



HENDERSON STATE UNIVERSITY

EXCELLENCE • SPIRIT • TRADITION

INVITATION FOR BID BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	19-18	Solicitation Issued:	June 6, 2019
Description:	Two Maule Aircraft		
	Please understand that this document is designed for an agency to make purchases from a company, not an individual. Therefore, it may appear a bit awkward.		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	June 27, 2019	Bid Opening Time:	5:00 p.m., Central Time
<p>Deliver bid submissions for this Invitation For Bid to Henderson State University (HSU) Purchasing 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. .</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p>Henderson State University 1100 Henderson Street Arkadelphia, AR 71999-0001</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 HSU 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

HSU - PURCHASING CONTACT INFORMATION			
	TIM JONES	Direct Phone Number:	870-230-5117
Email Address:	JONEST@HSU.EDU		
HSU Website:	http://www.HSU.EDU		

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

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

1.1 PURPOSE

Henderson State University (HSU), Department of Aviation, is seeking to purchase two used Maule aircraft, ready for use in the Fall Semester of 2019.

MXT-7-160 or MXT-7-180A;
1997 model year or newer;
3,000 hours on airframe, or less;
Fixed pitch propeller;
Subject to pre-purchase and log book inspections;

Consideration of purchase will include, but will not be limited to, overall condition of aircraft, condition of airframe, condition of engine, avionics installed and their condition.

1.2 TYPE OF CONTRACT

- A. As a result of this IFB, HSU Purchasing intends to award a contract to a single or multiple Seller(s), whichever proves to be in the best interest to Henderson State University.
- B. The anticipated purchase date for any resulting agreement is on or after July 1, 2019. By submitting a signed bid in response to the IFB, the Prospective Seller/Contractor represents and warrants that it will honor their offering for a period of 30 days for State approval.

1.3 ISSUING Department

HSU Purchasing, as the issuing Department, is the sole point of contact throughout this solicitation process.

1.4 BID OPENING LOCATION

Bids will be opened at the following location:

HSU Purchasing Department
1100 Henderson Street, Womack Hall, Room 314
Arkadelphia, AR 71999-0001

1.5 ACCEPTANCE OF REQUIREMENTS

- A. A Prospective Seller/Contractor **must** unconditionally accept all Requirements in the Requirements Section(s) 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 Section(s) of this IFB.

1.6 DEFINITION OF TERMS

- A. HSU Purchasing Department 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 Seller/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, equipment, 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 Seller/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 Henderson State University.

1.7 **RESPONSE DOCUMENTS**

A. Bid Response

1. The following are Bid Submission Requirements and **must** be submitted with your original Bid Response.
 - a. Original signed *Bid Offering*. Written proposal giving details about the offering, complete contact information that is signed in ink, and a W-9 form.
 - i. An official / owner authorized to bind the Prospective Contractor(s) to a resultant contract **must** sign the Bid offering included in the *Bid Response*.
 - 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* could 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* as a hard copy and as an electronic copy, preferably on a flash drive and in PDF format. HSU can work with you on this.
 - a. EO 98-04 Disclosure Form.
 - b. Copy of Prospective Seller/Contractor’s *Equal Opportunity Policy*. N/A if an individual.
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 no later than two days before bid opening date as shown on page one (1) of this *Bid Solicitation*.
 1. For each question submitted, Prospective Seller/Contractor should reference the specific solicitation item number to which the question refers.
 2. Prospective Seller /Contractors’ written questions will be consolidated and responded to by HSU.
- B. The Prospective Seller/Contractor should notify the HSU Purchasing Department of any term, condition, etc., that precludes the Prospective Seller/Contractor from submitting a compliant, responsive proposal. Prospective

Seller/Contractors should note that it is the responsibility of the Prospective Seller/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. An oral statement by HSU will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Seller/Contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by HSU Purchasing.
- D. Prospective Seller/Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

1.9 **SUBCONTRACTORS**

Not Applicable to this solicitation

1.10 **PRICING**

- A. Prospective Seller/Contractor(s) **shall** include all pricing on the Official Bid Price Sheet. If any cost is not identified by the successful Seller/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 and approvals, prices **must** be valid for 30 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**

Not Applicable

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/HSU 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 Seller/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 Seller/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, if any, should be submitted on a flash drive in the *Bid Response Packet*.
- 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 Seller/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 Seller/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 Seller/Contractor will be contacted prior to release of the documents.
- L. HSU has no liability to a Prospective Seller/Contractor with respect to the disclosure of Prospective Seller/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 HSU Purchasing.
- B. Do not alter any language in any solicitation document provided by HSU.
- C. All official documents and correspondence related to this solicitation become part of the resultant contract.
- D. HSU has the right to award or not award a contract, if it is in the best interest of HSU to do so.
- E. If requested, provide clarification regarding Prospective Seller/Contractor's bid response to HSU.
- F. Prospective Seller/Contractors may submit multiple bids offerings.

1.15 **REQUIREMENT OF ADDENDUM**

- A. Only an addendum written and authorized by HSU Purchasing will modify this *Bid Solicitation*.
- B. The Prospective Seller/Contractor is expected to check HSU Purchasing website, <https://www.hsu.edu/pages/about/administration/finance-and-administration/purchasing/> for any and all addenda up to bid opening.

1.16 **AWARD PROCESS**

A. Successful Contractor Selection

Award will be made to the lowest-bidding, responsible Prospective Seller/Contractor (LINE ITEM, ALL OR NONE, MULTIPLE CONTRACTOR ETC) basis. Consideration of purchase will include, but will not be limited to, overall condition of aircraft, condition of airframe, condition of engine, avionics installed and their condition.

1.

B. Negotiations

1. If the State so chooses, negotiations may be conducted with the lowest-bidding Prospective Seller/Contractor. Negotiations are conducted at the sole discretion of the HSU.
2. If negotiations fail to result in a contract, HSU may begin the negotiation process with the next lowest-bidding Prospective Seller/Contractor. The negotiation process may be repeated until the anticipated

successful Contractor has been determined, or until such time HSU decides not to move forward with an award.

C. Anticipation to Award

1. Once the anticipated successful Contractor(s) has been determined, the anticipated award will be announced to all participants.
2. The anticipated award will be for a period of fourteen (14) days prior to the issuance of a contract. .
3. HSU may waive the policy of Anticipation to Award when it is in the best interest of the HSU.

D. Issuance of Contract

Any resultant contract of this *Bid Solicitation* is subject to State approval processes which may include Legislative review.

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, HSU must have a copy of the anticipated Seller/Contractor's *Equal Opportunity (EO) Policy* prior to issuing a contract award, if applicable.

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 Seller/Contractors who are not required by law by to have an *EO Policy* **must** submit a written statement to that effect.

1.20 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

A. Pursuant to Arkansas Code Annotated § 19-11-105, Contractor(s) providing services **shall** certify with HSU 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 Seller/Contractor's past performance with the State may be used to determine if the Prospective Seller/Contractor is "responsible". Bids submitted by Prospective Seller/Contractors determined to be non-responsible will be rejected.

1.23 **TECHNOLOGY ACCESS**

- A. When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Prospective Contractor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.
- B. Accordingly, the Prospective Contractor expressly represents and warrants to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:
1. Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means.
 2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use.
 3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
 4. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means.
 5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact.
 6. Integrating into networks used to share communications among employees, program participants, and the public.
 7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

- C. State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies must evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product, including any required reasonable accommodations.
- D. For purposes of this section, the phrase “equivalent access” means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired **shall** be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.
- E. If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

1.24 **COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM**

The Prospective Contractor’s commodity or service **must** comply with the State’s shared Technical Architecture Program which is a set of policies and standards that can be viewed at: <https://www.dfa.arkansas.gov/intergovernmental-services/state-technology-cost-analysis/architecture-compliance/>. Only those standards which are fully promulgated or have been approved by the Governor’s Office apply to this solution.

1.25 **VISA ACCEPTANCE**

- A. Awarded 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 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.

1.27 **RESERVATION**

HSU 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 Henderson State University Purchasing Department to obtain pricing and a contract(s) for Two Used Maule Aircraft. MXT-7-160 or MXT-7-180A; 1997 model year or newer; 3,000 hours on airframe, or less; Fixed pitch propeller; Subject to pre-purchase and log book inspections;

2.2 DELIVERY: FOB DESTINATION (pick up by HSU may be a possibility).

Henderson State University
Arkadelphia Airport
Arkadelphia, AR 71923

- A. HSU requests delivery within five working days after receipt of the order. If this delivery date cannot be met, the Prospective Seller/Contractor **must** state the alternate number of days required to begin the service and/or place the commodity in the ordering agency's designated location. Failure to state the alternate delivery time obligates the Contractor to complete delivery by the agency's requested date. Extended delivery dates may be considered when in the best interest of HSU.
- B. Loss or damage that occurs during shipping, prior to the ownership transfer, is the Contractor's responsibility

2.3 ACCEPTANCE STANDARDS

All laws pertaining to the transfer of ownership of an aircraft by the FAA shall apply.

SECTION 3 – GENERAL CONTRACTUAL ITEMS

- Do not provide responses to items in this section.

3.1 PAYMENT AND INVOICE PROVISIONS

A. Forward invoices to:

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

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods by HSU. Check may be delivered at the time the aircraft are delivered/picked up.
- C. Payment will be made only after the Contractor has successfully satisfied the agency as to the reliability and effectiveness of the goods purchased as a whole.
- D. 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.
- E. Selected Contractor **must** be registered to receive payment. Please submit a W-9 with your response to this solicitation.

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 HSU 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. HSU 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. HSU will not at any time be responsible for or accept liability for any Contractor-owned items.
- B. 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 HSU/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 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.

3.6 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:** HSU **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 HSU.
- 3. **BID SUBMISSION:** Original Bid Packets **must** be submitted to HSU 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.
- 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. HSU 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. HSU **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and HSU 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 HSU. 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 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 HSU PURCHASING. 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.
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 HSU Purchasing 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 HSU Purchasing 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/HSU 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 HSU. Contractor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The Contractor **must** agree to indemnify and hold HSU 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.