



STATE OF ARKANSAS

Department of Human Services
Office of Procurement
700 Main Street
Little Rock, Arkansas 72201

INVITATION FOR BID BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	710-22-0003	Solicitation Issued:	11/1/2021
Description:	Meal Service for the Civilian Student Training Program (CSTP)		
Agency:	Department of Human Services, Division of Youth Services		

SUBMISSION DEADLINE			
Bid Submission Date/Time	11/30/2021 1:00 PM CST	Bid Opening Date/Time:	11/30/21 2:00 PM CST
Bids shall not be accepted after the designated bid submission date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit proposals at the designated location on or before the bid submission date and time. Bids received after the designated bid submission date and time shall be considered late and shall be returned to the vendor without further review. It is not necessary to return "no bids" to the Office of Procurement.			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	Arkansas Department of Human Services 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 th 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. Prospective Contractors assume all risk for timely, properly submitted deliveries.	
Bid's Outer Packaging:	Seal outer packaging and properly mark with the following information. If outer packaging of bid submission is not properly marked, the package may be opened for bid identification purposes. <ul style="list-style-type: none">• Bid number• Date and time of bid opening• Prospective Contractor's name and return address

OFFICE OF PROCUREMENT CONTACT INFORMATION			
OP Buyer:	Margurite Al-Uqdah	Buyer's Direct Phone Number:	501-682-8743
Email Address:	Margurite.al-uqdah@dhs.arkansas.gov	DHS's Main Number:	501-683-4162
DHS Website:	https://humanservices.arkansas.gov/do-business-with-dhs		
OSP Website:	http://www.arkansas.gov/dfa/procurement/bids/index.php		

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

1.1 PURPOSE

This Invitation for Bid (IFB) is issued by the Arkansas Department of Human Services (DHS) Office of Procurement (OP) for the Division of Youth Services (DYS) for the purpose of seeking a qualified and experienced food service management company (FSMC) to manage the food service operation in part, or in all, of the National School Lunch Program (NSLP), School Breakfast Program (SBP), and After School Snack Program (ASP) for the Civilian Student Training Program.

- 1.2** 7 CFR 210.16(a)(9). Obtain written approval of invitations for bids and requests for proposals before their issuance when required by the State agency. The school food authority must incorporate all State agency required changes to its solicitation documents before issuing those documents;

1.3 INTERGOVERNMENTAL/COOPERATIVE USE OF PROPOSAL AND CONTRACT

In accordance with Arkansas Code §19-11-249, this proposal and resulting contract is available to any State Agency or Institution of Higher Education that wishes to utilize the services of the selected proposer, and the proposer agrees, they may enter into an agreement as provided in this solicitation.

1.4 TYPE OF CONTRACT

- A. A Term contract will be awarded to a single vendor.
- B. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review.
- C. This contract shall be for a period of up to one (1) year, beginning on February 1, 2022 and ending June 30, 2022, and renewed annually for no more than four (4) additional years with mutual agreement between the DHS and the FSMC. 7 CFR 210.16(d). The effective date may be different than July 1st, but the termination date must be June 30. Keep in mind that the effective date may not occur prior to the one which the contract is signed.
- D. 7 CFR 210.19 requires DHS to annually review the contract between the DHS and the FSMC to ensure compliance with program regulations. Regulations required DHS's review of contract amendments and/or renewals before execution. The State agency (Arkansas Department of Human Services, NSLP) must provide written approval.

1.5 ISSUING AGENCY

The OP, as the issuing office, is the sole point of contact throughout this solicitation process. Vendor questions regarding this Bid Solicitation should be made through the State's buyer as shown on page one of this document. Vendor's questions will be answered as a courtesy and at vendor's own risk.

1.6 BID OPENING LOCATION

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

Arkansas Department of Human Services
Office of Procurement
700 Main Street
Little Rock, AR 72201

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.

When circumstances warrant, DHS may elect to conduct the bid opening entirely via video conference. If DHS makes this election, DHS shall post a link to the video conference on its website. If the bid opening will be conducted entirely via video conference, individuals will not be permitted to attend in-person.

1.7 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 bid or in subsequent correspondence, **shall** cause the vendor's bid to be disqualified.

1.8 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. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. "Prospective Contractor", Bidder" means a person who submits a bid in response to this solicitation.
- D. "Contractor", "Vendor," and "Food Service Management Company" means a person who sells or contracts to sell commodities and/or services.
- E. The terms "Invitation for Bid", "IFB," "Bid Solicitation," and "Solicitation" are used synonymously in this document.
- F. "Shall" and "Must" mean the imperative and are used to identify requirements
- G. "Responsive bid" means a bid submitted in response to this solicitation that conforms in all material respects to this IFB.
- H. "Requirement" means a specification that a Contractor's product and/or service must perform during the term of the contract. These specifications will be distinguished by using the term "shall" or "must" in the requirement.
- I. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.

J. Acronyms

DYS	Division of Youth Services
FSMC	Food Service Management Company
NSLP	National School Lunch Program
SBP	School Breakfast Program
ASP	After School Snack Program (ASP)
USDA	United States Department of Agriculture

1.9 RESPONSE DOCUMENTS

A. Bid Response Packet

1. The following are bid submission requirements and must be submitted as a hard copy in the original Bid Response Packet.
 - a. Original signed Bid Signature Page. Signature may be ink or digital. (See Bid Response Packet.)
 - b. Completed Bid Response Packet, which must be in the English language
 - c. Proposed Subcontractors Form. The utilization of any proposed subcontractor is subject to approval by the Department
 - d. Exceptions Form

B. Pricing

1. Vendor(s) **must** include all pricing on the Official Bid Price Sheet(s) only. Any cost not identified by the successful vendor but subsequently incurred in order to achieve successful operation **shall** be borne by the vendor.
2. A justification of prices quoted should be attached to the *Official Bid Price Sheet*.
3. To allow time to evaluate bids, prices **must** be valid for one hundred twenty (120) days following the bid opening.
4. Failure to complete and submit the *Official Bid Price Sheet* **shall** result in disqualification.
5. All bid pricing **must** be in United States dollars and cents.
6. The Official Bid Price Sheet may be reproduced as needed.
7. 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.
 - b. Copy of Prospective Contractor's Equal Opportunity Policy.
 - c. Voluntary Product Accessibility Template (VPAT), if applicable.
8. DO NOT include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

1.10 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 *Bid Response Packet*.
- B. Vendor's signature on these pages **shall** signify agreement to and compliance with all requirements within the designated section.

1.11 CLARIFICATION OF BID SOLICITATION

- A. Contractor may submit written questions requesting clarification of information contained in this *Bid Solicitation*. Written questions should be submitted by 4:30 pm., Central Time on November 8, 2021. Submit written questions by email to the buyer as shown on page one (1) of this *Bid Solicitation*.
- B. The attached response template (*Attachment B*) **must** be used for submission of all written questions. All questions should include the information specified in the response template. Written questions submitted in a different format may not be answered by DHS.
- C. Contractor's written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OP website by the close of business on November 15, 2021.
- E. Answers to verbal questions may be given as a matter of courtesy and **must** be evaluated at contractor's risk.

1.12 SUBCONTRACTORS

- A. Vendor **must** complete, sign and submit the *Proposed Subcontractors Form* included in the *Bid 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*. **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 PRIME CONTRACTOR RESPONSIBILITY

- A. A joint bid submitted by two (2) or more vendors is acceptable. However, a single vendor **must** be identified as the prime contractor.
- B. The prime contractor **shall** be held responsible for the contract and **shall** be the sole point of contact.

1.14 INDEPENDENT PRICE DETERMINATION

- A. By submission of this bid, the vendor certifies, and in the case of a joint response, each party thereto certifies as to its own organization, that in connection with this bid:
 - 1. The prices in the bid have been arrived at independently, without collusion.
 - 2. No prior information concerning these prices has been received from, or given to, a competitive company.
- B. Evidence of collusion **shall** warrant consideration of this bid by the Office of the Attorney General. All vendors **shall** understand that this paragraph may be used as a basis for litigation.

1.15 PROPRIETARY INFORMATION

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
- C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
- D. By redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- F. Under no circumstances will pricing information be designated as confidential.
- G. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Bid Response Packet*. A CD is also acceptable. Do not submit documents via email or fax.
- H. 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.
- I. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- J. The redacted copy will be open to public inspection under FOIA without further notice to the Prospective Contractor.

- K. If a redacted copy of the submission documents is not provided with Prospective Contractor's *Bid Response Packet*, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under FOIA.
- L. If the State deems redacted information to be subject to FOIA, the Prospective Contractor will be contacted prior to release of the documents.
- M. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

1.16 CAUTION TO VENDORS

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through OP.
- B. Vendor **must not** alter any language in any solicitation document provided by the State.
- C. Vendor **must not** alter the Official Bid Price Sheet.
- D. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- E. Bids **must** be submitted in the English language.
- F. 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.
- G. Vendor **must** provide clarification of any information in their response documents as requested by OP.
- H. Bids **must** meet or exceed all defined specifications as set forth in this *Bid Solicitation*.
- I. Bids **must** meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.
- J. Vendors may submit multiple bids.

1.17 REQUIREMENT OF ADDENDUM

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by OP.
- B. An addendum posted within three (3) calendar days prior to the bid opening **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 following websites for any and all addenda up to bid opening:
<https://humanservices.arkansas.gov/do-business-with-dhs>
<https://www.arkansas.gov/dfa/procurement/bids/index.php>

1.18 AWARD PROCESS

- A. Vendor Selection
 - 1. Award **shall** be made on an ALL OR NONE basis to the lowest responsive bidder. Bidders must meet minimum qualifications. Bids must meet or exceed all defined specifications. Bids must meet all terms and conditions of this Invitation for Bid and the laws of the State of Arkansas.
 - 2. Contract award, extension, or renewal is contingent upon approval by DHS officials, subsequent approval by the OP, review by the Legislative Council and the availability of State funds. Changes to any non-financial portion of this agreement may be made with the agreement of both DHS and the Contractor. 7 CFR 210.16(a)(10) Ensure that the State agency has reviewed and approved the contract terms and that the school food authority has incorporated all State agency required changes into the contract or amendment before any contract or amendment to an existing food service management company contract is executed. Any changes made by the school food authority or a food service management company to a State agency pre-approved prototype contract or State agency approved contract term must be approved in

writing by the State agency before the contract is executed. When requested, the school food authority must submit all procurement documents, including responses submitted by potential contractors, to the State agency, by the due date established by the State agency.

B. Negotiations

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

C. Anticipation to Award

1. Once an anticipated successful vendor has been determined, the anticipated award will be posted on the following websites:

<https://humanservices.arkansas.gov/do-business-with-dhs>
<https://www.arkansas.gov/dfa/procurement/bids/index.php>

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 (14) day posting period.
3. OP **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 above referenced websites for the posting of an anticipated award.

D. Issuance of Contract

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

1.19 MINORITY AND WOMEN-OWNED 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 woman-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.
- D. Necessary affirmative steps will be taken to assure that small and minority businesses, women's business enterprises and labor surplus area firms will be used when possible 2 CFR 200.321

1.20 EQUAL EMPLOYMENT OPPORTUNITY POLICY

- A. In compliance with Arkansas Code Annotated § 19-11-104, the State is required to have a copy of the anticipated Contractor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. EO Policies should be included as a hardcopy accompanying the solicitation response.
- C. The submission of an *EO Policy* to the OP 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 the OP 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." Proposals 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 Prospective Contractor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 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 Prospective Contractor expressly represents and warrants to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 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 MASTERCARD ACCEPTANCE

- A. Awarded vendor should have the capability of accepting the State's authorized Mastercard 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. Mastercard 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 OP's prior written approval.
- B. Failure to comply with this Requirement **shall** be cause for a vendor's bid to be disqualified.

1.28 RESERVATION

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

1.29 CERTIFICATION REGARDING LOBBYING

A. Bidder will comply with Public Law 101-121, Section 319 (Section 1352 of Title 31 U.S.C.) by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with awarding of any federal contract, sub-grant, loan or cooperative agreement for an award in excess of \$100,000.

B. If the bidder has paid or will pay for lobbying using funds other than appropriated federal funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included with the Response Packet.

1.30 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

A. The contractor, as a lower tier recipient of federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions).

B. By signing and submitting the response packet, the bidder understands and agrees, as defined in 45 CFR Part 76, and certifies to the best of its knowledge and belief that it and its principals:

- Are not presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department of agency.
- Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

1.31 2 CFR Appendix II to Part 200 (F) Contract Provisions for Non-Federal Entity Contracts Under Federal Awards Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2](#) (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

1.32 SCHEDULE OF EVENTS

Public Notice of IFB	November 1, 2020
Deadline for Receipt of Written Questions	November 8, 2021
Response to Written Questions, On or About	November 15, 2021
Date and Time for Bid Submission	November 30, 2021 1:00 pm CST
Date and Time for Bid Opening	November 30, 2021 2:00 pm CST
Intent to Award Announced, On or About	December 8, 2021
Contract Start (Subject to State Approval)	February 1, 2022

1.33 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

2.1 INTRODUCTION

This Invitation for Bid (IFB) is issued by the Arkansas Department of Human Services (DHS) Office of Procurement (OP) for the Division of Youth Services (DYS) for the purpose of seeking a qualified and experienced food service management company (FSMC) to manage the food service operation in part, or in all, of the National School Lunch Program (NSLP), School Breakfast Program (SBP), and After School Snack Program (ASP) for the Civilian Student Training Program.

2.2 MINIMUM QUALIFICATIONS

- A. Bidder **shall** be registered to do business in the State of Arkansas. For verification purposes, bidder **must** submit official documentation of their active registration from Arkansas Secretary of State office.
- B. Bidder **shall** have a business license for Catering and an Arkansas Department of Health (ADH) Retail Food Establishment Permit. For verification purposes, bidder **must** provide, at the time of bid submission, a copy of the license and the permit
- C. Bidder **must** have at a minimum, three (3) years of catering experience including food delivery. For verification purposes, contractor **must** submit a narrative of detailing catering experience, food delivery experience and date catering service began.
- D. Bidder **shall** have passed health inspection. For verification purpose, bidder **must** submit, at time of bid submission, a copy of health inspection issued by the Arkansas Department of Health.
- F. Bidder **must** submit a 21-day cycle menu in accordance with the regulations in 7 CFR 210.10, with its response. The 21-day cycle menu **must** include breakfast, lunch, snack, dinner, and beverages.
- G. Bidder **must** be an independent contractor and shall not be an employee of DHS. Bidder must submit, at time of bid submission, a completed Attachment I – I Independent Price Determination Certification.
- H. The DYS maintain all applicable health certifications on its facilities and **shall** ensure that all state and local regulations are being met by the contractor preparing or serving meals at any facility.
- I. The FSMC **shall** maintain state and/or local health certifications for any facility outside the DYS in which it proposes to prepare meals and shall maintain this health certification for the duration of the contract as required under USDA Regulations 7 CFR 210.16 (a)(7).
- I. Bidder must not be debarred or suspended. For verification purposes, bidder **must** submit, at time of bid submission, a completed Attachment F – Certification Regarding Debarment and Suspension.

2.3 SCOPE OF WORK

- A. The FSMC **shall** operate in conformance with the DYS's agreement with the Arkansas State Department of Human Services – Special Nutrition Programs (National School Lunch Program, School Breakfast Program, and After School Snack Program).
- B. The FSMC, as an independent contractor, **shall** have the exclusive right to operate the above program(s) at the sites specified by the DYS.
- C. The FSMC **shall** be an independent contractor and not an employee of the DYS. The employees of the FSMC are not employees of the DYS.
- D. The food service provided **shall** be operated and maintained as a benefit to the DYS's students, faculty, and staff.
- E. The DYS **shall** be legally responsible for the conduct of the food service program and **shall** supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the Department of Human Services and USDA.

The DYS **shall** retain control of the Child Nutrition Program (CNP) food service account and overall financial responsibility for the CNP.

- F. The DYS **shall** establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and a 'la carte (including vending, adult meals, contract meals and catering) prices. (Exception: Non-pricing programs need not establish a selling price for reimbursable meals/milk).
- G. USDA commodities **shall not** be used for special functions unless the DYS's students will be the primary beneficiaries.
- H. The DYS **must** include all food service programs; however, the DYS reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the DYS's regularly scheduled lunch, breakfast, or dinner periods, provided such is prohibited by state or federal program regulations.
- I. The FSMC **shall** cooperate with the DYS in promoting nutrition education and coordinating the DYS's food service with classroom instruction.
- J. The FSMC should establish an advisory board composed of parents, teachers, and students to assist in menu planning. 7 CFR 210.16(a)(8)
- K. The FSMC **shall** comply with the rules, regulations, policies and instructions of the State Agency and USDA and any additions or amendments thereto, including USDA Regulation 7 CFR Parts 210, 220, 245, 250, 2 CFR - 200.318-327, Appendix II to Part 200, 2 CFR 400, 2CFR 416, 2 CFR 417, and 2 CFR 418; 7 CFR Part 215 (SMP), if applicable; 7CFR Part 225 (SFSP), if applicable; and 7 CFR Part 226 (CACFP); if applicable.
- L. Meal Equivalents: For the purpose of making the meal count computation, include all Child Nutrition Programs (i.e., contract meals, SFSP meals, CACFP applicable), the number of lunches/breakfasts) 2 breakfasts equal 1 lunch)/after-school snacks (4 snacks equal 1 lunch) served to children shall be determined by actual count. The DYS **shall** determine a 'la carte meal equivalents by dividing the a'la carte revenue from catering plus revenue from catering, vended meals and concessions by the sum of the total federal and state reimbursements (current year federal free reimbursement rate, state match reimbursement rate and state program reimbursement rate) plus the value of USDA entitlement and bonus donated foods. a'la carte revenue from vending machine sales is part of the a'la carte revenue.
- M. The FSMC **shall** make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet as stated in the Students' Individual Educational Plans (IEPs) or 504 Plans and those non-abled students who are unable to consume regular lunch because of medical or other special dietary needs. Substitutions **shall** be made on a case-by-case when supported by a statement of the need for substitutes that includes recommended alternative foods unless otherwise exempted by USDA. Such statement **shall** be signed by a medical doctor or a recognized medical authority. There will be no additional charge to the student for such substitutions.
- N. Gifts from FSMC: The DYS's officers, employees or agents **shall** neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors not potential contractors. To the extent permissible under state law, rules or regulations, such standards **shall** provide for appropriate penalties, sanctions or other disciplinary actions to be applied for violations of such standards.

2.4 SIGNATURE AUTHORITY

The DYS **shall** retain signature authority for the application/agreement, free and reduced-price policy statement and programs indicated in Section I, Item B on page 4 and the monthly claim for reimbursement. (reference 7 CFR § 210.9 (a) and (b) and 7 CFR § 210.16(a)(5).

2.5 FREE AND REDUCED PRICE MEALS POLICY

- A. The DYS **shall** be responsible for the establishment and maintenance of the free and reduced-price meals eligibility roster.

- B. The DYS **shall** implement an accurate *point of service* count using the counting system submitted by the DYS in its application to participate in the CNP and approved by the State Agency for the programs listed in Item B on page 4, as required under USDA regulations. Such accounting system must eliminate the potential for the overt identification of free and reduced-price eligible students under USDA Regulation 7 CFR § 245.8.
- C. The DYS **shall** be responsible for the development and distribution of the parent letter and Application for Free and Reduced-Price Meals and/or Free Milk and participating in Direct Certification, if desired. The DYS shall be responsible for the determination of eligibility for free or reduced-price meals and free milk, if applicable.
 - 1. The DYS **shall** be responsible for conducting any hearings related to determinations regarding eligibility for free or reduced-price meals and free milk, if applicable.
 - 2. The DYS **shall** be responsible for verifying Applications for Free and Reduced-Price Meals as required by USDA regulations.

2.6 USDA-DONATED FOODS

General Requirements 7 CFR 250.52

(a) The food service management company **must** meet the requirements for the safe storage and control of donated foods in § 250.14(a).

(b) Storage and inventory with commercially purchased foods. The food service management company may store and inventory donated foods together with foods it has purchased commercially for the school food authority's use (unless specifically prohibited in the contract). It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in § 250.51(d) – i.e., use all donated beef and pork, and all end products in the food service, and use all other donated foods or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the food service. Additionally, under cost-reimbursable contracts, the food service management company must ensure that its system of inventory management does not result in the recipient agency being charged for donated foods.

(c) Disposition of donated foods and credit reconciliation upon termination of the contract. When a contract terminates, and is not extended or renewed, the food service management company must return all unused donated beef, pork, and processed end products, and must, at the recipient agency's discretion, return other unused donated foods. The recipient agency must ensure that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year, as applicable.

7 CFR 250. 53

(7) Assurance that the procurement of processed end products on behalf of the recipient agency, as applicable, will ensure compliance with the requirements in subpart C of 7 CFR part 250 and with the provisions of distributing or recipient agency processing agreements, and will ensure crediting of the recipient agency for the value of donated foods contained in such end products at the processing agreement value;

(9) Assurance that the food service management company will comply with the storage and inventory requirements for donated foods

7 CFR 250.54

(a) Recordkeeping requirements for the recipient agency. The recipient agency must maintain the following records relating to the use of donated foods in its contract with the food service management company:

- (1) The donated foods and processed end products received and provided to the food service management company for use in the recipient agency's food service;
- (2) Documentation that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's food service in the school or fiscal year, including, in accordance with the requirements in § 250.51(a), the value of donated foods contained in processed end products; and
- (3) The actual donated food values used in crediting.

- (b) Recordkeeping requirements for the food service management company. The food service management company must maintain the following records relating to the use of donated foods in its contract with the recipient agency:
 - (1) The donated foods and processed end products received from, or on behalf of, the recipient agency, for use in the recipient agency's food service;
 - (2) Documentation that it has credited the recipient agency for the value of all donated foods received for use in the recipient agency's food service in the school or fiscal year, including, in accordance with the requirements in § 250.51(a), the value of donated foods contained in processed end products; and
 - (3) Documentation of its procurement of processed end products on behalf of the recipient agency, as applicable.
 - (c) Review requirements for the recipient agency. The recipient agency must ensure that the food service management company is in compliance with the requirements of this part through its monitoring of the food service operation, as required in 7 CFR parts 210, 225, or 226, as applicable. The recipient agency must also conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's food service in the school or fiscal year, including, in accordance with the requirements in § 250.51(a), the value of donated foods contained in processed end products.
 - (d) Departmental reviews of food service management companies. The Department may conduct reviews of food service management company operations, as necessary, to ensure compliance with the requirements of this part with respect to the use and management of donated foods.
- A. Any USDA-donated foods received by the DYS and made available to the FSMC **must** accrue solely to the benefit of the DYS 's nonprofit school food service and SFSP programs, if applicable, and **shall** be fully utilized therein.
 - B. The DYS **shall** retain title to all USDA-donated foods.
 - C. Credit issued by the FSMC to the DYS for USDA-donated commodities received during each contract term and used in the DYS's food service **shall** be recorded on the monthly bill/invoice as a separate line item entry and **shall** be clearly identified and labeled.
 - D. The FSMC is prohibited from entering into any processing contracts utilizing USDA- donated foods on behalf of the DYS. All refunds received from processors **must** be retained by the nonprofit school food service account.
 - E. The FSMC **shall** accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA-donated foods
 - F. The FSMC **shall** accept and use USDA-donated foods in as large quantities as may be efficiently utilized in the DYS 's nonprofit food service, subject to approval of the DYS. The DYS **shall** consult with the FSMC in the selection of commodities; however, the final determination as to the acceptance of commodities **must** be made by the DYS.
 - G. The FSMC **shall** use all donated ground beef and ground pork products, and all processed end products, in the DYS's food service.
 - H. The FSMC **shall** use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the DYS's food service; Assurance that the procurement of processed end products on behalf of the DYS, as applicable, will ensure compliance with the requirements in subpart C of 7 CFR 250 and with the provisions of distributing or DYS processing agreements, and will ensure crediting of the DYS for the value of donated foods contained in such end products at the processing agreement value. The method of determining the donated food values used in crediting **shall** be in accordance with 7 CFR 250.51(c) or the actual donated food values.
 - I. The FSMC **must** credit the DYS for the value of all donated foods received for use in the DYS 's meal service in the school year or fiscal year (including both entitlement and bonus foods) and including the value of donated foods contained in processed end products, in accordance with the contingencies in 7 CFR 250.51(a). Any

activities relating to donated foods that the food service management company will be responsible for, in accordance with 7 CFR 250.50(d), and assurance that such activities will be performed in accordance with the applicable requirements in 7 CFR 250.

- J. The DYS may perform onsite reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of donated foods.
- K. The FSMC shall account for all USDA-donated foods separately from purchased foods. The FSMC is required to maintain accurate and complete records with respect to the receipt, use/disposition, storage, and inventory of USDA-donated foods. Failure by the FSMC to maintain the required records under this contract shall be considered prima facie evidence of improper distribution or loss of USDA- donated foods.
- L. The FSMC shall have records available to substantiate that the full value of all USDA-donated foods is used solely for the benefit of the DYS.
- M. Extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

2.7 HEALTH CERTIFICATIONS

- A. The DYS **shall** maintain all applicable health certifications on its facilities and **shall** ensure that all state and local regulations are being met by the FSMC preparing or serving meals at any DYS facility.
- B. The FSMC **shall** maintain state and/or local health certifications for any facility outside the DYS in which it proposes to prepare meals and **shall** maintain this health certification for the duration of the contract as required under USDA Regulations 7 CFR § 210.16(c).

2.8 MEAL REQUIREMENTS

- A. The FSMC **shall** serve meals on such days and at such times as requested by the DYS.
- B. Meals provided **must** consist of breakfast, lunch and dinner. Snack **must** be delivered with lunch and will be distributed as needed.
- C. The DYS **shall** retain control of the quality, extent, and general nature of the food service.
- D. The DYS **shall** offer free, reduced-price, and full-price reimbursable meals to all eligible children participating in the programs.
- E. In order for the FSMC to offer a' la carte food service, the FSMC **must** offer free reduced-price, and full-price reimbursable meals to all eligible children.
- F. The FSMC **shall** provide meals that meet the menu- planning option.
- G. Meals provided **must** meet nutrition requirements set forth by the United States Department of Agriculture for National School Lunch Program for breakfast, lunch and snack **Milk is required for all meals. All milk **must** be fat-free or low-fat (1 percent). Milk with higher fat content is not allowed. Students **must** be provided an option between flavored and unflavored milk for breakfast and lunch.
- H. No payment will be made to the FSMC for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the DYS for each food component in the Attachment H - USDA meal pattern, or do not otherwise meet the requirements of the contract.
- I. The IFB contains a 21-day cycle menu developed in accordance with the regulations at 7 CFR 210.10, to be used as a guide for the purpose of bid response or estimating average cost per meal. DYS with no capability to prepare a 21-day cycle menu may, with State agency approval, require that each food service management company include a 21-day cycle menu developed in accordance with the regulations in 7 CFR 210.10, with its response. The FSMC **must** adhere to the cycle menu for the first 21days of meal service. Changes thereafter may be made with the approval of the school food authority (7 CFR 210.16(b)(1)).

1. 7 CFR 210.10 Meal Pattern requirements recommended by USDA.

- (a) General requirements
- (b) General nutrition requirements. Schools must offer nutritious, well-balanced, and age-appropriate meals to all the children they serve to improve their diets and safeguard their health.
- (c) (i) Requirements for lunch. School lunches offered to children age 5 or older must meet, at a minimum, the meal requirements in paragraph (b) of this section. Schools must follow a food-based menu planning approach and produce enough food to offer each child the quantities specified in the meal pattern (Refer to Attachment H – USDA Meal Pattern) established in paragraph (c) of this section for each age/grade group served in the school. In addition, school lunches must meet the dietary specifications in paragraph (f) of this section. Schools offering lunches to children ages 1 through 4 and infants must meet the meal pattern requirements in paragraphs (p) and (q), as applicable, of this section. Schools must make potable water available and accessible without restriction to children at no charge in the place(s) where lunches are served during the meal service.
- (d) (1) On a daily basis:
 - (e) (i) Meals offered to each age/grade group must include the food components and food quantities specified in the meal pattern in paragraph (c) of this section;
 - (f) (ii) Food products or ingredients used to prepare meals must contain zero grams of trans fat per serving or a minimal amount of naturally occurring trans fat; and
 - (g) (iii) The meal selected by each student must have the number of food components required for a reimbursable meal and include at least one fruit or vegetable.
- (h) (2) Over a 5-day school week:
 - (i) (i) Average calorie content of meals offered to each age/grade group must be within the minimum and maximum calorie levels specified in paragraph (f) of this section;
 - (j) (ii) Average saturated fat content of the meals offered to each age/grade group must be less than 10 percent of total calories; and
 - (k) (iii) Average sodium content of the meals offered to each age/grade group must not exceed the maximum level specified in paragraph (f) of this section.
- (l) (c) Meal pattern for school lunches. Schools must offer the food components and quantities required in the lunch meal pattern established. See attached meal pattern chart for lunch.
- (m) Afterschool snacks. Eligible schools operating afterschool care programs may be reimbursed for one afterschool snack served to a child (as defined in § 210.2) per day.
- (n) (1) “Eligible schools” means schools that:
 - (o) (i) Operate school lunch programs under the Richard B. Russell National School Lunch Act; and
 - (p) (ii) Sponsor afterschool care programs as defined in § 210.2.
- (q) (2) Afterschool snack requirements for grades K through 12. Afterschool snacks must contain two different components from the following four:
 - (r) (i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose.
 - (s) (ii) A serving of meat or meat alternate, including nuts and seeds and their butters listed in FNS guidance that are nutritionally comparable to meat or other meat alternates based on available nutritional data.
 - (t) (A) Nut and seed meals or flours may be used only if they meet the requirements for alternate protein products established in appendix A of this part.
 - (u) (B) Acorns, chestnuts, and coconuts cannot be used as meat alternates due to their low protein and iron content.
 - (v) (iii) A serving of vegetable or fruit, or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice must not be served when fluid milk is served as the only other component.
 - (w) (iv) A serving of whole-grain or enriched bread; or an equivalent serving of a bread product, such as cornbread, biscuits, rolls, or muffins made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as enriched rice, bulgur, or enriched corn grits; or an equivalent quantity of any combination of these foods. See attached meal pattern chart for After School Snacks

2. 7 CFR 220.8 Meal requirements for breakfast
 - (a) General requirements. This section contains the meal requirements applicable to school breakfasts for students in grades K through 12, and for children under the age of 5. In general, school food authorities must ensure that participating schools provide nutritious, well-balanced, and age-appropriate breakfasts to all the children they serve to improve their diet and safeguard their health.
 - (b) (1) General nutrition requirements. School breakfasts offered to children age 5 and older must meet, at a minimum, the meal requirements in paragraph (b) of this section. Schools must follow a food-based menu planning approach and produce enough food to offer each child the quantities specified in the meal pattern established in paragraph (c) of this section for each age/grade group served in the school. In addition, school breakfasts must meet the dietary specifications in paragraph (f) of this section. Schools offering breakfasts to children ages 1 to 4 and infants must meet the meal pattern requirements in paragraphs (o) and (p), as applicable, of this section. When breakfast is served in the cafeteria, schools must make potable water available and accessible without restriction to children at no charge.
 - (c) (2) Unit pricing. Schools must price each meal as a unit. The price of a reimbursable lunch does not change if the student does not take a food item or requests smaller portions. Schools must identify, near or at the beginning of the serving line(s), the food items that constitute the unit-priced reimbursable school meal(s).
 - (d) (3) Production and menu records. Schools or school food authorities, as applicable, must keep production and menu records for the meals they produce. These records must show how the meals offered contribute to the required food components and food quantities for each age/grade group every day. Labels or manufacturer specifications for food products and ingredients used to prepare school meals for students in grades K through 12 must indicate zero grams of trans fat per serving (less than 0.5 grams). Schools or school food authorities must maintain records of the latest nutritional analysis of the school menus conducted by the State agency. Production and menu records must be maintained in accordance with FNS guidance.
 - (e) (b) Meal requirements for school breakfasts. School breakfasts for children ages 5 and older must reflect food and nutrition requirements specified by the Secretary. Compliance with these requirements is measured as follows:
 - (f) (1) On a daily basis:
 - (g) (i) Meals offered to each age/grade group must include the food components and food quantities specified in the meal pattern in paragraph (c) of this section;
 - (h) (ii) Food products or ingredients used to prepare meals must contain zero grams of trans fat per serving or a minimal amount of naturally occurring trans fat as specified in paragraph (f) of this section; and
 - (i) (iii) Meal selected by each student must have the number of food components required for a reimbursable meal and include at least one fruit or vegetable.
 - (j) (2) Over a 5-day school week:
 - (k) (i) Average calorie content of the meals offered to each age/grade group must be within the minimum and maximum calorie levels specified in paragraph (f) of this section;
 - (l) (ii) Average saturated fat content of the meals offered to each age/grade group must be less than 10 percent of total calories as specified in paragraph (f) of this section;
 - (m) (iii) Average sodium content of the meals offered to each age/grade group must not exceed the maximum level specified in paragraph (f) of this section;
 - (n) (c) Meal pattern for school breakfasts for grades K through 12. A school must offer the food components and quantities required in the breakfast meal pattern established in the following table: See attached table meal pattern chart for breakfast.

3. Meal requirements for dinner

- A. Meal pattern for dinner must offer the food components and quantities as required in the lunch meal pattern provided in *Attachment H*.
- B. Dinner options may vary as agreed upon by DYS and the contractor.

2.9 GEOGRAPHIC PREFERENCE

- A. The FSMC, as the agent of the DYS, **must** maximize the use of Arkansas grown/locally grown products, including but not limited to, fruits, vegetable, protein and dairy products, whenever possible, and when purchased by the DYS directly, such fruits, vegetables, protein and dairy products must be used by the FSMC in the DYS's Food Service Program.
- B. The FSMC **shall** engage in the Arkansas Farm to School Program, if applicable, in an effort to connect schools (K - 12) with Arkansas local farms in order to serve healthy meals using locally-produced foods, and participate in relevant state education and marketing initiatives that support farm to school.
- C. The FSMC **shall** produce a quarterly report which documents the procurement of Arkansas grown / locally grown products including the local farm source, the product(s) purchased, and the value of the products purchased on behalf of the DYS.

2.10 BOOKS AND RECORDS

- A. The FSMC **shall** maintain such record (supported by invoices, receipts, or other evidence) as the DYS will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by the DYS no later than the tenth calendar day succeeding the month in which service were rendered.
- B. 7 CFR 210.16(c)(1) The food service management company **shall** maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and **shall** be retained in accordance with § 210.23(c).
- C. Participation records, including claim information by eligibility category, **shall** be submitted no later than the tenth working day succeeding the month in which services were rendered. The DYS **shall** perform edit checks on the participation records provided by the FSMC prior to the preparation and submission of the claim for reimbursement.
- D. The FSMC **shall** maintain records at the DYS to support all allowable expenses appearing on the monthly operating statement. These records shall be kept in an orderly fashion according to expense categories.
- E. The FSMC **shall** provide the DYS with a year-end statement.
- F. The DYS shall conduct an internal audit of food, labor, and other large expense items quarterly as well as performing random audits on smaller expense categories.
- G. The DYS and the FSMC must provide all documents as necessary for the independent auditor to conduct the DYS's single audit.
- H. Books and records of the FSMC pertaining to CNP operations shall be made available, upon demand, in an easily accessible manner for a period of three years after the final claim for reimbursement for the fiscal year to which they pertain, in which the FSMC contract is in place, including extensions for audit, examination, excerpts, and transcriptions by the DYS and/or any state or federal representatives and auditors. (Reference 7 CFR §210.9[b][17].)
- I. If audit findings regarding the FSMC's records have not been resolved within the three-year record retention period, the records must be retained beyond the three-year period for as long as required for the resolution of the issues raised by the audit.
- J. The FSMC shall not remove federally required records from DYS premises upon contract termination.

2.11 MONITORING

- A. The DYS **shall** monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations. (Reference 7 CFR §210.16 (a)(3) Further, if there is more than one school site, there is an additional requirement that the DYS conduct an on-site review of the counting claiming system no later than February 1 of each year as required by 7 CFR §210.8.
- B. The records necessary for the DYS to complete the required monitoring activities **must** be maintained by the FSMC under this contract and must be made available to the Auditor General, USDA, the State Agency, and the DYS upon request for the purpose of auditing, examination, and review.

2.12 NON-DISCRIMINATION

Both the DYS and the FSMC agree that no child who participates in the NSLP, SBP, and ASP will be discriminated against on the basis of race, color, national origin, age, sex, or disability.

2.13 EMERGENCY CLOSING

- A. The DYS **shall** notify the FSMC of any interruption in utility service of which it has knowledge.
- B. The DYS **shall** notify the FSMC of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency situations.

2.14 ASSURANCES attachment

- A. The FSMC hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant.

- B. The FSMC hereby agrees that it will comply with the **Buy American Provision in 7 CFR 210.21(d) and 220.16(d)**.

1) Definition of domestic commodity or product. In this paragraph (d), the term 'domestic commodity or product' means -

(i) An agricultural commodity that is produced in the United States; and

(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

- C. The FSMC **must** provide justification to the DYS if a product cannot be produced and processed in the US and does not meet the Buy American provision. Bananas for example cannot be produced in the US. An SFA would need a justification if they served bananas. D. For contracts more than \$100,000, the FMSC hereby agrees that it will comply with:
 - a. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or

laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Appendix II of 2 CFR 200(E).

- b. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award. Appendix II of 2 CFR 200(I). See Appendix B to 3018-Disclosure Form to Report Lobbying.
- c. Appendix II to Part 200 (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency

E. For contracts in excess of \$150,000, the FMSC hereby agrees that it will also comply with:

- a. Clean Air and the Federal Water Pollution Control Acts (42 U.S.C. 7401-7671q. and 33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Appendix II of 2 CFR 200(G).
- b. Remedies: Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Appendix II of 2 CFR 200(A).

F. The FMSC hereby agrees that it will also comply with the Debarment and Suspension Executive Order (Executive Orders 12549 and 12689)(2 CFR 200.213 and Appendix II to 2 CFR 200 (H).

2.15 CIVIL RIGHTS

- A. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.
- B. Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotope, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.
- C. To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by
 - a. Mail: U.S. Department of Agriculture Office of the Assistant Secretary for Secretary for Civil Rights Assistant, 1400 Independence Avenue, SW Washington, D.C. 20250-9410;
 - b. Fax: (202) 690-7442; or
 - c. E-mail: program.intake@usda.gov
- D. The contractor **shall** prepare and deliver meals, snacks, and beverages for the Civilian Student Training Program (CSTP) located at Camp Robinson in North Little Rock, Arkansas.
- E. The number of youths will range from fifteen to forty-five (15 – 45) students with an average entering class of about twenty-five (25) that is subject to decrease slightly during the eight (8) week training session.

2.16 COMPLIANCE

- A. The FSMC **shall** comply with the rules, regulations, policies and instructions of the State Agency and USDA and any additions or amendments thereto, including USDA Regulation 7 CFR Parts 210, 220, 245, 250, 2 CFR 200 318-326, Appendix II to Part 200, 2 CFR 400, 2CFR 416, 2 CFR 417, and 2 CFR 418; 7 CFR Part 215 (SMP), if applicable; 7CFR Part 225 (SFSP), if applicable; and 7 CFR Part 226 (CACFP); if applicable.
- B. The DYS **shall** monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations. (Reference 7 CFR §210.16.(a)(2)) Further, if there is more than one school site, there is an additional requirement that the DYS conduct an on-site review of the counting claiming system no later than February 1 of each year as required by 7 CFR §210.8.
- C. The records necessary for the DYS to complete the required monitoring activities must be maintained by the FSMC under this contract and must be made available to the Auditor General, USDA, the State Agency, and the DYS upon request for the purpose of auditing, examination, and review.
- D. Contractor **shall** prepare and deliver three (3) meals per day consisting of breakfast, lunch, and dinner plus snacks for seven (7) days per week during eight (8) week intervals during the fiscal year, except during a two week break between sessions where no meals are delivered. Breakfast, lunch, and snack **must** comply with USDA requirements and meal patterns to be eligible for reimbursement. Dinner and beverages (other than milk) **must** meet requirements of the DYS.
- E. All meals **must** be individually pre-packaged with no extra charge for packaging.

2.17 SAFETY

- A. Contractor **must** maintain food safety in accordance with the USDA's Food Safety program.
- B. All contractor employees **must** undergo safety and sanitation training and meet all Arkansas Department of Health standards for food preparation and transportation at:
<https://www.healthy.arkansas.gov/programs-services/topics/food-protection>

- C. The contractor **shall** maintain a high standard of food service in compliance with the Department of Health. If illness occurs, the contractor may be held liable for medical expenses incurred by the State due to contaminated/adulterated foods being consumed by CSTP stakeholders.
- D. Contractor **shall** maintain a “passed” Health inspection throughout the duration of the contract. If at any time the status changes, contractor **shall** notify DYS within twenty-four (24) hours of failed status.

2.18 TRANSPORTATION

- A. Contractor **must** ensure that all transport drivers be properly insured, and vehicles properly registered.
- B. Contractor **shall** maintain all licensure and permits as required by law throughout the duration of the contract.

2.19 DELIVERY: FOB DESTINATION

- A. All deliveries **shall** be made to:

DYS/CSTP Program
Camp J.T. Robinson
16301 Missouri Street
North Little Rock, AR 72199

- B. Scheduling of meals **must** be coordinated with CSTP staff. All meals **shall** be delivered to CSTP facility according to the following schedule:

Breakfast	6:00 am – 6:45 am
Lunch/Snack	11:00 am – 11:45 am
Dinner	5:00 pm – 5:45 pm
- C. Delivery drivers **must** check-in with the security booth to receive a pass for permission to drive through the security gates.
- D. All deliveries **must** be made during the agreed upon hours and number of days unless otherwise arranged and coordinated. The Contractor shall give the agency immediate notice of any anticipated delays that will affect the delivery requirement.
- E. Loss or damage that occurs during transportation, prior to the order being received by the agency, is the Contractor’s responsibility. All orders should be properly packaged to prevent damage during shipping.

2.20 ACCEPTANCE STANDARDS

Inspection and acceptance/rejection of product(s) will be made upon receipt. The State has the option to reject any product(s) upon receipt for any reason. The contractor must replace any rejected product(s) at no additional cost. Bid must include a “total satisfaction” policy for all products and must not impose any liability on the State for such rejections.

2.21 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. Attachment C: Performance-Based Contracting identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **must** meet to avoid assessment of damages.
- B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration.
- 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 **may** result in the assessment of damages or termination of the contract.
- G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend, respond to, or cure to as determined by the State, the insufficiency. The State **may** waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services or it is in the best interest of the State. 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 – GENERAL CONTRACTUAL REQUIREMENTS

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

3.1 PAYMENT AND INVOICE PROVISIONS

- A. All invoices **shall** be forwarded to:
*Arkansas Department of Human Services
Division of Youth Services
P.O. Box 1437, Slot S-501
Little Rock, AR 72203-1437*
- B. All income accruing as a result of payments by children and adults, federal and state reimbursement and all other income from sources such as donations, special functions, catering, a la carte, vending, concessions, contract meals, grants and loans **shall** be deposited in the DYS's food service account. Any profit or guaranteed return **shall** remain in the DYS's food service account. The DYS and the FSMC agree that this contract is neither a *cost-plus-a-percentage-of-income* nor a *cost-plus-a percentage-of-cost* contract as required under United States Department of Agriculture (USDA) Regulation 7 CFR 210.16(c).
- C. Two (2) separate invoices **must** be submitted prior to the tenth (10th) of the following month.
 1. Invoice A **must** be labeled with a unique identifier of "NSL" and consist of USDA reimbursable items including breakfast, lunch, snack, and milk.
 2. Invoice B **must** include dinner, non-milk beverages, and additional food items not reimbursable through NSLP, ASP, and/or SBP.
- D. Invoices **must** be itemized.
- E. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services by the agency.
- F. The State **shall not** be invoiced in advance of delivery and acceptance of any goods or services.
- G. 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.
- H. 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.
- I. Other sections of this *Bid Solicitation* may contain additional requirements for invoicing.
- J. Selected vendor **must** be registered to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/vendor/index.html>.
- K. All income accruing as a result of payments by children and adults, federal, and state reimbursement and all other income from sources such as donations, special functions, catering, a la carte, vending, concessions, contract meals, grants, and loans shall be deposited in the DYS food service account. Any profit or guaranteed return shall remain in the DYS account.
- L. DYS and the contractor agrees that this is neither a cost-plus-a-percentage-of-income nor a cost-plus-a-percentage-of-cost contract as required under the United State Department of Agriculture (USDA) regulation 7 CFR 210.16(c)

3.2 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 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 deinstallation.
 - 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 Federal laws **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.
 - 2. The contract has required the State to carry insurance for such risk.

3.3 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, Certification Regarding Debarment and Suspension presented in Attachment F, and the Organizational or Personal Conflict of Interest policy as presented in Attachment G.

ALL VENDOR STAFF MAY BE MANDATED REPORTERS UNDER STATE AND FEDERAL MANDATES

3.4 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 State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

3.5 PERFORMANCE BONDING

- A. The Contractor **shall** be required to obtain performance bonds to protect the State's interest as follows:
1. The amount of the performance bonds **shall** be one hundred percent (100%) of the annual contract price, unless the State determines that a lesser amount would be adequate for the protection of the State. Such performance bond must be provided to DHS prior to signing the contract.
 2. The State **shall** require additional performance bond protection when a contract price is increased or modified.
 3. The additional performance bond **must** be delivered to the Arkansas Department of Human Services Chief Procurement Officer within fourteen (14) calendar days of request.
 4. The contractor **shall** notify the State of any changes, modification, or renewals for the performance bond during the term of the contract. The performance bond documentation **must** be provided to the State with each required notice.
 5. Failure to provide is a breach of contract and may result in immediate contract termination, prohibition against future bidding with the State, the addition of Contractor to the DHS excluded provider list, etc.
 6. 7 CFR 210.16(b)(2) Any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in § 210.21.

3.6 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.

3.7 PRICE ESCALATION

- A. Price increases will be considered at the time of contract renewal.
- B. The vendor **must** provide to the Office of Procurement (OP) 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. OP **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. OP **shall** have the right to approve or deny the request.

3.8 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 of while 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.

3.9 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.

3.10 CANCELLATION

- A. For Cause. The DYS or the FSMC may terminate the contract for cause by giving sixty (60) days written notice. The State may cancel any contract resulting from this solicitation for cause at the discretion of the Arkansas Department of Human Services. The State shall give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination.
- B. For Convenience. The State may cancel any contract resulting from the solicitation by giving the Contractor written notice of such cancellation no less than thirty (30) days prior to the date of cancellation.
- C. If upon cancellation the Contractor has provided commodities or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

3.11 SEVERABILITY

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the 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 4 – STANDARD TERMS AND CONDITIONS

- **Do not provide responses to items in this section.**
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
- 2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
- 3. **BID SUBMISSION:** Original Bid Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Bid Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind the firm in a contract. Multiple bids **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
- 4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty (30) 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. Contractors **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 Contractor to supply additional descriptive material. The Contractor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Contractors 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 Contractor 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 Contractor **shall** further guarantee that if the items furnished hereunder are to be installed by the Contractor, such items **shall** function properly when installed. The Contractor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The Contractor's obligations under this paragraph **shall** survive for a period of one (1) 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 Contractor'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 Contractor's expense. After reasonable examination, all demonstrators will be returned at Contractor'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 Contractor.
- 10. **AMENDMENTS:** Contractor's bids 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 Contractor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. *Firm Contract:* A written State purchase order authorizing shipment will be furnished to the successful Contractor.
- 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 Contractor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere, and any additional cost **shall** be borne by the Contractor.

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 (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 Contractors 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; (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. Contractor **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 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 if 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 Contractor 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 Contractor agrees that: (a) the Contractor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the Contractor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.
25. **CONTINGENT FEE:** The Contractor guarantees that no one has been retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for securing business.
26. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor named on the *Bid Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.

- 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.