



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

**REQUEST FOR QUALIFICATIONS (RFQ)**  
**BID SOLICITATION DOCUMENT**

**SOLICITATION INFORMATION**

Bid Number:	SP-15-0097	Solicitation Issued:	June 15, 2015
Description:	Business Plan and Consulting Services		
Agency:	Office of the Lottery (OAL)		

**SUBMISSION DEADLINE FOR RESPONSE**

Bid Opening Date:	July 17, 2015	Bid Opening Time:	3:00 p.m., Central Time
Proposals <b>shall not</b> be accepted after the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Vendors to submit proposals at the designated location on or before the bid opening date and time. Proposals received after the designated bid opening date and time <b>shall</b> be considered late and <b>shall</b> be returned to the Vendor without further review. It is not necessary to return "no bids" to OSP.			

**DELIVERY OF RESPONSE DOCUMENTS**

Delivery Address:	Office of State Procurement 1509 West 7 <sup>th</sup> Street, Room 300 Little Rock, AR 72201-4222  Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address.
Proposal's Outer Packaging:	Outer packaging <b>must</b> be sealed and should be properly marked with the following information. If outer packaging of proposal 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>

**OFFICE OF STATE PROCUREMENT CONTACT INFORMATION**

OSP Buyer:	Paul Coulter	Buyer's Direct Phone Number:	501-683-0084
Email Address:	paul.coulter@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	<a href="http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx">http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx</a>		
Arkansas Scholarship Lottery	<a href="http://www.myarkansaslottery.com/about/procurement">http://www.myarkansaslottery.com/about/procurement</a>		

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

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

### **1.1 PURPOSE**

This Request for Qualification (RFQ) is issued by the Office of State Procurement (OSP) for the Office of the Arkansas Lottery (OAL) to obtain the services of an independent consulting firm to analyze the operations of all relevant areas of OAL and the State Lottery as outlined in this bid solicitation to:

- A. Provide recommendations and actionable plans for use by OAL to:
  - 1. Increase the revenue generated for the Arkansas Academic Challenge Scholarship Program, and
  - 2. Control OAL's operational costs.
- B. Provide a comprehensive five (5) year business plan/strategic plan that incorporates the actionable plan created by the selected Vendor.
- C. Provide consultant services on an as needed basis throughout the life of the contract.

### **1.2 TYPE OF CONTRACT**

- A. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review and approval.
- B. The resulting contract **will** be a TERM contract. The term of this contract **shall** be for two (2) years. The anticipated starting date for the contract is August 14, 2015.
- C. Upon mutual agreement by the Vendor and agency, the contract may be renewed by OSP on a year-to-year basis, for up to five (5) additional one-year terms or a portion thereof.
- D. The total contract term **shall not** be more than seven (7) years.

### **1.3 QUALIFYING CRITERIA**

- A. The Vendor receiving the highest ranking score for their technical proposal **shall** be selected as the apparent qualified Vendor.
- B. The agency may enter pricing negotiations with the qualified Vendor prior to issuing a contract. If pricing negotiations prove to be unsuccessful with the top scoring Vendor, the agency **shall** move on to negotiations with the second highest scoring Vendor, and so on, until a contract is issued, or the agency determines not to move forward with issuing a resulting contract.

### **1.4 ISSUING AGENCY**

OSP, as the issuing office, is the sole point of contact for the selection process. Vendor questions regarding this *Bid Solicitation* should be made through the State's buyer as shown on page one of this document. Vendor's questions will be answered as a courtesy and at Vendor's own risk.

### **1.5 BID OPENING LOCATION**

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

Office of State Procurement  
1509 West Seventh Street, Room 300  
Little Rock, AR 72201-4222

**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 proposal or in subsequent correspondence, **shall** cause the Vendor’s proposal 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*. Vendor **must** clearly explain the requested exception, and should label the request to reference the specific solicitation item number to which the exception applies. (See *Agreement and Compliance Page*.)

**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 item in question as indicated in *Clarification of Bid Solicitation and Questions*.
- B. The words “bidder” and “Vendor” are used synonymously in this document.
- C. The words “Office of the Lottery”, “Arkansas Lottery” and Arkansas Scholarship Lottery are used synonymously in this document.
- D. The terms “Request for Qualification”, “RFQ” and “Bid Solicitation” are used synonymously in this document.

**1.8 RESPONSE DOCUMENTS**

- A. Original Technical Proposal Packet
  - 1. The original *Technical Proposal Packet* **must** be submitted on or before the bid opening date and time.
  - 2. The Proposal Packet should be clearly marked “Original” and **must** include the following:
    - a. Original signed *Proposal Signature Page*. (See *Proposal Signature Page*.)
    - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
    - c. Original signed *Proposed Subcontractors Form*. (See *Subcontractors*.)
    - d. Other documents and/or information as may be expressly required in this *Bid Solicitation*.
    - e. *Technical Proposal* response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
  - 3. The following items should be submitted in the original *Technical Proposal Packet*.
    - a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions*, #27. *Disclosure*.)
    - b. Copy of Vendor’s *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)

4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.
- B. Additional Copies and Redacted Copy of the *Technical Proposal Packet*  
In addition to the original *Technical Proposal Packet*, the following items should be submitted:
1. Additional Copies of the *Technical Proposal Packet*
    - a. Five (5) complete hard copies (marked "COPY") of the *Technical Proposal Packet*.
    - b. Six (6) electronic versions of the *Technical Proposal Packet*, preferably on flash drives. CDs will also be acceptable.
    - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy **shall** govern.
    - d. If OSP requests additional copies of the proposal, the copies **must** be delivered within twenty-four (24) hours of request.
  2. One (1) redacted copy the original *Technical Proposal Packet*, preferably on a flash drive. A CD will also be acceptable. (See *Proprietary Information*.)

#### 1.9 **ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that Vendors adhere to the following format and suggestions when preparing their *Technical Proposal* response.
- B. The original *Technical Proposal Packet* and all copies should be arranged in the following order.
  - *Proposal Signature Page.*
  - *All Agreement and Compliance Pages.*
  - *Proposed Subcontractors Form.*
  - Signed Addenda, if applicable.
  - 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.
  - *Technical Proposal* response to the *Information for Evaluation* section of the *Technical Proposal Packet*.

#### 1.10 **CLARIFICATION OF BID SOLICITATION AND QUESTIONS**

- A. Vendors may submit written questions requesting clarification of information contained in this *Bid Solicitation*. Written questions should be submitted by 4:00 p.m., Central Time on June 26, 2015. Submit written questions by email to the buyer as shown on page one (1) of this *Bid Solicitation*.
- B. Vendor's written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on July 7, 2015.
- C. Answers to verbal questions may be given as a matter of courtesy and **must** be evaluated at Vendor's risk.

**1.11 PROPOSAL SIGNATURE PAGE**

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

**1.12 AGREEMENT AND COMPLIANCE PAGES**

- A. Vendor **must** sign all *Agreement and Compliance Pages* relevant to each section of the *Bid Solicitation Document*. The *Agreement and Compliance Pages* are included in the *Technical Proposal Packet*.
- B. Vendor's signature on these pages **shall** signify agreement to and compliance with all Requirements within the designated section.

**1.13 SUBCONTRACTORS**

- A. Vendor **must** complete, sign and submit the *Proposed Subcontractors Form* included in the *Technical Proposal Packet* to indicate Vendor's intent to utilize, or to not utilize, subcontractors.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Technical Proposal Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.

**1.14 PRIME CONTRACTOR RESPONSIBILITY**

- A. A joint proposal submitted by two or more Vendors is acceptable. However, a single Vendor **must** be identified as the prime contractor.
- B. The prime contractor **shall** be held responsible for the contract and **shall** be the sole point of contact with regard to services and all requirements.

**1.15 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. One complete copy of the submission documents from which any proprietary information has been redacted should be submitted in electronic format with your proposal.
- C. Except for the redacted information, the redacted copy **must** be identical to the original hard copy reflecting the same pagination as the original, and showing the empty space from which information was redacted.
- D. It is the responsibility of the Vendor to identify all proprietary information and to ensure the electronic copy is protected against restoration of redacted data.
- E. The redacted copy **shall** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the Vendor.
- F. If a redacted copy of the submission documents is not provided with Vendor's response packet, a copy of the non-redacted documents, with the exception of financial data (other than pricing), **shall** be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).

- G. If the State deems redacted information to be subject to FOIA, the Vendor will be contacted prior to release of the documents.

#### 1.16 **CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through OSP.
- 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. Proposals **must** be submitted only in the English language.
- E. The State **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 OSP.
- G. Proposed services **must** meet or exceed the specifications as set forth in this *Bid Solicitation*.
- H. Vendors may submit multiple proposals.

#### 1.17 **REQUIREMENT OF ADDENDUM**

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by OSP.
- B. Vendors are cautioned to ensure that they have received or obtained, and have responded to, any and all addenda to the *Bid Solicitation* prior to submission of response.
- C. There will be no addenda to a *Bid Solicitation* three (3) calendar days prior to the bid opening, unless the addenda extends the bid opening date or cancels the bid.
- D. It is the responsibility of the Vendor to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php> and the Arkansas Scholarship Lottery Procurement website, <http://www.myarkansaslottery.com/about/procurement> for any and all addenda up to bid opening.

#### 1.18 **AWARD PROCESS**

##### A. Award Determination

1. A State Procurement Official will be responsible for award and administration of any resulting contract.
2. Award **shall** be made on an all or none basis.
3. The Grand Total Score for each Vendor **shall** be used to determine the ranking of proposals. The Vendor with the highest ranking proposal **shall** move forward to the next step in the solicitation process.

##### B. Negotiations

1. If the State so chooses, it **shall** have the right to conduct negotiations with the highest ranking Vendor. All negotiations **shall** be conducted at the sole discretion of the State. The State **shall** solely determine the items to be negotiated.

2. If negotiations fail to result in a contract, the State **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 the State 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 OSP website at [http://www.arkansas.gov/dfa/procurement/pro\\_intent.php](http://www.arkansas.gov/dfa/procurement/pro_intent.php) and the Arkansas Scholarship Lottery website at <http://www.myarkansaslottery.com/about/procurement>.
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. OSP **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 OSP website for the posting of an anticipated award.

**1.19 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
- Service Disabled Veterans 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 *Proposal Signature Page*.

**1.20 FEMALE-OWNED BUSINESS POLICY**

Participation by female-owned businesses is encouraged in this and all other procurements specific to the Office of the Arkansas Lottery (OAL).

"Female-owned business" is defined in the Arkansas Scholarship Lottery Act, Arkansas Code Annotated § 23-115-103(5) as "a business: (A) Whose management and daily business operations are under the control of one (1) or more females; and (B) Either: (i) Individually owned by a female who reports as her personal income for Arkansas income tax purposes the income of the business; (ii) Which is a partnership in which a majority of the ownership interest is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or (iii) Which is a corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation".

**1.21 EQUAL OPPORTUNITY POLICY**

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

- B. *EO Policies* may be submitted in electronic format to the following email address: [eeopolicy.osp@dfa.arkansas.gov](mailto:eeopolicy.osp@dfa.arkansas.gov), but should also be included as a hardcopy accompanying the solicitation response.
- C. The submission of an *EO Policy* to OSP is a one-time Requirement. 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.

#### 1.22 **PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

- A. Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected Vendor(s) **must** have a current certification on file with OSP stating that they do not employ or contract with illegal immigrants.
- B. OSP will notify the selected Vendor(s) prior to award if their certification has expired or is not on file. Instructions for completing the certification process will be provided to the Vendor(s) at that time.

#### 1.23 **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". Proposals submitted by Vendors determined to be non-responsible **shall** be disqualified.

#### 1.24 **VISA ACCEPTANCE**

- A. Awarded Vendor(s) 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) **shall 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.

#### 1.25 **PUBLICITY**

- A. Vendors **shall not** issue a news release pertaining to this *Bid Solicitation* or any portion of the project without OSP's prior written approval.
- B. Failure to comply with this Requirement **shall** be cause for a Vendor's proposal to be disqualified.
- C. The Successful Vendor **shall not** use the OAL's names, trademarks, service marks, logos, images, or any data arising or resulting from this bid solicitation or the resulting contract as part of any commercial advertising or submission without the express prior written consent of the OAL in each instance.

#### 1.26 **RESERVATION**

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

#### 1.27 **ONGOING PERFORMANCE REQUIREMENTS**

The OAL may terminate the Contract by the Successful Vendor or its subcontractors under the terms of the Contract if, within ten (10) days after the OAL gives the Successful Vendor written notice specifying a default, the Contractor has not, in the OAL's sole judgment, either cured the



default or given adequate assurance that assures the default will not adversely affect the timely implementation of the lottery or its continued operation.

Moreover, the OAL may cancel and terminate the Contract on less than ten (10) days written notice in cases of fraud, failure to disclose information required under this RFP, submission of work product in contravention of the terms of the Contract, refusal to permit inspections authorized by the Contract, and failure to adhere to all security requirements established from time to time by the OAL.

## **SECTION 2 – BACKGROUND**

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

### **2.1 OVERVIEW**

In March 2009, the Arkansas legislature passed the Arkansas Scholarship Lottery Act which established the Arkansas Lottery Act with a nine-member governing Commission. (The Arkansas Scholarship Lottery Act, Ark. Code Ann. § 23-115-101 et seq. and § 6-85-201 et seq.). In February, 2015, the Arkansas Legislature amended the Arkansas Scholarship Lottery Act to, among other things, abolish the nine-member governing Commission and create the Office of the Arkansas Lottery (OAL), a department within the Arkansas Department of Finance and Administration (Act 218 of 2015).

OAL is committed to maximizing revenues for the Arkansas Academic Challenge Scholarship Program (AACSP) set forth in the Act creating the Arkansas Scholarship Lottery. OAL began Lottery ticket sales on September 28, 2009, offering the public instant games and, shortly after, terminal-generated games. In the first nine (9) months of operation, OAL generated over \$384 million in revenue and transferred over \$82 million in proceeds for the fiscal year. In fiscal year 2014, OAL sold over \$410 million and proceeds were approximately \$81.5 million. OAL's retailer base consists of nearly 1,900 stores. Convenience store retailers are the strongest segment, followed by tobacco, grocery and liquor stores. OAL employs approximately seventy (70) people.

### **2.2 OAL PRODUCT OFFERINGS**

OAL's product mix is composed of instant and terminal-generated games. Instant games are played by removing a scratch-off coating from the play area of the ticket. There are various ways to win, including matching certain symbols, adding up to a specified total or otherwise satisfying the requirements listed on the ticket. If the specified condition occurs, the ticket is an instant winner. These play styles are combined with a variety of game themes and ticket prices. Instant games were the first type of games offered by OAL. In fiscal year ending June 30, 2014, OAL launched 48 instant ticket games with price points of \$1, \$2, \$3, \$5, \$10 and \$20. In fiscal year 2014 instant games sales were over \$322.4 million, accounting for 78.6% of total sales.

Terminal-generated games allow players to select the numbers for their wager or to utilize computer-generated plays. Players receive a ticket with the numbers selected or automatically generated and await the results of a drawing to determine if they have matched the numbers and won.

In fiscal 2014, terminal-generated sales accounted for 21.4% of total sales. OAL offers seven (7) different types of terminal-generated games:

- Powerball®,
- Mega Millions®,
- Lucky 4 Life,
- Natural State Jackpot,
- Cash 3,
- Cash 4, and
- Fast Play.

Powerball® is a multi-state draw game jointly operated by the 37 member lotteries of the Multi-State Lottery Association and sold in 45 states and territories. Players select one (1) set of five (5) numbers from a pool of 1 to 59 and one (1) additional number designated as the "Powerball" from a second pool of 1 to 35. To win the jackpot, all six (6) numbers must be matched. The minimum jackpot amount is \$40 million, which increases for each subsequent draw when the jackpot is not won. Each Powerball® play costs \$2. For an additional dollar, the PowerPlay® feature allows

players multiply their non-jackpot prizes to win an additional prize of up to \$1,000,000. A jackpot winner may select either an annuitized prize paid in 30 annual installments or a lump sum payment. Drawings are held every Wednesday and Saturday night. In fiscal year 2014, Powerball® sales were \$35,042,460, accounting for 8.5% of total sales for the year.

Mega Millions® is a second multi-state draw game sold in accordance with a cross-selling agreement between the 12 Mega Millions® member states and the Multi-State Lottery Association. Mega Millions® is sold in 46 states and territories. Players select one (1) set of five (5) numbers from a pool of 1 to 75 and one (1) additional number from a second pool of 1 to 15. To win the jackpot, all six (6) numbers must be matched. The minimum jackpot amount is \$15 million, which increases for each subsequent draw when the jackpot is not won. Each Mega Millions® play costs \$1. For an additional dollar, the Megaplier® feature allows players to multiply non-jackpot winnings up to five (5) times. A jackpot winner may select either an annuitized prize paid in 30 annual installments or a lump sum payment. Drawings are held every Tuesday and Friday night. In fiscal year 2014, sales for Mega Millions® were \$19,847,674, accounting for 4.8% of total sales during the year.

Natural State Jackpot is an Arkansas-only lotto style draw game that uses a standard matrix where a player selects five (5) different numbers from 1 to 39. The game offers overall odds of one (1) in nine (9) of winning a prize, with top prize odds of 1 in 575,757. The top (jackpot) prize starts at \$25,000, with incremental growth of \$5,000 following each draw held without a top prize winner. The game also offers additional prize levels of \$1 for correctly matching two (2) of the numbers drawn; \$7 for correctly matching three (3) of the numbers drawn; and \$300 for matching four (4) of the numbers drawn. The Natural State Jackpot amount re-sets to \$25,000 when the current jackpot is won by a player (or players) who correctly matched all five (5) numbers drawn in a drawing. Drawings take place nightly Monday through Saturday at 8:00 PM (CT). Natural State Jackpot sales for fiscal 2014 were \$8,863,034, accounting for 2.2% of sales during the year.

Lucky for Life is the newest multi-state draw game offered in Arkansas. This \$2 lotto style draw game offers a top prize of \$1,000 a day for life and a second prize of \$25,000 a year for life. There are 10 different ways to win and the overall odds of winning a prize are 1 in 7.8. Drawings are held on Monday and Thursday nights. Arkansas joined Lucky for Life on January 27, 2015.

Cash 3 is a terminal-generated game in which players select three (3) numbers between zero (0) and nine (9) and can play the numbers straight, box, straight/box or combo. Cash 3 can be played starting at 50 cents. Drawings are conducted twice per day except Sunday, which has one drawing. In fiscal year 2014, sales for Cash 3 were \$6,255,741, accounting for 1.5%

Cash 4 is played similarly to Cash 3, with players selecting four (4) numbers between zero (0) and nine (9). Players may play the numbers straight, box, straight/box, and combo. Cash 4 can be played starting at 50 cents. Drawings are conducted twice per day except Sunday, which has one (1) drawing. In fiscal year 2014, sales for Cash 4 were \$3,606,990, accounting for .9% of total sales during the year.

Fast Play is an instant play-style game that prints from retail terminals so players can determine instantly whether they have won. There are various ways to win, including matching certain symbols, adding up to a specified total, or otherwise satisfying the requirements listed on the ticket. The AR Progressive Jackpot Fast Play game was launched on April 15, 2013. This type of Fast Play game incorporates a progressive jackpot top prize along with several fixed tier prizes. In fiscal year 2014, sales for Fast Play were \$10,126,554, which is 2.5% of total sales during the year.

### **2.3 REVENUE, OPERATING EXPENSES, AND NET PROCEEDS**

As of March 31, 2015, OAL is down \$4.88 million in sales as compared to the same period last year. The decrease in sales is primarily attributed to a decrease in multi-state jackpot (Powerball® and Mega Millions®) games sales. In fiscal year 2014, OAL saw a \$29.5 million, or 6.7%, decrease in Lottery sales for fiscal year 2014 as compared to fiscal year 2013, of which instant ticket sales

decreased by \$32.6 million, or 9.2%, while online ticket sales increased by \$3.2 million, or 3.8%. In fiscal 2014, Powerball® had a \$12.4 million, or 26.1%, decrease in sales, and Fast Play sales increased by \$6.7 million, or 198.6%, over fiscal year 2013.

Advertising expenses have been approximately \$4,500,000 annually since fiscal year 2010. This is slightly lower than the national average of advertising spend, which is approximately one percent (1%) of sales. Advertising media expenses have traditionally been highest in the television category followed by radio, outdoor, internet/digital and print. Expenses are consistent with industry spend levels in each category.

#### **2.4 U.S. LOTTERIES' SALES**

In fiscal 2014, OAL generated \$410.07 million in sales, or \$138 in per capita sales. OAL ranked 26<sup>th</sup> out of 44 lotteries in per capita sales. OAL per capita annual instant tickets sales were \$109, outperforming 24 other lotteries in this gaming category.

#### **2.5 SALES BY COUNTY**

OAL Management has identified the regions of northwest Arkansas and northeast Arkansas as geographical areas of the state that are underperforming in relation to sales per capita, and determined that a focus in fiscal year 2015 will be improving sales in these areas.

#### **2.6 MARKETING RESEARCH**

In spring 2013 and 2014, Strategic Market Research, on behalf of OAL, conducted a marketing survey to measure frequency of play, advertising awareness, Lottery perceptions and beneficiary awareness. A combined methodology of telephone and online research was conducted utilizing a sample of 500 adults 18+ (N=150 phone surveys were collected, as well as N=350 online surveys). As a way to track those measurements year over year, OAL conducted the same study in spring 2014.

In 2015, Crestwood, on behalf of OAL, completed a demographic survey to measure playership, demographics, and awareness levels. A combined methodology of telephone and online research was utilized in a sample of 1,198 adults 18+ (N=397 phone surveys were collected, as well as N=801 online surveys). This information will be provided to the successful Vendor.

Since its start-up in 2009, OAL has conducted biennial player and retailer focus group sessions. One of the main purposes of the focus groups is to gather input and feedback on a number of instant game concepts along with several other Lottery programs, campaigns and initiatives. OAL's goal is to achieve a better understanding of its players' general purchase behavior (core, moderate or light) and how players view various Lottery products, promotions, advertising, marketing and merchandising materials at retail. This information will be provided to the successful Vendor.

## **SECTION 3 – SCOPE OF WORK**

- **Do not provide responses to items in this section.**

### **3.1 MINIMUM VENDOR QUALIFICATIONS**

- A. Vendor **must** have been in business for a minimum of five (5) years either in entity's current corporate form or an immediately prior largely identical form.
- B. Vendor **must** have demonstrated track record of success in increasing Lottery revenue and profit in a jurisdiction in which Vendor was contracted to work within last five (5) years.
- C. Vendor **must** have demonstrated knowledge and understanding of Lottery player reaction to changes in wagering opportunities within a jurisdiction or surrounding jurisdiction within last five (5) years.
- D. Vendor **must** have knowledge and experience building and/or implementing strategic Lottery business plan alternatives specifically related to discretionary dollar spending of consumers.
- E. Vendor **must** have experience evaluating the sales and profit results of business decisions where the upside or downside potential is in excess of \$250 million in profit.
- F. Vendor **must** have knowledge and understanding of product, retail, advertising and marketing opportunities within the Lottery industry.
- G. Vendor **must** have completed two (2) similar projects within the past five (5) years.

### **3.2 SCOPE OF WORK**

- A. The integrity of the Arkansas Scholarship Lottery is essential. OAL **shall** maintain control over all functions and be assured that they are performed to provide the greatest long-term benefit to the State of Arkansas, the greatest integrity for OAL, and the best service and products for the public, all in a manner consistent with the dignity of the State of Arkansas.
- B. Vendor **must** perform an in-depth assessment of OAL and provide recommendations for the improved performance of the following lottery operations:
  - 1. Sales
  - 2. Advertising/Marketing
  - 3. Game portfolio and development
  - 4. Security
  - 5. Finance
- C. Vendor **must** provide actionable plans for improving OAL's performance including, but not limited to, the following:
  - 1. Retailer recruitment and execution
  - 2. Advertising and marketing
  - 3. Game portfolio and development

4. Incorporating the use of debit cards or non-cash alternatives for Lottery game purchase(s) and in Lottery game offerings
  5. Increasing revenue
  6. Improving Cost control
  7. Increasing contribution to the Arkansas Academic Challenge Scholarship program
  8. OAL staffing needs
  9. Review and offer insight on the structure of OAL contracts.
- D. Should the Vendor have additional recommendations pertaining to games *outside* OAL's *current game portfolio*, do not include those in the business plan/strategic plan, include them in an Addendum.
- E. Keeping within the confines outlined in 3.2D of this RFQ, the Vendor's final business plan/strategic plan **shall** be a comprehensive 5 year plan that **shall** address alternative approaches for OAL in light of past performance and contemplates other competing gaming entities located in the State and relevant economic factors in the State. At a minimum, the 5 year business plan/strategic plan **must** include the following:
1. A description of specific business strategic opportunities, paths or actions for OAL, including any relevant timelines.
  2. Identification of estimated, relational, revenue opportunities under each opportunity, path, or action, for a five-year period.
  3. Estimated administrative costs to implement each path.
  4. A discussion of which aspects of each opportunity, path, or actionable items are best suited for OAL operation and recommendations regarding use of any outside Vendors.
  5. Identification and discussion of the competition that will be encountered depending on opportunities, paths, or actions selected by OAL.
- F. The business plan **must** be provided in a hard copy form. OAL will advise how many copies will be needed. Should OAL request, Vendor **must** be available to make a presentation or answer questions regarding business plan. This may be required in person, but conference call or other options may be acceptable per OAL's discretion.
- G. After the delivery of the business plan/strategic plan, should OAL require consultant services to assist with implementation of the resulting plan, the Vendor **must** provide consultant assistance with implementation and throughout the duration of the contract. OAL will negotiate the parameters of these services and pricing at that time, if necessary.
- H. Vendor **shall** provide services, staff, travel, equipment, programs and all other things necessary to complete the requirements of the contract.

### 3.3 **PROJECT REQUIREMENTS**

- A. Prior to the commencement of the analysis work, the Vendor **shall** meet with OAL, at a place and time of the OAL's discretion. All consultants who **shall** work on the analysis and require

access to OAL and its records **must** be in attendance at this meeting. At this time, OAL and the Vendor **shall** jointly determine the strategy for the timely completion of the resulting contract. Discussions will include the required time and assistance of OAL personnel to the Vendor during the review process. The Vendor will also be advised of any pertinent logistical information, to include, but not be limited to, office and security procedures.

- B. Prior to the commencement of any analysis work, the Vendor **must** supply to the OAL or their representative a list of all Vendor employees who will require access to the OAL office for the purpose of analysis work. This list should consist of only those Vendor employees who will be directly involved in the records review process within the OAL offices. This list **must** provide the employee's name, title, and purpose for access.
- C. Vendor's Project Manager (PM) **must** have overall responsibility for all projects conducted pursuant to this RFQ. Exceptions may be made only with the approval of OAL.
- D. Meeting dates, times, and locations will be determined by OAL, however the Vendor is encouraged to suggest any meeting dates and times.

### 3.4 **CODE OF CONDUCT FOR VENDOR**

OAL is an extremely sensitive enterprise because of the nature of the business and because it is government operated; therefore, it is essential that its operation, and the operation of other enterprises, which would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety.

- A. Vendor **shall** offer goods and services only of the highest standards;
- B. Vendor **shall** use best efforts to prevent OAL from becoming embroiled in unfavorable publicity;
- C. Vendor **shall** report security problems or potential security problems promptly to OAL.
- D. Vendor **shall not** offer or give any gift, gratuity, favor, entertainment, loan or any other thing of material monetary value to any OAL employee, or to any individual influencing the outcome of this project.

### 3.5 **TITLE TO AND USE OF INTELLECTUAL PROPERTY**

- A. Vendor's intellectual property, which is used for this project **shall** remain the property of the Vendor.
- B. The Vendor **shall not** separately charge OAL a fee for the right to use any Intellectual Property owned by the Vendor.
- C. As part of its bid submission, the Vendor **must** provide a list of Intellectual Property currently owned by the Vendor that may be relevant to this procurement.

### 3.6 **LICENSED INTELLECTUAL PROPERTY**

- A. To the extent that the Vendor utilizes or relies upon the Intellectual Property rights of a third party in fulfilling its obligations under the contract prior to utilization of such, the Vendor **shall** provide OAL with documentation which legally demonstrates that the use of such third party's Intellectual Property is permissible. OAL's Chief Legal Counsel or Director will determine the legal sufficiency of such documentation.
- B. In the event of failure to perform or breach of contract the Vendor **shall** allow continued "right of use" of licensed Intellectual Property by OAL under an agreed upon price.

- C. OAL **shall not** pay a fee for rights already held by the Vendor; however, if fees are incurred for the licensing of Intellectual Property owned by any third party relevant to the fulfillment of the services under this bid solicitation, any fees to be paid by OAL for use of a third party's Intellectual Property will be negotiated on a case by case basis.
- D. As part of its submission, the Vendor **must** provide a list of any third party's Intellectual Property relevant to this procurement that the Vendor is currently licensed to use.

### 3.7 **OAL RESPONSIBILITY AND PROJECT CONTROL**

- A. OAL will assign staff to serve as primary contact to the Vendor. The Vendor **shall** be responsible for the direction and control of all aspects of the project, including all work performed throughout the term subsequent to the completion of the Business Plan.
- B. OAL will provide the Vendor with all available data required by the Vendor to analyze current Lottery operations and capabilities, including staffing, system capabilities and options available under current contracts.
- C. OAL will make staff available as needed to help the Vendor understand current Lottery operations and the existing options available to OAL under existing Lottery related contracts.
- D. OAL will provide space within its office for Vendor, and access to phones, copiers, etc.
- E. OAL will provide meeting space at its headquarters as needed. All in-person meetings between the Vendor and OAL **shall** be held at this location unless otherwise required or approved by OAL.

### 3.8 **SECURITY REQUIREMENTS**

- A. The Vendor, including its employees, officers, agents and sub-contractors, **shall** be required to comply with all present and future security policies of OAL, as relayed to the Vendor by OAL staff.
- B. The Vendor, its sub-contractors, project managers, their employees, officers and agents, and any and all persons involved in projects and work assignments under this contract **shall** be required, prior to access to any OAL site, to be given a security clearance by OAL.
  - 1. Anyone seeking access to an OAL site **must** provide their name, address, company affiliation, and a company point of contact for employment verification, at least one week prior to any site visit.
  - 2. Once preliminary access approval is granted by OAL, all visitors to a site **must** provide two (2) forms of valid identification, including one photo ID and written authorization that they are acting on behalf of a designated employer and/or Vendor.
  - 3. Access to OAL site **shall not** be approved until after site authorization is confirmed.
- C. Physical Security during the Delivery of Contracted Services- The Vendor **shall** be solely responsible for the safety and security of the project sites, facilities, and components under this bid solicitation with the exception that the Vendor is not responsible for overall building security at locations under the control and management of OAL, State, local or federal agencies. The Vendor remains responsible, however, for security of project components or equipment within such buildings, e.g. secure equipment enclosures within the space provided by such agencies.
- D. The Vendor **shall** be responsible for and **shall** cover all costs and expenses for any and all theft of any components or portion of the project due to the Vendor's inadequate physical and/or information security at its cost and expense.



- E. If Vendor performs work for this project in a location other than OAL office, the physical security and the information security of project data **shall** be provided at a level commensurate with that normally established for a similar system in today's heightened security environment. All components of Vendor's site security **shall** be of suitable strength and design, and **shall** reasonably withstand attempts to gain unauthorized access.
- F. The Vendor, its officers, agents, sub-contractors, their employees and independent consultants, **shall** be required to comply with all applicable facility and information security policies and procedures of OAL and the State as relayed to the Vendor by OAL staff in performing the scope of work under this bid solicitation. Such policies and procedures **shall** be communicated to the Vendor by OAL staff as a condition precedent to Vendor's obligations under this paragraph.
- G. OAL **shall** have the right, in its sole discretion, and without liability to the Vendor's officers, agents, sub-contractors, and their collective employees and independent Vendors assigned to work under the contract, to withhold approval of and refuse to permit access prior to such individual accessing a site, system or data and OAL **shall** have the right to accompany such individual at all times when on-site. OAL **shall** have the right, in its sole discretion, and without liability to the Vendor's officers, agents, sub-contractors, and their collective employees and independent Vendors assigned to work under the contract, to withhold approval of and refuse to permit access to OAL facilities, electronic information systems or data contained therein to any individual proposed by or through the Vendor (A) who refuses to comply with the security procedures outlined in this section, or (B) where OAL determines that the individual may present a risk to OAL's security interests. OAL **shall not** be liable for payments or damages of any kind if the Vendor is delayed or unable to perform under the Contract as a result of OAL's denial of access to any individual(s) pursuant to this section.
- H. Vendor **must** sign a Confidentiality statement and/or a Non-disclosure form should the need arise.

### 3.9 **VENDOR PROFILE**

Pursuant to A.C.A. § 23-115-501 et seq., Vendor **shall** submit the following information with bid submission:

- A. Business name
- B. Business address
- C. Alternate business address
- D. Primary contact name, title, telephone, fax, and e-mail address
- E. How many years this company has been in this type of business
- F. Proof that the Vendor is qualified to do business in the state of Arkansas
- G. A disclosure of the Vendor's name and address and, as applicable, the names and addresses of the following:

If the Vendor is a corporation, the officers, directors, and each stockholder holding more than a ten percent (10%) interest in the corporation. However, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed; if the Vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust; if the Vendor is an association, the members, officers, and directors;

- and if the Vendor is a partnership or joint venture, all of the general partners, limited partners, or joint ventures.
- H. A disclosure of all the states and jurisdictions in which the Vendor does business and the nature of the business for each state or jurisdiction.
  - I. A disclosure of all the states and jurisdictions in which the Vendor has Contracts to supply gaming goods or services, including without limitation lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.
  - J. A disclosure of all the states and jurisdictions in which the Vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license of any kind or had fines or penalties assessed to the Vendor's license, Contract, or operation and the disposition of each instance in each state or jurisdiction. If any lottery or gaming license or Contract has been revoked or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying the failure to receive a license **shall** be disclosed.
  - K. A disclosure of the details of a finding or plea, conviction, or adjudication of guilt in a state, federal, foreign, or international court or tribunal for a criminal offense other than a traffic violation committed by Vendor or a person identified under Arkansas Code Annotated § 23-115-501 (b)(1). The OAL may request that any or all of the persons identified under § 23-115-501 (b)(1) undergo a state and federal criminal background check. If requested, a state and federal criminal background check **shall** be conducted in the manner under § 23-115-601(e).
  - L. A disclosure of the details of a Vendor's bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including without limitation the assumption of bonded indebtedness.
  - M. The Vendor's most recent financial statement, the most recent audit report of the Vendor's operations, and a disclosure of the Vendor's internal financial controls and procedures for financial reporting.
  - N. If any portion of a Vendor's contract is subcontracted, the Vendor **shall** disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a Vendor.

### **3.10 DISCLOSURE OF LITIGATION**

Vendor **must** include in its proposal a complete disclosure of any civil or criminal litigation or indictment involving such Vendor, and the Vendor **must** also disclose any civil or criminal litigation or indictment involving any of its joint ventures, strategic partners, prime contractor team members, and subcontractors. This disclosure requirement is a continuing obligation, and any litigation commenced after a Vendor has submitted a proposal under this RFQ **must** be disclosed to the OAL in writing within five (5) days after the litigation is commenced.

### **3.11 CONFLICT OF INTEREST/LITIGATION**

Vendor **shall** provide information on any conflict of interest with the products and goals of OAL that could result from other projects in which the Vendor is involved. Failure to disclose any such conflict may be cause for Contract termination or disqualification of the response.

A Vendor or its subcontractor(s) **must** list all clients that were lost between January 2013 and the present and the reason for the loss. OAL **shall** have the right to contact any accounts listed in this section. Vendor **must** describe any contract disputes involving an amount of thirty-five thousand dollars (\$35,000.00) or more the Vendor, or its subcontractor(s), has been involved in within the past two (2) years. Vendor should indicate if the dispute(s) has been successfully resolved.

**3.12 PERFORMANCE SECURITY**

In order to assure full performance of all obligations imposed on a Vendor by contracting with the OAL, the Vendor **shall** provide a performance security in an amount equal to the value of this contract. The performance security **shall** be submitted by the Vendor within ten (10) working days from date of receipt of OAL's written notification of its intent to award a proposal. The form of security required **shall** be a performance bond such as is usually and customarily written and issued by surety companies licensed and authorized to do business in Arkansas. In lieu of a bond, the Vendor may deposit and maintain with OAL securities that are (a) interest bearing or accruing and rated in one of the three highest classifications by an established, nationally recognized investment rating service. OAL **shall** award the contract upon acceptance of the performance security. The performance security **shall** be made out to OAL and will be on file at the OAL office.

If a Vendor fails to deliver the required performance security, the proposal **shall** be rejected. In the event of a breach of contract, either through quality problems, late delivery, substitutions, non-performance, or other areas within the control of the Vendor, OAL will notify the Vendor in writing of the default and **shall** have the right to assess reasonable charges against the Vendor's performance security. If, after notification of default, the Vendor fails to remedy OAL's damages within ten (10) working days, OAL **shall** have the right to initiate procedures for collection against the Vendor's performance security.

In the event of default, and in order to achieve the greatest economy for the State, OAL **shall** have the right to choose another qualified Vendor, re-advertise for proposals, negotiate a purchase, or complete any other action consistent with OAL and State of Arkansas procurement rules and applicable sections of the Arkansas Code. The performance security will be released at the end of the contract period.

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

- **Do not provide responses to items in this section.**

### **4.1 TECHNICAL PROPOSAL SCORE**

- A. OSP will review *Technical Proposals Packets* to verify submission Requirements have been met. *Technical Proposals Packets* 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 Technical Proposals. Evaluation will be based on Vendor's response to the *Information for Evaluation* section included in the *Technical Proposal Packet*. 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 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. The agency has assigned Weighted Percentages to each sub-section according to its significance.

Information for Evaluation Sub-Sections	Maximum Raw Points Possible	Weighted Percentage	Maximum Weighted Score Possible*
E.1 BUSINESS ORGANIZATION	5	5	35.0
E.2 FINANCIAL VIABILITY	10	5	35.0
E.3 VENDOR DISCLOSURES	5	5	35.0
E.4 EXPERIENCE OF THE VENDOR'S ORGANIZATION	40	25	175.0
E.5 PROJECT MANAGEMENT (PM) AND STAFFING	10	20	140.0
E.6 WORK PLAN	25	35	245.0
E.7 ADDITIONAL INFORMATION AND COMMENTS	5	5	35.0
<b>Totals</b>	<b>100</b>	<b>100</b>	<b>700</b>

- D. The Vendor'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. Scores for sub-sections will be added to determine the Total Technical Score for the Proposal.

#### 4.2 **GRAND TOTAL SCORE**

The Technical Score will determine the Grand Total Score for the Vendor. The Vendor with the highest Grand Total Score will be selected as the apparent successful Vendor. See *Award Criteria*.

	Maximum Points Possible
Technical Proposal	700
<b>Maximum Possible Grand Total Score</b>	<b>700</b>

#### 4.3 **VENDOR ACCEPTANCE OF EVALUATION TECHNIQUE**

A. The submission of a *Technical Proposal Packet* **shall** signify Vendor's understanding and agreement that subjective judgments **shall** be made by the evaluation committee during the evaluation and scoring of the Technical Proposals.

B. Vendor **must** agree to all evaluation processes and procedures as defined in this section.

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

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

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

- A. All invoices **shall** be forwarded to:

**Office of the Arkansas Lottery  
P.O. Box 3238  
Little Rock, AR 72203**

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the agency.
- C. The State **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 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 to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/Vendor/index.html>

### **5.2 GENERAL INFORMATION**

- A. The State **shall not** lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a 30 day written notice to the Vendor/lessor in the event funds are not appropriated.
- B. The State **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- C. Upon default of a Vendor, the State **shall not** be required to pay sums due under a contract.
- D. The State **shall not** pay damages, legal expenses or other costs and expenses of any other party.
- E. The State **shall not** continue a contract once any equipment has been repossessed.
- F. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- G. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- H. The State **shall not enter a** contract which grants to another party any remedies other than the following:
1. The right to possession.

2. The right to accrued payments.
  3. The right to expenses of deinstallation.
  4. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  5. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- I. The laws of the State of Arkansas **shall** govern this contract.
  - J. A contract **shall not** be effective prior to award being made by a State Procurement Official.

### 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 this 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.

### 5.4 **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. At no time will the State 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. Neither the Vendor nor the State **shall** 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. Nothing in these terms and conditions **shall** 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.

### 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 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.

#### 5.6 **PRICE ESCALATION**

- A. Price increases will be considered at the time of contract renewal.
- B. The Vendor **must** provide to OSP a written request for the price increase. The request **must** include supporting documentation demonstrating that the increase in contract price is based on an increase in market price. OSP **shall** have the right to require additional information pertaining to the requested increase.
- C. Increases **shall not** be considered to increase profit or margins.
- D. OSP **shall** have the right to approve or deny the request.

#### 5.7 **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 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 the contract.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

#### 5.8 **CONTRACT INTERPRETATION**

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

#### 5.9 **CANCELLATION**

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 State may cancel the contract or purchase order by giving the Vendor written notice of such cancellation 30 days prior to the date of cancellation.

#### 5.10 **SEVERABILITY**

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the 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**

- **Do not provide responses to items in this section.**
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any 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 Proposal Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Proposal Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple proposals **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
- 4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
- 5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. 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 proposals cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD:** Term Contract: A contract award will be issued to the successful 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 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 Vendor.
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 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 or by OSP. 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. **OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the State **shall** have the right to pursue any other remedy permitted by law or in equity.
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 *Proposal Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
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.