaining to this *Solicitation* or any portion of the project without the Agency's prior written approval.

B. Failure to comply with this Requirement **shall** be cause for a vendor's response to be disqualified.

**1.19 COST TO SUBMIT BID**

Agency and the State shall not be liable for any costs incurred by any respondent in preparation of a proposal in response to this IFB, or any other activities related to responding to this IFB.

## **SECTION 2 – SCOPE**

**2.1 INTRODUCTION**

National Park College ("NPC," "Agency") is seeking bids to obtain pricing and purchase of one (1) new 2023 Ford Explorer XLT SUV ("SUV").

**2.2 INSPECTION**

NPC reserves the right to test drive and inspect the condition of the SUV prior to purchase. NPC reserves the right to have the SUV inspected by a licensed mechanic. The SUV must meet inspection and acceptance by NPC prior to purchase.

NPC may use findings made during inspection to negotiate price with responding contractor and/or negotiate repairs that contractor shall need to make prior to purchase.

Depending on findings, NPC reserves the right not to purchase the SUV.

**2.3 MINIMUM SPECIFICATIONS**

Minimum specification shall match the Ford Explorer XLT specifications.

**2.4 OPTIONAL ADDITIONS**

Agency may purchase additional options/add-ons that are outside of the standard Ford Explorer XLT specifications, but is not required to do so.

**2.5 WARRANTY**

Include/specify all warranty information with bid submission. A warranty must be offered.

**2.6 ON-PROPERTY SUV ONLY**

Due to timing needs, SUV must be an on-property inventory sale. No ordering of SUV shall be accepted.

If SUV being offered contains optional features, list all optional features.

**2.7 DELIVERY**

Delivery shall be FOB destination.

Deliver to:

National Park College  
101 College Dr.  
Hot Springs National Park, AR 71913

All deliveries must be made during normal 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 shutdowns that will affect the delivery requirement.

**2.8 PRICING**

NPC reserves the right not to accept SUV submission if costs exceed budget.

Pricing shall be made on the above listed scope and other features, options, and specifications submitted. Any costs that may occur that are not included in the bid submission shall be borne by the vendor.

**2.9 ACCEPTANCE STANDARDS**

Inspection and acceptance/rejection of product(s) shall be made within thirty (30) days of receipt. The Agency 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 product(s) and must not impose any liability on the Agency for such returns.

## **SECTION 3 – SUBMISSION REQUIREMENTS**

**3.1 SUV DETAILS**

Prospective contractor shall submit:

1. Details, specifications, and features of SUV being submitted including optional features (if any).
2. Engine Type in SUV being offered (2.3 L EcoBoost I-4, 3.0L EcoBoost V6, or 3.3L Hybrid)
3. Warranty Details

**3.4 PRICING**

Pricing shall be made upon the above listed scope and specification submission along with any other fees or charges (e.g. delivery fees, cleaning/preparation fee(s), etc.)

Any costs that may occur that are not included in the pricing shall be borne by the vendor.

Agency may purchase additional options/add-ons that are outside of the specifications listed, but is not required to do so.

**3.5 ETHICAL STANDARDS**

- A. Vendors shall not offer any gratuities, favors, or anything of monetary value to any official or employee of NPC or the State of Arkansas, or to any official or employee of NPC's contractors, for the purpose of influencing this selection, as a gratuity, as a thank-you gift, or for any other reason. Any attempt by a vendor to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for exclusion from the selection process.
- B. Neither vendor nor any person acting on vendor's behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of NPC or NPC's contractors, their families or staff members. All inquiries regarding the solicitation are to be directed to the **designated agency contact ONLY** as listed at the bottom of page 1 of this RFQ. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from vendor's formal response to the solicitation, written requests for clarification during the period officially designated for such purpose by NPC, neither vendor(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of NPC, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any vendor.

## **SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS**

### **4.1 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 Agency accounting procedures upon acceptance of goods and services by the agency.
- C. The Agency **shall not** be invoiced in advance of delivery and acceptance of any goods or services.
- D. Payment shall be made only after the vendor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The vendor 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 vendor **must** be registered with the Agency in order to receive payment.

### **4.2 GENERAL INFORMATION**

- A. The Agency **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- B. The Agency **shall not** pay damages, legal expenses, or other costs and expenses of any other party.
- C. Any litigation involving the Agency **must** take place in Pulaski County, Arkansas.
- D. The Agency **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- E. The Agency **shall not** enter a contract which grants to another party any remedies other than the following:
- The right to possession.
  - The right to accrued payments.
  - The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  - The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- 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.

### **4.3 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 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 vendor.

### **4.4 STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of vendor-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 vendor **shall** retain total liability for equipment, software and technical and business or operations literature. The State **shall** not at any time be responsible for or accept liability for any vendor-owned items.

- B. The vendor's liability for damages to the State **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 the State **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.
- C. Language in these terms and conditions **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The vendor agrees that any claims against the State, 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.

#### 4.5 **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 the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

#### 4.6 **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 the State **shall** have the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

#### 4.7 **CONTRACT INTERPRETATION**

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

#### 4.8 **CANCELLATION**

- A. In the event the State 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, the Agency **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, the Agency **shall** agree to pay only sums due for goods and services received and accepted up to cancellation of the contract.

#### 4.9 **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 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 5 – 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 **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. **BRAND NAME REFERENCES:** Unless otherwise specified in the *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.
5. **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.
6. **AMENDMENTS:** Vendor's responses cannot be altered or amended after the bid opening except as permitted by regulation.
7. **AWARD:** Firm Contract: A contract award shall 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. The Agency hereby reserves the right not to award a contract if it is in the best interest of the Agency/State to do so.
8. **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.
9. **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.
10. **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.
11. **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.
12. **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.
13. **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.
14. **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.**

- 15. 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.
- 16. 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.

