**STATE OF ARKANSAS**

**DEPARTMENT NAME**

Department Address

City, Arkansas Zip Code

**INVITATION FOR BID**

SOLICITATION DOCUMENT

|  |
| --- |
| **SOLICITATION INFORMATION** |
| Solicitation Number: | S0000000xx | Solicitation Issued: | Month xx, 20xx |
| Description: |  |
| Division/Agency: |  |

|  |
| --- |
| **SUBMISSION DEADLINE** |
| Bid Opening Date: | Month xx, 20xx | Bid Opening Time: | 0:00 p.m., Central Time |
| Bid responses for this Invitation for Bid **must** be delivered to the Department Name on or before the submission deadline. Bids received after the submission deadline may be rejected as untimely. See Section 1.2 for information regarding Live Bid Openings.  |

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| --- |
| **DELIVERY OF RESPONSE DOCUMENTS** |
| Delivery Address and IFB Opening Location | Department NameOffice NameDelivery AddressCity, Arkansas Zip CodeDelivery providers, USPS, UPS, and FedEx deliver mail to the delivery street address on a schedule determined by each individual provider. These providers will deliver based solely on the street address. **Prospective Contractors assume all risk for timely, properly submitted deliveries.** |
| Bid’s Outer Packaging | 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.* Solicitation number
* Date and time of bid opening
* Prospective Contractor's name and return address
 |

|  |
| --- |
| **DEPARTMENT NAME CONTACT INFORMATION** |
| Buyer: |  | Buyer’s Direct Phone Number: |  |
| Email Address: |  | Department’s Main Number: | 501-324-9316 |
| Department Website: | [transform.ar.gov/procurement](https://www.transform.ar.gov/procurement/) |

# SECTION 1 – INFORMATION AND INSTRUCTIONS

## INTRODUCTION

This Invitation for Bid (IFB) is issued by the Department Name for the Division/Agency to obtain pricing and a contract(s) for commodity or service.

Direct all communications regarding this Solicitation to the Buyer on page one (1) of the IFB.

## LIVE BID OPENING

Use the information below to view the bid opening online [replace with physical bid location if applicable]

Zoom Meeting Link:

Meeting ID:

Meeting Password:

Dial-In Information: 877 853 5257 US Toll-free

 888 475 4499 US Toll-free

## OBJECTIVE AND GOALS

The Department seeks to

## BACKGROUND AND CURRENT ENVIRONMENT [delete this section if Solicitation is for a commodity]

The Department has

## TYPE OF CONTRACT

* 1. As a result of this IFB, the Department intends to award a contract to a single Contractor (see *Contractor Selection*).
	2. The anticipated starting date for any resulting contract is Month xx, 20xx, except that the actual contract start date may be adjusted unilaterally by the State for up to three (3) 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.
	3. The initial term of a resulting contract will be for one (1) year. Upon mutual agreement by the Contractor and Department, the contract may be renewed by the State 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.

## DEFINITION OF TERMS [Add specific terms, in alphabetical order, relevant to the Solicitation; often terms can be defined throughout the Solicitation and are not required to be defined here]

1. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law have the same meaning herein.
2. The terms “Invitation for Bid,” “IFB,” and “Solicitation” are used synonymously in this document.
3. “Prospective Contractor” means a responsive and responsible bidder who submits a bid that meets the Requirements and criteria set forth in this Solicitation.
4. “Requirement” means a term, condition, provision, deliverable, Specification, or a combination thereof, that is obligated under the Solicitation, resulting contract, or both.
5. “Shall” and “must” mean the imperative and are used to identify Requirements and Specifications.
6. “Specification” means any technical or purchase description or other description of the physical or functional characteristics, or of the nature, of a commodity or service. “Specification” may include a description of any Requirement for inspecting, testing, or preparing a commodity or service for delivery.
7. “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 Department using such a contract.

## CONTRACTOR SELECTION

* 1. Award is expected to be made to the responsive and responsible Prospective Contractor determined to have submitted the lowest bid that meets the Requirements and criteria set forth in the IFB, based on the Total Annual Cost/Estimated Total Cost, etc. of the *Official Bid Price Sheet* submitted by the Prospective Contractor.
	2. If the State so chooses, negotiations may be conducted with the lowest-bidding, responsive and responsible Prospective Contractor if:
		1. All bids received from responsive and responsible bidders exceed available funding; or
		2. It appears that additional savings to the state may result from negotiation.
	3. If negotiations fail to result in a contract, the State may negotiate with the next lowest-bidding, responsive and responsible Prospective Contractor.
		1. The negotiation process may be repeated until an acceptable lower bid price is negotiated, or until such time the State determines negotiations are no longer in the best interest of the state.
		2. Negotiations are conducted at the sole discretion of the State.
	4. Once the anticipated awardee has been determined, the anticipated award will be posted to the Solicitation posting, generally for a period of fourteen (14) days prior to the issuance of a contract. The postings are anticipated awards only, subject to protest.
	5. A contract is not effective prior to final award being made by the State; some contracts may be subject to Legislative review prior to final award.

## CLARIFICATION OF SOLICITATION

* 1. Submit questions regarding this Solicitation via email to the Buyer on page one (1) of the IFB by midnight, Central Time on or before date.
		1. For each question submitted, Prospective Contractor should reference the specific Solicitation item number to which the question refers, as applicable.
		2. Prospective Contractors’ written questions will be consolidated and answered by the State as deemed appropriate. The State’s consolidated written response is anticipated to be posted to the Solicitation posting by the close of business on date. If Prospective Contractor questions are unclear or non-substantive in nature, the State may request clarification of a question(s) or decline to answer.
	2. The Prospective Contractor should notify the Buyer of any term, condition, etc., that precludes the Prospective Contractor from submitting a Responsive Bid. 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.
	3. Prospective Contractors may contact the Buyer with non-substantive questions at any time prior to the bid opening.
	4. An oral statement by the Department 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 the Department.

## RESPONSE DOCUMENTS

* 1. All bids **must** be submitted to the delivery address and by the submission deadline on page one (1) of the IFB.
	2. *Bid Response Packet*
		1. Prospective Contractors **shall** utilize the *Bid Response Packet* attached to the Solicitation to submit their bids.
		2. The following are bid submission Requirements and **must** be submitted as part of a Prospective Contractor’s bid.
			1. Signed *Bid Signature Page*; signature may be ink or digital*.*
			2. Completed *Bid Response Packet*, which **must** be in English.
			3. Completed *Official Bid Price Sheet* attached to Solicitation posting.
				1. Pricing **must** be proposed in U.S. dollars and cents.
				2. Quantities stated are estimates only and are not guaranteed. Prospective 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, and the Contractor **shall** sell to the Department quantities ordered at no more than the bid price.

* + - * 1. If pricing documents do not allow for accurate pricing, Prospective Contractor should notify the Buyer at least seventy-two (72) hours before the bid opening time.
				2. Prices **must** be firm offers and adjustments may be negotiated at the time of contract renewal/annually/quarterly or **shall not** be subject to escalation.

**Include this bullet if price increase is an option**: A request for a price increase **must** include supporting documentation demonstrating that the increase in contract price is based on an increased cost to the Contractor and that the proposed pricing is still competitive in the marketplace. The State has the right to approve or deny any request for a price adjustment.

* + - * 1. Discount from list bids pricing is not acceptable unless requested elsewhere in the Solicitation.
				2. State and local sales taxes should not be included in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
			1. Copy of Prospective Contractor’s *Equal Opportunity Policy*
				1. Pursuant to Arkansas Code Annotated § 19-11-104, OSP requires a Prospective Contractor bidding on a state contract to submit a copy of the Prospective Contractor’s *Equal Opportunity (EO) Policy*. Prospective Contractors not required by law to have an *EO Policy* **must** submit a written statement to that effect.
			2. *Proposed Subcontractors Form* (see [SRV-1](https://www.transform.ar.gov/wp-content/uploads/Services-Contract-SRV-1-Fillable-Form-V.3.6.27.22.pdf) or [Standard Commodities Contract](https://www.transform.ar.gov/wp-content/uploads/2020/06/Standard-Commodities-Contract-Template-6.18.20.docx), section 14)
		1. The following items, which **must** be submitted prior to a contract award to the Prospective Contractor, may also be included with the Prospective Contractor’s bid response:
			1. *EO 98-04 Contract & Grant Disclosure Form* (see [SRV-1](https://www.transform.ar.gov/wp-content/uploads/Services-Contract-SRV-1-Fillable-Form-V.3.6.27.22.pdf) or [Standard Commodities Contract](https://www.transform.ar.gov/wp-content/uploads/2020/06/Standard-Commodities-Contract-Template-6.18.20.docx), section 11)
			2. *Voluntary Product Accessibility Template* ([VPAT](https://www.section508.gov/sell/vpat/)), if applicable
		2. Prospective Contractors should not include any other documents or ancillary information, such as a cover letter or promotional marketing information*.*
	1. Prospective Contractors should not alter any language in Solicitation document(s) or *Official Bid Price Sheet* provided by the State.
	2. Prospective Contractors’ bids cannot be altered or amended after the bid opening except as permitted by law or rule.
	3. As requested, Prospective Contractors **shall** provide clarification regarding Prospective Contractor’s bid response.
	4. Prospective Contractors may submit multiple bids.

# SECTION 2 – SPECIFICATIONS AND REQUIREMENTS

### SPECIFICATIONS [delete this section if Solicitation is for services; create additional sections as needed (i.e., Quality Requirements, Implementation, Reporting)]

* 1. The commodity **must**…

### GENERAL REQUIREMENTS [delete this section if Solicitation is for commodities; create additional sections as needed (i.e., Deliverables, Implementation, Training, Reporting)]

* 1. The Contractor **shall**…

### PERFORMANCE STANDARDS [this section is only required for Services Contracts equal to or more than $1,000,000 in a single contract year or $7,000,000 total projected cost; however, performance standards are recommended for all services contracts.]

* 1. State law requires that contracts for services include Performance Standards for measuring the overall quality of services that a Contractor **shall** provide.
	2. 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. Table A: *Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards.
	3. Performance Standards **shall not** be amended unless they are agreed to in writing and signed by the parties.
	4. Failure to meet the minimum Performance Standards as specified will result in the assessment of damages.
	5. 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.
	6. Should any compensation be owed to the Department due to the assessment of damages, the Contractor **shall** follow the direction of the Department regarding the required compensation process.

**TABLE A: PERFORMANCE STANDARDS**

|  |  |  |
| --- | --- | --- |
| **Criteria** | **Standard** | **Damages** |
| *Example: Implementation* | *Completes all implementation activities by the Go-Live Date.* | $300 for each calendar day beyond the Go-Live Date whereby the Contractor fails to complete all implementation activities.*Contractor will credit damages applied to the first submitted monthly invoice.*  |
|  |  |  |
|  |  |  |

# SECTION 3 – SOLICITATION TERMS AND CONDITIONS

#### ACCEPTANCE OF REQUIREMENTS

* 1. A Prospective Contractor’s past performance with the State may be used to determine if the Prospective Contractor is responsible (OSP Rule R1:19-11-235).
		1. Bids submitted by Prospective Contractors determined to be non-responsible will be rejected.
	2. A single Prospective Contractor **must** be identified as the prime contractor.
		1. The prime Contractor **shall** be responsible for the resulting contract and jointly and severally liable with any of its subcontractors, affiliates, or agents to the State for the performance thereof.
	3. By submitting a bid, the Prospective Contractor represents and warrants:
		1. That the prices in the bid have been arrived at independently, without any collusion with another competing Prospective Contractor.
			1. Collusion violates Arkansas Procurement Law and can lead to suspension, debarment, and can be referred to the Attorney General’s officer for investigation and appropriate legal action (Arkansas Code Annotated § 19-11-240 and 19-11-245).
		2. That the Prospective Contractor has not retained a person to solicit or secure the resulting 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.
	4. Qualifications, services, and commodities **must** meet or exceed the required Specifications as set forth in the Solicitation.

#### GENERAL TERMS AND CONDITIONS

* 1. The Contractor **must** be registered as a vendor to receive payment and may register online by visiting [ark.org/vendor/index](https://www.ark.org/vendor/index.html?_ga=2.231672543.1782009942.1693919943-292160598.1646079585) and clicking the *Start Here* button.
	2. Pursuant to Arkansas State Procurement Law, the Contractor **shall** certify that, unless they offer to provide the goods or services for at least twenty percent (20%) less than the lowest certifying Prospective Contractor:
		1. They are not engaged in and **shall not**, during the aggregate term of the resulting contract, engage in a boycott of Israel (Arkansas Code Annotated § 25-1-503),
		2. They are not engaged in and **shall not**, during the aggregate term of the resulting contract, engage in a boycott of an Energy, Fossil Fuel, Firearms, or Ammunition Industry (Arkansas Code Annotated § 25-1-1102).
	3. Pursuant to Arkansas Procurement Law, the Contractor **shall** certify that the Contractor does not knowingly employ or contract with illegal immigrants and that the Contractor **shall** **not** knowingly employ or contract with illegal immigrants during the aggregate term of any contract with the State or any of its departments, institutions, or political subdivisions (Arkansas Code Annotated § 19-11-105).
	4. The Contractor **shall** invoice the State as required by the Department and should not invoice the State in advance of delivery and acceptance of any commodities or services (Arkansas Code Annotated § 19-4-1206).
		1. The Contractor should invoice the agency by an itemized list of charges. The Department’s purchase order number and/or the contract number should be referenced on each invoice.
		2. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of commodities and services by the Department.
		3. Payment will be made only after the Contractor has successfully satisfied the Department as to the reliability and effectiveness of the commodities or services purchased as a whole.
	5. The Contractor should be able to accept the State’s authorized VISA Procurement Card
	(p-card) as a method of payment. Price changes or additional fee(s) **must** **not** be levied against the State when accepting the p-card as a form of payment.
	6. The Prospective Contractor **shall** certify that they are not a company owned in whole or with a majority ownership by the government of the People's Republic of China (a “Scrutinized Company”) and that they do not and **shall not** during the aggregate term of the resulting contract employ a Scrutinized Company as a contractor (Arkansas Code Annotated § 25-1-1203).
	7. This IFB incorporates all terms of the *Services Contract (SRV-1) Fillable Form* (found [here](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.transform.ar.gov%2Fwp-content%2Fuploads%2FServices-Contract-SRV-1-Fillable-Form-V.3.6.27.22.pdf&data=05%7C01%7Cbrandi.schroeder%40arkansas.gov%7C9a1a244ccb3c41e3116e08db39ea4a05%7C5ec1d8f0cb624000b3278e63b0547048%7C0%7C0%7C638167450648138830%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=vJT2HAmMqM7FwUbkgVGtr%2B%2FlT%2B8b43e9Zz0oayZPGiY%3D&reserved=0)) or *Standard Commodities Contract Template* (found [here](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.transform.ar.gov%2Fwp-content%2Fuploads%2F2020%2F06%2FStandard-Commodities-Contract-Template-6.18.20.docx&data=05%7C01%7Cbrandi.schroeder%40arkansas.gov%7C9a1a244ccb3c41e3116e08db39ea4a05%7C5ec1d8f0cb624000b3278e63b0547048%7C0%7C0%7C638167450648138830%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=saEjjM86uWoaDF9dYm8vZyUNFnL%2FBE21Jmb4au4Nn70%3D&reserved=0)).
		1. The contract template is attached to the Solicitation as a sample for your information only.
		2. A Prospective Contractor’s bid may be rejected if a Prospective Contractor takes exception to any terms, conditions, or Requirements in this IFB.
	8. The Prospective Contractor agrees and **shall** adhere to all terms, conditions, and Requirements if selected as the Contractor.
		1. Items may only be modified if the legal requirement is satisfied and approved by the State during negotiations.

#### GUARANTEES, SAMPLES, AND BRAND NAME REFERENCES [delete this section if Solicitation does not include a commodity]

1. By submitting a bid, the Prospective Contractor represents and warrants that goods its sells to the Department under a resulting contract **shall** be merchantable.
2. Samples or demonstrators, when requested, **must** be furnished for inspection free of expense to the State.
	1. Each sample should be marked with the Prospective Contractor's name and address, bid or contract number, and item number.
		1. If requested, samples that are not destroyed during reasonable examination will be returned at Prospective Contractor's expense.
		2. After reasonable examination, all demonstrators will be returned at Prospective Contractor’s expense.
	2. Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment.
		1. If products tested fail to meet or exceed all Requirements and Specifications, the cost of the sample used and the reasonable cost of the testing **must** be borne by the Prospective Contractor.
3. Unless otherwise specified in the Solicitation, a catalog brand name or manufacturer reference used in the Solicitation is descriptive only, not restrictive, and used to indicate the type and quality desired.
	1. Bids on brands of like nature and quality will be considered.
		1. 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.
		2. Prospective Contractors not bidding an alternate to the referenced brand name or manufacturer **shall** furnish the product according to brand names, numbers, etc., as specified in the Solicitation.

#### TECHNOLOGY ACCESS [delete this section if solicitation is not for an IT commodity or service]

1. 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 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, 2019 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2019 (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.
2. Accordingly, the 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, 2019 (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.
3. 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.
4. 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, 2019.
5. 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.
6. The proposed commodities, services, or both **must** comply with the State’s shared Technical Architecture Program which is a set of policies and standards that can found [here](https://www.transform.ar.gov/information-systems/policies-standards/). Only those standards that are fully promulgated or have been approved by the Governor’s Office apply to the solution.

#### DELIVERY: FOB DESTINATION [delete this section if solicitation is not for a commodity]

Department Name

Division Name

Delivery Street Address

City, AR Zip

* 1. The Contractor **shall** take all reasonable measures to ensure that commodities purchased **must** be delivered within thirty (30) days of the Department’s issuance of the relevant purchase order unless otherwise agreed upon in writing.
		1. The Contractor **shall** give the Department immediate notice of any anticipated delays or plant shutdowns that will affect the delivery requirement. **The Contractor** will not be liable for delays in performance or for non-performance due to unforeseen circumstances or causes beyond the Contractor’s reasonable control.
		2. If a delivery date specified in this IFB cannot be met, the Prospective Contractor **must** state the alternate number of days required to place the commodities in the ordering Department’s designated location.
		3. Failure to state the alternate delivery time obligates the Contractor to complete delivery by the Department’s requested date. Extended delivery dates may be considered when in the best interest of the State.
	2. All deliveries **must** be made during normal State work hours.
	3. The Contractor **shall** pay all transportation and handling charges, unless otherwise agreed upon in writing by the Contractor and Department.
	4. The Contractor **shall** bear responsibility for loss or damage that occurs during shipping, prior to the order being received by the Department.
		1. Risk of loss of the order will pass to the Department upon Contractor’s delivery of the order conforming to the resulting pursuant to a purchase order.
		2. All orders should be properly packaged to prevent damage during shipping.
	5. The State assumes no liability for commodities produced, processed, or shipped in excess of the amount specified on the Department’s purchase order.
	6. Unless otherwise agreed upon in writing by the Contractor and Department, payment will be made within thirty (30) days of the date of the Contractor’s delivery of product(s) conforming to the resulting contract and receipt of the Contractor’s invoice, whichever is later.

#### INSPECTION AND ACCEPTANCE [delete this section if solicitation is not for a commodity]

* 1. The State may inspect any commodities delivered, tendered, or identified to the State as being procured under a resulting contract to determine whether they conform to the contract.
		1. The State’s right to inspection may be exercised at any reasonable place and time and in any reasonable manner, as determined in the State’s reasonable discretion, prior to acceptance of and payment for any commodities procured under a resulting contract.
		2. If the commodities are found to be conforming as the result of inspection, the State will bear the cost of inspection, if any.
		3. If any of the commodities are found to be non-conforming, the State:
			1. May elect to recover expenses of inspection, if any, from the Contractor and the Contractor **shall** bear the cost
			2. The Contractor **shall** be responsible for the cost of any retrieval, return, or disposal of the commodities. Payment for commodities does not constitute acceptance of the commodities as conforming to the contract if the State has not had a reasonable opportunity to inspect the commodities or in the event of Contractor’s fraud or concealment of defects.
	2. The State has the option to return any product(s) within the thirty (30) day timeframe for any reason.
	3. The Contractor **shall** include a total satisfaction return policy for all products and **shall not** impose any liability on the State for such returns.

#### MINORITY AND WOMEN-OWNED BUSINESS

* 1. 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
 |

* 1. 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.
	2. 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.*

#### PROPRIETARY INFORMATION

1. The release of public records is governed by the Arkansas Freedom of Information Act (Arkansas Code Annotated § 25-19-101 et. seq.).
2. Submission documents pertaining to the Solicitation become the property of the State and may be subject to the Arkansas Freedom of Information Act (FOIA).
3. In accordance with FOIA, and to promote maximum competition in the State competitive sealed bidding, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets and other information exempted from public disclosure pursuant to FOIA.
4. Under no circumstances will pricing information submitted in response to an invitation for sealed bids be designated as confidential after the sealed bids have been opened.
5. Consistent with and to the extent permitted under FOIA, any Prospective Contractor may designate appropriate portions of a bid as confidential by submitting a redacted copy of the bid. By so redacting any information contained in the bid, 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.
6. If a Prospective Contractor deems part of the information contained in a response not to be a public record, the Prospective Contractor should submit one (1) complete copy of the submission documents from which any proprietary or confidential information has been redacted in their bid response. Except for the redacted information, the redacted copy **must** be identical to the original copy, reflecting the same pagination as the original and showing the space from which information was redacted.
7. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
8. 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.
9. 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.

#### CONVENIENCE FEE [delete this section if solicitation is not for a Statewide contract]

1. Convenience Fee

The Contractor **shall** remit a convenience fee in the amount of one percent (1%) of all Contract Sales made to State, Departments, and to local entities as defined in Arkansas Code Annotated § 19-11-206 (i.e., local governments, cities, counties, school districts, water districts, and other participants, collectively “State”). The convenience fee is based on the Contractor invoice date and is effective upon the date of execution of the Contract. Contract Sales is defined as gross sale amounts less credits, taxes, regulatory fees, and separately stated shipping charges not included in the unit prices. The State, at its sole discretion, may expand the applicability of this fee after providing notice to Contractors.

Unit prices are inclusive of the convenience fee and the Contractor is not to charge the fee directly to the State in the form of a separate line item. Contracts **shall not** have separate or different prices for Department customers and local entities as defined in Arkansas Code Annotated § 19-11-206 participants.

* 1. Quarterly Reporting and Fee Remittance

The Contractor **shall** submit a Sales Report documenting all contract sales, made to State and such submission, including any supplemental information submitted, is deemed public record.

The Sales Report **shall** be submitted, and the related convenience fee **shall** be remitted no later than thirty (30) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report **must** contain the following information:

1. Complete and accurate details of all sales, credits, returns, refunds, and the like for the reporting quarter
2. Purchasing entity
3. Total of Convenience Fee amount due
4. Such other information as the State may reasonably request
5. If no Sales were made to State during the reporting quarter, then a report **shall** be submitted showing zero sales and zero convenience fees due.
	1. Payment of Convenience Fee

The Contractor **shall** timely remit Convenience Fee via Automated Clearing House (ACH) transactions, unless otherwise directed by State, to the bank account directed by the State. Failure to remit convenience fees timely and accurately in accordance with State requirements may result in the Contractor’s commodities and services being made ineligible for purchase by State or any other recourse available, including contract cancellation, or as further provided for by law.

* 1. Retention and Inspection of Records

The Contractor **shall** keep records of Sales to State in sufficient detail to enable the State to determine the Convenience Fee payable by the Contractor. State may examine and audit, at its own expense, the Contractor’s sales records and Sales Reports for completeness and accuracy. In the event that such examination reveals underpayment of the Convenience Fee, the Contractor **shall** immediately pay to the State the amount of deficiency. If the examination reveals an underpayment of 5% or more, then the Contractor **shall** reimburse the State for the cost of the audit.