



# Arkansas Department of Health

4518 West Markham Street, Slot 58  
Little Rock, AR 72205-3867

## REQUEST FOR QUALIFICATIONS (RFQ) BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	RFQ-16-0006	Solicitation Issued:	September 14, 2016
Description:	ADH Trauma Medical Consultant		
Agency:	Arkansas Department of Health		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	September 28, 2016	Bid Opening Time:	3:00 p.m., Central Time
Proposals <b>shall not</b> be accepted after the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Vendors to submit proposals at the designated location on or before the bid opening date and time. Proposals received after the designated bid opening date and time <b>shall</b> be considered late and <b>shall</b> be returned to the Vendor without further review. It is not necessary to return "no bids" to ADH.			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	Arkansas Department of Health 4815 West Markham Street, Room L163 Little Rock, AR 72205-3867  Delivery providers, USPS, UPS, and FedEx deliver mail to ADH's street address on a schedule determined by each individual provider. These providers will deliver to ADH based solely on the street address.
Proposal's Outer Packaging:	Outer packaging <b>must</b> be sealed and should be properly marked with the following information. If outer packaging of proposal submission is not properly marked, the package may be opened for bid identification purposes. <ul style="list-style-type: none"><li>• Bid number</li><li>• Date and time of bid opening</li><li>• Vendor's name and return address</li></ul>

ARKANSAS DEPARTMENT OF HEALTH ISSUING OFFICER CONTACT INFORMATION			
ADH Issuing Officer (IO)	Tim Smith, CPPB	IO Direct Phone Number:	501-280-4573
Email Address:	Timothy.w.smith@dfa.arkansas.gov		

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

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

### **1.1 PURPOSE**

This Request for Qualification (RFQ) is issued by the Arkansas Department of Health to obtain the services of a third party consultant to assist ADH in the medical expertise and oversight of the state trauma system. ADH is seeking a consultant with extensive experience and expertise regarding the states trauma system and related lines of services, rules and regulations, trauma patient care, best medical practices, and education.

### **1.2 TYPE OF CONTRACT**

- A. Any resultant professional services contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review and approval.
- B. The resulting contract **will** be a TERM contract. The term of this contract **shall** be through June 30, 2017. The anticipated starting date for the contract will be as soon as possible.
- C. Upon mutual agreement by the Vendor and agency, the contract may be renewed by ADH on a year-to-year basis, for up to six (6) additional one-year terms or a portion thereof.
- D. The total contract term **shall not** be more than seven (7) years.

### **1.3 QUALIFYING CRITERIA**

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

### **1.4 ISSUING AGENCY**

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

### **1.5 BID OPENING LOCATION**

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

Arkansas Department of Health  
4815 West Markham St, Room L163  
Little Rock, AR 72201-4222

### **1.6 DEFINITION OF REQUIREMENT**

- A. The words "**must**" and "**shall**" signify a Requirement of this solicitation and that Vendor's agreement to and compliance with that item is mandatory.
- B. Exceptions taken to any Requirement in this *Bid Solicitation*, whether submitted in the Vendor's proposal or in subsequent correspondence, **shall** cause the Vendor's proposal to be disqualified.

- C. Vendor may request exceptions to NON-mandatory items. Any such request **must** be declared on, or as an attachment to, the appropriate section's *Agreement and Compliance Page*. Vendor **must** clearly explain the requested exception, and should label the request to reference the specific solicitation item number to which the exception applies. (See *Agreement and Compliance Page*.)

## 1.7 **DEFINITION OF TERMS**

- A. The ADH Issuing Officer has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of item in question as indicated in *Clarification of Bid Solicitation and Questions*.
- B. The words "bidder" and "Vendor" are used synonymously in this document.
- C. The terms "Request for Qualification", "RFQ" and "Bid Solicitation" are used synonymously in this document.

## 1.8 **RESPONSE DOCUMENTS**

### A. Original Technical Proposal Packet

1. The original *Technical Proposal Packet* **must** be submitted on or before the bid opening date and time.
2. The Proposal Packet should be clearly marked "Original" and **must** include the following:
  - a. Original signed *Proposal Signature Page*. (See *Proposal Signature Page*.)
  - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
  - c. Original signed *Proposed Subcontractors Form*. (See *Subcontractors*.)
  - d. Other documents and/or information as may be expressly required in this *Bid Solicitation*.
  - e. *Technical Proposal* response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
3. The following items should be submitted in the original *Technical Proposal Packet*.
  - a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions, #27. Disclosure*.)
  - b. Copy of Vendor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
4. **DO NOT** include in the response any other documents or ancillary information such as a cover letter or promotional/marketing information.

**1.9 ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that Vendors adhere to the following format and suggestions when preparing their Technical Proposal response.
- B. The original *Technical Proposal Packet* and all copies should be arranged in the following order.
- *Proposal Signature Page.*
  - *All Agreement and Compliance Pages.*
  - *Proposed Subcontractors Form.*
  - Signed Addenda, if applicable.
  - E.O. 98-04 – *Contract Grant and Disclosure Form.*
  - *Equal Opportunity Policy.*
  - Other documents and/or information as may be expressly required in this *Bid Solicitation*. Label documents and/or information so as to reference the *Bid Solicitation's* item number.
  - Technical Proposal response to the *Information for Evaluation* section of the *Technical Proposal Packet*.

**1.10 PROPOSAL SIGNATURE PAGE**

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

**1.11 AGREEMENT AND COMPLIANCE PAGES**

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

**1.12 SUBCONTRACTORS**

- A. Does not apply.

**1.13 PRIME CONTRACTOR RESPONSIBILITY**

- A. Does not apply.

**1.14 PROPRIETARY INFORMATION**

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

**1.15 CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through ADH Issuing Officer.
- B. Vendor **must not** alter any language in any solicitation document provided by the ADH.
- C. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- D. Proposals **must** be submitted only in the English language.
- E. The State **shall** have the right to award or not award a contract, if it is in the best interest of the ADH to do so.
- F. Vendor **must** provide clarification of any information in their response documents as requested by the ADH Issuing Officer.
- G. Proposed services **must** meet or exceed the specifications as set forth in this *Bid Solicitation*.
- H. Vendors may not submit multiple responses.

**1.16 REQUIREMENT OF ADDENDUM**

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

**1.17 AWARD PROCESS****A. Award Determination**

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

**B. Negotiations**

1. If the ADH so chooses, it **shall** have the right to conduct negotiations with the highest ranking Vendor. All negotiations **shall** be conducted at the sole discretion of the ADH. The ADH **shall** solely determine the items to be negotiated.
2. If negotiations fail to result in a contract, the ADH **shall** declare the Vendor as non-responsive and will begin the negotiation process with the next highest ranking Vendor. The negotiation process will be repeated until an anticipated successful Vendor has been determined, or until such time the ADH decides not to move forward with an award.

**C. Anticipation to Award**

1. Once an anticipated successful Vendor has been determined, the anticipated award will be posted on the OSP website at [http://www.arkansas.gov/dfa/procurement/pro\\_intent.php](http://www.arkansas.gov/dfa/procurement/pro_intent.php)
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Vendors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen day posting period.
3. ADH may request to OSP to waive the policy of Anticipation to Award when it is in the best interest of the ADH.
4. It is the Vendor's responsibility to check the OSP website for the posting of an anticipated award.

**1.18 MINORITY BUSINESS POLICY**

- A. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this State who is:
- African American
  - American Indian
  - Asian American
  - Hispanic American
  - Pacific Islander American
  - Service Disabled Veterans as designated by the United States Department of Veteran Affairs
- B. The Arkansas Economic Development Commission conducts a certification process for minority businesses and disabled veterans. The Vendor's Certification Number should be included on the Vendor's *Proposal Signature Page*.

**1.19 EQUAL OPPORTUNITY POLICY**

- A. In compliance with Arkansas Code Annotated § 19-11-104, ADH 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 the link in (B) is a one-time Requirement. Vendors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that **must** also comply with this statute.
- D. Vendors, who are not required by law by to have an *EO Policy*, **must** submit a written statement to that effect.

**1.20 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. A copy of that statement should be provided with response.
- B. ADH 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.

**1.21 PAST PERFORMANCE**

In accordance with provisions of State Procurement Law, specifically 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.

**1.22 VISA ACCEPTANCE**

- A. Does not apply.

**1.23 PUBLICITY**

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

**1.24 RESERVATION**

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

**1.25 ONGOING PERFORMANCE REQUIREMENTS**

The ADH may terminate the Contract by the Successful Vendor or its subcontractors under the terms of the Contract if, within ten (10) days after the ADH gives the Successful Vendor written notice specifying a default, the Contractor has not, in the ADH's sole judgment, either cured the default or given adequate assurance that assures the default will not adversely affect the timely transition to the private sector.

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

## **SECTION 2 – BACKGROUND**

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

**2.1 OVERVIEW**

Improving the quality of care for trauma patients in Arkansas is the foundation of the ADH trauma Section and having a medical consultant plays a vital role in that. Medical oversight plays a major role in the state's trauma system, from designation reviews, mortality studies, advisory council leadership and operational oversight. The trauma medical consultant works with the ADH to promote trauma care utilizing best practices, patient management guidelines, and as a liaison with trauma surgeons across the system.

## **SECTION 3 – SCOPE OF WORK**

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

### **3.1 VENDOR QUALIFICATIONS**

- A. Vendor must provide documentation of extensive experience and expertise regarding the Arkansas Trauma System related to
  1. trauma services,
  2. rules and regulations,
  3. trauma patient care,
  4. best medical practices, and
  5. trauma education
- B. Vendor must provide documentation of the following
  1. Current Arkansas medical license (in good standing),
  2. Current Board Certification through the American College of Surgeons,
  3. Current Arkansas Trauma Medical Director of a level 1-3 designated facility
  4. Current participation or roles in the Trauma Regional Advisory Council
  5. Additional leadership roles within the facility in which they are trauma medical director
  6. Current practicing trauma surgeon within an Arkansas designated trauma center level 1-3
  7. Current certification in Advanced Trauma Life Support

### **3.2 SCOPE OF WORK**

- A. The Trauma Medical Consultant will provide Medical Consultation in Trauma System Development to the Arkansas Department of Health (ADH) Trauma System. The Trauma Medical Consultant will perform the following duties:
  1. Serve as an advisor to the Arkansas Department of Health on continued trauma system development.
  2. Coordinate activities with the following ADH staff:
    - a. Branch Chief for Trauma, Preparedness and EMS
    - b. Trauma Section Chief
    - c. Injury and Violence Prevention (IVP) and Control Section Chief
    - d. General staff of both Trauma and IVP
  3. Provide up to 500 hours of work over the term of the contract.
  4. Evaluate best practices of other state trauma systems and work to incorporate those into the Arkansas trauma system.
  5. Represent the ADH in partnering with various organizations (Arkansas Hospital Association, Arkansas Medical Society, Arkansas Ambulance Association, Governor's Trauma Advisory Committee, Arkansas Chapter/American College of Surgeons, etc.) to develop an effective statewide trauma system.
  6. Provide presentations to professional groups and committees to include legislative committees.
  7. Participate in the state trauma center designation process. Assist as a surveyor when needed.
  8. Oversee the credentialing process for new surveyors.
  9. Participate in the state trauma preventable mortality study and state trauma death review
  10. Oversee the state quality improvement program.
  11. Coordinate the development of treatment guidelines regarding the main causes of trauma related deaths in Arkansas.
  12. Provide oversight and direction to the Trauma Regional Advisory Council Medical Directors including evaluations.
  13. Provide guidance on Arkansas Trauma Rules and Regulations revisions.

### **3.3 Performance Indicators:**

#### **Program Deliverable 1:**

Consultation at the Arkansas Department of Health

- **Performance Indicator:**  
The Trauma Medical Consultant will provide medical consultation at the Arkansas Department of Health for up to 500 hours of work for technical expertise and guidance in trauma system development.
- **Acceptable Performance:**  
Consultation up to 500 hours of work
- **Methods of Monitoring:**  
A status report of progress will be submitted to the Trauma Advisory Council (TAC) biannually and provided as needed reports to the Trauma, Preparedness and EMS Branch and senior leadership.

#### **Program Deliverable 2:**

The Trauma Medical Consultant will provide consultation and technical guidance for healthcare providers within the trauma system.

- **Performance Indicator:**  
The Trauma Medical Consultant will provide telephone, e-mail consultation for EMS, hospitals, physicians and others within the trauma system.
- **Acceptable Performance:**  
Availability to provide consultation as needed and requested.
- **Methods of Monitoring:**  
A status report of progress will be submitted to the TAC biannually and provided as needed reports to the Trauma, Preparedness and EMS Branch and senior leadership.

**Program Deliverable 3:** The Trauma Medical Consultant will attend meetings associated with development, implementation and maintenance of the trauma system including rules and regulations.

- **Performance Indicator:**  
TAC, Subcommittee Meetings, Trauma Regional Advisory Committees, Department meetings and stakeholder meetings as requested.
- **Acceptable Performance:**  
Attendance at requested meetings.
- **Methods of Monitoring:**  
A status report of progress will be submitted to the biannually and provided as needed reports to the Trauma, Preparedness and EMS Branch and senior leadership.

**3.3 VENDOR PROFILE**

C. Does not apply

**3.4 DISCLOSURE OF LITIGATION**

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

**3.5 CONFLICT OF INTEREST/LITIGATION**

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

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

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

**4.1 TECHNICAL PROPOSAL SCORE**

- A. ADH will review *Technical Proposals Packets* to verify submission Requirements have been met. *Technical Proposals Packets* that do not meet submission Requirements **shall** be disqualified and **shall not** be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying Proposals. Evaluation will be based on Vendor's response to the *Information for Evaluation* section included in the *Technical Proposal Packet*. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.
- C. The *Information for Evaluation* section has been divided into sub-sections.
  1. In each sub-section, items/questions have been assigned a maximum point value. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.

2. The agency has assigned Weighted Percentages to each sub-section according to its significance.

Information for Evaluation Sub-Sections	Maximum Raw Points Possible	Weighted Percentage	Maximum Weighted Score Possible*
E.1 Vendor must provide documentation of extensive experience and expertise regarding the Arkansas Trauma System and related lines referenced in 3.1A (1-5)	50	15	15
E.2 Current Arkansas medical license (in good standing), referenced in 3.1B (1)	10	15	15
E.3 Current Board Certification through the American College of Surgeons, referenced in 3.1B (2)	10	10	10
E.4 Current Arkansas Trauma Medical Director of a level 1-3 designated facility, referenced in 3.1B (3)	10	10	10
E.5 Current participation or roles in the Trauma Regional Advisory Council, referenced in 3.1B (4)	10	15	15
E.6 Additional leadership roles within the facility in which they are trauma medical director, referenced in 3.1B (5)	10	15	15
E.7 Current practicing trauma surgeon of a level 1-3 designated facility, referenced in 3.1B (6)	10	10	10
E.8 Currently certified in Advanced Trauma Life Support, referenced in 3.1B (7)	10	10	10
<b>Totals</b>	<b>120</b>	<b>100%</b>	<b>100.00</b>

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

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

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

E. Scores for sub-sections will be added to determine the Total Technical Score for the Proposal.

**4.2 GRAND TOTAL SCORE**

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

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

**4.3 VENDOR ACCEPTANCE OF EVALUATION TECHNIQUE**

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

**SECTION 5 – GENERAL CONTRACTUAL REQUIREMENTS**

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

**5.1 PAYMENT AND INVOICE PROVISIONS**

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

**Arkansas Department of Health/Trauma  
Attn: Greg Brown  
4815 West Markham Street, Slot #4  
Little Rock, AR 72205-3867**

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the agency.
- C. The State **shall not** be invoiced in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the Vendor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The Vendor should invoice the agency by an itemized list of charges by line item as listed in the purchase order. The agency's Purchase Order Number and/or the Contract Number should be referenced on each invoice.
- F. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- G. Selected Vendor **must** be registered to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/Vendor/index.html>

**5.2 GENERAL INFORMATION**

- A. The ADH **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- B. Upon default of a Vendor, the ADH **shall not** be required to pay sums due under a contract.
- C. The ADH **shall not** pay damages, legal expenses or other costs and expenses of any other party.
- D. Any litigation involving the ADH **must** take place in Pulaski County, Arkansas.

- E. The ADH **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- F. The ADH **shall not enter a** contract which grants to another party any remedies other than the following:
  - 1. The right to possession.
  - 2. The right to accrued payments.
  - 3. The right to expenses of de-installation.
  - 4. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  - 5. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- G. The laws of the State of Arkansas **shall** govern this contract.
- H. A contract **shall not** be effective prior to award being made by ADH and has completed any approval processes required by the State.

### 5.3 **CONDITIONS OF CONTRACT**

- A. The Vendor **shall** at all times observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of this contract which in any manner affect the completion of the work.
- B. The Vendor **shall** indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the Vendor.

### 5.4 **STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of Vendor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The Vendor **shall** retain total liability for equipment, software and technical and business or operations literature. At no time will the ADH be responsible for or accept liability for any Vendor-owned items.
- B. The Vendor's liability for damages to the ADH **shall** be limited to the value of the Contract. The foregoing limitation of liability **shall** not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. Neither the Vendor nor the ADH **shall** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall** not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

- C. Nothing in these terms and conditions **shall** be construed or deemed as the ADH's waiver of its right of sovereign immunity. The Vendor agrees that any claims against the ADH, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

#### **5.5 RECORD RETENTION**

- A. The Vendor **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.
- B. Financial and accounting records **shall** be made available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

#### **5.6 CONFIDENTIALITY**

- A. The Vendor, Vendor's subsidiaries, and Vendor's employees **shall** be bound to all laws and to all Requirements set forth in this *Bid Solicitation* concerning the confidentiality and secure handling of information of which they may become aware of during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of the contract.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

#### **5.7 CONTRACT INTERPRETATION**

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

#### **5.8 CANCELLATION**

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

#### **5.9 SEVERABILITY**

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

## **SECTION 6 – STANDARD TERMS AND CONDITIONS**

- **Do not provide responses to items in this section.**
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
- 2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
- 3. **BID SUBMISSION:** Original Proposal Packets **must** be submitted to the Arkansas Department of Health 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. If permitted, 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 Arkansas Department of Health. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:00 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 Arkansas Department of Health 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 Arkansas Department of Health of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the Vendors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the contractor's expense to the F.O.B. point provided by the agency or by OSP. Vendor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.

21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the State **shall** have the right to pursue any other remedy permitted by law or in equity.
23. **CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the Vendor written notice of such cancellation thirty (30) days prior to the date of cancellation.

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

**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.

24. **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.
25. **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.
26. **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.