



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

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

SOLICITATION INFORMATION			
Bid Number:	SP-16-0142	Solicitation Issued:	September 7, 2016
Description:	Food Distribution Services		
Agency:	Arkansas Department of Human Services		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	September 28, 2016	Bid Opening Time:	2:00 p.m. Central Time
<p>Bids <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. Bids 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>
Bid'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**

### **1.1 PURPOSE**

This Request for Proposal (RFP) is issued by the Office of State Procurement (OSP) on behalf of the Arkansas Department of Human Services (DHS) to obtain proposals for the provision of warehousing and commodity distribution services that **shall** be utilized for the storage and distribution of The United States Department of Agriculture (USDA) Commodity Foods within the State of Arkansas for the National School Lunch Program (NSLP), and The Emergency Food Assistance Program (TEFAP).

### **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 January 2, 2017. Upon mutual agreement by the vendor and agency, the contract may be renewed by OSP on a year-to-year basis, for up to four (4) additional one-year terms or a portion thereof.
- C. The total contract term **shall not** be more than five (5) years.

### **1.3 ISSUING AGENCY**

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

### **1.4 BID OPENING LOCATION**

Bids 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 bid or in subsequent correspondence, **shall** cause the vendor's bid 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.
- D. "ACDS" means the Arkansas Commodity Distribution System and is an internet based application program, which tracks all USDA orders from the point of order and delivery to warehouse, to the allocation from warehouse and point of delivery to agency.
- E. "ADH" means the Arkansas Department of Health.
- F. "CACFP" means the Child and Adult Care Food Program. The CACFP provides aid to child and adult care institutions and family or group day care homes for the provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired disabled persons.

- G. "Commodity Distribution Unit" is a part of the Arkansas Department of Human Services, Division of County Operations, Office of Community Services. The Commodity Distribution Unit is the distributing agency for USDA Commodity Foods within the State of Arkansas.
- H. "Demurrage" means a penalty charge assessed by railroads for cars held beyond the specified free time.
- I. "Detention Charge" means a penalty charge assessed by carriers for shipments held beyond the specified free time.
- J. "DHS" means the Arkansas Department of Human Services.
- K. "FDA" means the United States Food and Drug Administration.
- L. "FNS" means the USDA Food and Nutrition Service.
- M. "Free Time" means the amount of time established by carriers for the unloading of freight before penalty charges apply.
- N. "NSLP" means the National School Lunch Program. NSLP is a federally assisted meal program operating in public and nonprofit private schools and residential childcare institutions. It provides nutritionally balanced, low-cost or free lunches to children each school day. The program was established under the National School Lunch Act, signed by President Harry Truman in 1946.
- O. "OS&D" means Over, Short and/or Damaged USDA Commodities.
- P. "SFSP" means the School Food Service Program. The School Food Service Program ensures that low-income children continue to receive nutritious meals when school is not in session.
- Q. "TEFAP" means The Emergency Food Assistance Program. TEFAP is a program that makes USDA donated foods available to emergency feeding organizations to provide the foods to needy households to relieve situations of emergency or provide supplemental food assistance.
- R. "USDA" means the United States Department of Agriculture.

## 1.7 **RESPONSE DOCUMENTS**

### A. Bid Response Packet

1. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Bid Signature Page*.
2. Vendor's signature on this page **shall** signify vendor's agreement that either of the following **shall** cause the vendor's bid to be disqualified
  - a. Additional terms or conditions submitted intentionally or inadvertently.
  - b. Any exception that conflicts with a Requirement of this *Bid Solicitation*.
3. The following items should be submitted in the original *Bid Response 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.

#### 1.8 **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 *Bid Response Packet*.
- B. Vendor's signature on these pages **shall** signify agreement to and compliance with all Requirements within the designated section.

#### 1.9 **SUBCONTRACTORS**

Subcontractors **shall not** be allowed to perform services under the terms of this contract.

#### 1.10 **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*.
- B. To allow time to evaluate proposals, prices **must** be valid for 120 days following the bid opening.
- C. Failure to complete and submit the *Official Bid Price Sheet* **shall** result in disqualification.
- D. All bid pricing **must** be in United States dollars and cents.
- E. The Official Bid Price Sheet may be reproduced as needed.
- F. The vendor **must** include all costs for the storage and distribution of USDA Commodity Food.
- G. Pricing **must** be on a per case basis for pick-up and delivery.

#### 1.11 **PRIME CONTRACTOR RESPONSIBILITY**

- A. A joint bid submitted by two (2) 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.

#### 1.12 **INDEPENDENT PRICE DETERMINATION**

- A. By submission of this bid, the vendor certifies, and in the case of a joint response, each party thereto certifies as to its own organization, that in connection with this bid:
  - The prices in the bid 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 bid by the Office of the Attorney General. All vendors **shall** understand that this paragraph may be used as a basis for litigation.

#### 1.13 **PROPRIETARY INFORMATION**

- A. Response 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. 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.

#### 1.14 **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. Bids **must** be submitted only in 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. Bids **must** meet or exceed all defined specifications as set forth in this *Bid Solicitation*.
- I. Bids **must** meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.
- J. Vendors may submit multiple bids.

#### 1.15 **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.

#### 1.16 **AWARD PROCESS**

- A. Vendor Selection
  - 1. Award **shall** be made in the form of a term contract on an all or none basis.
- B. 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.

C. 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.

**1.17 MINORITY BUSINESS POLICY**

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

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

**1.18 EQUAL EMPLOYMENT 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.

**1.19 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.

**1.20 PAST PERFORMANCE**

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

**1.21 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.

**1.22 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 bid to be disqualified.

**1.23 RESERVATION**

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

## **SECTION 2 – MINIMUM REQUIREMENTS**

### **2.1 INTRODUCTION**

This Invitation For Bid (IFB) is issued by the Office of State Procurement (OSP) on behalf of the Arkansas Department of Human Services (DHS) to obtain pricing for the provision of warehousing and commodity distribution services that **shall** be utilized for the storage, handling and distribution of the United States Department of Agriculture (USDA) Commodity Foods. The vendor **shall** handle and store USDA Commodity Foods in the warehouse facility, and distribute these foods to various National School Lunch Program (NSLP) and The Emergency Food Assistance Program (TEFAP) recipients throughout the State of Arkansas.

The USDA purchases food and arranges transportation to the State of Arkansas. The Commodity Distribution Unit, operated by DHS, and under authority from USDA, enters into agreements with local agencies and school food authorities, who then become eligible recipients of raw and processed USDA Commodity Foods.

Under the NSLP and TEFAP and through the Commodity Distribution Unit, the State provides distribution of USDA Commodity Foods to approximately 350 eligible public and private schools, charitable institutions, child and adult care centers, summer food service programs, food banks, and approximately 100 Community Action Agencies for further distribution to eligible households in each County of the State.

For the purposes of this IFB, the NSLP **shall** operate as an umbrella for two additional USDA programs, the CACFP, and the SFSP, and all three **shall** be referred to as NSLP. Throughout this IFB, all references made to NSLP **shall** also be meant to include the CACFP and the SFSP.

### **2.2 GENERAL REQUIREMENTS**

- A. The vendor **must** have a minimum of five (5) consecutive years of experience in operating a food storage warehouse and/or as a food distributor, and **must** currently have the facilities and delivery equipment available to store, handle and deliver the volumes of USDA Commodity Food as outlined in this IFB.
- B. The vendor **shall** handle a wide variety of foods during any given year and the items and quantities **shall** vary from year to year, however, the vendor's facilities **must** have the capacity to store, at a minimum, the following quantities of USDA Commodity Foods during any given month:
  - 150,000 cases of dry foods
  - 25,000 cases of refrigerated foods
  - 50,000 cases of frozen foods
- C. The vendor **shall** be required to absorb all one-time costs associated with accepting this contract, including but not limited to:
  1. Expenses associated with equipping the warehouse as needed in order to provide services required in this IFB.
  2. Expenses associated with moving commodities from the current vendor's location to the new vendor's location.
  3. Programming and/or upgrading of the vendor's computer system to make it compatible with the data processing requirements outlined in this IFB.
- D. The vendor **shall** accept, store and deliver only sound, recoupable, and undamaged commodities ordered by the ACDS for use in the NSLP and TEFAP programs.
- E. The vendor **shall** have access to full-size, 18-wheeler trucks with 40,000 pound capacities, forklifts, van trucks, dual compartment (refrigerated and non-refrigerated) trucks, slip-sheet handling equipment, and other vehicles and/or equipment in the quantities needed to provide the services required in this IFB.



- F. The vendor **must** follow instructions given by the Commodity Distribution Unit regarding shipment, receipt, delivery, and storage requirements for USDA Commodity Foods.
- G. The vendor **must** adhere to all USDA, FDA, ADH, and DHS regulations governing the storage, handling and/or delivery of USDA Commodity Foods.
- H. The vendor **shall** provide the services for the receipt, and delivery of USDA Commodity Foods as required in this solicitation according to USDA FNS Revised Instructions 709-5 dated June 2, 2015, provided as Attachment C to this IFB, and the provisions of all applicable State, and Federal statutes, rules, and regulations including but not limited to the National School Lunch and Child Nutrition Act; 7 CFR Section 210-251.
- I. The vendor **shall** comply with all applicable Federal, State, and local laws and regulations pertaining to wages, hours, and conditions of employment.
- J. The vendor **shall** be responsible for paying any Monetary Settlement Claims levied by USDA against the vendor and/or against the Commodity Distribution Unit resulting from the vendor's failure to properly secure, handle, store, and/or account for shipments.
- K. The vendor **shall** maintain All Risk Liability Insurance on all USDA Commodity Foods stored in the vendor's warehouse. The coverage amount **must** be equal to the market value of the USDA Commodity Foods in the vendor's warehouse at any one time.
- L. The vendor **shall** maintain All Risk Liability Transit Insurance for use during the transportation and delivery of USDA Commodity Foods to the distribution locations. The coverage **must** be equal to the market value of the USDA Commodity Foods on delivery vehicles at any one time.
- M. The vendor **must** possess a computer system capable of exchanging data with the ACDS and the Commodity Distribution Unit using the Internet, such as downloading, sending, and receiving delivery schedules, and downloading shipping instructions in specified formats, such as Excel.
- N. The vendor **must** have a recall program. The vendor's recall program **must** be able to identify, track and locate recalled USDA Food Commodities distributed to each location within 24 hours of recall notification. The vendor **shall** notify recipients of recalled USDA Commodity Food and **shall** report information regarding the recall to the DHS Commodity Distribution Unit immediately upon knowledge of such recall.
- O. The vendor **must** perform a test of the product recall program and perform an assessment of recall procedures, annually.
- P. The vendor **must** provide instruction on the proper receipt, storage, and delivery of USDA Commodity Foods to all staff members who deliver, handle, receive, report on, and/or store USDA Commodity Foods. The vendor **shall** determine the training method.

### **2.3 REFRIGERATION MANAGEMENT**

- A. The warehouse **must** be equipped with a refrigeration temperature management system for refrigerated and frozen storage areas and **must** include an automated reporting system that records temperatures in 15-minute intervals, 24 hours per day, seven (7) days per week.
- B. The vendor **shall** provide reports generated from the refrigeration temperature management system for annual audits, warehouse reviews, in instances when food loss occurs in which temperature is a factor, or upon request of the DHS Commodity Distribution Unit.
- C. The refrigeration temperature management system **must** have the capabilities to send alarms to a monitoring service and/or warehouse personnel in the event of a rise or fall in temperatures beyond required settings.
- D. If alarms are triggered by the refrigeration temperature management system, the vendor **shall** notify the DHS Commodity Distribution Unit immediately upon knowledge of the event for a determination of whether the USDA Commodity Food stored in the vendor's warehouse is salvageable, or if it is to be destroyed.

- E. The warehouse **must** be equipped with a monitoring system for leak detection if ammonia is to be used as a refrigerant.
- F. The monitoring system **must** have the capabilities of automatic shutdown of the refrigeration system in the event of an ammonia leak.
- G. The vendor **shall** notify the Commodity Distribution Unit immediately upon knowledge of an automatic shutdown caused from an ammonia leak. The vendor **shall** proceed as instructed by the Commodity Distribution Unit.

## **2.4 PEST CONTROL**

- A. The vendor **shall** keep storage areas and aisles clean and free from litter and debris in order to reduce the possibility of infestation.
- B. The vendor **shall** install and maintain industry approved rodent bait traps, and **shall** chart the trap locations on a floor plan of the warehouse.
- C. The vendor **shall** inspect the rodent bait traps, and warehouse area daily as to promptly detect any evidence of insect or rodent infestation. The vendor **shall** record the daily inspections in a Pest Control Inspection Log that **shall** be provided to the vendor upon award. The vendor **shall** make the Pest Control Inspection Log available to the Commodity Distribution Unit for inspection upon request.
- D. The vendor **shall** notify the Commodity Distribution Unit within 24 hours of any damaged, deteriorated, or infested commodities found in the warehouse.
- E. The vendor **shall** have monthly, licensed pest control services performed in accordance with all Federal, State, and local rules and regulations.
- F. The vendor **shall** maintain records on all fumigations and/or pest control applications performed during the monthly service and **shall** document such inspections and/or fumigations in the Pest Control Inspection Log.
- G. The vendor **shall** move and restack any USDA Commodity Food susceptible to insect and /or rodent infestation if stored for more than three (3) months.

## **2.5 FIRE SAFETY**

- A. The vendor **shall** comply with City, County, and Local Fire Code.
- B. The vendor **shall** keep storage areas and aisles clean, and free from litter and debris in order to reduce the possibility of fire.
- C. The vendor **shall** keep fire extinguishers in the quantities and locations as required by City, County, and Local Fire Code.
- D. The vendor **shall** maintain fire extinguishers and other fire-fighting equipment in good condition, and **shall** have inspections performed on such equipment a minimum of twice per year.
- E. The vendor **shall** attach tags to individual pieces of fire-fighting equipment to show dates of inspections, recharging, and/or reconditioning of such equipment.
- F. The warehouse **must** be equipped with a fire alarm system with the capability of being monitored 24 hours per day, seven days per week.
- G. The vendor **shall** monitor fire alarms 24 hours per day, seven days per week, and **shall** notify the Commodity Distribution Unit immediately upon knowledge of any fires in the warehouse.
- H. The warehouse **must** be equipped with a sprinkler system per City, County and Local Fire Code.

## 2.6 HOURS OF SERVICE

- A. The vendor **shall** provide services for the receipt, storage and distribution of USDA Commodity Food as outlined in this RFP to the Arkansas Department of Human Services Commodity Distribution Unit, and to the recipient agencies during normal business hours, which **shall** be Monday through Friday, 8:00 a.m. to 5:00 p.m., CST.
- B. The vendor **shall** provide services required in this IFB during scheduled appointment times for agency pick-ups of USDA Commodity Foods, incoming shipments, and for any inspections and/or other service required in this bid solicitation.
- C. The vendor **shall** provide services required in this IFB during crisis or disaster situations on a twenty-four (24) hour basis. A crisis or disaster situation **shall** include, but is not limited to, catastrophic disasters such as earthquakes, tornadoes, etc. where food is brought in for congregate feeding. DHS **shall** have the final determination as to which events qualify as a disaster or crises.
- D. The vendor **shall** provide access to the warehouse for USDA and DHS personnel during normal business hours, Monday through Friday, 8:00 a.m. CST until 5:00 p.m. CST.
- E. The vendor **shall** accept and provide storage for all sound, recoupable and/or undamaged USDA Commodity Foods received during the hours of 8:00 a.m. to 5:00 p.m. CST, Monday through Friday unless additional scheduling has been mutually agreed upon by the vendor and the shipper/carrier in advance.

## 2.7 RECEIPT OF USDA COMMODITIES

- A. Logistics
  - 1. The vendor **must** initially inspect each shipment and Bill of Lading prior to unloading. This vendor **shall** inspect the security seals, the overall condition of the USDA Commodity Food, and the number of units in the shipment against the delivery receipt.
  - 2. If the security seal is broken, or if the security number of the seal does not match the serial number on the Bill of Lading, the vendor **must** refuse the shipment and contact the Commodity Distribution Unit by telephone immediately. The vendor **shall** proceed as instructed by the Commodity Distribution Unit.
  - 3. The vendor **shall** conduct a complete and thorough inspection as the shipment is unloaded and prior to the carrier departing. The vendor **shall** inspect the condition of USDA Commodity Food, the condition of the containers, and the quantities received.
  - 4. If the shipment contains Over, Short, or Damaged (OS&D) USDA Commodity Food, the vendor **shall** ensure the carrier remains at the vendor's warehouse until a determination is made by the Commodity Distribution Unit on how to proceed.
  - 5. The vendor **shall** unload shipments of USDA Commodity Foods within the Free Time allowed. For palletized loads, free time is up to two (2) hours. For non-palletized loads, free time is up to six (6) hours. Failure to complete the unloading within the free time may incur a demurrage or detention charge.
  - 6. The vendor **shall** be responsible to pay any assessed demurrage and/or detention charges when shipments are not unloaded within the free time allotted. In instances when shipments are held by the Commodity Distribution Unit, any demurrage and/or detention charges **shall not** be the responsibility of the vendor.
  - 7. The vendor **shall** ensure the carrier's freezer or refrigeration unit remains on during unloading of USDA Commodity Foods.
  - 8. The vendor **shall** receive inbound freight in accordance with acceptable industry practices and USDA Food and Nutrition Service (FNS) Instruction 709-5, Shipment and Receipt of USDA Foods, dated June 2, 2015. A copy of this document is listed as Attachment C to this IFB.

9. USDA Commodity Foods shipped to the vendor's warehouse **shall** be entirely prepaid by USDA and the USDA food vendor, including product and freight.
10. Poultry deliveries should arrive with documentation from USDA poultry inspectors. In instances where documentation is not provided upon delivery, the vendor **shall** be responsible for arranging inspections with USDA Poultry inspectors to break the truck seal and check temperatures on all poultry shipments.
11. The vendor **shall** accept both USDA and Commodity Distribution Unit contracted shipments, including any shipments which may result from new contracts between recipient agencies and the Commodity Distribution Unit.
12. The USDA shipping periods **shall** be either the 1<sup>st</sup> through the 15<sup>th</sup> of the month, or the 15<sup>th</sup> through end of the month. The USDA food vendor is under contract with USDA to deliver orders placed by the Commodity Distribution Unit to the warehouse vendor during one of these two periods.
13. The vendor **shall** receive both palletized and slip-sheeted commodities. The vendor **shall** provide the proper slip-sheet handling equipment.
14. The vendor **shall** be required to unload a minimum of three, full, 18-wheeler trucks per day.
15. An overview of the warehouse activity for FY 2014 and FY 2015 for both the NSLP and TEFAP are provided as Attachments A and B, respectively. This data is provided for informational purposes only and **shall not** be construed as the actual activity which may result from this solicitation.
16. The vendor **must** maintain a log of shipper/carrier deliveries, preferably in electronic format and **shall** include the following information in the log:
  - a. Name of the carrier (firm and driver for truck deliveries)
  - b. Date and time of notification for delivery
  - c. USDA Commodity Food to be delivered
  - d. Date and time of arrival
  - e. Date and time unloading commences
  - f. Date and time unloading is completed
  - g. Signature of the vendor, or designated representative, and signature of the carrier's representative.

#### B. Notification Of Shipments

1. The Commodity Distribution Unit **shall** notify the vendor via email with an Excel Attachment of expected deliveries for the year as soon as the information becomes available to the Commodity Distribution Unit.
2. USDA **shall** notify the vendor with expected delivery dates for the year.
3. The Commodity Distribution Unit **shall** notify the vendor monthly of any updated delivery schedules.
4. The vendor **shall** be notified by the USDA automated email system and the Commodity Distribution Unit of upcoming shipments.
5. The vendor **shall** receive telephone correspondence from a USDA food vendor representative to schedule the exact date and time of delivery.

#### C. Unloading Documents

1. The Unloading Documents **shall** include the following:

- a. Bill of Lading
  - b. Warehouse Receiving Report
  - c. Unloading Tally
  - d. Forwarding Notice FNS-269
  - e. Over, Short or Damaged (OS&D) Report, if applicable
  - f. Signed Salvage Receipts from carrier, if applicable
  - g. Inspection Reports, if applicable, such as poultry inspections, carrier inspections, and/or ADH inspections
  - h. Signed delivery receipts with any rejected commodities noted
2. The Bill of Lading, Unloading Tally, Forwarding Notice FNS-269, OS&D Report, Delivery Receipts, and any Poultry Inspection Reports **shall** be supplied by the USDA food vendor and presented to the warehouse vendor upon delivery of USDA Commodity Foods. The Commodity Distribution Unit **shall** supply the vendor with the Warehouse Receiving Report.
  3. The vendor **must** read the truck temperatures, and temperatures of refrigerated and frozen USDA Commodity Foods at the time of truck opening. The vendor **must** document the temperatures on the Unloading Tally, Forwarding Notice FNS-269, Warehouse Receiving Report, and the Bill of Lading.
  4. Prior to accepting USDA Commodity Food shipments, the vendor **shall** check and document the following additional information on the Warehouse Receiving Report:
    - a. The seal numbers and the condition of seals
    - b. The pack dates and Best If Used By dates, if available
    - c. The condition of the USDA Commodity Food load, the truck, and/or trailer
    - d. The temperature of the truck upon opening
    - e. The adequacy of bracing and/or strapping
    - f. Any recouped commodities
    - g. Lot numbers assigned by the vendor
    - h. Any damage to USDA Commodity Foods upon receipt of shipment
  5. The vendor **shall** forward the Warehouse Receiving Report to Commodity Distribution Unit via fax or email, or per DHS discretion, along with additional Unloading Documents, by the end of the next business day following delivery.

D. Lack of Capacity

1. On the rare occasion whereby the quantity of USDA Commodity Foods received by the vendor exceeds the vendor's warehouse capacity, the vendor **shall** secure additional warehouse space to provide adequate storage for the excess of USDA Commodity Foods. This **shall** take place on the date and time of delivery.
2. The need to secure additional warehouse space **shall** be the rare exception in extraordinary circumstances, such as a catastrophic disaster where food is brought in for congregate feeding. The need to secure additional warehouse space **shall** be determined and approved, in writing, by the DHS Commodity Distribution Unit prior to the vendor securing the additional warehouse space.

3. Additional warehouse space secured by the vendor **must** meet the same specifications and requirements set forth in this IFB for the original warehouse space.
4. The Commodity Distribution Unit **shall** reserve the right to inspect any facility that may be used for additional warehouse space prior to the vendor securing the facility.
5. Additional expenses connected with the securing, transfer, handling, and transportation to and from the additional warehouse space **shall** be borne by the vendor.

E. Over, Short and Damaged USDA Commodity Foods

1. The vendor **must** inspect the truck temperatures, and the temperatures of refrigerated and frozen USDA Commodity Foods at the time of truck opening. Upon inspection, if temperature is above 40 degrees Fahrenheit for refrigerated commodities, or above 10 degrees Fahrenheit for frozen commodities, or if the commodity is soft as determined by warehouse vendor personnel, the vendor **must** notify the Commodity Distribution Unit by telephone immediately. The vendor **shall** then handle the commodities as instructed by the Commodity Distribution Unit.
2. The vendor **must** inspect the condition and quantity of USDA Commodity Foods upon delivery, and **shall** reject containers having OS&D commodities. The vendor **shall** notify the Commodity Distribution Unit, and the carrier's representative by telephone immediately upon receipt of any shipments containing OS&D commodities.
3. When instructed by the Commodity Distribution Unit, the vendor **shall** request a joint inspection with the carrier. Any joint inspection **must** be conducted within 48 hours of receipt of any shipment containing OS&D USDA Commodity Food. The date, time, and name of the individual contacted **shall** be noted on the Forwarding Notice, and the OS&D Report.
4. To determine the condition of USDA Commodity Foods when the carrier does not respond to an inspection request, the vendor **shall** follow instructions issued by the Commodity Distribution Unit concerning the receipt and handling of OS&D USDA Commodity Food, such as documentation requirements, whether the vendor is to accept or reject the shipment, recoup all or portions of the shipment, release all or portions of the shipment to the carrier for salvage, or arrange inspections with USDA Agents or State/Local Health Authorities.
5. In the event that the entire shipment, or large portions of the shipment, contain OS&D commodities that are not recoupable, as determined by the Commodity Distribution Unit and/or any subsequent USDA or State/Local Health Authority inspections, the vendor **shall** mark all damaged, non-recoupable containers as "Not To Be Sold Or Exchanged" and "Railroad Salvage/Carrier Salvage". Upon instruction from the Commodity Distribution Unit, the vendor **shall** release the containers to the carrier for salvage. The vendor **must** obliterate all USDA markings if the product is to be salvaged by the carrier for another use.
6. When rejecting non-recoupable OS&D USDA Commodity Food the vendor **shall** obtain the carrier's inspection report with written confirmation of damage if applicable, the delivery receipt noting any rejected commodities, the carrier's signature on the OS&D Report acknowledging the OS&D commodities, and a salvage receipt from the carrier, if applicable. The vendor **shall** submit these documents to the Commodity Distribution Unit along with the additional Unloading Documents by the end of the next business day following delivery.
7. If the carrier is unable, or unwilling to accept rejected product for salvage within two weeks, the vendor **shall** set rejected product aside for disposal.
8. If upon inspection of the condition and quantity of USDA Commodity Foods it is determined by the vendor that insect or rodent infestation is present, the vendor **shall** immediately notify the Commodity Distribution Unit by telephone. The vendor **shall** follow the instructions received from the Commodity Distribution Unit as to whether the load is to be returned to the food vendor, or destroyed by the warehouse vendor. The costs of returning USDA Commodity Food **shall** be borne by the vendor.

## **2.8 RECOUPING USDA COMMODITY FOODS**

- A. With confirmation from the Commodity Distribution Unit, the vendor **shall** accept USDA Commodity Food units delivered with damaged outer cases or containers, but only when the inner cases or containers are sound and undamaged. The vendor **shall** assign these units to the same lot, and store in the same manner as undamaged units.
- B. The vendor **shall** recoup the sound and undamaged inner cases or containers into new outer cases or containers as soon as possible, but **shall not** take longer than 48 hours from receipt.
- C. When recouping commodities, the vendor **shall** transfer all USDA food vendor markings, to the new cases or containers. At a minimum, the markings **must** include the Lot Number and UPC, if available.

## **2.9 DISPOSAL OF USDA COMMODITY FOODS**

- A. The vendor **must** contact the Commodity Distribution Unit for instruction prior to disposing of USDA Commodity Food.
- B. The vendor **must** obtain appropriate inspections from the local Health Department to determine if the food is usable for other than human consumption. If upon inspection, it is determined the food is usable for other than human consumption, the vendor **shall** contact the Commodity Distribution Unit and proceed as instructed by the Commodity Distribution Unit.
- C. The vendor **must** dispose of all USDA Commodity Food in accordance with all local, State, and Federal regulations including the Food, Drug, and Cosmetics Act.
- D. The vendor **must** receive a Destruction Report from the local Health Department prior to disposal of USDA Commodity Foods.
- E. When disposing of USDA Commodity Foods, the vendor **shall** remove the food from its container or bag and dispose of both separately.
- F. The vendor **shall** bill all costs for disposing the USDA Commodity Food to the Commodity Distribution Unit.

## **2.10 STORAGE OF USDA COMMODITY FOODS**

- A. General Requirements
  - 1. The vendor **shall** store USDA Commodity Foods separately from other foods stored at the vendor's facility.
  - 2. Except in rare circumstances, the vendor **shall** store and ship all USDA Commodity Food for both the NSLP and TEFAP programs in and from a single location.
- B. Lot Identification
  - 1. The vendor **shall** assign a lot number to each shipment received for storage and **shall** mark, label, and/or tag each storage lot with its assigned number.
  - 2. The vendor **shall** record the assigned lot number on the Warehouse Receiving Report. The assigned lot number **must** match the lot number recorded on the Warehouse Receiving Report.
- C. Quality Control
  - 1. The vendor **shall** ensure USDA Commodity Foods are not damaged and/or contaminated by moisture, foreign odors, inappropriate freezing, mold formation, rusting etc., by taking preventative measures such as the following:
    - a. Maintaining a dry warehouse with no more than 40% humidity
    - b. Utilization of fans to provide air circulation in storage areas

- c. Storing USDA Commodity Foods on dry pallets, and away from all chemicals, cleaning agents, or other types of harmful products that could contaminate food.
  - d. Providing air drying and heating equipment
2. The vendor **shall** rotate all commodities on a first-in, first-out (FIFO) basis in accordance with acceptable warehousing practices and **must** have a system in place prior to award which ensures all proper stock rotation practices and procedures are followed.
  3. The vendor **shall** mark the date of receipt to the vendor's warehouse on all USDA Commodity Food cases and containers.
  4. The Commodity Distribution Unit **shall** periodically conduct inspections for proper FIFO compliance.
  5. The vendor **shall not** store, load, or deliver any USDA Commodity Food with chemicals or other products that may be harmful to the quality or safety of USDA Commodity Food. The Commodity Distribution Unit may allow exceptions if such exceptions are documented as being compatible with standard industry practice, and written authorization is obtained from the Commodity Distribution Unit, in advance.

#### D. Refrigerated Storage

1. The vendor **shall** store USDA Commodity Foods requiring refrigeration at 36 to 40 degrees Fahrenheit.
2. The vendor **shall** provide main aisles and cross aisles which permit easy identification, inspection, inventorying, and removal of USDA Commodity Foods.
3. The vendor **shall** check and document temperatures hourly.
4. The vendor **shall** use fans to circulate air and maintain an even temperature.

#### E. Dry Storage for Perishable Items

1. The vendor **shall** provide dry storage for perishable USDA Commodity Foods between 50 to 60 degrees Fahrenheit.
2. The vendor **shall** provide main aisles and cross aisles to permit easy identification, inspection, inventorying and removal of USDA Commodity Foods.
3. The vendor **shall** add heat, as deemed necessary by the vendor, to prevent moisture from condensing on the stored USDA Commodity Foods.
4. The vendor **shall** check and document temperatures hourly.

#### F. Dry Storage for Non-Perishable Items

1. The vendor **shall** store non-perishable USDA Commodity Foods at 60 to 70 degrees Fahrenheit.
2. The vendor **shall** provide main aisles and cross aisles to permit easy identification, inspection, inventorying, and removal of USDA Commodity Foods.
3. The vendor **shall** add heat, as deemed necessary by the vendor, to prevent moisture from condensing on stored commodities.

#### G. Frozen Storage

1. The vendor **must** store frozen USDA Commodity Foods at zero degrees Fahrenheit or below.
2. The vendor **shall** provide main aisles and cross aisles in a manner that provides for easy identification, inspection, inventorying, and removal of USDA Commodity Foods.



3. The vendor **shall** check and document freezer temperatures hourly.

#### H. Multi-Walled Paper Bag and Corrugated Solid Fiberboard Carton Storage

1. The vendor **shall** store multi-walled paper bag and corrugated solid fiberboard cartons on a smooth, clean, and dry surface and **shall** only use dry pallets to provide air circulation and to prevent moisture absorption from floors.
2. The vendor **shall not** use green pallets to store multi-walled paper bagged commodities or solid fiberboard cartons.
3. The vendor **shall** protect USDA Commodity Foods from projecting nails, sharp corners, or any item which could damage packaging.

#### I. Canned Goods, Glass or Plastic, and Metal Container Storage

1. The vendor **must** store containers with screw caps, friction covers, or vent plugs facing up.
2. The vendor **shall** ensure against sudden temperature changes in order to prevent sweating of containers by using temperature controls in dry storage areas.

#### J. Stacking Restrictions

1. The vendor **shall not** stack pallets more than five pallets high.
2. The vendor **must** stack pallets in a way that allows for free and easy inspection, and ready use of fire equipment.
3. The vendor **must** provide a minimum of an 18 inch clearance between the tops of stacks and sprinkler heads.
4. The vendor **shall** stack each lot in an orderly manner and **shall** maintain sufficient clearances between adjacent stacks, walls, ceilings, and floors to provide proper air circulation, and between freezer room wall to prevent condensation and damage. Spacing, at the minimum, **shall** be six inches from the ground, ceiling, and walls, with one foot between stacks.

## 2.11 DELIVERY OF USDA COMMODITIES

#### A. General Requirements

1. The vendor **shall** receive schedules for TEFAP deliveries from the Commodity Distribution Unit via ACDS approximately 24 hours in advance.
2. The vendor **shall** deliver approximately 99% of the USDA Food Commodities to recipient agencies and approximately 1% is estimated to be picked-up by recipient agencies.
3. The vendor **shall** receive schedules from ASCS for NSLP deliveries approximately 24 hours in advance. Upon receipt, the vendor **shall** send the delivery schedules via email in Excel format to the Commodity Distribution Unit.
4. The vendor **shall** only disburse USDA Commodity Food to eligible recipient agencies. The vendor **must** obtain computer generated instructions through the ACDS, or written instructions from the Commodity Distribution Unit which **must** be signed by the Commodity Distribution Unit's authorized personnel. Written or verbal instructions by an agency, or verbal instructions by the Commodity Distribution Unit **shall not** be permitted.
5. The vendor **shall not** be paid for delivery of any item documented on the delivery receipt to be unfit for program use due to damage sustained while in transit aboard the vendor's delivery vehicle, or as a direct result of improper storage while at the vendor's warehouse.

6. The vendor **shall** use van trucks for delivery of dry commodities, refrigerated trucks for delivery of refrigerated commodities or dual compartment refrigerated trucks for a combination of these deliveries. The number of vehicles required **shall** depend on the size of the trucks and may vary by region and delivery period.
7. Delivery vehicles and equipment such as the refrigeration unit, internal units, bulkheads, walls, ceilings, and doors **shall** be washed to deter offensive odors, as determined necessary by the vendor, and **must** be maintained in good condition. Unsanitary conditions **shall not** be allowed.
8. Delivery personnel **must** be attired in a manner that identifies the vendor.
9. Delivery of all USDA Commodity Food **must** originate from a single location, except in rare circumstances.
10. The vendor **shall not** charge drop fees for small deliveries. The Commodity Distribution Unit **shall** work with recipient agencies and the vendor to minimize or eliminate deliveries of fewer than 10 cases.
11. The vendor **shall** clearly itemize each type of USDA Commodity Food using the product identification number, and an item description on all shipping lists to recipient agencies.

#### B. Loading Requirements

1. The vendor **shall** place for loading and **shall** load only sound, undamaged USDA Commodity Foods.
2. The vendor **shall** place all USDA Commodity Foods for loading in the loading area, organized by stop order, as determined by the of delivery driver, and **shall** conduct a preloading count.
3. The vendor **shall** perform all loading of refrigerated and frozen USDA Commodity Food from a temperature-controlled (40-50 degrees Fahrenheit) loading dock.
4. The vendor **must** pre-cool delivery vehicles to a minimum 40 degrees Fahrenheit before frozen or refrigerated USDA Commodity Food is loaded.
5. The vendor **shall not** overload trucks. The vendor **shall** load trucks in a manner that complies with the Department of Transportation weight limits.

#### C. Delivery Requirements

1. The vendor **shall** deliver all USDA Commodity Food to recipient agencies on a monthly basis, or at other intervals mutually agreed upon by the vendor and the agency.
2. In order to increase delivery efficiency by enabling recipient agencies to plan and schedule receiving personnel, the vendor either **shall** provide each recipient agency of the NSLP Program with deliveries on the same weekday of each scheduled delivery period, or **shall** provide a 24-hour notification of delivery to the recipient agency.
3. Many TEFAP deliveries are time sensitive and there **shall** be instances when the vendor is requested by the Commodity Distribution Unit to make such time sensitive deliveries. In these instances, the vendor **shall** take all steps necessary to schedule and make such deliveries at the time and place designated by the Commodity Distribution Unit. Such time sensitive delivery requests **shall** be made no less than (2) two full business days prior to the requested delivery date.
4. When requested by the Commodity Distribution Unit, the vendor **must** provide delivery to all recipient agencies of the NSLP Program during the months of August through May. Only TEFAP deliveries **shall** be scheduled during any of the 12 months.
5. The vendor **shall** make deliveries between the hours of 7:00 a.m. and 3:00 p.m. for the NSLP Programs and between the hours of 8:00 a.m. and 4:00 p.m. for TEFAP Programs, unless special arrangements between the vendor and the recipient agency have been made in advance.

6. The vendor **shall** make deliveries Monday through Friday, except for planned closings, holidays or other times when certain recipient agencies are closed, such as for inclement weather.
7. The Commodity Distribution Unit **shall** provide the vendor with a list of each school district's planned closings. This **shall** be provided monthly and is to be used as a guide only and not as an absolute final schedule.
8. If deliveries are delayed due to a cause beyond the control of the recipient agency, such as inclement weather, vendor equipment failure, or personnel problems, the vendor **shall** work with the affected recipient agency to arrange another agreeable time of delivery, which **shall** be before the next scheduled delivery date.
9. The vendor **shall not** receive payment for attempted deliveries on days when a school or agency is closed. This **shall** include days when the school or agency is closed due to inclement weather, or for any other reason, even if the closing is not listed on the planned school closings lists.
10. The vendor may deliver USDA Commodity Food in straight loads only, or in mixed loads containing other foods that have been commercially purchased. The delivery of mixed loads **shall not** hinder compliance with any of the requirements outlined in this IFB.
11. The vendor **shall** provide dry storage during delivery at a minimum 50 degrees Fahrenheit and a maximum 70 degrees Fahrenheit, refrigerated storage during delivery between 36 degrees Fahrenheit and 40 degrees Fahrenheit, and frozen storage during delivery at 0 degrees Fahrenheit or below.
12. The vendor **shall** follow standard industry practice pertaining to unusual delivery situations such as flooded or icy roads, business closures, or delivery vehicle malfunction.
13. Throughout the delivery cycle, the vendor **must** mechanically record internal cargo temperatures using on-board recording devices, a minimum of four (4) times daily, or every 30 minutes for deliveries not requiring long travel distance.

**D. Receipt of USDA Commodity Food By Recipient Agency**

1. The vendor **shall** be notified by the Commodity Distribution Unit of each agency's designated receiving areas prior to delivery.
2. The vendor will have access to each receiving area by truck, and to a ground level unloading area or a standard truck dock.
3. The vendor **shall** only be required to deliver USDA Commodity Food to the rear of the truck at the designated receiving areas at each recipient agency site. Recipient agency personnel **shall** be responsible for unloading USDA Commodity Food delivered by the vendor.
4. The vendor **shall** instruct the recipient agency to verify the quantity of each type of USDA Commodity Food, the total of all quantities of USDA Commodity Food, and the condition of USDA Commodity Food delivered.
5. The vendor **shall** instruct the recipient agency to note on the delivery receipt, any variances from the norm such as shortages, or damaged USDA Commodity Food. The vendor **shall** initial all such notations and **shall** obtain a signature from the recipient agency on each delivery receipt.
6. The vendor **shall not** re-deliver any mis-picked, short, or damaged USDA Commodity Food. Any commodity not properly delivered at the time of the original delivery **shall** be considered cancelled and the Commodity Distribution Unit **shall** enter new delivery instructions to the vendor.

**2.12 PICK-UP OF USDA COMMODITIES**

- A. The vendor **must** receive properly assigned, computer generated instruction from the Commodity Distribution Unit before recipient agencies, or Commodity Distribution Unit personnel will be allowed to pick-up any USDA Commodity Food stored in the vendor's warehouse.

- B. The vendor **shall** receive 24-hour advance notice from the Commodity Distribution Unit of agency pick up.
- C. The vendor **shall** provide timely service to recipient agencies.
- D. The vendor **shall** place only sound, undamaged products in the loading dock area for agency pick-up and loading by agency personnel.
- E. When requested by the Commodity Distribution Unit, the vendor **shall** load State vehicles with USDA Commodity Food picked up by the State agency.

## **2.13 INSPECTIONS AND INVENTORY**

- A. During normal business hours, which **shall** be Monday through Friday, 8:00 a.m. until 5:00 p.m. CST, the vendor **shall** allow authorized representatives of the Commodity Distribution Unit and/or USDA to inspect the vendor's warehouse and material handling equipment, inventory all USDA Commodity Food stored in the vendor's warehouse, and review all records pertaining to USDA Commodity Food.
- B. Any inspection or inventory conducted by the Commodity Distribution Unit or USDA which finds deterioration, infestation, or other change in condition in any of the USDA Commodity Food stored in the vendor's warehouse, **shall not** act to relieve the vendor of any responsibilities under this contract or under law. In addition, any inspection or inventory conducted **shall not** constitute a waiver of any of the notification requirements outlined in this IFB.
- C. The vendor **shall** invoke the services of a third-party auditing company, or a certified and experienced individual qualified to perform food storage safety inspections. The vendor **shall** have such inspections performed annually.
- D. Monthly Inventory
  - 1. The vendor **must** conduct monthly inventory, and **must** reconcile any discrepancies with the Commodity Distribution Unit. Inventory, and any reconciliation, **must** be completed no later than the 22<sup>nd</sup> of each month.
  - 2. The vendor **must** submit a reconciled Monthly Inventory Report via email with an Excel attachment to the Commodity Distribution Unit no later than the 22<sup>nd</sup> of each month, unless otherwise instructed by the Commodity Distribution Unit.
  - 3. The vendor **shall** include the following information on Monthly Inventory Report:
    - a. Name of each commodity
    - b. Pack size of each commodity
    - c. Lot number of each commodity, as assigned by the vendor
    - d. Beginning inventory of each commodity
    - e. Quantity of each commodity received during the reporting period
    - f. Rejections and returns from recipient agencies of each commodity
    - g. Amount of each commodity released or shipped by master bill number
    - h. Amount of each commodity lost through damages, shortages, or other loss
    - i. Ending inventory of each commodity

#### E. Annual Inventory Review

1. The vendor **shall** conduct an annual, joint, physical inventory review with the Commodity Distribution Unit and/or State Auditors before the end of the State's fiscal year, or as deemed necessary by the Commodity Distribution Unit, to verify counts and to resolve and reconcile discrepancies. The State's fiscal year ends on June 30.
2. The vendor **shall** receive written notification from the Commodity Distribution Unit of the pending annual inventory review at least ten (10) business days prior to the scheduled annual review date.
3. The vendor **must** palletize commodities prior to the annual inventory review and **must not** rearrange commodities from June 25 through July 15 of each year.
4. The vendor **shall not** charge additional costs to the State or the Commodity Distribution Unit for use of the vendor's personnel, and/or equipment during the annual inventory review.
5. All discrepancies from overages, shortages, or loss from damages **shall** be disclosed to the vendor on July 15 of each year and **shall** be based on the results of the monthly inventory and final annual inventory review.
6. If shortages or damages exist after the annual inventory review and cause a discrepancy between the physical inventory and the book inventory, such discrepancies **shall** result in a recount. The discrepancies **shall** be reconciled between the vendor and the Commodity Distribution Unit within two (2) weeks of the completion of the annual inventory review.
7. If any irreconcilable discrepancies exist after the two (2) week reconciliation period, the Commodity Distribution Unit **shall** issue a Monetary Claim Settlement against the vendor.
8. Overages found during the annual inventory review **shall** accrue to the benefit of the Commodity Distribution Unit, and the vendor **shall** place such overages of USDA Commodity Food back into the inventory.
9. The vendor **shall not** use any excess inventory or overages found during the annual inventory review to carryover in order to offset future shortages that may occur, except in instances where the vendor has documentation, and a clear identification of an uncorrected delivery error such as, applesauce delivered instead of apricots. In such instances, the Commodity Distribution Unit **shall** make the final reconciliation decision.

#### 2.14 **DAMAGE AND LOSS OF USDA COMMODITY FOOD**

- A. The vendor **shall** prevent damage to USDA Commodity Food by strictly adhering to all industry standards and protocol, and the requirements of this IFB.
- B. Damage to USDA Commodity Foods **shall** include, but is not limited to, insect and rodent infestation due to improper storage, mold, mildew, or other quality altering contamination, physical damage to containers including serious rust, or any other circumstance that causes damage to USDA Commodity Food stored in the vendor's warehouse, or delivered on the vendor's delivery vehicles.
- C. If damage to USDA Commodity Foods occurs, the vendor **shall** immediately isolate all damaged, spoiled, or infested USDA Commodity Foods from good USDA Commodity Foods in order prevent additional contamination.
- D. The vendor **shall** notify the Commodity Distribution Unit by email within 24 hours upon knowledge of any damage, deterioration, or infestation of USDA Commodity Foods found in the warehouse, or during delivery.
- E. The vendor **shall** notify the Commodity Distribution Unit by email within 24 hours upon knowledge of any occurrence that could be detrimental to USDA Commodity Foods, such as fire, storms, flood, water leaks, bankruptcy and power outages.

- F. The vendor **shall** safeguard all USDA Commodity Food from theft by securing locks on all entries into the warehouse. The vendor **shall** only distribute keys to employees as reasonably needed to provide smooth operation.
- G. Any loss of USDA Commodity Food resulting from damage while being stored in the vendor's warehouse, or while being delivered on the vendor's delivery vehicles **shall** result in a Monetary Claim Settlement against the vendor.

## **2.15 MONETARY CLAIM SETTLEMENT**

- A. The Commodity Distribution Unit **shall** assess a Monetary Claim Settlement against the vendor for any product damaged or lost while being stored in the vendor's warehouse, or while being delivered to recipient agencies.
- B. The Commodity Distribution Unit **shall** assess a Monetary Claim Settlement against the vendor for all irreconcilable discrepancies still in existence after the completion of the annual inventory review's two-week reconciliation period.
- C. The Commodity Distribution Unit **shall** compute the monetary value of the damage to and/or loss of commodities using the most current market rates available for USDA Commodity Food. The computed monetary value **shall** be assessed to the vendor through the issuance of a Monetary Claim Settlement.
- D. Losses from damage **shall** include, but is not limited to, insect and rodent infestation due to improper storage, mold, mildew, or any other quality altering contamination, physical damage to containers including serious rust, or any circumstance within the vendor's control that causes damage and/or loss to USDA Commodity Foods in such a way that makes them unacceptable and/or unavailable for distribution and/or human consumption.
- E. The Commodity Distribution Unit **shall** submit the Monetary Claim Settlement to the vendor within ten (10) business days after the two-week reconciliation period of the annual inventory review has ended, and the monetary value of the loss has been determined, or within ten (10) business days of the vendor's disclosure of the loss and/or damage.
- F. The vendor **shall** have fifteen (15) business days after receipt of the Monetary Claim Settlement to submit a Monetary Claim Settlement Appeal Request, in writing, to the Commodity Distribution Unit. The Commodity Distribution Unit **must** receive the request within fifteen (15) business days of receipt of the Monetary Claim Settlement by the vendor.
- G. The Commodity Distribution Unit **shall** rule on the Monetary Claim Settlement Appeal Request and respond to the vendor, in writing, within ten (10) business days of receipt of the vendor's Monetary Claim Settlement Appeal Request.
- H. If the vendor's Monetary Claim Settlement Appeal Request is denied by the Commodity Distribution Unit, the vendor **shall** make payment, as outlined in this IFB, within ten (10) business days of receipt of the Monetary Claim Settlement Appeal Request denial. Failure of the vendor to comply with this requirement may result in the termination of this contract.
- I. The vendor **shall** submit Monetary Claim Settlement payments, and Monetary Claim Settlement Appeal Requests to:

Arkansas Department of Human Services  
Commodity Distribution Unit  
P.O. Box 1437 Slot S337  
Little Rock, AR 72203-1437

## **2.16 REPORTS AND RECORDS RETENTION**

- A. The vendor **shall** submit the following reports to the Commodity Distribution Unit:
  - 1. Reconciled Monthly Inventory Reports in Excel format by the 22<sup>nd</sup> of each month via email

2. Warehouse Receiving Reports in Excel format by the end of the next business day following delivery of USDA Commodities to the vendor's warehouse.
- B. The vendor **shall** maintain records of all delivery receipts, salvage receipts or any other appropriate receipts for a period of five (5) years past the expiration date of the initial contact award.
- C. The vendor **shall** maintain records of all perpetual inventory disbursements, and deliveries for a period of five (5) years past the expiration date of the initial contact award.
- D. The vendor **shall** maintain all monthly and yearly inventory reconciliations conducted with the Commodity Distribution Unit for a period of five (5) years past the expiration date of the initial contact award.
- E. The vendor **shall** maintain all written summaries of each annual test of the vendor's recall program for a period of five (5) years past the expiration date of the initial contact award.
- F. The vendor **shall** maintain all reports generated from the refrigeration temperature management system for a period of five (5) years past the expiration date of the initial contact award.
- G. The vendor **shall** maintain the Pest Control Inspection Log complete with all daily pest control inspections performed by the vendor of warehouse area and all professional pest control inspections and any fumigations or applications administered for a period of five (5) years past the expiration date of the initial contact award.
- H. The vendor **shall** maintain the charted locations of rodent bait traps for a period of five (5) years past the expiration date of the initial contact award.
- I. The vendor **shall** maintain records of bi-annual inspections on fire extinguishers or other firefighting equipment, and any maintenance administered for a period of five (5) years past the expiration date of the initial contact award.
- J. The vendor **shall** maintain documentation of hourly temperature checks and recorded temperatures for a period of five (5) years past the expiration date of the initial contact award.
- K. The vendor **shall** maintain written summaries of each annual food storage safety inspection for a period of five (5) years past the expiration date of the initial contact award.
- L. The vendor **shall** maintain all employee training sessions for the proper receipt, storage and delivery of USDA Commodity Foods for a period of five (5) years past the expiration date of the initial contact award.
- M. The vendor **shall** maintain all records in an organized manner, and in electronic or hard copy format, and **shall** make all records available for inspection, review, and/or audit by any State or Federal authorized personnel during normal business hours, Monday through Friday, 8:00 a.m. until 5:00 p.m. CST.

## **2.17 COMMUNICATION AND COMPLAINTS**

- A. The Commodity Distribution Unit **shall** distribute the contact information of each recipient agency to the vendor via email after award. The vendor and the Commodity Distribution Unit **shall** utilize the contact person for all communication regarding USDA Commodity Food delivery.
- B. The Commodity Distribution Unit **shall** distribute contact information for the TEFAP and NSLP to the vendor after award for the purpose of general communication.
- C. The vendor **shall** submit all policy and/or administration questions, including complaints, in writing to:

Address: DHS/DCO  
Commodity Distribution  
P.O. Box 1437  
Slot S337  
Little Rock, AR 72203-1437  
Attn: James Ponzini

Email: [james.ponzini@dhs.arkansas.gov](mailto:james.ponzini@dhs.arkansas.gov)

Fax: 501-371-1410

- D. All complaints will be reviewed by the Office of Community Services, and if needed, an investigation initiated. The vendor **shall** supply the Office of Community Services with any information and/or documentation that may be needed to conduct and complete any such investigation.
- E. The Office of Community Services **shall** prepare a written response to legitimate complaints and **shall** provide a copy of such response to interested parties within ten (10) business days of receipt.
- F. The Office of Community Services **shall** notify the Department of Human Services, Division of County Operations of complaints and /or investigations appearing to violate the requirements of this IFB and/or any resultant contract.
- G. Investigations showing violation of this IFB and/or any resultant contract may be cause for contract termination, as determined by the Department of Human Services, Division of County Operations.

## **2.18 PERFORMANCE SECURITY**

- A. The vendor **shall** provide a Performance Security in the amount of \$50,000 within ten (10) business days prior to the award of this contract.
- B. The vendor **shall** provide the Performance Security either by the issuance of a Performance Bond written and issued by a Surety Company licensed and authorized by the State of Arkansas to issue such bonds, by certified funds such as a cashier's check, or by an Irrevocable Letter of Credit from a bank with branches located in the State of Arkansas.
- C. The contract **shall not** be awarded prior to acceptance of the Performance Security by the State Procurement Official.
- D. If the vendor fails to deliver the Performance Security within ten (10) business days prior to award, the State **shall** declare the vendor as non-responsive and the State **shall** reserve the right to enter into negotiations with the next highest ranking vendor.
- E. At the State's discretion, the vendor's Performance Security **shall** be forfeited if the vendor fails to perform the contracted services as determined by the Office of State Procurement and DHS.

## **2.19 PERFORMANCE STANDARDS**

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. Below, *Table 1: Performance Standards* 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.

Table 1: Performance Standards		
Service Criteria	Acceptable Performance	Compensation / Damages
Warehouse Receiving Reporting/Unloading Documents	Warehouse Receiving Report and all Unloading Documents <b>must</b> be submitted to the Commodity Distribution Unit by the end of the next business day following delivery.	\$100 credit to invoice for each day a report is past due
Pest Inspection Log	Pest Inspection Log <b>must</b> be maintained for each inspection performed by the vendor, and <b>must</b> be provided to the Commodity Distribution Unit upon request.	\$100 credit to invoice for each missing or incomplete daily entry into the log found upon inspection by the Commodity Distribution Unit.
FIFO Rotation	100% of foods <b>must</b> be rotated on a First In First In rotation basis.	\$100 credit to invoice for each failure of the vendor to utilize FIFO Rotation. Non-compliance found upon inspection by the Commodity Distribution Unit.
Timely Delivery	95% of monthly deliveries <b>must</b> be on time	\$100 credit on monthly invoice for each percent below 95% for the month.

### **SECTION 3 – GENERAL CONTRACTUAL REQUIREMENTS**

#### **3.1 PAYMENT AND INVOICE PROVISIONS**

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

Arkansas Department of Human Services  
Commodity Distribution Unit  
P.O. Box 1437 Slot S337  
Little Rock, AR 72203-1437

- 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>.
- H. The Commodity Distribution Unit **must** authorize, in writing, any services rendered which are not in the ordinary course of the vendor's business as it pertains to the requirements outlined in this solicitation.
- I. The vendor **shall** submit any invoices for additional services such as blast freezing as a means of meeting temperature storage guidelines of inbound commodities, separately from the regular, monthly invoices. In addition, the vendor **shall** submit a copy of the written statement from Commodity Distribution Unit authorizing the additional services.
- J. The vendor **must** submit invoices monthly to the Commodity Distribution Unit in a format prescribed by the Department of Human Services, which may change periodically.

#### **3.2 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.

### 3.3 **CONDITIONS OF CONTRACT**

A. The vendor **shall** at all times observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to the execution of a resulting contract which in any manner affect the completion of the work.

B. The vendor **shall** indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the vendor.

### 3.4 **STATEMENT OF LIABILITY**

A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of 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.

### 3.5 **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.

### 3.6 **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.

### 3.7 **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.

### 3.8 **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.

### 3.9 **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.
- C. Pursuant to USDA 7CFR, 250.14, the State may, at its option, immediately terminate the contract for any of the following reasons:
1. Failure to make timely deliveries
  2. Failure of the vendor to store and deliver USDA Commodity Food consistent with acceptable Federal and State Health and Safety Laws
  3. Failure of the vendor to document the arrival and delivery of USDA Commodity Food pursuant to the terms of this solicitation.
  4. Failure of the vendor to comply with any of the requirements outlined in this RFP.

### 3.10 **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 4 – 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.