



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

INVITATION FOR BID
BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	SP-19-0061	Solicitation Issued:	March 27, 2019
Description:	Airborne Fire Suppression Services		
Agency:	Arkansas Agriculture Department-Forestry Commission		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	April 12, 2019	Bid Opening Time:	2:00 p.m., Central Time
<p>Deliver bid submissions for this Invitation For Bid to the Office of State Procurement on or before the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit bids at the designated location on or before the bid opening date and time. Bids received after the designated bid 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>
Bid's Outer Packaging:	<p>Seal outer packaging and properly mark with the following information. If outer packaging of bid submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none">• Bid number• Date and time of bid opening• Prospective Contractor's name and return address

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Julia Shackelford	Buyer's Direct Phone Number:	501-371-6079
Email Address:	Julia.shackelford@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

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for the Arkansas Agriculture Department-Forestry Commission (AAD-FC) to obtain pricing and a contract for airborne fire suppression services throughout the State of Arkansas.

1.2 TYPE OF CONTRACT

- A. As a result of this IFB, OSP intends to award a contract to a single Contractor.
- B. The anticipated starting date for any resulting contract is July 1, 2019, 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 bid in response to the IFB, the Prospective Contractor represents and warrants that it will honor its bid as being held open as irrevocable for this period.
- C. The initial term of a resulting contract will be for one (1) year. Upon mutual agreement by the Contractor and agency, the contract may be renewed by OSP for up to six (6) 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 BID OPENING LOCATION

Bids 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 Sections of this IFB to be considered a responsive Prospective Contractor.
- B. A Prospective Contractor's bid will be rejected if a Prospective Contractor takes exceptions to any Requirements in the Requirements Sections of this IFB.

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 bid in response to this solicitation.
- D. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- E. The terms "Invitation For Bid", "IFB," "Bid Solicitation," and "Solicitation" are used synonymously in this document.
- F. "Responsive bid" means a bid submitted in response to this solicitation that conforms in all material respects to this IFB.
- G. "Bid Submission Requirement" means a task a Prospective Contractor **must** complete when submitting a bid response. These requirements will be distinguished by using the term "**shall**" or "**must**" in the requirement.

- H. "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.
- I. "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.
- J. "Air Attack" means an aerial platform over a fire, containing a division supervisor or higher qualified fire person, who controls the air space over the fire and directs the fire suppression aircraft on where to drop and what tactics are to be used.
- K. "Base of Operations" means an airport located within forty (40) aeronautical miles of the Malvern municipal airport.
- L. "Call When Needed" means the Commission may request aircraft for suppression services outside the exclusive use period, subject to Contractor availability.
- M. "Commission" means the Arkansas Forestry Commission.
- N. "FAA" means Federal Aviation Association.
- O. "Ground Personnel" means fire fighters on the ground attempting to suppress a wildfire.
- P. "Pilot-In-Command" means the pilot aboard any given aircraft who is responsible for its operation and safety during flight.
- Q. "Readiness Level" means various response time requirements of an aircraft to be launched and/or dispatched at any given airport.
- R. "Retardant" means water, foam or a mix of water and foam that is dropped to slow down the spread of wildland fires.
- S. "Spider Tracks" means a flight tracking system to keep track of aircraft, pilots, flying hours, schedule maintenance, inspections, etc.

1.7 **RESPONSE DOCUMENTS**

A. Bid Response Packet

1. The following are Bid Submission Requirements and **must** be submitted in the original Bid Response Packet.
 - a. Original signed *Bid Signature Page*. (See *Bid Response Packet*.)
 - i. An official authorized to bind the Prospective Contractor to a resultant contract **must** sign the Bid Signature Page included in the *Bid Response Packet*.
 - ii. Prospective Contractor's signature signifies agreement to and compliance with all Requirements in this IFB, and that any exception that conflicts with a Requirement or Bid Submission Requirement of this *Bid Solicitation* will cause the Prospective Contractor's bid to be rejected.
 - iii. Bid response **must** be in the English language.
 - b. One (1) original hard copy of the *Official Bid Price Sheet*. Pricing **must** be proposed in U.S. dollars and cents.
2. The following items should be submitted in the original *Bid Response Packet* as a hard copy and as an electronic copy, preferably on a flash drive and in PDF format.
 - a. One (1) copy of the *Official Bid Price Sheet*.
 - b. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions*, #27. *Disclosure*.)

c. Copy of Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)

3. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

1.8 **CLARIFICATION OF BID SOLICITATION**

- A. Submit any questions requesting clarification of information contained in this *Bid Solicitation* in writing via email by 3:00 p.m., Central Time on or before April 2, 2019 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 April 5, 2019. If Prospective Contractor questions are unclear or non-substantive in nature, the State may request clarification of a questions or reserves the right not to respond to that questions.
- 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 bid.
- C. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the bid 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.

1.9 **SUBCONTRACTORS**

Subcontractors **shall not** be allowed to perform work under the terms of any resulting contract.

1.10 **PRICING**

- A. Prospective Contractor **shall** include all pricing on the Official Bid Price Sheet only. If any cost is not identified by the successful Contractor but is subsequently incurred in order to achieve successful operation, the Contractor **shall** bear this additional cost.
- B. To allow time to review bids, prices **must** be valid for ninety (90) days following the bid opening.
- C. DO NOT submit any ancillary information not related to actual pricing on or with the Bid Price Sheet.

1.11 **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.

1.12 **INDEPENDENT PRICE DETERMINATION**

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

1.13 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 *Bid Response 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 *Bid 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.

1.14 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 bid 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 bids.

1.15 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 bid opening may extend the bid opening 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 bid opening.

1.16 AWARD PROCESS**A. Successful Contractor Selection**

1. Award will be made to the responsible Prospective Contractor with the lowest Estimated Yearly Total.

B. Negotiations

1. If the State so chooses, negotiations may be conducted with the lowest-bidding Prospective Contractor. 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 lowest-bidding 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.

1.17 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.

1.18 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 *Bid Signature Page*.

1.19 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.

1.20 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

- A. Pursuant to Arkansas Code Annotated § 19-11-105, Contractors 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.

1.21 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 Bid 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.

1.22 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". Bids submitted by Prospective Contractors determined to be non-responsible will be rejected.

1.23 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 fees **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.

1.24 PUBLICITY

- A. Do not discuss the solicitation nor your bid 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 bid to be rejected.

1.25 RESERVATION

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

SECTION 2 – REQUIREMENTS

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

2.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Office of State Procurement (OSP) for the Arkansas Agriculture Department-Forestry Commission (AAD-FC) to obtain pricing and a contract for airborne fire suppression services throughout the State of Arkansas.

The Prospective Contractor **shall** furnish the necessary resources, to include, but is not limited to, airplanes, pilots, mechanics, lease payment of airport hangers, meals, lodging, and all incidentals needed to meet the requirements as outlined in this IFB.

2.2 BACKGROUND INFORMATION

The mission of the Arkansas Forestry Commission (hereinafter, "Commission") is to protect approximately 18.9 million acres of Arkansas's forests, and those who enjoy them, from wildland fire and natural hazards while promoting rural and urban forest health, stewardship, development and conservation for all generations of Arkansans. There are eight (8) forest districts within the State of Arkansas. (see Attachment A).

- A. Since 2010, the Single Engine Air Tankers (SEAT's) have dispersed water on the following number of fires:

Year	# of fires
2010	220
2011	137
2012	87
2013	9
2014	13
2015	37
2016	16
2017	13
2018	8

- B. The Commission's aviation program includes the following two (2) components:

1. **A technical service contract for fire suppression**

The technical service contract will be for Single Engine Air Tankers (SEAT's) to provide airborne fire suppression activities supporting the Commission's fire suppression Ground Personnel, volunteer fire departments, U.S. Forest Service, and any departments that are engaged in wildland firefighting.

2. **The Commissions in-house aviation program**

- The Commission's in-house aviation service has a fleet of fifteen (15) aircraft and four (4) full-time pilots.
- The Commission may use several extra-help pilots during high fire years.
- The Commission owns two (2) Aero Commander twin-engine planes and five (5) single-engine aircraft.
- In addition, the Commission houses and maintains eight (8) Federally-owned single-engine planes that are on loan from the U. S. Forest Service under the Federal Excess Personal Property (FEPP) program.

- The Commission leases a 10,000-square foot multi-aircraft hangar and two single aircraft hangars at the Malvern airport to house the aviation fleet.
- C. The Aero Commander twin-engine planes are used in an "Air Attack" role to coordinate the SEAT's during fire suppression activities between ground crews and air resources. The other thirteen (13) aircrafts are used for fire detection, timber damage surveys, and other forestry related needs. Under the FEPP agreement, the Federally-owned planes are to be flown two (2) hours per month. In fiscal year 2018, the aviation crew recorded 1,685 flight hours.
- D. Each of the eight (8) forest districts within the State of Arkansas have a predetermined route that the Commissions' pilots fly to look for wildland fires. The routes vary from two hundred (200) to three hundred fifty (350) miles and can take two (2) to three (3) hours to complete. If the Commission detection pilot sees smoke, he will try to visually determine if the fire is controlled with containment lines or personnel. If it is not contained, the pilot will activate the electronic tracking system which notifies the dispatch center of the latitude and longitude of the fire. The pilot will verbally provide the dispatch center a description of the fire and surrounding area, so the center can dispatch the appropriate crews.

2.3 **EXCLUSIVE USE REQUIREMENTS**

- A. Contractor's airplanes and pilots **shall** be available during two (2) exclusive use periods and **must not** be used for any other purpose during the periods listed below:
- August 1 at 12:00 a.m. Central Time through September 30 at 11:59 p.m. Central Time.
 - February 1 at 12:00 a.m. Central Time through April 30 at 11:59 p.m. Central Time.
- B. The Commission will determine if the start dates of the exclusive use period will vary, but not exceed, two (2) weeks.
- C. The approximate total number of days for the exclusive use periods should not change.
- Sixty-One (61) days during August 1 at 12:00 a.m. Central Time through September 30 at 11:59 p.m. Central Time.
 - Ninety (90) days during February 1 at 12:00 a.m. Central Time through April 30 at 11:59 p.m. Central Time.
- D. Contractor **shall** have the following minimum number of aircrafts and pilots available throughout the exclusive use periods:
- Two (2) aircrafts and two (2) pilots during the months of August through September.
 - Four (4) aircrafts and four (4) pilots during the months of February through April.
- E. The Commission may request the Contractor's pilots and aircrafts to be available for fire suppression services outside the exclusive use periods, on call/when needed, subject to Contractor availability. No penalty will be incurred by the Contractor if pilots and aircrafts are not available during these times.

2.4 **PILOT REQUIREMENTS**

- A. Pilots **shall** meet the following requirements and **must** provide documentation when requested by the Commission:
1. Possess a FAA commercial pilot certificate with instrument rating.
 2. Possess a Class II medical certificate issued under provisions of 14 CFR Part 67.
 3. Possess category and class ratings in aircraft to be flown.
 4. Meets 61.56 a, b, and c, and "recent flight experience Pilot-In-Command" of 14 CFR 61.57c.
 5. Possess a FAA approved knowledge and skill endorsement in their logbooks stating they have met the requirements of 14 CFR 137.
 6. Be night qualified as documented in the pilot's log book.

- B. A current DOI/USFS Level I or Level II card that is documented in the pilot's log book will meet the pilot requirements and specifications as stated above. The Contractor **shall** provide a copy of the DOI/USFS Level I or Level II card when requested by OSP and/or prior to award.
- C. Pilots **shall** meet the minimum aircraft experience in flight hours and **must** provide documentation when requested by the Commission:
1. Total flight hours in aircraft: 1500-flight hours.
 2. Fixed wing aircraft: 1200-flight hours.
 3. Agricultural aircraft with a 600-horsepower or more engine: 200-flight hours.
 4. Pilot-In-Command aircraft: 25-flight hours.
 5. Pilot-In-Command flight hours within the last 12-months: 100-flight hours.
 6. Flight time within the last 60-days: 10-flight hours.
 7. Flight time over Arkansas type landscape (mountains, trees): 200-flight hours.

2.5 **FLIGHT TIME REQUIREMENTS**

- A. Flight time **must** be measured from the time the aircraft commences its takeoff run, on an ordered flight, and ends when the aircraft has taxied to parking, loading, refueling, or warm-up operations area.
- B. Elapsed time **must** be recorded in hours and hundredths of hours. (i.e. 1.25 hours).

2.6 **READINESS LEVELS AND RESPONSE TIME DURING EXCLUSIVE USE PERIODS**

- A. The Commission will determine the Readiness Level of aerial firefighting resources needed from the Contractor for each day of the exclusive use period.
- If the aircraft is not launched, the Commission will pay the Contractor the hourly bid rate times the minimum flight hours for the applicable Readiness Level.
 - If the aircraft is launched and flies more than the minimum flight hours, the Commission will pay the Contractor the total hours flown times the hourly bid rate for the applicable Readiness Level.
 - If the aircraft is launched and flies less than the minimum flight hours, the Commission will pay the Contractor the minimum flight hours times the hourly bid rate for the applicable Readiness Level.
1. Readiness Level I
 - a. Response time: Pilots and aircrafts **must** launch within five (5) minutes of receiving a call from the Commission.
 - b. Minimum daily payment per aircraft will be calculated by using 1.20 hours x hourly bid rate.
 - c. Aircrafts **must** be stationed at an airport other than the Base of Operations. The Commission will determine which airport will be used depending on where the majority of fires are occurring at the time resources are needed.
 - d. Aircrafts **must** be loaded with retardant, water, or foam during on-going fires.
 - e. Contractor **shall** be responsible for cost of meals, lodging, and transportation, etc.
 2. Readiness Level II
 - a. Response time: Pilots and aircrafts **must** launch within five (5) minutes of receiving a call from the Commission.
 - b. Minimum daily payment per aircraft will be calculated by using 1.00 hour x the hourly bid rate.
 - c. Aircrafts **must** be stationed at the Base of Operations airport.

- d. Aircrafts **must** be loaded with retardant, water, or foam during on-going fires.
- e. Contractor **shall** be responsible for cost of meals, lodging, and transportation, etc.
- 3. Readiness Level III: Off-Duty
 - a. Response time: Pilots and aircrafts **must** be available to meet Readiness Level I or II within two (2) hours of receiving a call from the Commission.
 - b. Minimum daily payment per aircraft will be calculated by using 0.85 hours x the hourly bid rate.
 - c. Contractor **shall** be responsible for cost of meals, lodging, and transportation, etc.
- 4. Readiness Level IV: Unavailability
 - a. Services **must** be recorded as unavailable whenever the Contractor fails to comply with the requirements as specified within this IFB, including preparation for inspection and return to service.
 - b. Services **must** continue to be recorded as unavailable until the failure is corrected.
 - c. Contractor **shall** notify the Commission of the exact date and time the aircraft is removed from service.
 - d. No payment **shall** be made for aircraft in Level IV: Unavailable.
 - e. Contractor **shall** be responsible for cost of meals, lodging, and transportation, etc.

2.7 SAFETY EQUIPMENT

- A. Contractor **shall** furnish, aboard the plane, the following safety equipment for each pilot:
 - 1. A properly fitted crash helmet with headset and boom microphone.
 - 2. A safety belt and shoulder harness which **must** always be worn by the pilot when operating the aircraft for the purpose of flight.
 - 3. A fire extinguisher securely mounted in each aircraft within easy reach of the pilot.
 - 4. Fire retardant flight suit properly fitted to the pilot.
 - 5. An emergency locator transmitter (ELT).

2.8 FAA CERTIFIED MECHANIC

- A. Contractor **shall** provide a minimum of one (1) certified mechanic and list the information on Attachment B.
- B. Mechanic **shall** possess a valid FAA mechanic certificate with both airframe and power plant ratings.
- C. Mechanic **shall** have maintained the certificate for a minimum of twenty-four (24) months.
- D. Contractor **shall** provide a copy of a valid FAA mechanic certificate, when requested by OSP and/or prior to award.

2.9 AIRCRAFT REQUIREMENTS

- A. Aircrafts **must** be capable of direct or indirect application of fire retardant, foam, or water on forest fires and be highly mobile, capable of rapid response.
- B. Aircrafts may be owned, rented, or leased by the Contractor.
- C. Aircrafts **must** be certified in the Restricted Category under 14 CFR 21.185 for the special purpose of performing fire suppression work.
- D. Aircrafts **must** include the Flight Manual Procedures for retardant drops.
- E. Aircrafts log book **must** be in compliance with 100-hour and annual inspections.

- F. Aircraft engines operated past Time Between Overhaul (TBO) **must not** be used.
- G. Aircrafts **must** have a hopper with a minimum capacity of 550-gallons of fire retardant with an Interagency Approved Gate (IAG).
- H. Aircrafts **must** have a minimum fuel endurance of 2.5 hours with a full load. In addition, the aircraft **must** have the following instrumentation installed:
 - 1. Gyroscopic rate of turn indicator.
 - 2. Slip/skid indicator.
 - 3. Gyroscopic compass.
 - 4. Rate of climb indicator.
 - 5. Navigation and strobe lights.
- I. Contractor **shall** provide a list of all aircrafts that meet the specifications within this IFB, by make, model, N number, Tanker number, and hopper capacity. (see Attachment B).
- J. A current DOI/USFS Type III card **must** be located inside the aircraft and **must** meet the aircraft requirements and specifications as stated above. The Contractor **shall** provide a copy of the DOI/USFS card when requested by the Commission.

2.10 **AVIONICS REQUIREMENTS**

- A. Each aircraft **must** have at least one (1) navigation receiver such as a GPS. The receiver **must** be capable of accepting latitude/longitude coordinates for navigating to fire locations. Minimum accuracy **must** be 600-feet with 60-feet repeatable accuracy.
- B. Aircrafts operating in airspace defined in 14 CFR § 91.225 **must** have an Automatic Dependent Surveillance – Broadcast (ADS-B) system that includes a certified position source capable of meeting requirements defined in 14 CFR § 91.227.

2.11 **COMMUNICATION REQUIREMENTS**

- A. Each aircraft **must** have the following communications requirements:
 - 1. Two (2) AM aviation transceivers.
 - 2. One (1) AM aviation radio.
 - 3. One (1) FM radio capable of 138-174 MHz narrow band and digital tone capable with a switching system which will enable the pilot to switch to or monitor either radio.
- B. Radios **must** be operated by a stick-mounted mike switch incorporating a headset and boom mike capable of being worn in conjunction with a crash helmet.
- C. Aircrafts **must** be equipped with "Spider Tracks" flight following transponders and be operable with a current "Spider Tracks" subscription.

2.12 **FIRE GATE BOX AND TANK REQUIREMENTS**

- A. Each aircraft **must** have an approved Interagency Airtanker Board (IAB) type 3 drop gate box with a minimum flow rate of 480-gallons per second.
- B. Tank **must** have a controllable gate/door system that allows the volume of the water to be released in selected drop configurations including full salvo, reduced flow/extended trail, or partial tank (split) drops.
- C. Tank **must** be vented to allow the contents to flow through the fire gate. The emergency dump system **must** isolate the pneumatic or hydraulic emergency system including lines, hoses, and actuators so that function or failure of the normal system does not affect the function of the emergency systems.
- D. Fire gate opening and closing control may be mechanical, hydraulic, or pneumatic, or a combination.

- E. Fire gates approved by the IAB **must** meet the fire gate specifications. All other gates **must** be approved by the Commission.
- F. Operating systems or mechanisms **must** be installed in accordance with a FAA – authorized Supplemental Type Certificate, cam 8, or field approval.
- G. Equipment **must** be maintained in accordance with the standard practices and procedures specified in FAA Advisory Circular 43.13-1A.
- H. Aircrafts **must** be able to inject foam into the hopper while in flight.

2.13 FIRE RETARDANT CHEMICALS

- A. The Commission will make the decision when to use fire retardant chemicals and which chemicals will be used.
- B. The Commission may waive the 550-gallon minimum fire-retardant requirement when using chemicals that conform to aircraft weight and balance limitations. This will keep the aircraft from being overweight, as chemicals have various weights.

2.14 WATER SUPPLY

- A. Contractor **shall** provide female fittings for each aircraft and the fittings **must** be compatible with a 1-1/2-inch fire hose connections.
- B. When reloading away from the Base of Operations, water, pumping equipment, and associated personnel will be provided by the local volunteer fire departments at no additional cost to the Contractor.
- C. Contractor will not be held accountable due to inadequate water supply at the reload base.
- D. Contractor **shall** provide personnel to supervise loading of water.
- E. The loading supervisor can also be the Pilot-In-Command.
- F. The Commission will provide the necessary orientation and training to volunteer fire departments on procedures and following directions of the loading supervisor.

2.15 SUPPORT/SERVICE VEHICLE

- A. Contractor **shall** provide one (1) full support/service vehicle per two aircraft when SEAT's are stationed at an airport, other than their Base of Operations, for more than twenty-four (24) hours.
- B. Support/service vehicle **must** contain a portable retardant mixing base, fuel tank for aircraft fuel, plus all other tools and equipment to support the aircraft.
- C. Vehicles **must** be capable of carrying retardant products, water, fuel, tools, parts, and other items to support the aircraft while at an airport other than the Base of Operations for more than twenty-four (24) hours.
- D. Batch mixing capability **must** be equal to the volume of the aircraft hopper. (i.e. 550-gallons or 800-gallons).
- E. Vehicles **must** be approved for highway use by the U.S. Department of Transportation.
- F. Fuel tanks, plumbing, filters, and other required equipment should be free of rust, scale, dirt, and other contaminants.
- G. Vehicles **must** be maintained, clean, and reliable.

2.16 AIRPORT REQUIREMENTS

- A. Contractor **shall** be responsible for leasing any of the following airports as their Base of Operations based on fuel availability, location in the affected area, airport environment, and minimum runway length.
- Malvern Municipal Airport located in Malvern, Arkansas
 - Memorial Field Airport located in Hot Springs, Arkansas
 - Dexter B. Florence Memorial Field located in Arkadelphia, Arkansas
 - Saline County Regional Airport located in Benton, Arkansas
 - Sheridan Municipal Airport located in Sheridan, Arkansas
 - Fordyce Municipal Airport located in Fordyce, Arkansas
- B. Airports in congested areas or airports which are determined to have hazardous approach and departure conditions **must not** be selected (i.e. North Little Rock Municipal Airport located in North Little Rock, Arkansas and Bill and Hillary Clinton National Airport located in Little Rock, Arkansas; (f/k/a Little Rock Municipal Airport).

2.17 ADMINISTRATION PERSONNEL

- A. Commission Supervisor
1. The Commission will assign one Commission Supervisor who will be responsible for coordinating all issues concerning the contract, which may include Readiness Levels, payment of invoices, or any other matters relating to this IFB, with the Contractor.
 2. The Commission Supervisor will monitor and evaluate the Contractor for the effective performance of all operations and requirements of firefighting activities as specified within this IFB.
 3. The Commission Supervisor will be the Contractor's contact on all matters concerning safety and policy. Contract compliance, issues, and resolutions will be handled by the Commission's supervisor.
 4. The Commission Ground Personnel and Air Attack supervisor will critique and evaluate the retardant drops performed by the Contractor's pilots.
- B. Commission Aviation Manager
1. The Aviation Manager will approve the Contractors' qualifications at the beginning of each exclusive use periods and at any time a "call when needed" use begins. Qualifications can mean pilot certification, aircraft performance, and personnel qualifications.
 2. The Aviation Manager will approve each aircraft individually in writing at the beginning of each exclusive use periods and at any time a "call when needed" use begins.
 3. The Aviation Manager will monitor and evaluate the Contractor regarding compliance of FAA rules and regulations and for the effective performance of all operations and requirements as specified within this IFB.

2.18 CONTRACTOR RESPONSIBILITIES

- A. Contractor **shall** report directly to the Commission Supervisor.
- B. Contractor **shall** provide transportation to move personnel and equipment when moving to different airports due to an escalation of fire activity in any area within the State of Arkansas.
- C. Contractor **shall** provide direct supervision of the aircrafts and Pilot-In-Command.
- D. Contractor **shall** maintain professional conduct and behavior while performing the duties of any resulting contract.
- E. Contractor **shall** notify the Commission of any additions or deletions of pilots, aircrafts, or mechanics. Approval **must** be received by the Commission prior to performing any work.
- F. Contractor **shall** provide a list of all pilots that meet the specifications within this IFB, by name and certification level. (See Attachment B).
- G. If the Contractor has one (1) or two (2) aircrafts and or pilots unavailable for ten (10) or more days during the exclusive use periods or when SEAT's have been activated on a call when needed basis, the Commission has the option to cancel the contract.

2.19 OPERATION REQUIREMENTS

- A. Contractor **shall** operate in accordance with the approved FAA operating certificate under 14 CFR 137. This includes all provisions of 14 CFR 91 Visual Flight Rules (VFR) daytime FAR 91.151 and 91.209. Exceptions and additional procedures are listed below:
1. In-route operations **must** be conducted under 14 CFR 91, including compliance with minimum safe altitude requirements of 91.119. The only exception will be the retardant drop, which may be completed in compliance with limitations provided in 14 CFR 137.
 2. Retardant drop **must** be completed in accordance with the FAA approved flight manual procedure.
 3. Minimum retardant drop height **must** be 60-feet above ground cover.
 4. Retardant drops **must** be as accurately as possible on the target area of the fire. Accuracy of retardant drops are usually placed, 25% of drop inside the burn area, and 75% just outside the burn area. The Commissions' air and ground personnel will determine if the accuracy drops are acceptable.
 5. The Pilot-In-Command **shall** be required to determine whether a drop can be accomplished safely. This includes decisions regarding safety of flight such as obstructions, visibility, aircraft performance, and persons and property on the ground. If for any reason the Pilot-In-Command determines a drop is unsafe, it is their responsibility to refuse the drop.
 6. In many cases the initial attack will require the Contractor's pilot to make the decision alone when the Commission's authorized airborne or Ground Personnel are not available. It **shall** be the pilot's responsibility to determine the most effective drop location.
 7. When the Commission's authorized airborne or Ground Personnel are assigned and in charge of the wildfire, the drop location **must** be determined by them; however, this does not preclude the Contractor's pilot's responsibility of whether the drop can be safely completed as noted above.
 8. Aircraft strobe and navigation lights **must** be on and operating during fire suppression activities.
 9. Flights **must** be conducted under Visual Flight Rules (VFR) operating rules and in compliance with airport traffic pattern procedures.
 10. Pilots **shall** have in their possession a current aeronautical chart appropriate to the prescribed area.
 11. Pilots **shall** possess and use a kneeboard.
 12. Pilots **shall** be prohibited from formation flying.
 13. Flight manuals **must** be in the aircraft at all times during fire suppression operations.
 14. Passengers **must** not be allowed during fire suppression flights.
 15. Dual cockpit aircrafts are allowed for a second person during training purposes only and **must** be authorized by the Pilot-In-Command.
 16. Contractor **shall** provide a copy of the company training plan for aerial fire suppression, when requested by the Commission.

2.20 TRAINING AND DEMONSTRATION

- A. The Commission will provide training to the Contractor on the topics listed below. Training(s) will be held at the Base of Operations at the beginning of any SEAT's exclusive use periods.
1. Ground Training Fire Behavior
 - a. Four-hour ground school training on wildland fire behavior, terminology, fire-fighting tactics, and effects of weather and fire-fighting safety, or the Computer Base Training (CBT) as provided by the U.S. Department of Interior.
 - b. Briefing on the Commissions' policy and guidelines.

- c. Briefing and discussion of the aerodynamic effects on aircraft during rapid release of liquid retardant.
- d. Briefing and instructions on the Commissions' communications procedures.

Note: The Commission will reimburse the Contractor for the required ground training of pilots at 0.85 x hourly bid rate, per hour of training.

B. Contractor **shall** provide demonstrations on these topics:

1. In-Flight Demonstrations

- a. Four (4) retardant drops, per pilot, which will be observed by the Commission for accuracy and a minimum of 60-foot drop height above ground cover.
- b. One (1) free retardant drop, per pilot, from a safe altitude for familiarization with "pitch up" tendencies of the aircraft to be flown.
- c. Three (3) retardant drops at a location selected by the Commission on simulated wildland fires.

Note: The Commission will reimburse each plane per hour for in-flight demonstrations at Level II pay rate.

- C. Training and demonstrations **must** be completed by all the Contractor's pilots at a place and time mutually agreed upon between the Commission and the Contractor.
- D. Fire suppression activity will begin after successful training and demonstrations are completed by the Contractor's pilots and have written approval from the Aviation Manager.
- E. A current DOI/USFS Level I or Level II card issued to the pilot will allow the pilot to be exempt from the training and demonstrations listed above.

2.21 CERTIFICATE REQUIREMENTS

Contractor **shall** provide a copy of a valid agricultural operator's certificate under 14 CFR 137, when requested by the Commission. Operations conducted under any resulting contract **must** be in compliance with FAR 137.

2.22 INSURANCE REQUIREMENTS

- A. Contractor **shall** provide proof of insurance, when requested by OSP and/or prior to award, in the following amounts listed below.
 - 1. Liability insurance with a minimum \$2,000,000.00 limit and \$200,000.00 per person occurrence.
 - 2. Workers' compensation on pilots and employees.
- B. The policy or binder **must** specifically indicate coverage for airborne fire suppression. In addition, the policy should name the Arkansas Forestry Commission as an additional insured.

2.23 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. *Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards.
- 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		
Service Criteria	Acceptable Performance	Damages
Response Time for Readiness Levels I and II during exclusive use periods.	Five (5) minutes response time for Readiness Levels I and II during exclusive use periods.	<p>5% reduction in hourly rate if response time is not met within 5-minutes.</p> <p>10% reduction in hourly rate if response time is not met within six (6) to ten (10) minutes.</p> <p>20% reduction in hourly rate if response time is not met within eleven (11) to fifteen (15).</p> <p>50% reduction in hourly rate if after fifteen (15) minutes response time.</p> <p>If, continue repeat of over fifteen (15) minutes response time is not met, the contract may be cancelled at the discretion of Commission.</p>
Exclusive Use Periods	100% compliance during exclusive use periods.	Contract may be cancelled at the discretion of Commission.

SECTION 3 – GENERAL CONTRACTUAL ITEMS

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

3.1 PAYMENT AND INVOICE PROVISIONS

- A. Invoices will be submitted bi-weekly to:

AAD-Forestry Commission
Attn: Pia McDonald
#1 Natural Resources Drive
Little Rock, AR 72205

- B. Payment will be made for all flights ordered by the Commission and flown by the Contractor's pilots.
- C. Payments **shall not** be made for flights for the benefit of the Contractor.
- D. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods and services by the agency.
- E. Do not invoice the State in advance of delivery and acceptance of any goods or services.
- F. 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.
- G. 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.
- H. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- I. Selected Contractor **must** be registered to receive payment and future *Bid Solicitation* notifications. Contractors may register on-line at <https://www.ark.org/contractor/index.html>.

3.2 GENERAL INFORMATION

- A. The State will 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 de-installation.
 - 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.

3.3 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.

3.4 STATEMENT OF LIABILITY

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of 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 \$2,000,000, 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.

3.5 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 at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

3.6 PRICE ESCALATION

- A. Price increases will be considered at time of contract renewal.
- B. The Contractor **shall** 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.

3.7 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.

3.8 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.

3.9 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.

3.10 SEVERABILITY

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the 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 4 – STANDARD TERMS AND CONDITIONS

- *Do not provide responses to items in this section.*
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
- 2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
- 3. **BID SUBMISSION:** Original Bid Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Bid 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 should show title or authority to bind his firm in a contract. Multiple bids **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 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 bids 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 *Bid 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.