



**STATE OF ARKANSAS**  
**Department of Human Services**  
**Office of Procurement**  
 700 Main  
 Little Rock, Arkansas 72201

## REQUEST FOR QUALIFICATION

SOLICITATION INFORMATION			
Bid Number:	710-19-1027	Solicitation Issued:	3/8/2019
Description:	Therapeutic Foster Care		
Agency:	Department of Human Services		
SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	4/5/2019	Bid Opening Time:	2:00 pm CST
<p>Responses <b>shall not</b> be accepted after the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit responses at the designated location on or before the bid submission deadline date and time. Responses received after the designated bid submission deadline date and time <b>shall</b> be considered late and non-responsive. It is not necessary to return "no bids".</p>			
DELIVERY OF RESPONSE DOCUMENTS			
Delivery Address:	Arkansas Department of Human Services		
Drop off (walk in):	Attn: Office of Procurement 700 Main Street Slot W345 Little Rock, AR 72201		
United States Mail (USPS):	Arkansas Department of Human Services Attn: Office of Procurement P.O. Box 1437 Slot W345 Little Rock, AR 72203-1437		
Commercial Carrier (UPS, FedEx or USPS Exp):	Arkansas Department of Human Services Attn: Office of Procurement 112 West 8 <sup>th</sup> Street, Slot W345 Little Rock, AR 72201		
	Delivery providers, USPS, UPS, and FedEx deliver mail to OP's street address on a schedule determined by each individual provider. These providers will deliver to OP based solely on the street address.		
Response's Outer Packaging:	<p>Outer packaging <b>must</b> be sealed and should be properly marked with the following information. If outer packaging of proposal 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>• Vendor's name and return address</li> </ul>		
OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
Issuing Officer:	Margurite Al-Uqdah, Issuing Officer	Issuing Officer Direct Phone Number:	501-682-8743
Email Address:	Margurite.al-uqdah@dhs.arkansas.gov	Main Number:	501-682-1000
Posting websites	<a href="https://humanservices.arkansas.gov/about-dhs/op/procurement-announcements">https://humanservices.arkansas.gov/about-dhs/op/procurement-announcements</a> <a href="http://www.arkansas.gov/dfa/procurement/bids/index.php">http://www.arkansas.gov/dfa/procurement/bids/index.php</a>		

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

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

### **1.1 PURPOSE**

The Arkansas Department of Human Services (DHS) is seeking qualified community-based organizations to provide Therapeutic Foster Care (TFC) to eligible children placed in out-of-home care. This Request for Qualifications (RFQ) describes the organizational capacities required of applicant organizations, the scope of services successful organizations will be expected to provide, and financial considerations.

A contract will be awarded to all bidders who meet the minimum qualifications specified in Section 2.5 of this RFQ.

### **1.2 TYPE OF CONTRACT**

- A. The term of this contract **shall** be for one (1) year. The anticipated starting date for the contract is July 1, 2019. Upon mutual agreement by the vendor and agency, the contract may be renewed by the Office of Procurement (OP) on a year-to-year basis, for up to six (6) additional one-year terms or a portion thereof.
- B. The total contract term **shall not** be more than seven (7) years.
- C. Any resultant contract(s) of this Bid Solicitation shall be subject to State approval processes which may include Legislative review.

### **1.3 ISSUING AGENCY**

OP, as the issuing office, is the sole point of contact throughout this solicitation and award process. Questions regarding this solicitation shall be directed to the Issuing Officer listed on page one of this document.

### **1.4 BID OPENING LOCATION**

Responses submitted by the opening time and date **shall** be opened at the following location:

Department of Human Services  
Office of Procurement  
618 Main Street, DPW  
Little Rock, AR 72203

Vendors wishing to attend the bid opening must report to the main entrance location, Arkansas Department of Human Services, Donaghey Plaza South Building, 700 Main Street, Little Rock, Arkansas 72201 and check in with the receptionist. All attendees are required to obtain security clearance upon entrance to the building by submitting a current, valid photo ID, preferably a driver's license, to the Security Officer at the reception area. The Security Officer will issue a visitor's badge which must be worn at all times. Before leaving the bid opening visitors are required to return the visitor's badge to the Security Officer and retrieve their ID.

The receptionist is to contact the buyer, for the vendor, for more detailed directions to the bid opening location.

### **1.5 DEFINITION OF REQUIREMENT**

- A. The words "**must**" and "**shall**" signify a Requirement of this solicitation and that vendor's agreement to and compliance with that item is mandatory.
- B. Exceptions taken to any Requirement in this *Bid Solicitation*, whether submitted in the vendor's response or in subsequent correspondence, **shall** cause the vendor's response to be disqualified.
- C. Vendor may request exceptions to NON-mandatory items. Any such request **must** be declared on, or as an attachment to, the appropriate section's *Agreement and Compliance Page* in the *Response Packet*. Vendor **must** clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies. (See *Agreement and Compliance Page*.)

## 1.6 DEFINITION OF TERMS

- A. The State 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. The words “bidder” and “vendor”, “contractor” are used synonymously in this document.
- C. The terms “Request for Qualifications”, “RFQ” and “Bid Solicitation” are used synonymously in this document.
- D. The terms “buyer” and “Issuing Officer” are used synonymously in this document.

## 1.7 RESPONSE DOCUMENTS

### A. Original Response Packet

- 1. The original *Response Packet* **must** be submitted on or before the bid opening date and time.
- 2. The *Response Packet* **must** include the following and, submitted in the following order:
  - a. Original signed *Response Signature Page*. (See *Response Signature Page*.)
  - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
  - c. Original signed *Proposed Subcontractors Form*. (See *Subcontractors*.)
  - d. Signed Addenda to this RFQ, if applicable. (See Requirement of Addendum)
  - e. Signed EO 98-04 Disclosure Form. (Attachment A)
  - f. Copy of Vendor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
  - g. Response to the *Information for Evaluation* section included in the *Response Packet*.
- 3. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

- B. Pricing is not requested for this solicitation and **must not** be submitted with the bidder's response. (See *Pricing*.)

### C. Copies and Redacted Copy of the Response Packet

In addition to the hard copy of the *Response Packet*, the following items **must** be submitted:

- 1. One (1) electronic copy of the *Response Packet*, preferably on flash drives. CD's will also be acceptable.
- 2. The electronic copy **must be identical to the original hard copy**. In case of a discrepancy, the original hard copy **shall** govern. To the extent possible, all electronic files should be a single document in PDF format.
- 3. One (1) redacted copy (if applicable), marked “REDACTED”) of the original *Response Packet*, preferably on a flash drive. (See *Proprietary Information*.)
- 4. If DHS requests additional copies of the response, the copies **must** be delivered within twenty-four (24) hours of request.

## 1.8 ORGANIZATION OF RESPONSE DOCUMENTS

- A. It is strongly recommended that vendors adhere to the following format and suggestions when preparing their Response.
- B. The hard copy of the *Response Packet* should be arranged in the following order and should be **tabbed and labeled** with the name of each section.
- *Response Signature Page*
  - *All Agreement and Compliance Pages*
  - *Proposed Subcontractors Form*
  - Signed Addenda, if applicable
  - E.O. 98-04 – *Contract Grant and Disclosure Form*.
  - *Equal Opportunity Policy*
  - Response to the *Information for Evaluation* section of the *Response Packet*.

## 1.9 CLARIFICATION OF BID SOLICITATION

- A. Vendor must use the Question Submission Template (QST) when requesting clarification of information contained in this RFQ. The Question template **must** be submitted via email by 12:00 p.m., Central Time on or before March 15, 2019 to the Issuing Officer as shown on page one (1) of this RFQ.
- B. Vendors' written questions will be consolidated and responded to by the DHS. The State's consolidated written response is anticipated to be posted to the websites listed on page 1 by the close of business on or about March 22, 2019.
- C. Vendors may contact the Issuing Officer with non-substantive questions at any time prior to the bid opening.
- D. Oral answers to vendor questions may be given as a matter of courtesy and is not a part of any contract resulting from this solicitation and may not be relied on by any vendor as an aid to interpretation unless it is reduced to writing and expressly adopted by DHS.
- E. It is the vendor's responsibility to guarantee receipt of the questions by the specific time and date. The State accepts no responsibility for accurate or timely receipt of email submission from responses.

## 1.10 RESPONSE SIGNATURE PAGE

- A. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Response Signature Page* included in the *Response Packet*.
- B. Vendor's signature on this page **shall** signify vendor's agreement that either of the following **shall** cause the vendor's response to be disqualified:
1. Additional terms or conditions submitted intentionally or inadvertently.
  2. Any exception that conflicts with a Requirement of this *Bid Solicitation*.

## 1.11 AGREEMENT AND COMPLIANCE PAGES

- A. Vendor **must** sign all *Agreement and Compliance Pages* relevant to each section of the *Bid Solicitation Document*. The *Agreement and Compliance Pages* are included in the *Response Packet*.
- B. Vendor's signature on these pages **shall** signify agreement to and compliance with all Requirements within the designated section.

## 1.12 SUBCONTRACTORS

- A. Vendor **must** complete, sign and submit the *Proposed Subcontractors Form* included in the *Response Packet* to indicate vendor's intent to utilize, or to not utilize, subcontractors.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Response Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.
- C. The utilization of any proposed subcontractor is subject to approval by the State agency.

## 1.13 PRICING

### A. Performance-Based Contracts

Over the term of the contract, the Division expects to move from a traditional per diem, fee-for-service reimbursement model to a performance-based contract using a prospective payment model. Fee-for-services reimbursement models reimburse providers for each day of care provided. Prospective payment models define a level of reimbursement at the outset of the fiscal year. The prospective payment is based on historical utilization of care and is designed to fund services at historical levels.

The development and implementation of the performance contract with prospective payment will be structured to phase-in over the course of the contract period, and will involve stakeholder engagement, support, and technical assistance to the provider community. The implementation phases are described below.

- ▶ Phase 1: Implementation of TFC contracts using per diem payment method.
- ▶ Phase 2: Implementation of TFC fiscal model using prospective payment methods.
- ▶ Phase 3: Implementation of prospective payment model with risk-sharing model

### B. Reimbursement

The per diem rate of reimbursement for therapeutic foster care services over the first two phases of implementation will be as follows:

- ▶ Level 3 (SRP) - \$115.00 per day
- ▶ Level 2 - \$95.75 per day
- ▶ Level 1 (Non – SED) and Step - Down - \$45.00 per day

These rates, notwithstanding any adjustment that may take place in the future, will be the rates used in the prospective payment model.

- C. Other considerations with regard to the reimbursement are: Therapeutic Foster Parents will receive a portion, no less than sixty-three percent (63%), of the monthly contract payment submitted to the Contractor for Level 3 and Level 2. They will receive no less than thirty-four percent (34%) for Level 1. Supplemental board payments will not be provided for either level of care.
- D. The Division of Children and Family Services (DCFS) will not provide mileage reimbursement; however, travel for medical appointments may be reimbursed through Medicaid.
- E. Only signed original invoices will be accepted for payment. No payment will be made prior to delivery of services. Invoices shall be submitted to the Specialized Services Unit (SSU) by the tenth (10th) working day of the month following services being rendered. A Certification of Compliance (COC) form must be submitted with monthly invoices.

Vendor **must not** include any pricing in their response to this RFQ. If the hard copies or electronic copies of their response packet contain pricing, the response shall be disqualified.

#### 1.14 **PRIME CONTRACTOR RESPONSIBILITY**

- A. A single vendor **must** be identified as the prime contractor and shall be the sole point of contact.
- 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.

#### 1.15 **PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this RFQ become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. 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 *Response Packet*. A CD is acceptable
- C. 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.
- D. The vendor **shall** be responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- E. The redacted copy **shall** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor.
- E. If a redacted copy of the submission documents is not provided with vendor's response packet, a copy of the non-redacted documents, with the exception of financial data, **shall** be released in response to any request made under FOIA.
- G. If the State deems redacted information to be subject to FOIA, the vendor will be contacted prior to release of the documents.

#### 1.16 **CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this RFQ **must** be addressed through the Issuing Officer.
- B. Vendor **must not** alter any language in any solicitation document provided by DHS.
- C. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- D. Responses **must** be submitted only in the English language.
- E. The State **shall** have the right to award or not award a contract, if it is in the best interest of the State to do so.
- F. Vendor **must** provide clarification of any information in their response documents as requested by DHS.
- G. Qualifications **must** meet or exceed the required specifications as set forth in this RFQ.

#### 1.17 **REQUIREMENT OF ADDENDUM**

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by DHS.
- B. An addendum posted within three (3) calendar days prior to the bid closing **shall** extend the bid opening and may or may not include changes to the Bid Solicitation.

- C. The vendor **shall** be responsible for checking the websites listed on page 1 for any and all addenda up to bid opening.

## 1.18 AWARD PROCESS

### A. Negotiations

1. If the agency so chooses, it **shall** have the right to enter into discussions with the qualifying vendor(s) to further define contractual details. All negotiations **shall** be conducted at the sole discretion of the State. The State **shall** solely determine the items to be negotiated.
2. If negotiations fail to result in a contract(s), the negotiation process may be repeated until an anticipated successful vendor(s) has/have been determined, or until such time the State decides not to move forward with an award.

### B. Award determination

1. Contracts that are awarded to respondents **must** be awarded to respondents whose proposals meet minimum qualifications and are determined to be most advantageous to DHS based on the selection criteria.
2. The contracts are subjected to state approval processes including but not limited to approval by the Department of Finance and Administration and legislative review as well as federal agency oversight and is not valid until those are complete.
3. DHS reserves the right to award multiple contracts.

### C. Anticipation to Award

1. Once an anticipated successful vendor, or vendors, have been determined, the anticipated award will be posted on the websites listed on page 1.
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Vendors 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. DHS **shall** have the right to waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the vendor's responsibility to check the websites for the posting of an anticipated award.

### D. Issuance of a Contract

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

## 1.19 MINORITY BUSINESS POLICY

- A. A minority-owned business is defined by Arkansas Code Annotated § 15-4-303 as a business that is at least fifty-one percent (51%) 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 Veterans Affairs

- B. A women-owned business is defined by Arkansas Code Annotated § 15-4-303(9) as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.
- C. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses. If certified, the Prospective Contractor's Certification Number should be included on the *Bid Signature Page*.

#### **1.20 EQUAL OPPORTUNITY POLICY**

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP is required to have a copy of the vendor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* should be included as a hardcopy accompanying the solicitation response.
- C. The submission of an *EO Policy* to DHS is a one-time Requirement. Vendors 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. Vendors who are not required by law by to have an *EO Policy* **must** submit a written statement to that effect.

#### **1.21 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

- A. Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected vendor(s) **must** have a current certification on file with DHS stating that they do not employ or contract with illegal immigrants.
- B. OP will notify the selected vendor(s) prior to award if their certification has expired or is not on file. Instructions for completing the certification process will be provided to the vendor(s) at that time.

#### **1.22 RESTRICTION OF BOYCOTT OF ISRAEL**

- A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.
- B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.
- C. By checking the designated box on the Bid Signature Page of the response packet, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

#### **1.23 PAST PERFORMANCE**

In accordance with provisions of State Procurement Law, specifically OSP Rule R5:19-11-230(b)(1), a vendor's past performance with the State may be used to determine if the vendor is "responsible". Responses submitted by vendors determined to be non-responsible **shall** be disqualified.

#### **1.24 TECHNOLOGY ACCESS**

- A. When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in

accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

- B. ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:
1. Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means
  2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use
  3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired
  4. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
  5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact
  6. Integrating into networks used to share communications among employees, program participants, and the public.
  7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired
- C. State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies **must** evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product, including any required reasonable accommodations.
- D. For purposes of this section, the phrase “equivalent access” means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.
- E. If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

#### **1.25 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM**

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

**1.26 VISA ACCEPTANCE**

- A. Awarded vendor should have the capability of accepting the State's authorized VISA Procurement Card (p-card) as a method of payment.
- B. Price changes or additional fee(s) **shall not** be levied against the State when accepting the p-card as a form of payment.
- C. VISA is not the exclusive method of payment.

**1.27 PUBLICITY**

- A. Vendors **shall not** issue a news release pertaining to this *Bid Solicitation* or any portion of the project without DHS's prior written approval.
- B. Failure to comply with this Requirement **shall** be cause for a vendor's response to be disqualified.

**1.28 RESERVATION**

The State **shall not** pay costs incurred in the preparation of a response.

**1.29 SCEHDULE OF EVENTS**

Public Notice of RFQ	March 8, 2019
Deadline for Receipt of Written Questions	March 15, 2019 12:00 pm CST
Response to Written Questions on or about	March 22, 2019
Date and time for Opening Bids	April 5, 2019 2:00 pm CST
Intent to Award Announced, On or About	April 12, 2019
Contract Start, (Subject to State Approval)	July 1, 2019

**1.30 STATE HOLIDAYS**

Holidays are those days as declared legal state holidays by authority of Act 304 of 2001. Those days are as follows:

New Year's Day	January 1
Dr. Martin Luther King Jr.'s Birthday	Third Monday in January
George Washington's Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Eve	December 24
Christmas Day	December 25

Additional days can be proclaimed as holidays by the Governor through executive proclamation. State offices are normally closed on holidays; however, there are occasions (i.e. during legislative sessions) when it may become necessary to keep state offices open on holidays. The Contractor shall maintain adequate staff on such working holidays.

## **SECTION 2 – MINIMUM REQUIREMENTS**

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

### **2.1 INTRODUCTION**

Therapeutic Foster Care (TFC) services are provided in the home for children who have an array of problems. These problems cannot be dealt with in the child's own home, nor in a routine foster parenting situation nor in a qualified residential treatment program for clients for youth statewide. These children require a Medicaid Independent Assessment which will determine their tier for mental health services and their level of care within the therapeutic foster care program.

### **2.2 MINIMUM QUALIFICATIONS**

- A. Vendor **must** meet the foster care requirements outlined in the *Minimum Licensing Standards for Child Welfare Agencies: Placement Child Welfare Agency*.
- B. Vendor **must** be licensed as a Therapeutic Foster Care Placement Child Welfare Agency as set out in the *Minimum Licensing Standards for Child Welfare Agencies: Placement Child Welfare Agency*. This publication, Pub 04, can be viewed at the link below:

[https://humanservices.arkansas.gov/images/uploads/dccece/Minimum\\_Licensing\\_Standards\\_PLACEMENT\\_2016.pdf](https://humanservices.arkansas.gov/images/uploads/dccece/Minimum_Licensing_Standards_PLACEMENT_2016.pdf)

For verification of the requirements specified above (A & B), Vendor **must** submit Vendor's Therapeutic Foster Care Placement Child Welfare Agency license obtained from the Arkansas Department of Human Services (DHS), Division of Child Care and Early Childhood Education (DCCECE).

- C. Vendor **must** be able to provide trauma informed mental health services for clients placed in the program.
- D. Vendor **must** have the ability to provide twenty-four (24)-hour, seven (7) days a week mobile crisis intervention in the home and community setting.

For verification of the requirements above (C & D), Vendor **must** submit a narrative outlining their ability to provide trauma informed mental health services and the ability to provide twenty-four (24)-hour, seven (7) days a week mobile crisis intervention. Vendor must also submit contact information, including current phone number, mailing address, email address, title, and printed name for former contract managers/employers who can verify experience.

### **2.3 OVERVIEW OF THERAPEUTIC FOSTER CARE**

**What is Therapeutic Foster Care:** Therapeutic Foster Care (TFC) is a specialized, community-based foster care service provided to children placed out of their home. TFC utilizes certified foster parents with specialized training who care for children and adolescents who have emotional, behavioral or social issues and/or medical needs that cannot be remedied in a routine foster parenting situation but for whom higher levels of care are not appropriate. TFC utilizes clinical assessment and treatment services provided by community providers to address the therapeutic needs of the child.

**Who is eligible for TFC:** TFC is provided for children and adolescents statewide referred by or in the custody of the Division of Children and Family Services (DCFS). Children and adolescents placed in TFC must have a Medicaid Independent Assessment (which will be conducted by a DHS-contracted vendor), prior to placement in TFC, which will determine their tier for mental health services and their level of care within the TFC program.

TFC services are offered in partnership with the child, the child's family, DCFS and other persons identified by the placing agency towards the goals outlined in the family and/or child's case plan. These services are designed to allow the child to benefit from a therapeutic home environment that focuses on identifying children's strengths and addressing their needs. TFC relies on a trauma-informed approach to meet the needs of children and evolve their strengths and skills.

**Goals of TFC:** For children and adolescents placed away from their family, DCFS is responsible for timely permanency in accordance with the child's best interests and the rights of the family. Within that context, DCFS, the TFC providers, members of the family, and other stakeholders have a role to play in securing permanency for the children. Therefore, it is expected that the TFC provider will work alongside DCFS to engage birth parents, extended family, siblings and fictive kin (if appropriate), to be involved as much as possible with the child's day to day activities. The contractor must support the permanency goal(s) of the DCFS Permanency Plan, including reunification, relative placement and adoption and provide details specific to the agency's role in supporting the child and family, when appropriate, in achieving permanency.

## 2.4 **SCOPE OF WORK**

Vendor **must** maintain licensure as a Therapeutic Foster case Placement Child Welfare Agency as set out in the *Minimum Licensing Standards for Child Welfare Agencies: Placement Child Welfare Agency* at all times throughout the contracted term.

In addition, the Vendor must provide the following capabilities:

### A. Administrative Structure

Primary responsibilities of TFC program staff **shall** include treatment planning, leadership of the treatment team, case management, clinical and administrative supervision, twenty-four (24) hour crisis intervention, and discharge planning. The TFC program **shall** employ a Clinical Director who **shall** be clearly responsible for implementation of treatment planning and service delivery. The Clinical Director **shall** hold a master's degree in a human services field, **shall** have two (2) years' experience in placement or treatment, and **shall** be currently licensed in Arkansas as a mental health professional (as recognized by Arkansas Medicaid). The TFC program **shall** employ at least one (1) caseworker who shall coordinate the implementation of the treatment plan. The caseworker **shall** hold a bachelor's degree in a human service field, or **shall** be a mental health paraprofessional, and **shall** be supervised by the Clinical Director.

#### 1. Leadership Team

Vendor **must** be governed by a Board and/or stakeholders, and must involve all parties to promote the goal of therapeutic foster care services in securing permanency outcomes for children and adolescents that involve birth parents, siblings, extended family and fictive kin (if appropriate) to ensure a clear vision and understanding of the permanency goals and best outcomes for the child and family.

#### 2. Quality Assurance Structure and Process

Vendor **must** have a quality improvement process in place. At a minimum, Vendor must identify the personnel responsible for implementing quality improvement processes and their position in the organization via organizational chart, and the processes and corresponding structures in place for maintaining high quality services and monitoring outcomes.

#### 3. Electronic Record Keeping

Vendor **must** provide data to DCFS in accordance with existing DHS/DCFS policy and procedures. In addition, Vendor must document the care provided to children and their families. To that end, Vendor must describe their record-keeping system.

### B. Financial Management (i.e., clean audit)

Vendor **must** submit an annual report detailing an independent fiscal audit, program specific for therapeutic foster care, or a single audit report with a supplemental schedule listing therapeutic foster care revenue and expenditures and the year-end total of therapeutic foster care days provided to clients, certified by a Certified Public Accountant in accordance with generally accepted accounting principles, of the program. The fiscal audit report should contain detailed revenue and expenditures for the Therapeutic Foster Care Program. The schedule must only reflect revenue and expenditures reimbursable under Title IV-E. The report must be submitted directly to the DHS Office of Quality Assurance within one hundred twenty (120) days after the end of each contract year, as well as within one hundred twenty (120) days after the end the contract. For-profit entities will not be required to file audit reports.

## 2.5 CLINICAL CAPACITY

### A. Foster Parents

Vendor **must** ensure that foster parents within their program meet the foster care requirements outlined in the Minimum Licensing Standards for Child Welfare Agencies: Placement Child Welfare Agency.

### B. Training Requirements of Foster Parents

Vendor **must** ensure that foster parents complete at least thirty (30) hours of skill-based pre-service training (excluding CPR and First Aid) consistent with the TFC agency's treatment methodology and the needs of the population served. Foster parent(s) **shall** have a current certificate of completion of First Aid and CPR before a child is placed in the home. The training **shall** require hands-on skilled based instruction as well as practical testing. Training and certification that is provided solely on-line shall not be accepted. Each therapeutic foster parent **shall** complete at least twenty-four (24) hours of skill-based training annually, excluding CPR and First Aid.

### C. Case managers and other specialists

The vendor **shall** assign a TFC case manager to each child who is responsible for doing assessments, treatment planning, and case management services.

### D. Staffing Requirements

No case manager shall be responsible for managing more than twelve (12) children's cases.

### E. Training Requirements of Case Management Staff

All TFC case management staff **shall** be trained in crisis prevention and intervention, CPR, and First Aid within the first sixty (60) days of employment. All case management staff **shall** be provided with eight (8) hours of orientation, either prior to employment or within the first week of employment, which shall provide an overview of the following areas:

1. The agency's policies and procedures.
2. The client's rights, including confidentiality.
3. How to handle medical and non-medical emergencies.
4. The caseworker's clinical limitations.
5. How to document clinical information in the child's and family's records.
6. General information regarding commonly prescribed medications and their side effects.

## 2.6 CARE COORDINATION AND OTHER SERVICES

- A. The Vendor **must** provide trauma informed mental health services for clients placed in their program and provide twenty-four (24)-hour, seven (7) day a week mobile crisis intervention in the home and community setting. Accordingly, the Vendor **must** demonstrate working partnerships with other community-based providers as reflected in Memorandums of Understanding, contracts, or other agreements that demonstrate the ability to access necessary clinical services.

Furthermore, the Vendor must work in conjunction with the Provider-Led Arkansas Shared Savings Entity (PASSE) Care Coordinator to ensure services are put in place based on the needs of the child. These services shall be based on the child's Person-Centered Service Plan (PCSP), which will be developed by the assigned PASSE care coordinator. The TFC case manager must, in coordination with the PASSE care coordinator, ensure delivery of services as needed based on the PCSP. The array of services should address the needs of the child(ren) to ensure that they maintain stability while placed in the community. TFC providers **must** recruit, train, certify and support homes that can meet the specialized needs listed above. Support of these homes includes access to on-call TFC staff, twenty-four (24) hours a day, seven (7) days a week, transportation, education, behavioral intervention and advocacy for services.

### 1. Responsibilities of Division

Case management of the child welfare case will be retained by DCFS. The child placement agency **shall** remain legally responsible for the supervision and decision making regarding foster children. Foster parents have daily responsibility for the care of the children.

## 2. Responsibilities of the TFC program

The TFC program shall be expected to provide care consistent with the applicable process, quality and capacity standards and such other standards as found in applicable state regulation.

## 3. Responsibilities of the PASSE Care Coordinator

The care coordination process includes assessing, collaborating on care planning, treatment plan follow-through, service coordination, monitoring the patient adherence, and reevaluating the patient for medically necessary care and service. These activities focus on ensuring the individual's healthcare and support service needs are met; through effective provider and patient communication, information sharing, follow up, care transitions, and assurance of timely access to care that promotes quality, cost-effective outcomes.

## 2.7 PERFORMANCE MONITORING

- A. DCFS recognizes that placement providers have a critical role in moving a child in foster care to permanency. Therefore, it is expected that the TFC provider will work alongside DCFS to engage birth parents, extended family, siblings and fictive kin (if appropriate), to be involved as much as possible with the child's day to day activities. The contractor **must** support the permanency goal(s) of the DCFS Permanency Plan, including reunification, relative placement, adoption and provide details specific to the agency's role in supporting the child and family, when appropriate, in achieving permanency. At a minimum, DCFS will monitor the following outcomes:
1. Permanency rates: Of all children referred to a TFC provider, how many achieve permanency, which is defined as reunification, adoption, or guardianship.
  2. Re-Entry: Of all children who achieve permanency, how many return to care within one (1) year.
  3. Placement stability: Of all children referred to a TFC provider, how many change placements? Of those placement changes how many moves are between settings at the same level? How many moves involve changes in the level of care, either up or down?
  4. Non-permanent exits: Of all children referred to a TFC provider, how many children leave for reasons other than permanency? Other reasons include but are not limited to transfers to another provider, young people who have runaway, and youth who age out of foster care.
  5. Days in care: For children placed with a TFC provider, how long was the length of stay?
- B. As part of its oversight responsibility, DCFS recognizes the duty it has to ensure that children and families receive care that meets their needs in a timely fashion. To that end, DCFS will monitor services provided in accordance with existing regulatory requirements, with a focus on:
1. The process of care.
  2. The quality of care.
  3. Capacity requirements.
- C. The process of care refers to standards that, at a minimum, speak to requirements as to assessments (when and how often) and reporting requirements. Quality of care refers to whether services are delivered in accordance with the needs of the children, with appropriate clinical follow-up. Capacity refers to staff ratio, training, physical plant, communications infrastructure, and record keeping as spelled out in regulation or in the successful applicant's response to the RFQ. Notwithstanding the foregoing, nothing in this section supersedes applicable policy and regulation. Moreover, the Division reserves the right to further refine its monitoring procedures. In doing so, the Division will work with stakeholders to ensure that changes are effective but not overly burdensome.

## 2.8 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. *Scope of Work and sample Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **must** meet in order to avoid assessment of damages. (See **Attachment C**).
- 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.

- C. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its 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 vendor so as to establish standards that are reasonably achievable.
- D. All changes made to the Performance Standards **shall** become an official part of the contract.
- E. Performance Standards **shall** continue throughout the term of the contract.
- F. Failure to meet the minimum Performance Standards as specified **shall** result in the assessment of damages.
- G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend or respond to the insufficiency. The State **shall** have the right to waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services. In these instances, the State **shall** have final determination of the performance acceptability.
- H. Should any compensation be owed to the agency due to the assessment of damages, vendor **shall** follow the direction of the agency regarding the required compensation process.

## **SECTION 3 – CRITERIA FOR SELECTION**

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

### **3.1 RESPONSE EVALUATION**

- A. The Arkansas Department of Human Services will review each *Response Packet* to verify submission Requirements have been met. *Response Packets* that do not meet submission *Requirements* **shall** be disqualified and **shall not** be evaluated.
- B. The following submission required mandatories **must** be received at Bid submission date and time in order to move to next stage of evaluation.
- 1) Bid Solicitation Response Packet received by submission date and time.
  - 2) One (1) original hard copy and one (1) electronic copy of Response Packet.
  - 3) Response Signature Page and Agreement and Compliance pages for Section 1,2,3,4 and 5 submitted and Signed.
  - 4) Proposed sub-contractor form submitted and signed.
  - 5) EO 98-04 Disclosure Form submitted and signed.

**Failure to submit the above documents will cause your response to not proceed to the next stage which is to review for minimum qualifications.**

### **3.2 VENDOR ACCEPTANCE OF EVALUATION TECHNIQUE**

The submission of a *Response Packet* **shall** signify the vendor's understanding and agreement to comply with all requirements in this Bid Solicitation.

## **SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS**

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

### **4.1 PAYMENT AND INVOICE PROVISIONS**

- A. Invoices for monthly billing must be developed online through the CHRIS FINANCIAL MODULE @ <https://dhs.arkansas.gov/dcfs/pie/login.aspx>. Reimbursement of services rendered under resultant contracts-- will be by submission of an itemized monthly billing.
- B. Billing must be signed by an authorized agent or designee for the provider and have the certification of compliance with the performance indicators, Arkansas Department of Human Services (DHS) 0145 attached.
- C. A monthly report will be required and will include: number of clients served, hours of service, dollar amount billed to the Division of Children and Family Services and contract balance (dollar amount).
- D. Payment will be made only after the vendor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The vendor 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 vendor **must** be registered with the State in order to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/vendor/index.html>

### **4.2 GENERAL INFORMATION**

- A. The State **shall not** lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a thirty (30)-day written notice to the vendor/lessor in the event funds are not appropriated.
- B. The State **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- C. The State **shall not** pay damages, legal expenses, or other costs and expenses of any other party.
- D. The State **shall not** continue a contract once any equipment has been repossessed.
- E. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- F. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- G. The State **shall not** enter a contract which grants to another party any remedies other than the following:
  - 1. The right to possession.
  - 2. The right to accrued payments.
  - 3. The right to expenses of de-installation.
  - 4. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  - 5. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- H. The laws of the State of Arkansas **shall** govern this contract.
- I. A contract **shall not** be effective prior to award being made by a State Procurement Official.

- J. In a contract with another party, the State will accept the risk of loss of the equipment or software and pay for any destruction, loss or damage of the equipment or software while the State has such risk, when:
1. The extent of liability for such risk is based upon the purchase price of the equipment or software at the time of any loss, and
  2. The contract has required the State to carry insurance for such risk.

#### **4.3 CONDITIONS OF CONTRACT**

- A. The vendor **shall** at all times observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to the execution of a resulting contract which in any manner affect the completion of the work.
- B. The vendor **shall** 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 vendor.
- C. The Contractor agrees to the Performance Based Contracting standards as presented in Attachment C, DHS Standard Terms and Conditions as presented in Attachment D, a pro forma contract as presented in Attachment E, and the Organizational or Personal Conflict of Interest policy as presented in Attachment F.

#### **4.4 STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of vendor-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 vendor **shall** retain total liability for equipment, software and technical and business or operations literature. The State **shall** not at any time be responsible for or accept liability for any vendor-owned items.
- B. The vendor's liability for damages to the State **shall** be limited to the value of the Contract or five million dollars (\$5,000,000), whichever is higher. The foregoing limitation of liability **shall 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 vendor; 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 vendor and the State **shall not** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall 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 vendor; 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 **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The vendor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

#### **4.5 PERFORMANCE BONDING**

- A. The Contractor **shall** be required to obtain performance and payment bonds when necessary to protect the State's interest, as determined by the state.
- B. The following situations may warrant a performance bond:
1. The State's property or funds are to be provided to the contractor for using in performing the contract;
  2. Substantial progress payments are made before delivery of end items is complete; or
  3. The duties of the Contractor, if breached, could expose the State to liabilities.
- C. When it is determined that a performance bond is required, the Contractor shall obtain a performance bond as follows:

1. The amount of the performance bonds shall be one hundred percent (100%) of the original contract price, unless the State determines that a lesser amount would be adequate for the protection of the State; and
  2. The State may require additional performance bond protection when a contract price is increased or modified.
  3. The performance bond must be delivered to the Arkansas Department of Human Services Chief Procurement Officer within fourteen (14) days of contract execution.
  4. Failure to provide is a breach of contract and may result in immediate contract termination.
- D. The Contractor shall submit documentation to the satisfaction of the State that a performance bond has been obtained. The contractor shall notify the State of any changes, modification, or renewals for the performance bond during the term of the contract.

#### **4.6 RECORD RETENTION**

- A. The vendor **shall** 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, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.
- B. Financial and accounting records **shall** be made 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.

#### **4.7 PRICE ESCALATION**

- A. Price increases will be considered at the time of contract renewal.
- B. The vendor **must** provide the State with 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. The State **shall** have the right to require additional information pertaining to the requested increase.
- C. Increases **shall not** be considered to increase profit or margins.
- D. The State **shall** have the right to approve or deny the request.

#### **4.8 CONFIDENTIALITY**

- A. The vendor, vendor's subsidiaries, and vendor's employees **shall** 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 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 **shall** have the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

#### **4.9 CONTRACT INTERPRETATION**

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

#### **4.10 CANCELLATION**

- A. In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated

funding. The State **shall** give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination. The effective date of termination **shall** be thirty (30) days from the date of notification, unless a longer timeframe is specified in the notification.

- B. Upon default of a vendor, the State **shall** agree to pay only sums due for goods and services received and accepted up to cancellation of the contract.

#### **4.11 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 vendor **shall** be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it **shall not** be affected by such declaration or finding and **shall** be fully performed.

## **SECTION 5 – 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 Response Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Response 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 disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple responses **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. Vendor **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. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. 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 vendor to supply additional descriptive material. The vendor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Vendors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.
- 7. **GUARANTY:** All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The vendor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The vendor **shall** further guarantee that if the items furnished hereunder are to be installed by the vendor, such items **shall** function properly when installed. The vendor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The vendor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
- 8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the vendor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at vendor's expense. After reasonable examination, all demonstrators will be returned at vendor's expense.
- 9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the vendor.
- 10. **AMENDMENTS:** Vendor's responses cannot be altered or amended after the bid opening except as permitted by regulation.
- 11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
- 12. **AWARD:** Term Contract: A contract award will be issued to the successful vendor. 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 vendor.
- 13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the vendor 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 vendor.

- 14. 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.
- 15. STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
- 16. DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize 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 vendors list or suspension of eligibility for award.
- 17. 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.
- 18. INVOICING:** The contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
- 19. STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the contractor's expense to the F.O.B. point provided by the agency or by OSP. Vendor **shall** properly identify items being returned.
- 20. 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.
- 21. ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
- 22. CLAIMS:** Any claims the Contractor may assert under this Agreement shall be brought before the Arkansas State Claims Commission ("Commission"), which shall have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor shall continue to provide the Services under this Agreement even in the event that the Contractor has a claim pending before the Commission.
- 23. CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the vendor written notice of such cancellation thirty (30) days prior to the date of cancellation.
- Any delivered but unpaid for goods will be returned in normal condition to the contractor by the State. If the State is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the contractor has provided services which the State has accepted, the contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**
- 24. DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the vendor agrees that: (a) the vendor **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 vendor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the vendor 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 vendor 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 vendor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.
- 25. CONTINGENT FEE:** The vendor 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 vendor for the purpose of securing business.
- 26. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the vendor named on the *Response 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.
- 27. 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.