



**STATE OF ARKANSAS**  
**ARKANSAS DEPARTMENT OF HEALTH**  
 4815 W. Markham  
 Little Rock, Arkansas 72205

**INVITATION FOR BID**  
**SOLICITATION DOCUMENT**

SOLICITATION INFORMATION			
Solicitation Number:	<b>DH-26-0010</b>	Solicitation Issued:	January 7, 2026
Description:	<b>Radium-226, Radium-228, and Tritium Drinking Water Analysis</b>		
Division/Agency:	<b>Arkansas Department of Health, Public Health Engineering Branch</b>		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	January 20, 2026	Bid Opening Time:	2:00 p.m., Central Time
<p>Deliver bid submissions for this Invitation For Bid to the Arkansas Department of Health (ADH) on or before the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit bids at the designated location on or before the bid opening date and time. Bids received after the designated bid opening date and time may be considered late and may be returned to the Prospective Contractor without further review. It is not necessary to return "no bids" to ADH. <b>Emailed or faxed responses will not be accepted. No exceptions.</b></p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p>Arkansas Department of Health            4815 West Markham Street, Slot 58            Little Rock, AR 72205-3867</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to ADH's street address on a schedule determined by each individual provider. These providers will deliver to ADH based solely on the street address.  <b>Prospective Contractors assume all risk for timely, properly submitted deliveries.</b></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"> <li>Bid number</li> <li>Date and time of bid opening</li> <li>Prospective Contractor's name and return address</li> </ul>

ARKANSAS DEPARTMENT OF HEALTH CONTACT INFORMATION			
Issuing Officer:	Heather Bailey	Phone Number:	501-280-4630
Email Address:	<a href="mailto:Heather.V.Bailey@arkansas.gov">Heather.V.Bailey@arkansas.gov</a>	Alternate Number:	
ADH Website:	<a href="#">Grant &amp; Bid Opportunities - Arkansas Department of Health</a>		

## **SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION**

### **1.1 PURPOSE**

- A. This Invitation for Bid (IFB) is issued by the Arkansas Department of Health (ADH), to obtain pricing and a contract to provide radium-226, radium-228 and tritium drinking water analysis.
- B. The Arkansas Department of Health, Public Health Engineering Branch oversees the collection and analysis of drinking water samples required by the Safe Drinking Water Act of 1974.
- C. Direct all communications regarding this Solicitation to the Issuing Officer on page one (1) of the IFB.

### **1.2 TYPE OF CONTRACT**

- A. As a result of this IFB, ADH intends to award a contract to a single Contractor.
- B. The anticipated starting date for any resulting contract is March 1, 2026, except that the actual contract start date may be adjusted forward 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.
- C. The initial term of a resulting contract will be for one (1) year, from March 1, 2026, until February 28, 2027. Upon mutual agreement by the Contractor and agency, 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.

### **1.3 ISSUING AGENCY**

ADH, 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:

Arkansas Department of Health  
4815 W Markham Street, Room L156  
Little Rock, AR 72205

### **1.5 ACCEPTANCE OF REQUIREMENTS**

- A. A Prospective 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 may 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. The ADH Procurement Official has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.
- B. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. "Prospective Contractor" means a person who submits a bid in response to this solicitation.
- D. "Business Days" means Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding [State Holidays](#).
- E. "Calendar Days" means every day on the calendar, including weekends and holidays.
- F. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- G. The terms "Invitation For Bid", "IFB," "Bid Solicitation," and "Solicitation" are used synonymously in this document.

- H. "Responsive bid" means a bid submitted in response to this solicitation that conforms in all material respects to this IFB.
- I. "Bid Submission Requirement" means a task a Prospective Contractor **must** complete when submitting a bid response. These requirements will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- J. "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.
- K. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.

## 1.7 **RESPONSE DOCUMENTS**

### A. Bid Response Packet

- 1 The following are Bid Submission Requirements and **must** be submitted in the original *Bid Response Packet*.
  - a. Original signed *Bid Signature Page*. (See *Bid Response Packet*.)
    - i. An official authorized to bind the Prospective Contractor(s) to a resultant contract **must** sign the Bid Signature Page included in the *Bid Response Packet*.
    - ii. Prospective Contractor's signature signifies agreement to and compliance with all Requirements in this IFB, and that any exception that conflicts with a Requirement or Bid Submission Requirement of this *Bid Solicitation* may cause the Prospective Contractor's bid to be rejected.
    - iii. Bid response **must** be in the English language.
  - b. One (1) original hard copy of the *Official Bid Price Sheet*. Pricing **must** be proposed in U.S. dollars and cents.
- 2 The following items should be submitted in the original *Bid Response Packet* as a hard copy and as an electronic copy, preferably on a flash drive and in PDF format.
  - a. One (1) copy of the *Official Bid Price Sheet*,
  - b. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions*, #27. *Disclosure*.)
  - c. Copy of Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
  - d. *Voluntary Product Accessibility Template* (VPAT). (See *Technology Access*.)
  - e. Proposed Subcontractors Form. (See *Subcontractors*.)
- 3 **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

## 1.8 **PRICING**

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

**1.9 PRIME CONTRACTOR RESPONSIBILITY**

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

**1.10 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.

**1.11 PROPRIETARY INFORMATION**

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

**1.12 CAUTION TO PROSPECTIVE CONTRACTORS**

- A. Prior to any contract award, address all communication concerning this *Bid Solicitation* through the ADH Issuing Officer.

- B. Do not alter any language in any solicitation document provided by the State.
- C. Do not alter the Official Bid Price Sheet.
- D. All official documents and correspondence related to this solicitation become part of the resultant contract.
- E. The State has the right to award or not award a contract, if it is in the best interest of the State to do so.
- F. As requested, provide clarification regarding Prospective Contractor's bid response to ADH.
- G. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- H. Prospective Contractors may submit multiple bids.

### 1.13 **REQUIREMENT OF ADDENDUM**

- A. Only an addendum written and authorized by ADH will modify this *Bid Solicitation*.
- B. An addendum posted within three (3) calendar days prior to the bid opening may extend the bid opening and may or may not include changes to the Bid Solicitation.
- C. The Prospective Contractor is expected to check the ADH website for any and all addenda up to bid opening. [Grant & Bid Opportunities - Arkansas Department of Health](#)

### 1.14 **AWARD PROCESS**

#### A. Successful Contractor Selection

1. Award will be made to the most responsive, responsible bidder on an ALL OR NONE basis.

#### B. Negotiations

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

#### C. Anticipation to Award

1. Once the anticipated successful Contractor has been determined, the anticipated award will be posted on the ADH website at: [Grant & Bid Opportunities - Arkansas Department of Health](#)
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Prospective Contractors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen-day posting period.
3. ADH may waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the Prospective Contractor's responsibility to check the ADH website for the posting of an anticipated award. [Grant & Bid Opportunities - Arkansas Department of Health](#)

#### D. Issuance of Contract

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

**1.15 EQUAL OPPORTUNITY POLICY**

- A. In compliance with Arkansas Code Annotated § 19-11-104, ADH must have a copy of the anticipated Contractor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* should be included as a hard copy accompanying the solicitation response.
- C. Contractors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute.
- D. Prospective Contractors who are not required by law by to have an *EO Policy* **must** submit a written statement to that effect.

**1.16 PAST PERFORMANCE**

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

**1.17 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.

**1.18 RESERVATION**

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

**1.19 VENDOR PERFORMANCE REPORTS**

- A. Vendor Performance Reports will be utilized whenever the Vendor is in default of the contract terms as outlined in this IFB.
- B. Upon notification of the VPR, the Vendor (Contractor) **shall** promptly take all corrective actions to be in compliance with the contract terms. The Vendor **shall** work together with ADH during the vendor's resolution of any non-compliance issue.

## **SECTION 2 – REQUIREMENTS**

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

### **2.1 INTRODUCTION**

This Invitation for Bid (IFB) is issued by the Arkansas Department of Health to obtain pricing and a contract to provide radium-226, radium-228 and tritium drinking water analysis.

### **2.2 REQUIREMENTS**

- A. The Prospective Contractor **shall** be a certified EPA approved laboratory.
- B. The Prospective Contractor **shall** have the capability of providing analysis for the following:
1. EPA Method 903.0 for Radium-226
  2. EPA Method 904.0 for Radium-228
  3. EPA Method 906.0 for Tritium
- C. The Prospective Contractor **shall** be able to provide a 25 Business Day turnaround from sample receipt in the laboratory.
- D. The Prospective Contractor **shall** provide primary analytes, limited to the three (3) analytes shown below, with specific reporting limits as indicated:
1. Radium-226, RLs <1 pCi/L
  2. Radium-228, RLs <1 pCi/L
  3. Tritium, RLs <1,000 pCi/L
- E. The Prospective Contractor **shall** provide in the bid submission a copy of the following:
1. Laboratory certification for approved analytical method (EPA Method 903.0, 904.0, and 906.0).
  2. Most current successful proficiency test results for the applicable analytes.
  3. Laboratory's Standard Operating Procedure.
  4. Laboratory's current NELAP Certification for Drinking Water.

### **2.3 METHODOLOGY REQUIREMENTS**

- A. All sample analyses **must** be by an EPA approved laboratory using:
1. EPA Method 903.0 for Radium-226
  2. EPA Method 904.0 for Radium-228
  3. EPA Method 906.0 for Tritium
- B. All analyses **must** be performed in strict accordance with the appropriate EPA methodology requirements as listed in [40 CFR Part 141.25](#).

### **2.4 REPORTING**

- A. Standard Level II Report
1. The Contractor **shall** provide a Standard Level II Report that **must** include sample results and a QC summary.
  2. The Contractor **shall** provide the report via PDF in an electronic EDD (CSV) file.
  3. The Contractor **shall**, upon request from the Arkansas Department of Health, provide reports in an Excel spreadsheet.
- B. ADH has final determination of format and content. At any time during the term of the contract, if ADH requests to adjust the reporting format or content, the Contractor **shall** make the specified adjustments.

**2.5 COMPLIANCE, PRIVACY AND SECURITY REQUIREMENTS**

- A. The Contractor and their staff **shall** uphold the confidentiality of all data.
- B. All data **must** remain the sole property of the Arkansas Department of Health and **must not** be used for any other purpose other than described in this IFB.
- C. Failure to comply with the confidentiality requirements will submit the Contractor and their staff to legal penalties as set forth by Arkansas Code Annotated § 20-7-301 et seq., as amended.
- D. The confidentiality requirements **must** continue in full effect until all of the paper data in the Contractor’s possession has been physically destroyed and all electronic data has been purged from the Contractor’s system and from any backups.

**2.6 PERFORMANCE STANDARDS**

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided that a Contractor **shall** meet to avoid assessment of damages.
- B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration. The Performance Standards Table below identifies expected deliverables, performance measures, or outcomes, and defines the acceptable standards.
- C. The State has the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in the best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards and may include the input of the Contractor to establish standards that are reasonably achievable.
- D. All changes made to the Performance Standards will become an official part of the contract.
- E. Performance Standards will continue throughout the aggregate term of the contract.
- F. Failure to meet the minimum Performance Standards as specified will result in the assessment of damages.
- G. In the event a Performance Standard is not met, the Contractor will have the opportunity to defend or respond to the insufficiency. The State has the right to waive damages if it determines there were extenuating factors beyond the control of the Contractor that hindered the performance of services. In these instances, the State has final determination of the performance acceptability.
- H. Should any compensation be owed to the State agency due to the assessment of damages, the Contractor **shall** follow the direction of the State agency regarding the required compensation process.

**Performance Standards Table**

<b>PERFORMANCE STANDARDS</b>		
<b>Service Criteria</b>	<b>Performance Standard</b>	<b>Damages</b>
Analyses	Analyses submitted within 25 Business Days as stated in IFB.	\$150 for each day past 25 business days without prior notification to the ADH Contract Manager.

## **SECTION 3 – GENERAL CONTRACTUAL ITEMS**

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

### **3.1 PAYMENT AND INVOICE PROVISIONS**

A. Forward invoices to:

[Susan.Corder@arkansas.gov](mailto:Susan.Corder@arkansas.gov)

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods and services by the agency.
- C. Do not invoice the State in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the Contractor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The Contractor should invoice the agency by an itemized list of charges. The agency's Purchase Order Number and/or the Contract Number should be referenced on each invoice.
- F. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- G. Selected Contractor **must** be registered to receive payment and future *Bid Solicitation* notifications. Contractors may register on-line at <https://www.ark.org/contractor/index.html>.

### **3.2 GENERAL INFORMATION**

A. The State will not:

1. Lease any equipment or software for a period of time which continues past the end of the fiscal year unless the contract allows for cancellation by the ADH 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 tears excluded.
    - e. The right to recover only amounts due at the time of repossession and any unamortized non-recurring 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 **GENERAL TERMS AND CONDITIONS**

- A. 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).
- B. 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).
- C. 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.
- D. 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.
- E. 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).
- F. 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.

### 3.4 **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 affects 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.

### 3.5 **STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of Contractor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The Contractor will retain total liability for equipment, software and technical and business or operations literature. The State will not at any time be responsible for or accept liability for any Contractor-owned items.

- B. The Contractor's liability for damages to the State will be limited to the value of the Contract or \$5,000,000, whichever is higher. The foregoing limitation of liability will not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The Contractor and the State will not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability will not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.
- C. Language in these terms and conditions **must not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, will be brought before the Arkansas Claims Commission as provided by Arkansas law and governed accordingly.

### 3.6 **RECORD RETENTION**

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

### 3.7 **PRICE ESCALATION**

- A. Price increases will *only* be considered at the time of contract renewal.
- B. The Contractor **must** provide to ADH a written request for the price increase. The request **must** include supporting documentation demonstrating that the increase in contract price is based on an increase in market price. ADH has the right to require additional information pertaining to the requested increase.
- C. Increases will not be considered to increase profit or margins.
- D. ADH has the right to approve or deny the request.

### 3.8 **CONFIDENTIALITY**

- A. The Contractor, Contractor's subsidiaries, and Contractor's employees will be bound to all laws and to all Requirements set forth in this *Bid Solicitation* concerning the confidentiality and secure handling of information of which they may become aware of during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State has the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

### 3.9 **CONTRACT INTERPRETATION**

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

### 3.10 **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.

### 3.11 **SEVERABILITY**

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

**SECTION 4 – STANDARD TERMS AND CONDITIONS**

- *Do not provide responses to items in this section.*
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
- 2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
- 3. **BID SUBMISSION:** Original Bid Packets **must** be submitted to the Arkansas Department of Health on or before the date and time specified for bid opening. The Bid Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be rejected. The person signing the bid should show title or authority to bind his firm in a contract. Multiple bids **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
- 4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
- 5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Contractor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
- 6. **AMENDMENTS:** Contractor's bids cannot be altered or amended after the bid opening except as permitted by regulation.
- 7. **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.
- 8. **AWARD:** Term Contract: A contract award will be issued to the successful Contractor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful Contractor.
- 9. **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.
- 10. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
- 11. **STORAGE:** The ordering agency is responsible for storage if the Contractor delivers within the time required and the agency cannot accept delivery.
- 12. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting Contractor. The Contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the Contractors list or suspension of eligibility for award.
- 13. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
- 14. **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.
- 15. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Contractor hereunder or in contemplation hereof or developed by the Contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the Contractor's expense to the F.O.B. point provided by the agency or by OSP. Contractor **shall** properly identify items being returned.
- 16. **PATENTS OR COPYRIGHTS:** The Contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
- 17. **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.

- 18. 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.
- 19. 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.
- 20. 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.
- 21. 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.