



STATE OF ARKANSAS
ARKANSAS DEPARTMENT OF HEALTH

4815 W. Markham
 Little Rock, Arkansas 72205

INVITATION FOR BID
SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Solicitation Number:	DH-26-0023	Solicitation Issued:	June 3, 2026
Description:	Water Sample Bottles		
Agency:	Arkansas Department of Health, Public Health Laboratory		

SUBMISSION DEADLINE			
Bid Opening Date:	June 9, 2026	Bid Opening Time:	2:30 p.m. Central Time
<p>Deliver sealed bids for this Invitation for Bid to the Arkansas Department of Health on or before the submission deadline. 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. Bids received after the submission deadline may be rejected as untimely. Emailed or faxed responses will not be accepted. No exceptions.</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Bid Delivery and Bid Opening Location:	<p>Arkansas Department of Health Contract Support Section, L156 4815 W. Markham, Slot 58 Little Rock, Arkansas 72205</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to ADH's street address on a schedule determined by each individual provider. Prospective Contractors assume all risk for timely, properly submitted deliveries. Emailed or faxed responses will not be accepted. No exceptions.</p>
Bid's Outer Packaging:	<p>Seal outer packaging and properly mark with the following information. If outer packaging of bid submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none"> • Bid number • Date and time of bid opening • Prospective Contractor's name and return address

ADH Contract Support Section CONTACT INFORMATION			
Issuing Buyer:	Heather Bailey	Buyer's Direct Phone Number:	501-280-4630
Email Address:	Heather.V.Bailey@arkansas.gov		
ADH Website:	Grant & Bid Opportunities - Arkansas Department of Health		

SECTION 1 – INFORMATION AND INSTRUCTIONS

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

1.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Arkansas Department of Health for the Glen F. Baker Public Health Laboratory to obtain pricing and a contract(s) for screw top sterile coliform water sample bottles.

Direct all questions, comments, or concerns you may have regarding this solicitation to the issuing buyer noted on Page 1.

1.2 BID OPENING LOCATION

Bids will be opened at the following location:

Arkansas Department of Health
4815 W. Markham Street, Room L117
Little Rock, AR 72205

1.3 OBJECTIVE AND GOALS

The Department seeks to purchase 120mL and 150mL sterile screw cap sample bottles for collecting drinking water samples for Total Coliform and *E. coli* testing.

1.4 BACKGROUND AND CURRENT ENVIRONMENT

The [Safe Water Drinking Act of 1974](#) is a federal regulation that requires Public Water Systems to monitor Total Coliform bacteria and *E. coli*. Testing requires 100mL of water sample. The Environmental Protection Agency (EPA) requires sample containers to be wide mouth with a head space of at least 120mL (4oz) to allow for ample sample shaking. Bottles must have tamper seal screw cap to ensure sterility and contain sodium thiosulfate for dichlorination. Sample bottles must not fluoresce under UV lighting. The Water Microbiology Lab is a high-volume lab receiving more than 60,000 per year. The 120mL sample bottles must be polystyrene in material to endure shipping and transporting to and from the Laboratory. Samples that are overfilled must be poured into a 150mL sterile, screw cap, plastic sample bottle with at least one inch neckline space to allow for proper pouring and shaking.

1.5 TYPE OF CONTRACT

- A. As a result of this IFB, the Department intends to award a contract to a single Contractor.
- B. The anticipated starting date for any resulting contract is July 1, 2026, 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.
- C. The initial term of a resulting contract will be for one (1) year. Upon mutual agreement by the Contractor and the 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) years.

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 the *Clarification of Bid Solicitation*.
- B. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law have the same meaning herein.

- C. "Bid Submission Requirement" means a task a Prospective Contractor **shall** complete when submitting a bid response. These requirements will be distinguished by using the terms "**must**" or "**shall**" in the requirement.
- D. "Business Days" means Monday through Friday, 8:00 a.m. until 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. "Department" means the State Agency or Department using the contract.
- H. The terms "Invitation For Bid," "IFB," "Bid Solicitation," and "Solicitation" are used synonymously in this document.
- I. "mL" stands for milliliters, a metric unit of volume equal to one-thousandth of a liter, used for reagents, solvents, and solutions in chemical reactions, titrations, dilutions, and analytical procedures.
- J. "Requirement" means a term, condition, provision, deliverable, Specification, or a combination thereof, that is obligated under the Solicitation, resulting contract, or both.
- K. "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.
- L. "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 or Department using such a contract.

1.7 CONTRACTOR SELECTION

- A. 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 of the Official Bid Price Sheet submitted by the Prospective Contractor.
- B. The State reserves the right to determine that received costs from any offeror are unreasonable (too high for the requirements of the subject solicitation) or unrealistic (too low to reflect the ability of the offeror to meet the requirements of the solicitation). When it is determined by the State that pricing is potentially unrealistic or unreasonable, the State may request an offeror to clarify elements of pricing, and the offeror may be removed from consideration for a solicitation, at the sole discretion of the State.
- C. 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.
- D. 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.

- E. Once the anticipated awardee has been determined, the anticipated award will be posted with the Solicitation posting, for a period of fourteen (14) Calendar Days prior to the issuance of a contract. The postings are anticipated awards only, subject to protest. The State may waive the policy of Anticipation to Award when in the best interest of the State.
- F. 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.

1.8 RESPONSE DOCUMENTS

- A. All bids **must** be submitted to the delivery address and by the submission deadline on page one (1) of the IFB.
- B. *Bid Response Packet*
 - 1. Prospective Contractor **shall** utilize the *Bid Response Packet* attached with the Solicitation to submit their bids.
 - 2. The following are bid submission Requirements and **must** be submitted as a part of a Prospective Contractor's bid.
 - a. Signed *Bid Signature Page*; signature may be ink or digital.
 - b. Completed *Bid Response Packet*, which **must** be in English.
 - c. Completed Official Bid Price Sheet attached with Solicitation posting.
 - i. Pricing **must** be proposed in U.S. dollars and cents.
 - ii. Quantities stated are estimates only and are not guaranteed. Prospective Contractor **shall** 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.
 - iii. If pricing documents do not allow for accurate pricing, Prospective Contractor should notify the issuing buyer at least seventy-two (72) hours before the bid opening date and time.
 - iv. Prices **must** be firm offers and adjustments may be negotiated at the time of contract renewal.
 - 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.
 - v. Discount from list bids pricing is not acceptable unless requested elsewhere in the Solicitation.
 - vi. State and local taxes should not be included in the bid price. Trade discounts should be deducted from the unit price and the net price shown in the bid.
 - d. Copy of Prospective Contactor's *Equal Opportunity Policy*
 - i. Pursuant to Arkansas Code Annotated § 19-60-104, 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 are not required by law to have an *EO Policy* **must** submit a written statement to that effect.
 - e. *Proposed Subcontractors Form* (see [Standard Commodities Contract](#))
 - 3. 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:

a. *EO 98-04 Contract & Grant Disclosure Form* (see [Standard Commodities Contract](#), section 11)

4. Prospective Contractors **shall not** include any other documents or ancillary information, such as a cover letter or promotional marketing information.

C. Prospective Contractors **shall not** alter any language in Solicitation document(s) or *Official Bid Price Sheet* provided by the State.

D. Prospective Contractors' bids cannot be altered or amended after the bid opening except as permitted by law or rule.

E. As requested, Prospective Contractors **shall** provide clarification regarding Prospective Contractor's bid response.

F. Prospective Contractors may submit multiple bids.

1.9 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 cost. The *Official Bid Price Sheet* is attached with the bid documents on the website.

B. To allow time to review bids, prices **must** be valid for ninety (90) days following the bid opening.

C. **DO NOT** submit any ancillary information not related to actual pricing on or with the *Official Bid Price Sheet*.

1.10 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, [Grant & Bid Opportunities - Arkansas Department of Health](#), for any and all addenda up to bid opening.

1.11 ACCEPTANCE STANDARDS

A. Inspection and acceptance/rejection of product(s) will be made within thirty (30) days of receipt.

B. The State has the option to return any product(s) within the thirty (30) day timeframe for any reason.

C. Bid must include a "total satisfaction" return policy for all products and **must not** impose any liability on the State for such returns.

SECTION 2 – SPECIFICATIONS AND REQUIREMENTS

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

2.1 SPECIFICATIONS

A. The two (2) sizes of water sample bottles **must** meet the following requirements:

1. One size **must** be made of plastic (polystyrene or polypropylene), have a capacity of 120 mL and contain sodium thiosulfate.
2. One size **must** be made of plastic (polystyrene or polypropylene), have a capacity of 150 mL and **must not** contain sodium thiosulfate.

2.2 GENERAL REQUIREMENTS

- A. The EPA requires sample containers to be wide mouth with a head space of at least 120 mL, or 4 ounces (oz.) to allow for sample shaking.
- B. Bottles **must** have tamper seal screw cap to ensure sterility and contain sodium thiosulfate for dichlorination.
- C. Sample bottles **must not** fluoresce under UV lighting.
- D. The 120 mL sample bottles **must** be polystyrene or polypropylene in material for durability during shipping and transporting to and from the Arkansas Public Health Laboratory.
- E. The 150 mL sample bottles **must** be sterile, screw cap, and be polystyrene or polypropylene in material.
- F. The 150 mL sample bottles **must** have a neckline of at least one inch (1”) to allow for proper pouring and shaking.
- G. The Department anticipates ordering 5,000 per month, or 60,000 per year of the 120 mL polystyrene sample bottles with sodium thiosulfate.
- H. The Department anticipates ordering 10,000 per year of the 150 mL polystyrene bottles without sodium thiosulfate.

2.5 DELIVERY: FOB DESTINATION

Arkansas Department of Health
Glen F. Baker Public Health Laboratory
201 South Monroe Street
Little Rock, AR 72205

- A. 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.

- B. All deliveries **must** be made during normal State work hours.
- C. The Contractor **shall** pay all transportation and handling charges, unless otherwise agreed upon in writing by the Contractor and Department.
- D. 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.
- E. The State assumes no liability for commodities produced, processed, or shipped in excess of the amount specified on the Department's purchase order.
- F. 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.

SECTION 3 – SOLICITATION TERMS AND CONDITIONS

3.1 ACCEPTANCE OF REQUIREMENTS

- I. A Prospective Contractor's past performance with the State may be used to determine if the Prospective Contractor is responsible (19-CAR § 1-401).
- B. Bids submitted by Prospective Contractors determined to be non-responsible will be rejected.
- C. 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.
- D. 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.
 - a. 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 § 19-61-403 and 19-61-702).
 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.
- E. Qualifications, services, and commodities **must** meet or exceed the required Specifications as set forth in the Solicitation.

3.2 GENERAL TERMS AND CONDITIONS

- A. The Contractor **must** be registered as a vendor to receive payment and may register online by visiting ark.org/vendor/index and clicking the *Start Here* button.
- B. All payments to the Contractor under a resulting contract **shall** be made exclusively through ACH (Automated Clearing House) direct deposit.
 1. The Contractor **shall** provide the necessary banking information, including account number, routing number, and any other details required to facilitate ACH direct deposits.
 2. The Contractor **shall** be responsible for ensuring that the provided banking information is accurate and up to date. Any delays or errors in payment caused by incorrect or outdated information provided by the Contractor **shall not** be the responsibility of the Department.
 3. The Department will process payments according to the agreed payment schedule, and all payments made via ACH direct deposit **shall be** considered as duly received upon successful transmission to the Contractor's designated bank account.
- C. 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).

- D. 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 § 19-60-105).
- E. 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.
- F. 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.
- G. 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).
- H. This IFB incorporates all terms of the *Standard Commodities Contract Template* (found [here](#)).
 - 1. A Prospective Contractor's bid may be rejected if a Prospective Contractor takes exception to any terms, conditions, or Requirements in this IFB.
- I. 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.
- J. Pursuant to Arkansas State Procurement Law, the Contractor **shall** in all other respects comply with the laws, rules, and executive orders of the state that apply to the Contractor's performance under a resulting contract.

3.3 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.

3.4 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.

3.5 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 vendors resolution of any non-compliance issue.

3.6 GUARANTEES, SAMPLES, AND BRAND NAME REFERENCES

- A. By submitting a bid, the Prospective Contractor represents and warrants that goods its sells to the Department under a resulting contract **shall** be merchantable.
- B. 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.
 - a. If requested, samples that are not destroyed during reasonable examination will be returned at Prospective Contractor's expense.
 - b. 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.
 - a. 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.
- C. 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.
 - a. 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.
 - b. 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.

3.7 INSPECTION AND ACCEPTANCE

- A. 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:

- a. May elect to recover expenses of inspection, if any, from the Contractor and the Contractor **shall** bear the cost
 - b. 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.
- B. The State has the option to return any product(s) within the thirty (30) day timeframe for any reason.
- C. The Contractor **shall** include a total satisfaction return policy for all products and **shall not** impose any liability on the State for such returns.

3.8 PROPRIETARY INFORMATION

- A. The release of public records is governed by the Arkansas Freedom of Information Act (Arkansas Code Annotated § 25-19-101 et. seq.).
- B. Submission documents pertaining to the Solicitation become the property of the State and may be subject to the Arkansas Freedom of Information Act (FOIA).
- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- H. 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.
- I. 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.

3.9 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.

3.10 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.

3.11 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.

3.12 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.