



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

REQUEST FOR PROPOSAL
BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Solicitation Number:	SP-19-0032	Solicitation Issued:	10/10/18
Description:	Strategic Advisor Management Consultant		
Agency:	Arkansas Economic Development Commission		

SUBMISSION DEADLINE FOR RESPONSE			
Proposal Opening Date:	November 8, 2018	Proposal Opening Time:	2:00 p.m., Central Time
<p>Deliver proposal submissions for this Request for Proposal to the Office of State Procurement on or before the designated proposal opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit proposals at the designated location on or before the proposal opening date and time. Proposals received after the designated opening date and time may be considered late and may be returned to the Prospective Contractor 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 7th 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. Prospective Contractors assume all risk for timely, properly submitted deliveries.</p>
Proposal's Outer Packaging:	<p>Seal outer packaging and properly mark with the following information. If outer packaging of proposal submission is not properly marked, the package may be opened for proposal identification purposes.</p> <ul style="list-style-type: none">• Solicitation number• Date and time of proposal opening• Prospective Contractor's name and return address

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Heather Bailey	Buyer's Direct Phone Number:	501-324-9320
Email Address:	Heather.Bailey@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx		

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

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

1.1 PURPOSE

The Office of State Procurement (OSP), on behalf of the Arkansas Economic Development Commission (AEDC), is issuing this Request for Proposal (RFP) to solicit proposals from qualified firms for providing strategic advisory services (as a Strategic Advisor) to AEDC to assist in the development and implementation of a program to administer the Partnership for Public Facilities and Infrastructure Act (PPFIA), as created by Act 813 of 2017, and codified at A.C.A. §22-10-101 et seq.

The PPFIA provides a framework by which Public-Private Partnerships (P3) may be formed to expedite the timely and cost-efficient development of qualifying projects for public infrastructure and government facilities by providing alternative and innovative procurement methods and funding sources which result in increased benefits to the public safety and welfare of the citizens of the State at substantial cost savings to responsible public entities and the public.

1.2 TYPE OF CONTRACT

- A. As a result of this RFP, OSP intends to award a contract to a single Contractor.
- B. The anticipated starting date for any resulting contract is immediately upon award, except that the actual contract start date may be adjusted forward unilaterally by the State for up to three calendar months. By submitting a signed proposal in response to the RFP, the Prospective Contractor represents and warrants that it will honor its proposal as being held open as irrevocable for this period.
- C. The initial term of a resulting contract will be for two (2) years. Upon mutual agreement by the Contractor and agency, the contract may be renewed by OSP for up to five (5) additional one-year terms or portions thereof, not to exceed a total aggregate contract term of seven (7) consecutive years.

1.3 ISSUING AGENCY

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

1.4 PROPOSAL OPENING LOCATION

Proposals will be opened at the following location:

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

1.5 ACCEPTANCE OF REQUIREMENTS

- A. A Prospective Contractor **must** unconditionally accept all Requirements in the Requirements Section(s) of this RFP to be considered a responsive Prospective Contractor.
- B. A Prospective Contractor's proposal will be rejected if a Prospective Contractor takes exceptions to any Requirements in the Requirements Section(s) of this RFP.

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. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. "Prospective Contractor" means a person who submits a proposal in response to this solicitation.
- D. "Contractor" means a person who sells or contracts to sell commodities and/or services.

- E. "Comprehensive Agreement" means a final written agreement between a private entity and a responsible public entity executed under §22-10-303 by which a qualifying project will be developed.
- F. "Private Entity" means a natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.
- G. "Qualifying Project" means as defined in *Attachment A: Act 813 of 2017* pages 3 and 4.
- H. "Responsible Public Entity" (RPE) means an agency or instrumentality of the State, including, without limitation, an agency, an institution of higher education, a board, or a commission that has statutory or legal authority to develop and operate a qualifying project.
- I. "Responsive proposal" means a proposal submitted in response to this solicitation that conforms in all material respects to this RFP.
- J. "Proposal Submission Requirement" means a task a Prospective Contractor **must** complete when submitting a proposal response. These requirements will be distinguished by using the term "shall" or "must" in the requirement.
- K. "Requirement" means a specification that a Contractor's product and/or service **must** perform during the term of the contract. These specifications will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- L. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.

1.7 **RESPONSE DOCUMENTS**

A. Original Technical Proposal Packet

1. The following items are Proposal Submission Requirements and **must** be submitted in the original *Technical Proposal Packet*.
 - a. Original signed *Proposal Signature Page*. (See *Technical Proposal Packet*.)
 - b. One (1) original hard copy of the proposal response which includes:
 - i. Technical Proposal response to the Information for Evaluation section included in the *Technical Proposal Packet*. Proposal response **must** be in the English language.
 - ii. Response to the *Official Bid Price Sheet*. Pricing **must** be proposed in U.S. dollars and cents
 - The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". A Prospective Contractor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.
2. 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 Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
 - c. Proposed Subcontractors Form. (See *Subcontractors*.)
3. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

B. Additional Copies and Redacted Copy of the *Technical Proposal Packet* and *Official Bid Price Sheet*

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

1. Additional Copies of the *Technical Proposal Packet*
 - a. Five (5) complete hard copies (marked "COPY") of the *Technical Proposal Packet*.
 - b. Six (6) electronic copies of the *Technical Proposal Packet*, preferably on flash drives and in PDF format. CDs will also be acceptable. Do not send electronic copies via email or fax.
 - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy governs.
 - d. If OSP requests additional copies of the proposal, the copies **must** be delivered within the timeframe specified in the request.
2. Additional Copies of the *Official Bid Price Sheet*
 - a. Prospective Contractor should also submit one (1) electronic copy of the *Official Bid Price Sheet*, preferably on a flash drive and in PDF format. A CD will also be acceptable. Do not send electronic copies via email or fax.
 - i. *The Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". Prospective Contractor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.
3. One (1) redacted (marked "REDACTED") copy the original *Technical Proposal Packet*, preferably on a flash drive and in PDF format. A CD will also be acceptable. Do not send electronic copies via email or fax. (See *Proprietary Information*.)

1.8 ORGANIZATION OF RESPONSE DOCUMENTS

- A. It is strongly recommended that Prospective Contractors 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*.
 - *Proposed Subcontractors Form*.
 - Signed Addenda, if applicable.
 - E.O. 98-04 – *Contract Grant and Disclosure Form*.
 - *Equal Opportunity Policy*.
 - *Voluntary Product Accessibility Template (VPAT)*.
 - *Technical Proposal* response to the *Information for Evaluation* section of the *Technical Proposal Packet*.

1.9 CLARIFICATION OF BID SOLICITATION

- A. Submit any questions requesting clarification of information contained in this *Bid Solicitation* in writing via email by 4:00 p.m., Central Time on or before October 16, 2018 to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.
 1. For each question submitted, Prospective Contractor should reference the specific solicitation item number to which the question refers.
 2. Prospective Contractors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on October 23, 2018. If Prospective Contractor questions are unclear or non-substantive in nature, the State may request clarification of a question(s) or reserves the right not to respond to that question(s).

- B. The Prospective Contractor should notify the OSP buyer of any term, condition, etc., that precludes the Prospective Contractor from submitting a compliant, responsive proposal. Prospective Contractors should note that it is the responsibility of the Prospective Contractor to seek resolution of all such issues, including those relating to the terms and conditions of the contract, prior to the submission of a proposal.
- C. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the proposal opening.
- D. An oral statement by OSP will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by OSP.
- E. Prospective Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

1.10 **PROPOSAL SIGNATURE PAGE**

- A. An official authorized to bind the Prospective Contractor(s) to a resultant contract **must** sign the *Proposal Signature Page* included in the *Technical Proposal Packet*.
- B. Prospective Contractor's signature on this page signifies Prospective Contractor's agreement to and compliance with all Requirements of this RFP, and that any exception that conflicts with a Requirement or Proposal Submission Requirement of this *Bid Solicitation* will cause the Prospective Contractor's proposal to be rejected.

1.11 **SUBCONTRACTORS**

- A. Prospective Contractor should complete, sign and submit the *Proposed Subcontractors Form* included in the *Technical Proposal Packet*.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Technical Proposal Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.
- C. The utilization of any proposed subcontractor is subject to approval by the State agency.

1.12 **PRICING**

- A. Prospective Contractor(s) **shall** include all pricing on the Official Bid Price Sheet(s) only. If any cost is not included by the successful Contractor but is subsequently incurred in order to achieve successful operation, the Contractor **shall** bear this additional cost. 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 proposal opening.
- C. The *Official Bid Price Sheet*, including the hard copy and electronic copy, **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". **DO NOT** submit any ancillary information not related to actual pricing on the Official Bid Price sheet or in the sealed pricing package.

1.13 **PRIME CONTRACTOR RESPONSIBILITY**

- A. A single Prospective Contractor **must** be identified as the prime Contractor.
- B. The prime Contractor **shall** be responsible for the contract and jointly and severally liable with any of its subcontractors, affiliates, or agents to the State for the performance thereof.

1.14 **INDEPENDENT PRICE DETERMINATION**

- A. By submission of this proposal, the Prospective Contractor certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
 - The prices in the proposal have been arrived at independently, without collusion.

- No prior information concerning these prices has been received from, or given to, a competitive company.

B. Evidence of collusion warrants consideration of this proposal by the Office of the Attorney General. All Prospective Contractors **shall** understand that this paragraph may be used as a basis for litigation.

1.15 **PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
- C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
- D. By so redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- E. Under no circumstances will pricing information be designated as confidential.
- F. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Technical Proposal Packet*. A CD is also acceptable. Do not submit documents via email or fax.
- G. 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.
- H. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- I. The redacted copy will be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the Prospective Contractor.
- J. If a redacted copy of the submission documents is not provided with Prospective Contractor's response packet, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- K. If the State deems redacted information to be subject to FOIA, the Prospective Contractor will be contacted prior to release of the documents.
- L. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

1.16 **CAUTION TO PROSPECTIVE CONTRACTORS**

- A. Prior to any contract award, address all communication concerning this *Bid Solicitation* through the OSP buyer.
- B. Do not alter any language in any solicitation document provided by the State.
- C. Do not alter the Official Bid Price Sheet.
- D. All official documents and correspondence related to this solicitation become part of the resultant contract.
- E. The State has the right to award or not award a contract, if it is in the best interest of the State to do so.

- F. As requested, provide clarification regarding Prospective Contractor's proposal response to OSP.
- G. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- H. Prospective Contractors may submit multiple proposals.

1.17 **REQUIREMENT OF ADDENDUM**

- A. Only an addendum written and authorized by OSP will modify this *Bid Solicitation*.
- B. An addendum posted within three (3) calendar days prior to the proposal opening may extend the opening date and time and may or may not include changes to the Bid Solicitation.
- C. The Prospective Contractor is expected to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to proposal opening.

1.18 **AWARD PROCESS**

A. Successful Contractor Selection

The Grand Total Score for each Prospective Contractor, which is the sum of the Technical Score and Cost Score, will be used to determine the ranking of proposals. The State may move forward to negotiations with those responsible Prospective Contractors determined, based on the ranking of the proposals, to be reasonably susceptible of being selected for award.

B. Negotiations

1. If the State so chooses, negotiations may be conducted with the highest ranking Prospective Contractors. Negotiations are conducted at the sole discretion of the State.
2. If negotiations fail to result in a contract, the State may begin the negotiation process with the next highest ranking Prospective Contractor. The negotiation process may be repeated until the anticipated successful Contractor has been determined, or until such time the State decides not to move forward with an award.

C. Anticipation to Award

1. Once the anticipated successful Contractor has been determined, the anticipated award will be posted on the OSP website at 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. Prospective Contractors 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 may waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the Prospective Contractor's responsibility to check the OSP website for the posting of an anticipated award.

D. Issuance of Contract

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

1.19 **INTERGOVERNMENTAL/COOPERATIVE USE OF COMPETITIVELY BID PROPOSALS AND CONTRACTS**

In accordance with Arkansas Code Annotated § 19-11-249, any State public procurement unit may participate in any contract resulting from this solicitation with a participating addendum signed by the Contractor and approved by the chief procurement officer of the procurement agency issuing this solicitation.

1.20 MINORITY AND WOMEN-OWNED BUSINESS POLICY

- A. A minority-owned business is defined by Arkansas Code Annotated § 15-4-303 as a business owned by a lawful permanent resident of this State who is:
- African American
 - American Indian
 - Asian American
 - Hispanic American
 - Pacific Islander American
 - A Service Disabled Veteran as designated by the United States Department of Veteran Affairs
- B. A women-owned business is defined by Act 1080 of the 91st General Assembly Regular Session 2017 as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.
- C. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses. If certified, the Prospective Contractor's Certification Number should be included on the *Proposal Signature Page*.

1.21 EQUAL OPPORTUNITY POLICY

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP must have a copy of the anticipated Contractor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* should be included as a hardcopy accompanying the solicitation response.
- C. Contractors 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. Prospective Contractors who are not required by law to have an *EO Policy* **must** submit a written statement to that effect.

1.22 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

- A. Pursuant to Arkansas Code Annotated § 19-11-105, Contractor(s) providing services **shall** certify with OSP that they do not employ or contract with illegal immigrants.
- B. By signing and submitting a response to this *Bid Solicitation*, a Prospective Contractor agrees and certifies that they do not employ or contract with illegal immigrants. If selected, the Prospective Contractor certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.

1.23 RESTRICTION OF BOYCOTT OF ISRAEL

- A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.
- B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.
- C. By checking the designated box on the Proposal Signature Page of the response packet, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

1.24 PAST PERFORMANCE

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

1.25 VISA ACCEPTANCE

- A. Awarded Contractor 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) **must not** be levied against the State when accepting the p-card as a form of payment.
- C. VISA is not the exclusive method of payment.

1.26 PUBLICITY

- A. Do not discuss the solicitation nor your proposal response, nor issue statements or comments, nor provide interviews to any public media during the solicitation and award process.
- B. Failure to comply with this Requirement may be cause for a Prospective Contractor's proposal to be rejected.

1.27 RESERVATIONS

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

SECTION 2 – REQUIREMENTS

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

2.1 INTRODUCTION

The Arkansas Economic Development Commission (AEDC) is the State's cognizant economic development entity, and as such, administers numerous community and economic development fiscal programs. Arkansas is a small but diverse state of approximately three million residents. Qualified projects may potentially be located anywhere throughout the State.

The Partnership for Public Facilities and Infrastructure Act (PPFIA), created by Act 813 of 2017 (See Attachment A), established a framework by which responsible public entities may solicit Requests for Proposals (RFP) from private entities for bids to develop qualifying projects under the PPFIA. The submittal process, as established by the PPFIA Guidelines, published in October 2017, can be referenced at: http://www.arkansasedc.com/docs/default-source/rules-and-regulations/partnership-for-public-facilities-and-infrastructure-act-guidelines-october-2017-final.pdf?sfvrsn=35d299e5_0.

The AEDC will be the lead administrative agency in administering the PPFIA program. The Arkansas Development Finance Authority (ADFA) and the Department of Finance and Administration (DFA) will assist AEDC in PPFIA program administration. Table 2.1 below lists the primary functions of each agency under the PPFIA program.

Table 2.1 Primary Functions of State Agencies under the PPFIA Program

Primary PPFIA Functions	Responsible State Entity
Primary Point of Contact for PPFIA Program	AEDC
Guidelines and Rules Promulgation	AEDC and ADFA
Policy Development	AEDC, ADFA, DFA, Governor
PPFIA Application Submittal, Review, and Approval Process	AEDC and ADFA
Designation of Responsible Public Entities	AEDC and ADFA
RFP Review	AEDC and ADFA
Development of Interim Agreements and Comprehensive Agreements - Assist in Negotiation	AEDC
Approval of Interim and Comprehensive Agreements	DFA and Governor (Final Approval)
Audit of Qualifying Project Accounts	AEDC, ADFA, DFA
Project Monitoring and Reporting to the Governor	AEDC

2.2 PROSPECTIVE CONTRACTOR QUALIFICATION REQUIREMENTS

- A. The Prospective Contractor **shall** have a minimum of three (3) years' experience in public-private partnership policy and program development and implementation of similar size and scope as defined in this RFP.
- B. The Prospective Contractor **shall** have knowledge of successful public-private partnership structures, best practices, trends, and standards reflective of Arkansas PPFIA program objectives.
- C. Upon proposal submission, and throughout the life of the contract, the Prospective Contractor **shall not** have any actual and/or potential conflict(s) of interest pertaining to the Prospective Contractor's company and relative to the scope of work required in this RFP. The conflict of interest requirement includes, but is not limited to, any contract and/or financial arrangement between the Prospective Contractor and any entity and/or subcontractor that impacts, has the potential to impact, and/or directly conflicts with the Prospective Contractor's ability to effectively and impartially honor the terms of the contract resulting from this RFP. Throughout the term(s) of a resultant contract, the Contractor **shall** notify AEDC immediately upon knowledge of any such conflict of interest.

- D. The Prospective Contractor **shall not** have potential, pending or ongoing litigation (criminal or civil), nor any bankruptcy petitions pertaining to the Prospective Contractor's company that impacts and/or has the potential to impact the Prospective Contractor's ability to effectively and impartially honor the terms of any contract resulting from this RFP. Throughout the term(s) of any resultant contract, the Contractor **shall** notify AEDC immediately upon knowledge of any such litigation or bankruptcy petition.
- E. During the duration of the contract, the State reserves the right, in its sole discretion, to determine if any actual and/or potential conflict(s) of interest, litigation, and/or bankruptcy petition disclosed by the Contractor will directly conflict, impact, and/or prevent the Contractor from effectively and impartially honoring the terms of the contract resulting from this RFP.

2.3 **GENERAL REQUIREMENTS**

- A. The Contractor **shall** provide the following deliverables and services:
 - 1. Materials Development, such as PPFIA rules and necessary instructional manuals.
 - 2. Marketing and Communication to the private and public entities.
 - 3. Strategic Guidance throughout the development, implementation, and execution of the PPFIA program.
 - 4. Screening and Vetting of PPFIA projects.
 - 5. Compliance Support Services.

2.4 **MATERIAL DEVELOPMENT REQUIREMENTS**

- A. The Contractor **shall** collaborate with AEDC in drafting the PPFIA rules.
- B. The Contractor **shall** develop a manual for PPFIA participants. The participants will be the responsible public entities and the qualified respondents.
 - 1. The manual **must** include instructional guidance and sample documentation required for qualified projects, as well as, but not limited to:
 - a. Criteria for selecting a qualifying project, including fiscal screening and vetting
 - b. Application development and submittal
 - c. Engagement of local affected jurisdictions
 - d. Procurement package development guidance
 - e. Selection of qualified respondents
 - f. Mandatory and optional elements of project proposals
 - g. Evaluating, reviewing, negotiating, executing, and modifying standard interim agreements and comprehensive agreements, including feasibility and legality of public and private financial resources and methods
 - h. Professional services contract templates and execution guidance
 - i. Project operations and maintenance guidance
 - j. Sample reporting documentation
 - k. Financial review and analyses procedures, financial parameters, and screening criteria for projects including, without limitation:
 - i. Value-for-Money Analysis

- ii. Opportunity Cost Assessment
 - iii. Cost-Benefit Analysis
 - iv. Lifecycle Cost Analysis
- C. The Contractor **shall** develop a PPFIA project procedure manual including, but not limited to, procedures for:
 - 1. Application review, evaluation, and approval
 - 2. Guidelines for negotiating interim agreements and comprehensive agreements
 - 3. Staff review of project implementation, delivery, monitoring and reporting
- D. The following applies to all deliverables required by this RFP, as well as to any other deliverables as may be requested by AEDC throughout the duration of the contract.
 - 1. The Contractor **shall** provide the documents:
 - a. By the due dates as determined by the parties, with AEDC having final determination.
 - b. In a format as directed by AEDC.
 - c. Through a delivery method as directed by AEDC.
 - 2. Upon review of the documents, if requested by AEDC, the Contractor **shall** make edits to the document(s) and provide a revision(s) of document(s) to AEDC until final approval is granted by AEDC.

2.5 **MARKETING AND COMMUNICATION REQUIREMENTS**

- A. Contractor **shall** develop a communications and public relations plan for the public and private entities which provides details regarding the core objectives, policies, and processes of the PPFIA program. Further details and directives of the plan will be provided by AEDC and/or discussed with the awarded Contractor.
- B. As determined by AEDC, the Contractor **shall** represent, or assist in representing, AEDC to public and private entities regarding the PPFIA program.
- C. As requested by AEDC, Contractor **shall** prepare talking points and briefing materials regarding internal and external PPFIA matters.
- D. In collaboration with the AEDC Marketing and Communications division, the Contractor **shall** provide a range of strategies for PPFIA outreach, including, but not limited to:
 - 1. Public Relations, including creating materials and attending Statewide public meetings with stakeholders
 - 2. Responding to public inquiries
 - 3. Media Relations
 - 4. Website development
 - 5. Marketing materials
 - 6. General communications

2.6 **STRATEGIC GUIDANCE REQUIREMENTS**

- A. Throughout the duration of the contract, the Contractor **shall** provide strategic guidance on the development and implementation of the PPFIA program and on the execution of individual PPFIA projects.
- B. The Contractor **shall** provide ongoing written policy advice and guidance on program development and improvement.

- C. The Contractor **shall** provide program staffing and budgetary recommendations to AEDC.
- D. Upon request by AEDC, the Contractor **shall** provide written technical guidance regarding project submittal, review, evaluation, approval, implementation/delivery, reporting, monitoring, and auditing.
- E. Contractor **shall** provide a minimum of one week of on-site PPPIA Administrative training to AEDC employees. Training **must** cover all aspects of the project administration for the oversight of PPPIA projects.

2.7 PROJECT SCREENING AND VETTING REQUIREMENTS

- A. To the extent requested by the State, the Contractor **shall** provide hands-on assistance to State PPPIA review staff during screening of PPPIA applications.
- B. To the extent requested by AEDC, Contractor **shall** collaborate with AEDC regarding specific PPPIA project discussions with internal and external constituents.
- C. Contractor **shall** assist in evaluating, monitoring, and managing project delivery and operation by providing performance reviews and financial feasibility and analysis.
- D. The Contractor **shall** be available for consultation once a PPPIA project has been implemented.

2.8 COMPLIANCE SUPPORT REQUIREMENTS

- A. The Contractor **shall** ensure that all rules, manuals, and other written documentation, as well as all oral directives, guidance, and advice, provided to AEDC and to all State entity participants in the PPPIA program are compliant with all applicable Federal and State laws. This compliance assurance **must** cover, but is not limited to:
 - 1. Guidance and recommendations with the initial screening and vetting of qualifying projects.
 - 2. State Freedom of Information Act requirements under §25-19-101 et seq.
 - 3. Eminent domain
 - 4. Sovereign immunity
 - 5. Procurement laws
 - 6. Assessment of review fees
 - 7. Insurance requirements
 - 8. Property interests
 - 9. Strategic guidance in negotiating and reviewing documents including, but not limited to:
 - a. Debt instruments
 - b. Intergovernmental agreements
 - c. Reimbursement agreements
 - d. Revenue sharing agreements
 - e. Professional service contracts
 - f. Permitting requirement

2.9 COMPREHENSIVE AGREEMENT REQUIREMENTS

- A. Collaborating with AEDC and the RPE, The Contractor **shall** facilitate the creation of the comprehensive agreement for each project. This process includes, but is not limited to, preparing a written template, developing the document, facilitating negotiations, and providing interim reviews of the agreement.
- B. A comprehensive agreement **shall** fully detail the planning, design, development, ownership, financing, leasing, acquisition, installation, construction, operation, maintenance, expansion, and termination of a qualifying project and **shall** include, but not be limited to, the following items:
1. Any items identified in interim agreements.
 2. A thorough description of the duties and responsibilities of each party in the completion, operation, and dissolution of the qualifying project.
 3. Dates and schedules for the completion of all phases or segments of the qualifying project.
 4. All financing components including the sources and uses of public and private funding; estimated revenues, user fees, lease payments, service payments, including, but not limited to, those realized from the operation of the project as well as any process for charging fees, payments, or funding terms and conditions throughout the duration of the agreement.
 5. A process for review and approval of plans and specifications for the qualifying project by the RPE.
 6. Delivery of all required payment, performance, surety, and other bonds in the forms and amounts required by law for the qualifying project.
 7. Proof of all required insurance, in the forms and amounts required by law for the qualifying project.
 8. The filing of appropriate financial statements and progress reports by the RPE, AEDC, ADFA, and DFA on a periodic basis as determined by AEDC.
 9. A process for monitoring and inspecting the development of the project by the RPE, ADFA, AEDC and DFA to ensure compliance with terms and conditions of written agreements, PPFIA law, and rules.
 10. Provisions governing the rights and responsibilities of the RPE and private entity in the event that the comprehensive agreement is terminated or if there is a material default by the private entity or RPE.
 11. Terms and conditions related to the procurement of services or materials through any contracts related to the qualifying project.
 12. Safeguards to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the RPE or qualified respondent.
 13. Plans for long-term operation and maintenance agreements, management agreements, or service agreements with private entities.
 14. Processes and procedures regarding any changes to the terms of the comprehensive agreement, as may be mutually agreed upon by the parties from time to time, as added by written amendment.
 15. Any other terms and conditions that the RPE determines will serve the public purpose of the PPFIA and to which the private entity and RPE determine will serve the public purpose of the PPFIA and to which the private entity and RPE mutually agree.

2.10 INITIATION OF CONTRACT SERVICES AND PROGRAM IMPLEMENTATION

- A. The Contractor **shall** attend a kick-off meeting in person at the AEDC offices in Little Rock. The specific date, time, and duration of the meeting will be determined by AEDC after contract award.
- B. As required by AEDC and anticipated to be throughout the entire contract duration depending upon the project(s) and services needs, the key Contractor personnel **shall** work on-site at the AEDC offices. AEDC will provide work stations and computers for three Contractor personnel. Other standard office equipment such as copiers, printers, etc. will also be made available.
 - 1. The Contractor personnel working on-site at the AEDC office **shall** follow all security guidelines and office/State procedures for AEDC.
- C. AEDC and the Contractor **shall** determine the key personnel necessary for the on-site work, for any off-site work, and for meetings, with AEDC having final determination.
- D. Should the Contractor need additional personnel readily available to AEDC in order to meet the requirements of this contract, or should AEDC determine that the availability of additional Contractor personnel are required, the Contractor **shall** provide a branch office location within the Little Rock area. The office **must** be located so that AEDC's requirements for availability of Contractor personnel will be met.
- E. AEDC anticipates frequent meetings and continual in-person collaboration throughout the implementation period. The Contractor **shall** make the required personnel available. The specific dates, times, locations and method of meetings and collaborative work will be determined by AEDC.
- F. The anticipated time frame from contract award through implementation is no more than two (2) years. After implementation is complete, the Contractor **shall** begin the provision of services relative to individual projects and/or continued services to AEDC as required by AEDC.

2.11 PRICING REQUIREMENTS

- A. The following applies regarding contract costs and Prospective Contractor pricing submission:
 - 1. Prospective Contractors **shall** enter pricing as a one-time, flat fee to cover all requirements of the contract as specified in this RFP through the AEDC-approved completion of the implementation.
 - 2. Upon AEDC's approval of the completion of the implementation phase, regardless if this phase takes the complete two years or if the Contractor completes these requirements to AEDC's approval prior to the two-year deadline, the one-time fee will be fully paid for the provision of this portion of the services.
 - a. Partial, benchmark invoicing of the one-time fee will be negotiated with the Contractor after contract award.
 - 3. Costs for individual PPFIA project services and costs for ongoing, general services for AEDC will be negotiated between AEDC and the Contractor when these instances arise after the implementation phase.
 - 4. The Contractor **shall** cover all travel expenses, including expenses for all lodging, meals, and personal expenses for on-site Contractor personnel. These costs **must** be included in the 2-Year Initial Term Cost on the Official Bid Price Sheet. See 1.12.A

2.12 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided that a Contractor **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 identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards. See table below.
- C. The State has 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 Contractor so as to establish standards that are reasonably achievable.

- D. All changes made to the Performance Standards will become an official part of the contract.
- E. Performance Standards will continue throughout the aggregate term of the contract.
- F. Failure to meet the minimum Performance Standards as specified will result in the assessment of damages.
- G. In the event a Performance Standard is not met, the Contractor will have the opportunity to defend or respond to the insufficiency. The State has the right to waive damages if it determines there were extenuating factors beyond the control of the Contractor that hindered the performance of services. In these instances, the State has final determination of the performance acceptability.
- H. Should any compensation be owed to the State agency due to the assessment of damages, Contractor **shall** follow the direction of the State agency regarding the required compensation process.

Performance Standards for SP-19-0032		
Service Criteria	Acceptable Performance	Benchmark Payments*
Kickoff Meeting	Attended and Completed	5% of 2-Year Initial Term Cost paid
Rules Document	Provide a final approved version of the Rules document by the deadline (anticipated to be within four (4) months from date of contract award)	30% of 2-Year Initial Term Cost paid
PPFIA Participant Manual	Provide a final approved version of the PPFIA Participant Manual by the deadline (anticipated to be within nine (9) months from date of contract award)	30% of 2-Year Initial Term Cost paid
PPFIA Procedure Manual	Provide a final approved version of the PPFIA Procedure Manual by the deadline (anticipated to be within nine (9) months from date of contract award)	30% of 2-Year Initial Term Cost paid
Full Implementation Completed	As approved by AEDC	5% of 2-Year Initial Term Cost paid

* Unless another agreement is approved by AEDC during the kick-off meeting.

SECTION 3 – CRITERIA FOR SELECTION

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

3.1 TECHNICAL PROPOSAL SCORE

- A. OSP will review each *Technical Proposal Packet* to verify submission Requirements have been met. *Technical Proposals Packets* that do not meet submission Requirements will be rejected and will not be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying Technical Proposals. Evaluation will be based on Prospective Contractor's response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
 1. Members of the Evaluation Committee will individually review and evaluate proposals and complete an Individual Score Worksheet for each proposal. Individual scoring for each Evaluation Criteria will be based on the following Scoring Description.

Quality Rating	Quality of Response	Description	Confidence in Proposed Approach
5	Excellent	When considered in relation to the RFP evaluation factor, the proposal squarely meets the requirement and exhibits outstanding knowledge, creativity, ability or other exceptional characteristics. Extremely good.	Very High
4	Good	When considered in the relation to the RFP evaluation factor, the proposal squarely meets the requirement and is better than merely acceptable.	High
3	Acceptable	When considered in relation to the RFP evaluation factor, the proposal is of acceptable quality.	Moderate
2	Marginal	When considered in relation to the RFP evaluation factor, the proposal's acceptability is doubtful.	Low
1	Poor	When considered in relation to the RFP evaluation factor, the proposal is inferior.	Very Low
0	Unacceptable	When considered in relation to the RFP evaluation factor, the proposal clearly does not meet the requirement, either because it was left blank or because the proposal is unresponsive.	No Confidence

2. After initial individual evaluations are complete, the Evaluation Committee members will meet to discuss their individual ratings. At this consensus scoring meeting, each member will be afforded an opportunity to discuss his or her rating for each evaluation criteria.
3. After committee members have had an opportunity to discuss their individual scores with the committee, the individual committee members will be given the opportunity to change their initial individual scores, if they feel that is appropriate.
4. The final individual scores of the evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each proposal.

5. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.
- C. The *Information for Evaluation* section has been divided into sub-sections.
1. In each sub-section, items/questions have each been assigned a maximum point value of five (5) points. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
 2. The agency has assigned Weighted Percentages to each sub-section according to its significance.

Information for Evaluation Sub-Sections	Maximum Raw Points Possible	Sub-Section's Weighted Percentage	* Maximum Weighted Score Possible
E.1 Company Overview and Background	20	25%	175
E.2 Company Experience	75	65%	455
E.3 Implementation	5	10%	70
Total Technical Score		100%	700

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

- D. The proposal'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. The proposal's weighted scores for sub-sections will be added to determine the Total Technical Score for the Proposal.

3.2 **PRESENTATION SCORE**

- A. The Prospective Contractors with the top three Technical proposal scores after the completion of the technical evaluation will be contacted to schedule a presentation before the Evaluation Committee.
- B. Each Prospective Contractor **shall** conduct a PowerPoint presentation that highlights the firm's ability to provide strategic advisory services as a Strategic Advisor to AEDC in the development and implementation of a program to administer the Partnership for Public Facilities and Infrastructure Act (PPFIA), as created by Act 813 of 2017, and codified at A. C. A. §22-10-101 et seq. in accordance with the requirements of the RFP. Further details and a final agenda will be provided to Prospective Contractors at the time the presentation is scheduled.
- C. At the presentation, the Prospective Contractor **shall** respond to questions from the Evaluation Committee and will have an opportunity to present their proposal in greater detail. The State anticipates delivery of oral presentations approximately two (2) weeks after the evaluation of the technical proposals are complete.
- D. The Prospective Contractor **shall** provide the State with a flash drive of the PowerPoint at the presentation.
- E. All costs for travel and material preparation **shall** be borne by the Prospective Contractor,
- F. The buyer will create a second set of score sheets by copying the Excel workbook (including the scores entered) and titling each of the score sheets in that workbook as the "Post-Presentation" score sheets.
- G. After each presentation is complete, the Evaluation Committee members will have the opportunity to discuss the presentation and revise their individual scores on the Post-Presentation Consensus Score Sheet based on the information in the presentation.

- H. The final individual scores of the evaluators on the Post-Presentation Consensus Score Sheets will be averaged to determine the final Technical score for each proposal.

3.3 **COST SCORE**

- A. When pricing is opened for scoring, the maximum amount of cost points will be given to the proposal with the lowest Two-Year Initial Term as shown on the Official Bid Price Sheet. (See *Grand Total Score* for maximum points possible for cost score.)

- B. The amount of cost points given to the remaining proposals will be allocated by using the following formula:

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

A = Lowest Total Cost

B = Second (third, fourth, etc.) Lowest Total Cost

C = Maximum Points for Lowest Total Cost

D = Total Cost Points Received

3.4 **GRAND TOTAL SCORE**

The Technical Score and Cost Score will be added together to determine the Grand Total Score for the proposal. The Prospective Contractor's proposal with the highest Grand Total Score will be selected as the apparent successful Contractor. (See *Award Process*.)

	Maximum Points Possible
Technical Proposal	700
Cost	300
Maximum Possible Grand Total Score	1,000

3.5 **PROSPECTIVE CONTRACTOR ACCEPTANCE OF EVALUATION TECHNIQUE**

- A. Prospective Contractor **must** agree to all evaluation processes and procedures as defined in this solicitation.
- B. The submission of a *Technical Proposal Packet* signifies the Prospective Contractor's understanding and agreement that subjective judgments will be made during the evaluation and scoring of the Technical Proposals.

SECTION 4 – GENERAL CONTRACTUAL ITEMS

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

4.1 PAYMENT AND INVOICE PROVISIONS

A. Forward invoices to:

Arkansas Economic Development Commission
900 W. Capitol Avenue, Suite 400
Little Rock, AR 72201

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods and services by the agency.
- C. Do not invoice the State in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the Contractor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The Contractor 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 Contractor **must** be registered to receive payment and future *Bid Solicitation* notifications. Prospective Contractors may register on-line at <https://www.ark.org/contractor/index.html>.

4.2 GENERAL INFORMATION

A. The State **shall** not:

1. 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 Contractor/lessor in the event funds are not appropriated.
 2. Contract with another party to indemnify and defend that party for any liability and damages.
 3. Pay damages, legal expenses or other costs and expenses of any other party.
 4. Continue a contract once any equipment has been repossessed.
 5. Agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
 6. Enter a contract which grants to another party any remedies other than the following:
 - a. The right to possession.
 - b. The right to accrued payments.
 - c. The right to expenses of deinstallation.
 - d. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - e. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- B. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- C. The laws of the State of Arkansas govern this contract.
- D. A contract is not effective prior to award being made by a State Procurement Official.

4.3 CONDITIONS OF CONTRACT

- A. 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. 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 Contractor.

4.4 STATEMENT OF LIABILITY

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of Contractor-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 Contractor will retain total liability for equipment, software and technical and business or operations literature. The State will not at any time be responsible for or accept liability for any Contractor-owned items.
- B. The Contractor's liability for damages to the State will be limited to the value of the Contract or \$1,000,000, whichever is higher. The foregoing limitation of liability will 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 Contractor; 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 Contractor and the State will not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability will 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 Contractor; 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 **must not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, will be brought before the Arkansas Claims Commission as provided by Arkansas law and governed accordingly.

4.5 RECORD RETENTION

- A. 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, grant access to State or Federal Government entities or any of their duly authorized representatives.
- B. Make financial and accounting records available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

4.6 PRICE ESCALATION

- A. Price increases will be considered at the time of contract renewal.
- B. The Contractor **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 has the right to require additional information pertaining to the requested increase.
- C. Increases will not be considered to increase profit or margins.
- D. OSP has the right to approve or deny the request.

4.7 CONFIDENTIALITY

- A. The Contractor, Contractor's subsidiaries, and Contractor's employees will 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 has the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

4.8 **CONTRACT INTERPRETATION**

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

4.9 **CANCELLATION**

- A. For Cause. The State may cancel any contract resulting from this solicitation for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the contract and provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. To the extent permitted by law and at the discretion of the parties, the parties may agree to **minor amendments to** the contract and avoid the cancellation for cause upon mutual agreement.
- B. For Convenience. The State may cancel any contract resulting from the solicitation by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.
- C. If upon cancellation the Contractor has provided commodities or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

4.10 **SEVERABILITY**

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

SECTION 5 – STANDARD TERMS AND CONDITIONS

- **Do not provide responses to items in this section.**
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any resulting contract 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 rejected. The person signing the bid shall have 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. Contractor **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 is 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 Contractor to supply additional descriptive material. The Contractor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Contractors 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 Contractor 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 Contractor **shall** further guarantee that if the items furnished hereunder are to be installed by the Contractor, such items **shall** function properly when installed. The Contractor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The Contractor'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 Contractor'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 Contractor's expense. After reasonable examination, all demonstrators will be returned at Contractor'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 Contractor.
- 10. **AMENDMENTS:** Contractor'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 Contractor. 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 Contractor.
- 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 Contractor 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 Contractor.

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 Contractors 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. Contractor **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. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the Contractor agrees that: (a) the Contractor **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 Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor 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 Contractor 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 Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.
23. **CONTINGENT FEE:** The Contractor 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 Contractor for the purpose of securing business.
24. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor 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.
25. **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.