



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

**REQUEST FOR PROPOSAL**  
**BID SOLICITATION DOCUMENT**

SOLICITATION INFORMATION			
Bid Number:	SP-16-0208	Solicitation Issued:	August 22, 2016
Description:	Actuarial Services		
Agency:	Department of Finance and Administration - Employee Benefits Division		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	September 12, 2016	Bid Opening Time:	2:00 p.m., Central Time
<p>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.</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p>Office of State Procurement            1509 West 7<sup>th</sup> Street, Room 300            Little Rock, AR 72201-4222</p> <p>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.</p>
Proposal's Outer Packaging:	<p>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.</p> <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:	Angela Allman	Buyer's Direct Phone Number:	501-371-6156
Email Address:	Angela.Allman@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>		

## **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 Proposal (RFP) is issued by the Office of State Procurement (OSP) on behalf of the Department of Finance and Administration – Employee Benefits Division (EBD) to obtain proposals for Actuarial and Healthcare Consulting services in order to obtain expert knowledge, assistance and advisory services related to the administration of the Arkansas State Employees, Public School Employees, dependents and retirees health insurance programs (Plans).

### **1.2 TYPE OF CONTRACT**

- A. A Term contract will be awarded to a single vendor.
- B. The term of this contract **shall** be for one (1) year. The anticipated starting date for the contract is December 1, 2016. Upon mutual agreement by the vendor and agency, the contract may be renewed by OSP on a year-to-year basis, for up to six (6) additional one-year terms or a portion thereof.
- C. The total contract term **shall not** be more than seven (7) years.

### **1.3 ISSUING AGENCY**

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

### **1.4 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

### **1.5 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 reference the specific solicitation item number to which the exception applies. (See *Agreement and Compliance Page*.)

### **1.6 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. The words “bidder” and “vendor” are used synonymously in this document.
- C. The terms “Request for Proposal”, “RFP” and “Bid Solicitation” are used synonymously in this document.

## 1.7 **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. *Technical Proposal* response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
  - e. Other documents and/or information as may be expressly required in this *Bid Solicitation*.
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. Official Bid Price Sheet. (See *Pricing*.)

1. Vendor's original *Official Bid Price Sheet* **must** be submitted in hard copy format.
2. Vendor should also submit one (1) electronic copy of the *Official Bid Price Sheet*, preferably on a flash drive. A CD will also be acceptable.
3. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". Vendor **must not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.
4. The vendor should note, the Official Bid Price Sheet contains three (3) tabulation sheets.

### C. Additional Copies and Redacted Copy of the Technical Proposal Packet

In addition to the original *Technical Proposal Packet* and the *Official Bid Price Sheet*, the following items should be submitted:

1. Additional Copies of the *Technical Proposal Packet*
  - a. Three (3) complete hard copies (marked "COPY") of the *Technical Proposal Packet*.
  - b. Four (4) electronic copies 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 (marked "REDACTED") copy the original *Technical Proposal Packet*, preferably on a flash drive. A CD will also be acceptable. (See *Proprietary Information*.)

## 1.8 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*.

## 1.9 CLARIFICATION OF BID SOLICITATION

- A. Vendors may submit written questions requesting clarification of information contained in this *Bid Solicitation*. Written questions **must** be submitted by 4:00 p.m., Central Time on August 29, 2016. Submit written questions by email to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.
  1. For each question submitted, vendor should reference the specific solicitation item number to which the question refers.
  2. Vendors' 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 September 2, 2016.
- B. Vendors may contact the OSP buyer with procurement-related questions at any time prior to the bid opening.
- C. Answers to verbal questions may be given as a matter of courtesy and **must** be evaluated at vendor's risk.

## 1.10 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 exception that conflicts with a Requirement of this *Bid Solicitation*.

## 1.11 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.

## 1.12 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*.

**1.13 PRICING**

- A. Vendor(s) **must** include all pricing on the Official Price Bid Sheet(s) only. Any cost not identified by the successful vendor but subsequently incurred in order to achieve successful operation **shall** be borne by the vendor. The *Official Bid Price Sheet* is provided as a separate excel file posted with this *Bid Solicitation and contains three (3) tabulation sheets*.
- B. To allow time to evaluate proposals, prices **must** be valid for 120 days following the bid opening.
- C. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". DO NOT submit any ancillary information not related to actual pricing in the sealed pricing package.
- D. Vendor **must not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*. Should hard copies or electronic copies of their *Response Packet* contain any pricing, the response **shall** be disqualified.
- E. Failure to complete and submit the *Official Bid Price Sheet* **shall** result in disqualification.
- F. All proposal pricing **must** be in United States dollars and cents.
- G. The Official Bid Price Sheet may be reproduced as needed.
- H. The Official Bid Price Sheet is to be used as a cost evaluation tool for comparison between all submitted offeror's costs and **shall not** be considered as actual expected amounts.
- I. Table 1 and Table 2 of the Official Bid Price Sheet **shall** be used for low cost determination.
- J. Table 3 and Table 4 of the Official Bid Price Sheet **shall not** be used for low cost determination.
- K. Table 5 of the Official Bid Price Sheet **shall not** be used for low cost determination.

**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.

**1.15 INDEPENDENT PRICE DETERMINATION**

- A. By submission of this proposal, the vendor certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
  - The prices in the proposal have been arrived at independently, without collusion.
  - No prior information concerning these prices has been received from, or given to, a competitive company.
- B. Evidence of collusion **shall** warrant consideration of this proposal by the Office of the Attorney General. All vendors **shall** understand that this paragraph may be used as a basis for litigation.

**1.16 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 (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Technical Proposal Packet*. A CD is also acceptable.
- 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 space from which information was redacted.
- D. The vendor **shall** be responsible for identifying all proprietary information and for ensuring 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.

#### 1.17 **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. Vendor **must not** alter the Official Bid Price Sheet.
- D. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- E. Proposals **must** be submitted only the English language.
- F. 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.
- G. Vendor **must** provide clarification of any information in their response documents as requested by OSP.
- H. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- I. Vendors may submit multiple proposals.

#### 1.18 **REQUIREMENT OF ADDENDUM**

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

#### 1.19 **AWARD PROCESS**

##### A. Successful Vendor Selection

The Grand Total Score for each vendor, which **shall** be a sum of the Technical Score and Cost Score, **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).
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.

### D. Issuance of Contract

1. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review and approval.
2. A State Procurement Official will be responsible for award and administration of any resulting contract.

## 1.20 MINORITY BUSINESS POLICY

A. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this State who is:

- African American
- American Indian
- Asian American
- Hispanic American
- Pacific Islander American
- A Service Disabled 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*.

## 1.21 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 by 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 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM**

The respondent's solution **must** comply with the State's shared Technical Architecture Program which is a set of policies and standards that can be viewed at: <http://www.dis.arkansas.gov/policiesStandards/Pages/default.aspx>. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.

**1.25 VISA ACCEPTANCE**

- A. Awarded vendor 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.

**1.26 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.

**1.27 RESERVATION**

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

## **SECTION 2 – MINIMUM REQUIREMENTS**

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

### **2.1 INTRODUCTION**

Arkansas Department of Finance and Administration – Employee Benefits Division (EBD) is requesting proposals for Actuarial and Healthcare Consulting services in order to obtain expert knowledge and assistance in administering the health insurance programs for Arkansas State Employees and Public School Employees and their dependents and retirees (Plans). EBD currently covers approximately 147,000 employees, retirees, and dependents under its self-funded Health Plan program.

This RFP outlines qualifications for a Primary Actuary and a Primary Healthcare Consultant as well as a Secondary Actuary and a Secondary Healthcare Consultant. The Primary Actuary and the Primary Healthcare Consultant may be the same person. The Secondary Actuary and the Secondary Healthcare Consultant may also be the same person but the vendor **must** provide at a minimum, two dedicated professionals to provide the services outlined in this RFP.

For Primary positions, the vendor has the option to propose and price **either** Option A **or** Option B below. A vendor **shall not** propose and price both options A and B for Primary positions.

- Option A—Separate Primary positions  
OR
- Option B—A combined Primary position

For Secondary positions, the vendor has the option to propose and price **either** Option A **or** Option B below. A vendor **shall not** propose and price both options A and B for Secondary positions.

- Option A—Separate Secondary positions  
OR
- Option B—A combined Secondary position

EBD anticipates a large portion of the required services outlined in this solicitation may be accomplished off-site in the months of January through August. However, the vendor **must** be present in person for meetings and expert testimony as required in this RFP, or any other time when EBD determines that in person attendance is necessary in order to provide quality services to EBD or as required in this RFP. All travel and travel related expenses **shall** be borne by the vendor.

### **2.2 QUALIFICATION REQUIREMENTS**

A. The vendor **must** be a professional actuarial services firm having provided actuarial valuations and healthcare consulting services for healthcare plan programs for a minimum of five (5) years.

B. Primary Actuary Qualifications:

1. The Primary Actuary **must** be a fellow of the Society of Actuaries.
2. The Primary Actuary **must** have a minimum of ten (10) years' of experience as an actuary, including five (5) years' of actuarial experience with active and retiree health plans. This experience may include public or private sector plans.
3. The Primary Actuary **must** have a minimum of one (1) year of experience as an actuary with public plans having membership totals of at least 100,000.

C. Secondary Actuary Qualifications:

1. In such cases whereby the Primary Actuary is unavailable, the Secondary Actuary **shall** serve as the replacement for the Primary Actuary.
2. The Secondary Actuary **must** be a fellow of the Society of Actuaries or working toward that accomplishment.

3. The Secondary Actuary **must** have a minimum of five (5) years' of experience as an actuary including three (3) years' of actuarial experience with active and retiree health plans, preferably with government plans having membership totals of at least 50,000.

D. Primary Healthcare Consultant Qualifications:

1. The Primary Healthcare Consultant **must** have a minimum of ten (10) years' of general health consulting experience dealing with public plans having membership totals of at least 100,000.
2. The Primary Healthcare Consultant **must** have experience in testifying to state legislative and other administrative bodies regarding healthcare issues.

E. Secondary Healthcare Consultant Qualifications:

1. The Secondary Healthcare Consultant **must** have a minimum of three (3) years of general health consulting experience, or experience with public plans management with membership totals of at least 50,000.
2. In such cases whereby the Primary Healthcare Consultant **shall** be unavailable, the Secondary Healthcare Consultant **shall** serve as the replacement for the Primary Healthcare Consultant.

- F. The vendor **must** be authorized to conduct business in the State of Arkansas, as required by this RFP.

### **2.3 ONGOING SERVICE REQUIREMENTS**

- A. The vendor **shall** provide consultation and advisory services related to the administration of the Plans.
- B. The vendor **shall** provide analysis and recommendations concerning the Plans' benefits.
- C. The vendor **must** conduct a monthly review of the overall effectiveness of the Plans.
- D. The vendor **shall** provide consultation, guidance, and support for any new or updated Federal or State mandate such as the following:
  1. Providing Governmental Accounting Standards Board (GASB) actuarial valuations, and any other State or Federally required analysis.
  2. Reviewing new or updated healthcare related mandates, and providing analysis services to identify gaps between the Plans and the mandates.
  3. Providing on-site actuarial, accounting, administrative, and/or technical services as applicable to mitigate non-compliance identified in the gap analysis.
- E. The vendor **shall** analyze claims experience for utilization trends, which will be used to guide decisions in cost containment, coverage benefits, and policy decisions for each of the Plans.
- F. The vendor **shall** maintain detailed models, including a database of historical and current healthcare data, and **shall** update the models on a monthly basis. EBD **shall** provide detailed claims and eligibility information to be used in constructing the models. The models **must** project medical and prescription drug claims utilizing data based on the most recent twelve (12) months.
- G. The vendor **shall** model, analyze, and make written recommendations for pricing Plan design and premiums.
- H. The vendor **shall** perform financial analysis and projections as it pertains to each of the Plans.
- I. The vendor **shall** provide rate projections based on various funding possibilities – for example, the impact of an additional \$20 million dollars through legislative mandate.
- J. The vendor **shall** monitor and analyze network pricing.

- K. The vendor **shall** perform trend analysis.
- L. The vendor **shall** provide support to EBD staff during audit requests by providing actuarial documentation, and/or technical information, as needed.
- M. The vendor **shall** produce, update, and/or provide guidance on reports as required by each of the Plans such as benefit coordinator generated lag reports.
- N. The vendor **shall** monitor and compare administrative and operational policies, claims utilization trends, marketplace trends, and any industry activities and/or developments.
- O. The vendor **shall** provide legal opinions based on proposed Plan changes such as covered services, exclusions, limitations, and eligibility.
- P. Upon request, the vendor **shall** provide expert testimony concerning the Plans to the Arkansas Legislature. The Primary Actuary or the Primary Healthcare Consultant (which may be the same person) **shall** provide any presentations and/or testimony required, unless otherwise specifically approved by EBD on a case by case basis.
- Q. The vendor **shall** be actively involved in the evaluation of employee benefits vendors, therefore it is critical the vendor selected be independent and objective in fact and in appearance. Prior to award, the vendor **shall** sign a confidentiality statement in the event the vendor selected should also contract for services with one of the present benefit vendors.
- R. The vendor **must** be readily available to the EBD Executive Director, or his/her designee, or the Chairman of the State and Public School Life and Health Insurance Board of Directors by telephone within four (4) hours, 24 hours per day, 7 days per week.
- S. The vendor **must** attend, in person, various EBD Benefit Subcommittee meetings, State and Public School Life and Health Insurance Board of Director's meetings, or other meetings as required by EBD, approximately 15-20 times per year. Such meetings are normally held at EBD offices in Little Rock, Arkansas or the Arkansas State Capitol. EBD publishes a schedule of regular meetings. Additional meetings called by EBD follow the Freedom Of Information Act (FOIA) notification requirements. The vendor must be prepared to attend such meetings within two business days' notice, or within one business day's notice during a regular or called session of the Arkansas Legislature.
- T. The vendor **shall** provide all labor, travel expenses, facilities, equipment, supplies, support staff, and other goods and/or services necessary to achieve quality services for the State of Arkansas as required by this RFP.
- U. The vendor **shall** assist with strategic planning for each of the Plans.
- V. The vendor **shall** prepare and/or fulfill ad hoc data requested by the State such as data regarding funding, claims expense, or utilization trends, including EBD requests to assist with responses to the Arkansas Legislature, Legislative Audit, or other State governing bodies. These vary in complexity and typically require extremely quick turnaround time.
- W. The vendor **shall** perform other duties or activities specified by EBD, the Arkansas State and Public School Health Insurance Board, or other State governing bodies.

## **2.4 REPORTS**

- A. The vendor **shall** submit written reports to EBD detailing the projections for monthly fund balances for each of the Plans on or before the 15<sup>th</sup> of each month.
- B. The vendor **shall** submit written reports to EBD containing detailed results and recommendations resulting from the comparison of administrative and operational policies, claims utilization trends, marketplace trends, and any industry activities and/or developments within 30 days of updated mandate publication or industry developments.
- C. The vendor **shall** prepare the actuarial attestation for Medicare Part D, annually.

- D. The vendor **shall** submit written summaries and/or graphs of the monthly medical and prescription projection models maintained by the vendor. The summaries and/or graphs submitted **must** be from the previous month's models and must be submitted to EBD by the 15<sup>th</sup> of each month.
- E. The vendor **shall** provide EBD with the State of Arkansas fiscal year end accounting information by June 30 of each year and **shall** include the following:
1. Letters stating the Incurred But Not Reported (IBNR) as of June 30<sup>th</sup> for the Plans including the evaluation of estimated unpaid claim liabilities.
  2. Letters stating methodology and procedures for rate calculation for the Plans
  3. A two (2) year and/or other applicable trending analysis for the Plans
  4. Full OPEB (Other Post-Employment Benefits) liability report for State employees, biannually. During the off year, the vendor **shall** submit answers to questions received from the Arkansas Office of Accounting for the CAFR (Comprehensive Annual Financial Report).
  5. Other information as required by EBD
- F. The vendor **shall** submit Annual Performance Reports to EBD on or before May 15 of each year. The vendor **shall** include any failure to comply with Performance Standards outlined in this RFP, and **shall** indicate applicable damages assessed. The vendor also **shall** summarize the following information in the Annual Performance Reports:
1. Administration of the Plans by the vendor
  2. Operations of the vendor
  3. Performance of the Plans by the vendor
- G. The vendor **shall** submit Quarterly Performance Reports to EBD no later than 45 days after the end of the quarter. The Quarterly Performance Reports **must** summarize the financial performance of the Plans, the satisfaction of the membership, and any information determined relevant by the State.
- H. The vendor **shall** provide Annualized Reporting regarding the Plans to the State and Public School Life and Health Insurance Board.
- I. The vendor **shall** provide EBD with a monthly, written report summarizing the overall effectiveness of the Plans, as well as a Power Point presentation for viewing by the State and Public School Life and Health Insurance Board, and any sub-committee members. The report and/or presentation **must** provide EBD with consultation and recommendations regarding Plan design and/or administrative adjustments, if needed and **shall** be submitted to EBD on or before the end of each month.
- J. The vendor **shall** prepare an actuarial valuation in accordance with GASB requirements, or any other subsequent standard issued in the future, by July 31<sup>st</sup> of each year, or as directed by EBD. The fiscal year for the State of Arkansas is July 1 to June 30.
- K. Unless otherwise stated above, all reports **shall** be provided in a manner and format as directed or approved by EBD.

## **2.5 TRANSITION SERVICES REQUIREMENTS**

- A. Transition Upon Contract Start
1. If the successful vendor is one other than the current service provider, upon execution of a contract with EBD, the vendor **shall** initiate and coordinate the transition of services from the current provider.
  2. Except for as specifically agreed to by the State, it is anticipated the State's main role will be

supervisory in nature to ensure all of the State's needs are sufficiently and successfully met. The State **shall** have final authority regarding all actions taken to transition these services.

B. Transition Upon Termination or Expiration

1. Should any subsequent contract for actuarial and healthcare consultant services be awarded to a provider other than the awardee of this RFP, the then current vendor **shall**, to the greatest extent possible and reasonable, cooperate with EBD in initiating a smooth and orderly transition to the next vendor.

- C. Should the current contract expire before a new contract is awarded for this solicitation, the successful vendor **shall** work with EBD regarding the implementation of services outlined in this RFP.

## 2.6 ADMINISTRATION REQUIREMENTS

- A. The vendor **must** utilize the ARBenefits secure email task system for protected health information.
- B. The vendor **must** utilize the State's secure file transfer protocol.
- C. The vendor **must** have a continuity plan that provides for the recovery of the firm's electronic data and data processing equipment, and which assures the data processing system will be operational within ten (10) days of a natural disaster, or any other business interruption, whether natural or otherwise.
- D. All data, records, files, and other information relating to the Plan **shall** belong to the State and **shall** be subject to release to the State if the contract is terminated or expires. Information **must** be made available in electronic format, and **shall** include images of paper documentation and data extract.
- E. The vendor **must** implement procedures to ensure adherence to, and appropriate reporting for, Performance Standards as specified in this RFP.
- F. The State **shall** have the right to request any member of the vendor's team with direct access to the Plans' data be removed from the State's account. If this occurs, vendor **must** replace with another staff member with equal or greater qualifications, and do so without disruption to daily operation.
- G. During the length of the contract, the vendor **shall not** undertake a major conversion for, or related to, the system used to deliver services to the Plan without specific written notice and approval from the State. This does not apply to any program fixes, modifications, or enhancements.
- H. The vendor **must** notify the State of any changes in vendor representatives, management, or ownership.
- I. As referenced in the Technical Proposal Packet, the vendor **must** disclose in their proposal, or at any time during the contract award period, any current negotiations that may significantly impact the ownership of the vendor.
- J. As referenced in the Technical Proposal Packet, the vendor **must** disclose in their proposal, or at any time during the contract award period, any pending litigation, either criminal or civil, and any petitions for bankruptcy.
- K. The vendor **must** comply with HIPAA and other federal and/or State mandates to include privacy, security, and electronic data transfer requirements.
- L. The vendor **must** work within constraints of end-of-fiscal-year procedures as provided by the State.
- M. As required by law, or at EBD's direction, EBD **shall** have the right to add or remove any services offered by the vendor under the scope of this contract (see Evaluation Information E.2 in Technical Proposal Packet). These services may be existing optional services as offered in the vendor's proposal, or they may be newly created services based on improving technology, or Federal or State mandates and fall under the scope of work. Pricing for these services **shall** be negotiated if and when the services are added, but **shall** be consistent with current pricing for similar services and **shall** be agreed upon in writing between EBD and the vendor prior to implementation of the service.

- N. The vendor **must** submit a list of staff positions with corresponding hourly rate to EBD within 30 days prior to the contract renewal date.

## 2.7 PRIVACY AND SECURITY REQUIREMENTS

- A. Prior to award, the vendor representatives **must** complete, sign, and abide by the *System Confidentiality Agreement* (Attachment 1), and the *Business Associate Agreement* (Attachment 2).
- B. Any current and future employees of the vendor assigned to this account **must** have attended or **shall** attend HIPAA training prior to performing work on this account or accessing Plan records. Documentation of the training by the vendor will be accepted, and **shall** be provided to EBD upon request.
- C. The vendor **must** remove Social Security Numbers from any printed report, letter, or any other form of communication.
- D. The vendor **must not** use, sell, or otherwise disclose any employee or Plan information to an outside party unless specifically provided on a need-to-know basis, or in order to comply with the requirements and operations of the Plans, subject to approval of the State.

## 2.8 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. *Table 1 Performance Standards* below identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **must** meet in order to avoid assessment of damages.
- B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration.
- C. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the vendor so as to establish standards that are reasonably achievable.
- D. All changes made to the Performance Standards **shall** become an official part of the contract.
- E. Performance Standards **shall** continue throughout the term of the contract.
- F. Failure to meet the minimum Performance Standards as specified **shall** result in the assessment of damages.
- G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend or respond to the insufficiency. The State **shall** have the right to waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services. In these instances, the State **shall** have final determination of the performance acceptability.
- H. Should any compensation be owed to the agency due to the assessment of damages, vendor **shall** follow the direction of the agency regarding the required compensation process.
- I. Damages will be invoiced and payment will be paid off invoice. Payment for damages are due no later than the last business day of the month following the date of the invoice. Prompt resolution of problems or issues is expected, but will not reduce or eliminate any penalties imposed due to failure to meet the performance standards outlined below.

**PERFORMANCE STANDARDS**

Table 1

<b><u>CRITERIA</u></b>	<b><u>STANDARD</u></b>	<b><u>DAMAGES</u></b>
Performance Reports	Annual Performance Reports—Submitted on or before May 15 of each year.	One Hundred Dollars (\$100) per each day report is past due
	Quarterly Performance Reports—Submitted within 45 days of the end of the quarter.	Fifty Dollars (\$50) per each day report is past due
Financial Reports	Fiscal year end accounting information/reports submitted by June 30 <sup>th</sup> of each year.	One Hundred Dollars (\$100) per each day report is past due
	Fund balance projection reports submitted to EBD on or before the 15 <sup>th</sup> of each month.	One Hundred Dollars (\$100) per each day report is past due
	Actuarial Valuation Report submitted by July 31 <sup>st</sup> of each year, or as directed by EBD.	One Thousand Dollars (\$1,000) per each day report is past due
Meeting/Testimony Attendance	Attendance in person at meetings or for testimony as required in the RFP.	Two Hundred Fifty Dollars (\$250) per occurrence for failure to meet this Standard
Customer Service	The Primary or the Secondary Actuary is available by telephone within 4 hours to the EBD Executive Director, or his/her designee, or the Chairman of the State and Public School Life and Health Insurance Board, 24 hours per day, 7 days per week.	Five Hundred Dollars (\$500) per occurrence for failure to meet this Standard
Account Management	Provide written summaries to EBD regarding industry activities and developments, review legislative mandates, and provide ongoing analysis and written recommendations to EBD regarding compliance with updated mandates within 30 days of mandate publication, or industry development.	Two Thousand Five Hundred Dollars (\$2,500) per occurrence for failure to meet this Standard

## SECTION 3 – CRITERIA FOR SELECTION

- Do not provide responses to items in this section.

### 3.1 TECHNICAL PROPOSAL SCORE

- A. OSP will review each *Technical Proposal Packet* 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 each been assigned a maximum point value of ten (10) points. 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	Sub-Section’s Weighted Percentage	* Maximum Weighted Score Possible
<b>E.1</b> Privacy and Security	40	5%	40
<b>E.2</b> Methodology	100	20%	160
<b>E.3</b> Computer Facilities and Capabilities	10	10%	80
<b>E.4</b> Corporate Profile, Capability and Administrative Experience	330	50%	400
<b>E.5</b> Implementation	20	10%	80
<b>E.6</b> Other documentation	20	5%	40
<b>Totals</b>	<b>520</b>	<b>100.0%</b>	<b>800</b>

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

- 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. Vendor’s weighted scores for sub-sections will be added to determine the Total Technical Score for the Proposal.
- F. Technical Proposals that do not receive a minimum weighted score of 400 may not move forward in the solicitation process. In this instance, pricing **shall not** be scored.

**3.2 COST SCORE**

- A. When pricing is opened for scoring, the maximum amount of cost points will be given to the vendor with the lowest total cost for Table 1 and Table 2 combined on the Official Bid Price Sheet. (See *Grand Total Score* for maximum points possible for cost score.)
- B. The amount of cost points given to the remaining vendors will be allocated by using the following formula:

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

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

**3.3 GRAND TOTAL SCORE**

The Technical Score and Cost Score will be added together to 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 Process*.)

	<b>Maximum Points Possible</b>
Technical Proposal	800
Cost	200
<b>Maximum Possible Grand Total Score</b>	<b>1,000</b>

**3.4 VENDOR ACCEPTANCE OF EVALUATION TECHNIQUE**

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

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

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

### **4.1 PAYMENT AND INVOICE PROVISIONS**

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

Department of Finance and Administration  
Administrative Services  
P.O. Box 2485  
Little Rock, AR 72203

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services 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>.

- A. Vendor invoicing **must** be:

1. Submitted on or before the 15<sup>th</sup> of each month following the month the services were provided, and must be in accordance with State practices, policies, and procedures.
2. Printed on vendor letterhead with contact name, telephone number, and payment instructions which includes bank routing number and bank account number.
3. Invoicing must tie costs to numbered projects or tasks as approved by the State before payment will be made.
4. The vendor **shall** submit a copy of each invoice to EBD at the following address:

Employee Benefits Division  
PO Box 15610  
Little Rock, AR 72231

### **4.2 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. The State **shall not** pay damages, legal expenses or other costs and expenses of any other party.
- D. The State **shall not** continue a contract once any equipment has been repossessed.
- E. Any litigation involving the State **must** take place in Pulaski County, Arkansas.

- F. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- G. The State **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 deinstallation.
  - 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.
- H. The laws of the State of Arkansas **shall** govern this contract.
- I. A contract **shall not** be effective prior to award being made by a State Procurement Official.
- J. In a contract with another party, the State will accept the risk of loss of the equipment or software and pay for any destruction, loss or damage of the equipment or software while the State has such risk, when:
- The extent of liability for such risk is based upon the purchase price of the equipment or software at the time of any loss, and
  - The contract has required the State to carry insurance for such risk.

#### 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.
- A. 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 or \$5,000,000, whichever is higher. 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 PRICE ESCALATION**

- A. Price increases will be considered at the time of contract renewal. However, the vendor **must** submit a list of staff positions with corresponding hourly rate to EBD within 30 days prior to the contract renewal date.
- 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.

#### **4.7 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 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.

#### **4.8 CONTRACT INTERPRETATION**

Should the State 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.

#### **4.9 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 State **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 State **shall** agree to pay only sums due for goods and services received and accepted up to cancellation of the contract.

#### **4.10 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 5 – 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. CLAIMS:** Any claims the Contractor may assert under this Agreement **shall** be brought before the Arkansas State Claims Commission ("Commission"), which **shall** have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor **shall** continue to provide the Services under this Agreement even in the event that the Contractor has a claim pending before the Commission.
- 23. CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the vendor written notice of such cancellation thirty (30) days prior to the date of cancellation.
- Any delivered but unpaid for goods will be returned in normal condition to the contractor by the State. If the State is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the contractor has provided services which the State has accepted, the contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**
- 24. DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the vendor agrees that: (a) the vendor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the vendor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the vendor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the vendor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.
- 25. CONTINGENT FEE:** The vendor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business.
- 26. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the vendor named on the *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.