



STATE OF ARKANSAS SOLICITATION TERMS AND CONDITIONS

1. **Prime Contractor Responsibility**

A single Prospective Contractor must be identified as the prime contractor. 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.

2. **Award Process**

a. **Negotiations (IFB)**

- i. 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.
- ii. 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.

b. **Negotiations (RFP)**

- i. If the State so chooses, it may conduct discussions for the purposes of negotiation or clarification.
- ii. Negotiation is optional and conducted at the sole discretion of the State.
- iii. Negotiation may be conducted contemporaneously with all responsible offerors determined to be reasonably susceptible of being selected for award or in serial fashion beginning with the highest-ranked Prospective Contractor and proceeding to the next highest-ranked Prospective Contractor. The negotiation process may be repeated until the State awards a contract, gives notice of anticipated award, or until the State decides to conclude negotiations.
- iv. The State may elect to request best and final offers.

c. **Anticipation to Award**

- i. Once the anticipated successful Contractor has been determined, the anticipated award will be posted on the ARBuy website at <https://arbuy.arkansas.gov>.
- ii. Anticipated awards will generally 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 only anticipated awards and are subject to protest.
- iii. It is the responsibility of Prospective Contractors to check ARBuy for the posting of an anticipated award.

d. Issuance of Contract

- i. Any resultant contract of a *Solicitation* is subject to State review and approval processes, which may include Legislative review, prior to award.

3. Pricing

- a. Prospective Contractor(s) shall include all pricing as requested in the solicitation, which may include providing pricing within the ARBuy system or by filling out an Official Solicitation Price Sheet(s) attached to the solicitation posting. If any cost is not identified by the successful Contractor but is subsequently incurred in order to perform its contractual obligations, the Contractor shall bear this additional cost.
- b. IF THE OFFICIAL SOLICITATION PRICE SHEET OR ARBUY SYSTEM DOES NOT ALLOW FOR ACCURATE PRICING, PLEASE NOTIFY THE BUYER AT LEAST SEVENTY-TWO (72) HOURS BEFORE THE SOLICITATION SUBMISSION DEADLINE.
- c. Bid unit price F.O.B. destination. In case of errors in extension, unit prices shall govern.
- d. Prices shall be firm offers and shall not be subject to escalation unless otherwise specified in the *Solicitation*.
- e. "Discount from list" bids or proposals are not acceptable unless requested in the *Solicitation*.
- f. Do not include State or local sales taxes in the price. Trade discounts should be deducted from the unit price and the net price should be shown in the solicitation.
- g. DO NOT submit any ancillary information not related to actual pricing on or with bid or proposal response.

4. Independent Price Determination

- a. By submission of a bid or proposal, the Prospective Contractor represents and warrants that the prices in the bid or proposal have been arrived at independently, without any collusion with another competing Prospective Contractor.
- b. Collusion violates Arkansas Procurement Law. Not only can it lead to suspension or debarment, it can be referred to the Attorney General's officer for investigation and appropriate legal action.

5. Past Performance

In accordance with provisions of State Procurement Law, specifically TSS 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 or proposals submitted by Prospective Contractors determined to be non-responsible will be rejected.

6. Proprietary, Confidential, and Exempt Information

- a. Submission documents pertaining to the *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 sealed bidding and sealed proposal process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade

secrets, personally identifiable information, and other information exempted from public disclosure pursuant to FOIA.

- c. Under no circumstances will pricing information submitted in response to an invitation for sealed bids or request for sealed proposals be designated as confidential after the sealed bids or sealed proposals have been opened.
- d. Consistent with and to the extent permitted under FOIA, any Prospective Contractor may designate appropriate portions of a bid or proposal as confidential by submitting a redacted copy of the bid or proposal. By so redacting any information contained in the bid or proposal, the Prospective Contractor warrants that, after having received such necessary or proper review by counsel or other knowledgeable advisors, it has formed a good faith opinion that the portions redacted are not considered public records under FOIA.
- e. If a Prospective Contractor deems part of the information contained in a response not to be a public record, the Prospective Contractor should submit a complete copy of the submission documents from which any proprietary, confidential, or exempt information has been redacted within their bid or proposal response. Except for the redacted information, the redacted copy must be identical to the non-redacted bid or proposal response, reflecting the same pagination and showing the space from which information was redacted.
- f. The Prospective Contractor is responsible for identifying all proprietary, confidential, and exempt information and for ensuring it is protected against restoration of redacted data.
- g. The redacted copy will be open to public inspection under the FOIA without further notice to the Prospective Contractor. If the State deems redacted information to be subject to a public record request under FOIA, the State will endeavor to notify the Prospective Contractor prior to release of the redacted record.
- h. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential or proprietary information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

7. Caution to Prospective Contractors

- a. Prior to any contract award, address all communication concerning the *Solicitation* through the buyer listed on page one of the solicitation document.
- b. Do not alter any language in any solicitation document provided by the State.
- c. Do not alter any pricing documents provided as part of any solicitation document provided by the State.
- d. As requested, provide clarification regarding Prospective Contractor's bid or proposal response.
- e. Qualifications and proposed services must meet or exceed the required specifications as set forth in the *Solicitation*.
- f. Prospective Contractors may submit multiple bids or proposals.

8. Quantities

Quantities stated in a *Solicitation* for term contracts are estimates only and are not guaranteed. Contractor must bid or propose 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 State.

9. Guaranty

All items bid or proposed shall be newly manufactured and merchantable, unless otherwise expressly indicated in the *Solicitation*. By submitting a bid or proposal, the Prospective Contractor implicitly represents and warrants that any goods its sells to the Department under a resulting contract shall be merchantable.

10. Samples

Samples or demonstrators, when requested, must be furnished free of expense to the State. Each sample should be marked with the Prospective Contractor's name and address, bid/proposal or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at Prospective Contractor's expense. After reasonable examination, all demonstrators will be returned at Prospective Contractor's expense.

Tests may be performed on samples or demonstrators submitted with the bid/proposal 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.

11. Brand Name References

Unless otherwise specified in the *Solicitation*, any catalog brand name or manufacturer reference used in the *Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids or proposals on brands of like nature and quality will be considered. If bidding or proposing on other than referenced specifications, the bid or proposal 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 Prospective Contractor to supply additional descriptive material. The Prospective Contractor shall guarantee that the product offered will meet or exceed specifications identified in the *Solicitation*. Prospective Contractors not bidding or proposing 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.

12. Amendments

Prospective Contractor's bids or proposals cannot be altered or amended after the bid or proposal opening except as permitted by law or rule.

13. Addendums

- a. Only an addendum written and authorized by the State will modify the *Solicitation*.
- b. An addendum posted within three (3) calendar days prior to the bid or proposal opening may extend the bid or proposal opening and may or may not include changes to the *Solicitation*.

- c. The Prospective Contractor is expected to check the ARBuy website, <https://arbuy.arkansas.gov>, for any and all addenda up to bid or proposal opening.

14. P-Card 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.

15. 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 or Proposal Signature Page*.

16. Equal Opportunity Policy

- a. In compliance with Arkansas Code Annotated § 19-11-104, the State 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 in the bid or proposal response.
- c. Prospective Contractors who are not required by law to have an *EO Policy* must submit a written statement to that effect.

17. Prohibition of Employment of Illegal Immigrants

- a. Pursuant to Arkansas Code Annotated § 19-11-105, Contractor(s) providing services shall certify that they do not employ or contract with illegal immigrants.
- b. By signing and submitting a response to a *Solicitation*, Prospective Contractors agree and certify that they do not employ or contract with illegal immigrants. If selected for award, the Prospective Contractor certifies that they shall not employ or contract with illegal immigrants during the aggregate term of the contract.

18. 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 or Proposal Signature Page of the response packet, the Prospective Contractor agrees and certifies that Prospective Contractor does not, and shall not boycott Israel for the duration of the contract.

19. Discrimination

In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, a 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.

20. Contingent Fee

By submitting a bid or proposal, the Prospective Contractor represents and warrants that the Prospective Contractor 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 Prospective Contractor for the purpose of securing business.

21. Compliance with the State Shared Technical Architecture Program

The Prospective Contractor's solution 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.transform.ar.gov/information-systems/policies-standards/> and <https://www.transform.ar.gov/information-systems/policies-standards/standards/>. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.