

# REQUEST FOR PROPOSAL

## BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	DH-20-0008	Solicitation Issued:	10-18-2019
Description:	Implement an evidence-based project for tobacco cessation services targeting pregnant women and their families		
Agency:	Arkansas Department of Health – Center for Health Advancement   Tobacco Prevention and Cessation Program		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	11-14-2019	Bid Opening Time:	1:00 p.m., Central Standard Time
<p>Deliver proposal submissions for this Request for Proposal to the Arkansas Department of Health on or before the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of prospective contractors to submit proposals at the designated location on or before the bid opening date and time. Proposals received after the designated bid opening date and time may be considered late and may be returned to the prospective contractor without further review. It is not necessary to return "no bids" to ADH.</p>			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	<p>Arkansas Department of Health 4815 West Markham Street, Slot 58 Little Rock, AR 72205-3867</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to ADH's street address on a schedule determined by each individual provider. These providers will deliver to ADH based solely on the street address. <b>Prospective contractors assume all risk for timely, properly submitted deliveries.</b></p>
Proposal's Outer Packaging:	<p>Seal outer packaging and properly mark with the following information. If outer packaging of proposal submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none"> <li>Bid number</li> <li>Date and time of bid opening</li> <li>Prospective Contractor's name and return address</li> </ul>

ARKANSAS DEPARTMENT OF HEALTH CONTACT INFORMATION			
Issuing Officer	Timothy J. O'Brien	Phone Number:	501-280-4573
Email Address:	<a href="mailto:Timothy.OBrien@arkansas.gov">Timothy.OBrien@arkansas.gov</a>	Fax Number:	501-661-2000
ADH Website:	<a href="https://www.healthy.arkansas.gov/programs-services/topics/grant-and-bid-opportunities">https://www.healthy.arkansas.gov/programs-services/topics/grant-and-bid-opportunities</a>		

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

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

### **1.1 PURPOSE**

The Arkansas Department of Health (ADH) Tobacco Prevention and Cessation Program (TPCP) issues this Request for Proposals (RFP) to obtain proposals for a statewide contract to implement an evidence and incentive-based project that will provide a framework for a tobacco cessation program for pregnant tobacco and nicotine users (and members of their households who use tobacco and/or nicotine products). The project will utilize health education, cessation counseling support during pregnancy and the postpartum period, and incentivized vouchers with an approximate budget of \$175,000.00 per year. If funding is approved, ADH TPCP will implement the program each fiscal year over a five (5) year term.

ADH TPCP will contract with one (1) contractor to provide services statewide as specified in this RFP. During the first year, the program will be implemented in designated sites (up to 10) as determined by ADH TPCP. It is the expectation of the program to add additional sites (up to 10) each fiscal year over the five (5) year funded period. By July 2024, ADH TPCP anticipates having up to 50 sites that will have sustained and adopted this program.

### **1.2 TYPE OF CONTRACT**

- As a result of this RFP, ADH TPCP intends to award a contract to a single contractor.
- The initial term of this contract **shall** be from February 2020 to June 2021 with total funding amount shall not exceed \$225,000. Funding availability from February 2020 to June 2020 is up to \$50,000 and from July 2020 to June 2021 is up to \$175,000
- Upon mutual agreement by the contractor and agency, the contract may be renewed by ADH on a year-to-year basis for up to three (3) additional one-year terms or portions thereof, subject to the State's right of cancellation. In no instance will the aggregate contract term exceed five years.

### **1.3 ISSUING AGENCY**

ADH, as the issuing office, is the sole point of contact throughout this solicitation.

### **1.4 BID OPENING LOCATION**

Proposals will be opened at the following location:

Arkansas Department of Health  
4815 West Markham Street, L156  
Little Rock, AR 72205-3867

### **1.5 ACCEPTANCE OF REQUIREMENTS**

- A prospective contractor **must** unconditionally accept all requirements in the requirements section(s) of this RFP to be considered a responsive prospective contractor.
- A prospective contractor's proposal will be disqualified if a prospective contractor takes exceptions to any requirements in the requirements section(s) of this RFP.

### **1.6 DEFINITION OF TERMS**

- 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 (Section 1.9).
- Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- "Prospective Contractor" means a person who submits a proposal in response to this solicitation.
- "Contractor" means a person who sells or contracts to sell commodities and/or services.

- The terms “Request for Proposal”, “RFP,” “Bid Solicitation,” and “Solicitation” are used synonymously in this document.
- “Responsive proposal” means a proposal submitted in response to this solicitation that conforms in all material respects to this RFP.
- “Proposal Submission Requirement” means a task a contractor **must** complete when submitting a proposal response. These requirements will be distinguished by using the term “**shall**” or “**must**” in the requirement.
- “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.
- “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 Arkansas Department of Health.

## 1.7 **RESPONSE DOCUMENTS**

### A. Original Technical Proposal Packet

#### 1. Proposal Submission Requirements

- a. Prospective contractor **shall** provide one (1) original hard copy of the Technical Proposal Packet including:
    - i. Original signed Proposal Signature Page
    - ii. Proposed Subcontractors Form
    - iii. Restriction of Boycott of Israel Certification
    - iv. SF-LLL Disclosure of Lobbying Activities
    - v. Response to the Information for Evaluation section included in the Technical Proposal Packet
    - vi. EO 98-04 Contract and Grant Disclosure and Certification form
  - b. The Official Bid Price Sheet, including the hard copy and electronic copy, **must** be separately sealed from the Technical Proposal Packet and should be clearly marked as “Pricing”. A prospective contractor **shall not** include any pricing in the hard copies or electronic copies of the Technical Proposal Packet. Pricing **must** be proposed in U.S. dollars and cents.
  - c. Proposal response **must** be in the English language.
- #### 2. The following items should be submitted with the original Technical Proposal Packet:
- a. Equal Employment Opportunity Policy
  - b. Signed Addenda, if applicable
  - c. Copy of Illegal Immigrant Certification <https://www.ark.org/dfa/immigrant/index.php/user/welcome>
  - d. Business Associate Agreement (AS-4001)
- #### 3. **DO NOT** include any other documents or ancillary information such as a cover letter or promotional/marketing information.

### B. Additional Copies and Redacted Copy of the Technical Proposal Packet and Official Bid Price Sheet

In addition to the original Technical Proposal Packet and the Official Bid Price Sheet, the following items should be submitted:

1. Additional Copies of the Technical Proposal Packet
  - a. Four (4) complete hard copies (marked "COPY") of the Technical Proposal Packet.

- b. One (1) electronic copy of the Technical Proposal Packet, preferably on a flash drive. A CD will also be acceptable. Do not send electronic copies via email or fax.
  - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy governs.
  - d. If ADH requests additional copies of the proposal, the copies **must** be delivered within the timeframe specified in the request.
  - e. Contractor **shall** not include any pricing in the hard copies or electronic copies of their Technical Proposal Packet.
2. Additional Copies of the Official Bid Price Sheet
- a. Prospective contractor should also submit one (1) electronic copy of the Official Bid Price Sheet, preferably on a flash drive. A CD will also be acceptable. Do not send electronic copies via email or fax.
    - i. The Official Bid Price Sheet, including the hard copy and electronic copy, **must** be separately sealed from the Technical Proposal Packet and should be clearly marked as "Pricing." Prospective Contractor **shall not** include any pricing in the hard copies or electronic copies of their Technical Proposal Packet.
3. One (1) redacted (marked "REDACTED") copy the original Technical Proposal Packet, preferably on a flash drive. A CD will also be acceptable. Do not send electronic copies via email or fax. (See Proprietary Information).

## 1.8 **ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that prospective contractors adhere to the following format and suggestions when preparing their Technical Proposal response.
- B. Responses to the Information for Evaluation section of the Technical Proposal Packet should be labeled to reflect the corresponding item/question (Example: E.1.A)
- C. The original Technical Proposal Packet and all copies should be arranged in the following order:
  - Original signed Proposal Signature Page
  - Proposed Subcontractors Form
  - Restriction of Boycott of Israel Certification
  - SF-LLL Disclosure of Lobbying Activities
  - Response to the Information for Evaluation section included in the Technical Proposal Packet
  - EO 98-04 Contract and Grant Disclosure and Certification form
  - Equal Employment Opportunity Policy
  - Copy of Illegal Immigrant Certification <https://www.ark.org/dfa/immigrant/index.php/user/welcome>
  - Business Associate Agreement (AS-4001)
  - Other documents and/or information as may be expressly required in this Solicitation. Label documents and/or information so as to reference the Solicitation's item number.

## 1.9 **CLARIFICATION OF BID SOLICITATION**

- Submit any questions requesting clarification of information contained in this bid solicitation in writing via email by **1:00 p.m.**, Central Time on or before **10-29-2019** to the ADH buyer as shown on page one (1) of this bid solicitation.

1. For each question, submitted, prospective contractor should reference the specific solicitation item number to which the question refers.
  2. Prospective contractors' written questions will be consolidated and responded to by ADH. Consolidated written response are anticipated to be posted to the ADH website by the close of business on [10-31-2019](#). If prospective contractor questions are unclear or non-substantive in nature, ADH may request clarification of a question(s) or reserves the right not to respond to that question(s).
- The prospective contractor should notify the ADH buyer of any term, condition, etc., that precludes the prospective contractor from submitting a compliant, responsive proposal. Prospective contractors should note that it is their responsibility to seek resolution of all such issues, including those relating to the terms and conditions of the contract, prior to the submission of a proposal.
  - Prospective contractors may contact the ADH buyer with non-substantive questions at any time prior to the bid opening.
  - An oral statement by ADH will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any prospective contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by ADH.
  - Prospective contractors entering into a contract with ADH **shall** comply with all the terms and conditions contained herein.

#### 1.10 **PROPOSAL SIGNATURE PAGE**

- An official authorized to bind the prospective contractor(s) to a resultant contract **must** sign the Proposal Signature Page included in the Technical Proposal Packet.
- Prospective contractor's signature on this page signifies agreement to and compliance with all requirements of this RFP, and that any exception that conflicts with a requirement or proposal submission requirement of this bid solicitation may cause the proposal to be disqualified.

#### 1.11 **SUBCONTRACTORS**

- A. Prospective contractor should complete, sign and submit the Proposed Subcontractors Form included in the Technical Proposal Packet.
- B. Additional subcontractor information may be required or requested. **Do not** attach any additional information to the Proposed Subcontractors Form.
- C. The utilization of any proposed subcontractor is subject to approval by ADH.

#### 1.12 **PRICING**

- A. Prospective contractor(s) **shall** include all pricing on the Official Bid Price Sheet(s) only. If any cost is not identified by the successful contractor but is subsequently incurred in order to achieve successful operation, the contractor **shall** bear this additional cost. The Official Bid Price Sheet is provided as a separate excel file posted with this bid solicitation.
- B. To allow time to evaluate proposals, prices **must** be valid for 180 days following the bid opening.
- C. The Official Bid Price Sheet, including the hard copy and electronic copy, **must** be separately sealed from the Technical Proposal Packet and should be clearly marked as "Pricing". DO NOT submit any ancillary information not related to actual pricing on the Official Bid Price sheet or in the sealed pricing package.

#### 1.13 **PRIME CONTRACTOR RESPONSIBILITY**

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

#### 1.14 **INDEPENDENT PRICE DETERMINATION**

- A. By submission of this proposal, the prospective contractor certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
- The prices in the proposal have been arrived at independently, without collusion.
  - No prior information concerning these prices has been received from, or given to, a competitive company.
- B. Evidence of collusion warrants consideration of this proposal by the Office of the Attorney General. All Prospective contractors **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 so redacting any information contained in the response, the prospective contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- E. Under no circumstances will pricing information be designated as confidential.
- F. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the Technical Proposal Packet. A CD is also acceptable. Do not submit documents via email or fax.
- G. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- H. The prospective contractor is responsible for identifying all proprietary information and for ensuring, the electronic copy is protected against restoration of redacted data.
- I. The redacted copy will be open to public inspection under the Arkansas Freedom of Information Act (FOIA) without further notice to the prospective contractor.
- J. If a redacted copy of the submission documents is not provided with prospective contractor's response packet, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- K. If the State deems redacted information to be subject to FOIA, the prospective contractor will be contacted prior to release of the documents.
- L. The State has no liability to a prospective contractor with respect to the disclosure of confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

#### 1.16 **CAUTION TO PROSPECTIVE CONTRACTORS**

- Prior to any contract award, address all communication concerning this bid solicitation through the ADH buyer.
- Do not alter any language in any solicitation document provided by the State.
- Do not alter the Official Bid Price Sheet.

- All official documents and correspondence related to this solicitation become part of the resultant contract.
- The State has the right to award or not award a contract, if it is in the best interest of the State to do so.
- As requested, provide clarification regarding prospective contractor's proposal response to ADH.
- Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this bid solicitation.
- Prospective contractors may submit multiple proposals.

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

- Only an addendum written and authorized by ADH will modify this bid solicitation.
- An addendum posted within three (3) calendar days prior to the bid opening may extend the bid opening and may or may not include changes to the Bid Solicitation.
- The Prospective Contractor is expected to check the ADH website at <http://www.healthy.arkansas.gov/programs-services/topics/grant-and-bid-opportunities> and the OSP website <http://www.arkansas.gov/dfa/procurement/bids/index.php> for any and all addenda up to bid opening.

#### 1.18 **AWARD PROCESS**

##### A. Successful Contractor Selection

The grand total score for each prospective contractor, which is the sum of the technical score and cost score, will be used to determine the ranking of proposals. The State may move forward to negotiations with those responsible prospective contractors determined, based on the ranking of the proposals, to be reasonably susceptible of being selected for award.

##### B. Negotiations

1. If the State so chooses, negotiations may be conducted with the highest-ranking prospective contractors. 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 highest-ranking prospective contractor. The negotiation process may be repeated until the anticipated successful contractor has been determined, or until such time the State decides not to move forward with an award.

##### C. Anticipation to Award

1. Once the anticipated successful contractor has been determined, the anticipated award will be posted on the ADH website at <http://www.healthy.arkansas.gov/programs-services/topics/grant-and-bid-opportunities> and the OSP website at [http://www.arkansas.gov/dfa/procurement/pro\\_intent.php](http://www.arkansas.gov/dfa/procurement/pro_intent.php)
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Prospective contractors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen day posting period.
3. ADH may waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the prospective contractor's responsibility to check the ADH and OSP website for the posting of an anticipated award.

##### D. Issuance of Contract

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

#### 1.19 **MINORITY AND WOMEN-OWNED BUSINESS POLICY**

- A minority-owned business is defined by Arkansas Code Annotated § 15-4-303 as a business owned by a lawful permanent resident of this State who is:
  - African American
  - American Indian
  - Asian American
  - Hispanic American
  - Pacific Islander American
  - A Service Disabled Veteran as designated by the United States Department of Veteran Affairs
- A women-owned business is defined by Act 1080 of the 91<sup>st</sup> General Assembly Regular Session 2017 as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.
- 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 Proposal Signature Page.

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

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

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

- Pursuant to Arkansas Code Annotated § 19-11-105, Contractor(s) providing services **shall** certify that they do not employ or contract with illegal immigrants.
- By signing and submitting a response to this bid solicitation, a prospective contractor agrees and certifies that they do not employ or contract with illegal immigrants. If selected, the prospective contractor certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.

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

- 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.
- 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.
- By signing and submitting a response to this bid solicitation, 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 prospective contractor's past performance with the State may be used to determine if the prospective contractor is "responsible". Proposals submitted by prospective contractors determined to be non-responsible will be disqualified.

#### **1.24 PUBLICITY**

- A. Do not discuss the solicitation nor your proposal response, nor issue statements or comments, nor provide interviews to any public media during the solicitation and award process.
- B. Failure to comply with this requirement may be cause for a prospective contractor's proposal to be disqualified.



**1.25 PRIVACY & SECURITY REQUIREMENTS**

A. The Contractor **shall**:

1. At all times, comply with the requirements of the Arkansas Personal Information Protection Act and any other State/Federal laws, regulations, rules, and policies regarding the privacy and security of information.
2. Provide for physical and electronic security of all Protected Health Information generated or acquired by the contractor in implementation of the contract, in compliance with Health Insurance Portability and Accountability (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, and consistent with the Business Associate Agreement executed between the parties.

B. Prior to contract award, the contractor **must** sign a Business Associate Agreement.

**1.26 RESERVATION**

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

**1.29 CONTRACTOR PERFORMANCE REPORTS (VPR)**

Pursuant to Arkansas Code Annotated § 19-11-268 and § 19-11-1013, ADH will report contractor performance for contracts with a total projected cost of \$25,000 or more, excluding property leases and construction projects.

**1.30 DEFINITION OF ACRONYMS**

ACRONYM	DEFINITION	ACRONYM	DEFINITION
<b>ADH</b>	Arkansas Department of Health	<b>NVSS</b>	National Vital Statistics System
<b>AAP</b>	American Academy of Pediatrics	<b>SIDS</b>	Sudden Infant Death Syndrome
<b>CDC</b>	Centers for Disease Control and Prevention	<b>SHS</b>	Secondhand Smoke
<b>CO</b>	Carbon Monoxide	<b>THS</b>	Thirdhand Smoke
<b>HIPAA</b>	Health Insurance Portability and Accountability Act of 1996	<b>TPCP</b>	Tobacco Prevention and Cessation Program
<b>LHU</b>	Local Health Unit		

## **SECTION 2 – REQUIREMENTS**

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

### **2.1 BACKGROUND**

According to the [2016 National Vital Statistics System \(NVSS\)](#), approximately 13.7% (5,042 births) of all Arkansas mothers smoked during pregnancy, compared to 6.9% (264,920 births) of mothers in the United States. This data shows that Arkansas currently ranks 9<sup>th</sup> in the nation for maternal smoking during pregnancy.

The [Centers for Disease Control \(CDC\)](#) confirms smoking during pregnancy increases the risk of health problems for mothers and developing babies. These risks include miscarriage, stillbirth, ectopic pregnancy, damage to the baby's preterm birth, low birth weight, birth defects of the mouth and lip, and increased risk of sudden infant death syndrome (SIDS).

SIDS is the leading cause of death in otherwise healthy infants. Secondhand smoke (SHS) increases the risk for SIDS. Infants who are exposed to SHS after birth are at greater risk for SIDS, and SHS can affect the infant's brain in ways that interfere with regulation of breathing.

The [American Academy of Pediatrics \(AAP\)](#) states that thirdhand smoke (THS) is a danger to children and pregnant women as well. THS is the invisible tobacco "dust" (or chemical residue) that settles in the environment and stays there even after a cigarette has been put out. The AAP recommends that all children be protected from tobacco smoke. Babies and children can be harmed because they breathe in toxic chemicals when they crawl on floors, sit in cars, or are held by adults who smoke. THS can settle on all of these surfaces.

E-cigarettes and other tobacco products containing nicotine (the addictive drug found in tobacco) are not safe to use during pregnancy. Nicotine is a health danger for pregnant women and developing babies and can damage a developing baby's brain and lungs. In addition, some of the flavorings used in e-cigarettes may be harmful to developing babies. Nicotine and other harmful chemicals can be passed on to babies through breast milk.

According to [Campaign for Tobacco Free Kids](#), research studies estimate that the direct additional health care costs in the United States associated with birth complications caused by pregnant women smoking or being exposed to secondhand smoke could be as high as \$2 billion per year. The medical condition with the highest average hospital charges nationwide is infant respiratory distress syndrome (\$68,000 per episode), which can be caused by pregnant women smoking or being exposed to secondhand smoke; and the third highest is for premature and low-birthweight birth (\$50,000), which can also be smoking-related. More broadly, parental smoking has been estimated to cause direct medical expenditures of more than \$4.5 billion per year to care for smoking-caused problems of exposed newborns, infants, and children as well as to treat pregnancy and birth complications. These estimates do not include the enormous smoking and pregnancy costs associated with the physical, developmental, and behavioral problems of affected offspring that can extend throughout their lives.

Cessation programs are evidence-based, best-practice approaches to treating and eliminating the use of tobacco and nicotine products. ADH TPCP seeks to increase cessation services by addressing the high prevalence of tobacco and nicotine use among pregnant and postpartum women as well as those smoking in their households. The program will be branded as ***Be Well Baby***. By providing counseling support and resources to pregnant women and their partners, it is the goal of this program to reduce smoking and nicotine use in this population, thereby reducing the complications associated with smoking and nicotine use during and after pregnancy. According to the 2016 journal article, "[Effects of Incentive-Based Smoking Cessation Programs for Pregnant Women on Birth Outcome Programs](#)," cessation programs have shown success in keeping pregnant women tobacco/nicotine free during pregnancy and beyond, resulting in an over 50% reduction in low birthweight babies compared to those who do not receive cessation support and incentives.

ADH TPCP believes this program will be successful in helping women quit tobacco/nicotine and stay quit, resulting in improved birth outcomes and long-term positive outcomes for women, children, and their families in our state. ADH TPCP believes this program will reduce the number of women who smoke during pregnancy through enrollment in the program. In addition, ADH TPCP anticipates the rate of women who smoke or use nicotine during future pregnancies will be reduced because of the knowledge and birthing outcomes realized as a result of involvement in this program.

## 2.2 CONTRACTOR QUALIFICATIONS

- The Contractor **shall** have five years of experience in providing assistance in implementing an evidence-and incentive-based tobacco and nicotine cessation project for prenatal/postnatal women and their smoking household partners/family members.
- The Contractor **shall** have the ability to distribute and track low-cost vouchers to selected participants. Vouchers must be redeemable locally (within 20 miles of implementation site) and/or online.
- The Contractor **shall** demonstrate the ability to collect, analyze and distribute data based on program outcomes and deliverables. Contractor **shall** have data collection mechanisms and tools in place prior to application of RFP.
- The Contractor **shall** have the ability to provide evidence-based cessation training to address prenatal and postnatal women and their household partners or family members.
- The Contractor **shall** have the ability to provide additional methods of training, including train-the-trainer modules to selected health care providers and/or traditional and nontraditional programs.
- The Contractor **shall** demonstrate capacity to coordinate a statewide program.
- The Contractor **shall** have the ability to supply designated sites with Carbon Monoxide (CO) monitor(s) and additional supplies (e.g., mouthpieces, D-pieces, wipes, calibration kits, etc.) needed to administer program components to successfully counsel and test client outcomes.
- The Contractor **shall** have the ability to provide resource materials (brochures and posters) for designated sites for distribution to program participants. Topics include but are not limited to explaining the dangers of tobacco and nicotine use before, during and after pregnancy and explaining the benefits of quitting tobacco/nicotine.

## 2.3 SCOPE OF WORK

- A. The Contractor **shall** provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines.
- B. Service Definitions:
1. "Enrollee" **shall** mean a woman who is pregnant and has a history of tobacco and/or nicotine product use, either currently or within three (3) months of becoming pregnant.
  2. "Postpartum" **shall** mean the twelve (12) month period after childbirth.
  3. "Eligible Partner" **shall** mean a member of an enrollee's household who is a tobacco and/or vape user within three (3) months of their partner/family member becoming pregnant. The Eligible Partner must cohabitate with the pregnant woman at the time of enrollment and throughout the twelve (12) month postpartum period. The Eligible Partner can be male or female.
  4. "Data Dictionary" **shall** mean a description of the structure of a database, including (1) what data is stored, (2) name, description, and characteristics of each data element, and (3) types of relationships between data elements.
  5. "The State" **shall** mean the Arkansas Department of Health Tobacco Prevention and Cessation Program.

## 2.4 SERVICE DESCRIPTION

- A. Within six (6) months of Effective Date, the Contractor shall implement and manage a statewide, evidence and incentive-based smoking cessation program for Enrollees and eligible partners.

1. The evidence-based program **shall** offer health education and cessation counseling support that, at a minimum, utilizes the core components of the U.S. Department of Health and Human Services' *Clinical Practice Guidelines - Treating Tobacco Use and Dependence*.
  2. The evidence-based program **shall** provide an objective and method of monitoring measurements for participants showing their tobacco and/or nicotine use status during each month of program enrollment.
  3. The evidence-based program **shall** provide ongoing support to ADH TPCP and the designated enrollment sites. In addition, they **shall** support enrollees and one (1) eligible partner from the time of enrollment through the postpartum period, so long as the enrollee desires to continue participation in the program and meets program criteria, up to the end of the twelfth postpartum month.
- B. The Contractor **shall** provide all materials to ADH TPCP for approval prior to implementation and **shall** work with ADH TPCP to ensure materials are applicable to needs of the program and State.
- C. The Contractor **shall** ensure, based on eligibility criteria set by TPCP, that Enrollees and/or one (1) Eligible Partner receive non-cash incentive vouchers to quit tobacco and nicotine use. The contractor shall form partnerships with local merchants to provide participants the ability to redeem incentive vouchers either online or within the merchant's business. Incentive vouchers **shall** be non-cash, safe (tamper-proof), trackable, unable to be replicated, and limited to only the specific item(s) approved by ADH TPCP. Incentives will only be offered to qualified enrollees throughout their participation in the program up to the end of the twelfth month postpartum.
- D. The Contractor **shall** create and maintain relationships with merchants who agree to accept the designated non-cash incentives and offer locations within one (1) hour's drive of the majority of program participants or offer online redemption of incentive vouchers.
- E. The Contractor **shall** ensure that merchants and their staff are adequately trained so that incentives are neither refused nor redeemed for a substitute product or refund.
- F. The Contractor **shall** electronically track program participants and non-cash incentives that are distributed and redeemed. All information collected will be provided to ADH TPCP categorized per enrollment site, county and participant. The contractor **shall**, within ten (10) business days after the end of each calendar month, provide ADH TPCP with periodic raw data and data analysis as requested by the State.

At a minimum, the following data elements **shall** be included:

1. Number of eligible participants offered program enrollment;
2. Number of eligible participants enrolled, detailed by type (pregnant women/partners);
3. Demographics of Enrollees, as determined by ADH TPCP;
4. Number of months enrolled in program (retention rates);
5. Attendance at prenatal and postpartum sessions;
6. Number of non-cash incentives distributed to each Enrollee;
7. Number of non-cash incentives redeemed by each Enrollee;
8. Tobacco and nicotine product use status of Enrollees and Eligible Partners throughout program participation;
9. Reason for Enrollee and/or Eligible Partner discontinuation;

10. Follow-up questionnaire with participants including birth outcomes, birth weight, indications of delivery complications, health status of baby at birth

ADH TPCP reserves the right to add, change or delete any questions on the Participants Data Collection Tool.

- G. The Contractor **shall** provide such data on media and in a format determined by ADH TPCP. The Contractor **shall** provide all confidential State data in a secure manner in accordance with Federal Information Processing Standard (FIPS) 140-2 validated encryption technologies.
- H. The Contractor **shall** immediately notify ADH TPCP of any issues that may occur with providing the requested data and work closely with ADH TPCP personnel to ensure data is properly provided within seven (7) business days. The Contractor **shall** provide to the State an up-to-date data dictionary, relevant mapping documentation and documentation for the associated metadata for the application with every application/system update. The Data Dictionary **shall** include the names, descriptions and characteristics of all the various table (records or Entities) and their contents (fields) plus additional details such as the type and length of each data element. It **shall** document the relationship between all tables within an entity relationship diagram.
- I. ADH TPCP retains all ownership rights to all data generated by this Contract. Contractor **shall** not have any right, title, or interest in such data except as provided for in this agreement and **shall** not make use of the data for commercial purposes unless it has received written permission from the Arkansas Department of Health.
- J. The Contractor **shall** ensure daily backup of collected data and inform the State as to its daily data/system backup process.
- K. The Contractor **shall** provide, after review and approval by ADH TPCP, an integrated electronic referral portal system that is HIPAA compliant. The system should handle up to 500 concurrent participants from varied sites across Arkansas. Expected enrollment is estimated at 100 participants per year over a five-year period.

At a minimum, the portal **shall** have:

1. The portal **shall** include instructions on how to enter referrals into the system and the ability to determine the status of each woman and/or household partner referred (i.e., open, appointment scheduled, client enrolled, client declined, etc.);
2. The portal **shall** contain, at a minimum, a menu list of program locations to which clients are enrolled;
3. The portal **shall** provide client contact information to the receiving program site based on client program location preference; Administrator **shall** have the ability to view all client content.
4. The portal **shall** track time between referral and action on the part of the local health unit and **shall** generate reports both by county and referral entity;
5. The portal system **shall** be made available to private providers, third-party payers, or other health partners who may refer pregnant women who smoke to participating sites across the state;
6. The portal system **shall** be available at least 99.99% of the time during normal State business hours, 8:00 am-4:30 pm, excepting events outside the Contractor's span of control;
7. If the portal system requires downtime for maintenance, the Contractor shall schedule and perform such maintenance outside normal State business hours. The Contractor shall notify ADH TPCP of scheduled downtime at least five (5) business days prior to the maintenance;
8. The portal system **shall** use Transport Layer Security (TLS) 1.1 or higher for data communications.

- L. The Contractor **shall** work with ADH TPCP to ensure that the integrated electronic referral portal meets their individual requirements.
- M. The Contractor **shall** provide sixteen (16) hours of annual staff training that will include a train-the-trainer facilitation. ADH TPCP will provide the sites for the trainings. The Contractor will provide all written training materials and any documents necessary to administer the program. All trainings will be scheduled and coordinated with designated ADH TPCP staff.
- N. The Contractor **shall** participate in quarterly webinars/conference calls with ADH TPCP and/or designated sites as needed or requested, to provide program and data updates as well as ongoing technical assistance.
- O. The Contractor **shall** provide each designated site testing location with a system to order and ship supplies necessary to administer the program. Supplies **shall** include:
  - 1. A one-time program setup materials package (which will consist of durable medical equipment such as the Micro+™ Smokerlyzer CO monitor tester) needed for enrolling and monitoring the smoking status of each patient;
  - 2. An annual equipment maintenance package (which will consist of Alere Saliva tests, SteriBreath mouthpieces, D-pieces, alcohol-free wipes, a calibration kit, and a replacement calibration tank for CO testers), as needed and approved by the State; and
  - 3. Brochures, posters and other marketing materials needed to promote the program to potential clients, as approved by the State.

Costs of supplies **shall** include shipping and **shall** not exceed amounts listed in the Official Cost Price Sheet.

- P. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) **shall** be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract **shall** conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract **shall** constitute a “Defect” and **shall** be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, Contractor **shall** correct the Defect at no additional charge.
- Q. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.
- R. Contractor represents and warrants that all goods or services provided under this Contract **shall** be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor’s industry.
- S. If Contractor fails to provide the goods or services as warranted, Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, the State **shall** be entitled to recover the fees paid to Contractor for the defective goods or services. Any exercise of the State’s rights under this Section **shall** not prejudice the State’s rights to seek any other remedies available under this Contract or applicable law.
- T. Inspection and Acceptance: ADH TPCP **shall** have the right to inspect all goods or services provided by Contractor under this Contract. If upon inspection ADH determines that the goods or services are defective, ADH **shall** notify Contractor, and Contractor **shall** re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the

State does not provide a notice of any Defects, the goods or services **shall** be deemed to have been accepted by ADH TPCP

U. Invoicing

Contractor **shall** submit payment requests on a monthly basis. All supporting documents for expenditures (i.e., itemized proof of payment, receipts, vendor invoices, etc.) must be submitted with the monthly payment request. Supporting documents must be legible and provide evidence that transaction took place.

**2.5 PERFORMANCE STANDARDS**

- A. State law requires that all contracts for services include performance standards for measuring the overall quality of services provided that a contractor **must** meet in order 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. Table Below: Performance Standards identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards.
- C. The State has the right to modify, add, or delete performance standards throughout the term of the contract, should the State determine it is in 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 contractor so as to establish standards that are reasonably achievable.
- D. All changes made to the performance standards will become an official part of the contract.
- E. Performance standards will continue throughout the aggregate term of the contract.
- F. Failure to meet the minimum performance standards as specified may result in the assessment of damages.
- G. In the event a performance standard is not met, the contractor will have the opportunity to defend or respond to the insufficiency. The State has the right to waive damages if it determines there were extenuating factors beyond the control of the contractor that hindered the performance of services. In these instances, the State has final determination of the performance acceptability.
- H. Should any compensation be owed to the State agency due to the assessment of damages, contractor **shall** follow the direction of the State agency regarding the required compensation process.
- I.

PERFORMANCE STANDARDS		
Service Criteria	Acceptable Performance	Damages for Insufficient Performance
Technical Assistance, Training & Educational Materials	Contractor must provide a minimum of one training (equaling 2 days or 16 hours) for health care providers per funded year to include proper procedures for intake / assessment procedures and ensure participants are provided screening and assessments. Contractor must provide technical assistance to staff and ADH.	Failure to comply may result in payment reduction or cancellation of contract.
Supplies (Micro+™ Smokerlyzer CO monitor calibration kits, saliva tests, wipes, D-pieces, SteriBreath mouthpieces, etc.)	Contractor must ensure and arrange that each designated site/health care provider (a minimum of 10 sites each fiscal year x 5 years = 50 sites) is supplied with (1 CO monitor + supplies per site), the necessary tools and supplies needed to conduct cessation activities to ensure there are no delays in service deliverables.	Failure to comply may result in payment reduction or cancellation of contract.

Online Data Collection Tools	Contractor must maintain and implement data collection reporting tools and will ensure that each trained health care provider (a minimum of 10 each fiscal year x 5 years = 50 sites) has access to reporting system for data input and retrieval.	Failure to comply may result in payment reduction or cancellation of contract.
Incentive Vouchers (diapers)	Contractor must set up and provide mechanism to issue diaper vouchers to identified clients (a minimum of 100 each fiscal year x 5 years = 500 total participants after 5 years) that can be redeemed online and/or at local merchants.	Failure to comply may result in payment reduction or cancellation of contract.

**SECTION 3 – CRITERIA FOR SELECTION**

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

**3.1 TECHNICAL PROPOSAL SCORE**

- A. ADH will review each Technical Proposal Packet to verify submission requirements have been met. Technical Proposals Packets that do not meet submission requirements will be disqualified and will not be evaluated.
- B. An agency-appointed evaluation committee will evaluate and score qualifying proposals. Evaluation will be based on the prospective contractor’s response to the Information for Evaluation section included in the Technical Proposal Packet.
  - 1. Members of the evaluation committee will individually review and evaluate proposals and complete an individual score worksheet for each proposal. Individual scoring for each Evaluation Criteria will be based on the following scoring description.

Quality Rating	Quality of Response	Description	Confidence in Proposed Approach
5	Excellent	When considered in relation to the RFP evaluation factor, the proposal squarely meets the requirement and exhibits outstanding knowledge, creativity, ability or other exceptional characteristics. Extremely good.	Very High
4	Good	When considered in relation to the RFP evaluation factor, the proposal squarely meets the requirement and is better than merely acceptable.	High
3	Acceptable	When considered in relation to the RFP evaluation factor, the proposal is of acceptable quality.	Moderate
2	Marginal	When considered in relation to the RFP evaluation factor, the proposal’s acceptability is doubtful.	Low
1	Poor	When considered in relation to the RFP evaluation factor, the proposal is inferior.	Very Low
0	Unacceptable	When considered in relation to the RFP evaluation factor, the proposal clearly does not meet the requirement, either because it was left blank or because the proposal is unresponsive.	No Confidence



2. After initial individual evaluations are complete, the evaluation committee members will meet to discuss their individual ratings. At this consensus-scoring meeting, each member will be afforded an opportunity to discuss his or her rating for each evaluation criteria.
  3. After committee members have had an opportunity to discuss their individual scores with the committee, the individual committee members will be given the opportunity to change their initial individual scores, if they feel that is appropriate.
  4. The final individual scores of the evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each proposal.
  5. Other agencies, consultants, and experts may also examine documents at the discretion of the agency.
- C. The Information for Evaluation section has been divided into sub-sections.
1. In each sub-section, items/questions have each been assigned a maximum point value of five (5) points. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
  2. The agency has assigned weighted percentages to each sub-section according to its significance.

Information for Evaluation Sub-Sections	Maximum Raw Points Possible	Sub-Section's Weighted Percentage	* Maximum Weighted Score Possible
E.1 BACKGROUND, QUALIFICATIONS, STAFFING	15	33.3%	50
E.2 APPROACH AND METHODOLOGY	15	33.3%	50
E.3 REPORTING, DATA COLLECTION AND MARKETING	15	33.3%	50
<b>Total Technical Score</b>	<b>45</b>	<b>100%</b>	<b>150</b>

\*Sub-Section's Percentage Weight x Total Weighted Score = Maximum Weighted Score Possible for the sub-section.

- D. The proposal's weighted score for each sub-section will be determined using the following formula:
- $$(A/B) * C = D$$
- A = Actual Raw Points received for sub-section in evaluation
  - B = Maximum Raw Points possible for sub-section
  - C = Maximum Weighted Score possible for sub-section
  - D = Weighted Score received for sub-section
- E. The proposal's weighted scores for sub-sections will be added to determine the Total Technical Score for the proposal.
- F. Technical Proposals that do not receive a minimum weighted score/subtotal of 75 may not move forward in the solicitation process. The pricing for proposals, which do not move forward, will not be scored.

**3.2 COST SCORE**

- A. When pricing is opened for scoring, the maximum amount of cost points will be given to the proposal with the lowest bid as shown on the Official Bid Price Sheet. (See Grand Total Score for maximum points possible for cost score.)
- B. The amount of cost points given to the remaining proposals will be allocated by using the following formula:
- $$(A/B) * (C) = D$$
- A = Lowest Total Cost
  - B = Second (third, fourth, etc.) Lowest Total Cost
  - C = Maximum Points for Lowest Total Cost
  - D = Total Cost Points Received

**3.3 GRAND TOTAL SCORE**

The Technical Score and Cost Score will be added together to determine the Grand Total Score for the proposal. The prospective contractor’s proposal with the highest Grand Total Score will be selected as the apparent successful Contractor (See Award Process).

	Maximum Points Possible
Technical Proposal	150
Cost	65
Maximum Possible Grand Total Score	215

**3.4 PROSPECTIVE CONTRACTOR ACCEPTANCE OF EVALUATION TECHNIQUE**

- A. Prospective contractor **must** agree to all evaluation processes and procedures as defined in this solicitation.
- B. The submission of a Technical Proposal Packet signifies the prospective contractor understands and agrees that subjective judgments will be made during the evaluation and scoring of the Technical Proposals.

**SECTION 4 – GENERAL CONTRACTUAL ITEMS**

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

**4.1 PAYMENT AND INVOICE PROVISIONS**

- A. Forward invoices to:  
  
Arkansas Department of Health  
Attn: Tobacco Prevention and Cessation Program  
4815 West Markham Street, Slot #3  
Little Rock, AR 72205
- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services by ADH.
- C. Do not invoice the State in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the contractor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The contractor should invoice the agency by an itemized list of charges. The agency’s purchase order number and/or the contract number should be referenced on each invoice.
- F. Other sections of this bid solicitation may contain additional requirements for invoicing.
- G. Selected contractor **must** be registered to receive payment and future bid solicitation notifications. Prospective contractors may register on-line at <https://www.ark.org/contractor/index.html>.

**4.2 GENERAL INFORMATION**

- A. The State will not:
  - 1. Lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a 30 day written notice to the Contractor/lessor in the event funds are not appropriated.
  - 2. Contract with another party to indemnify and defend that party for any liability and damages.
  - 3. Pay damages, legal expenses or other costs and expenses of any other party.
  - 4. Continue a contract once any equipment has been repossessed.
  - 5. Agree to any provision of a contract, which violates the laws, or constitution of the State of Arkansas.
  - 6. Enter a contract which grants to another party any remedies other than the following:
    - a. The right to possession.

- b. The right to accrued payments.
  - c. The right to expenses of de-installation.
  - d. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  - e. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- B. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- C. The laws of the State of Arkansas govern this contract.
- D. A contract is not effective prior to award being made by a State Procurement Official.
- E. In a contract with another party, the State will accept the risk of loss of the equipment **or software** and pay for any destruction, loss, or damage of the equipment **or software** while the State has such risk, when:
1. The extent of liability for such risk is based upon the purchase price of the equipment **or software** at the time of any loss, and
  2. The contract has required the State to carry insurance for such risk.

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

- A. 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. Indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the contractor.

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

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of contractor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The contractor will retain total liability for equipment, software and technical and business or operations literature. The State will not at any time be responsible for or accept liability for any Contractor-owned items.
- B. The contractor's liability for damages to the State will be limited to the value of the contract. The foregoing limitation of liability will not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the contractor; to claims covered by other specific provisions of the contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the contract. The contractor and the State will not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability will not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the contractor; to claims covered by other specific provisions of the contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the contract.
- C. Language in these terms and conditions **must not** be construed or deemed as the State's waiver of its right of sovereign immunity. The contractor agrees that any claims against the State, whether sounding in tort or in contract, will be brought before the Arkansas Claims Commission as provided by Arkansas law and governed accordingly.

#### 4.5 **RECORD RETENTION**

- A. Maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, grant access to State or Federal Government entities or any of their duly authorized representatives.

- B. Make financial and accounting records available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Maintain all pertinent protected health information, as defined by the Privacy Rule promulgated pursuant to HIPAA, available for six (6) years or as otherwise required by HIPAA.

#### 4.6 **PRICE ESCALATION**

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

#### 4.7 **CONFIDENTIALITY**

- A. The contractor, contractor's subsidiaries, and contractor's employees **shall** be bound to all laws and requirements set forth in this solicitation concerning the confidentiality and secure handling of information of which they may become aware of during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State **shall** have the right to cancel the contract on these grounds.
- C. Previous sections of this solicitation may contain additional confidentiality requirements.
- D. "Section 20-13-819 (c): "All information **shall** be treated in a manner consistent with all state and federal privacy requirements, including without limitation, the federal Health and Portability and Accountability Act of 1996 privacy rule, 45 C.F.R. Section 164.512(i)."

#### 4.8 **CONTRACT INTERPRETATION**

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

#### 4.9 **CANCELLATION**

- A. For Cause. The State may cancel any contract resulting from this solicitation for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the contract and provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. To the extent permitted by law and at the discretion of the parties, the parties may agree to minor amendments to the contract and avoid the cancellation for cause upon mutual agreement.
- B. For Convenience. The State may cancel any contract resulting from the solicitation by giving the contractor written notice of such cancellation 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.

#### 4.10 **SEVERABILITY**

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

## **SECTION 5 – STANDARD TERMS AND CONDITIONS**

- **Do not provide responses to items in this section.**
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
- 2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
- 3. **BID SUBMISSION:** Original Proposal Packets **must** be submitted to the Arkansas Department of Health on or before the date and time specified for bid opening. The proposal packet **must** contain all documents, information, and attachments as specifically and expressly required in the bid solicitation. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple proposals **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
- 4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the bid solicitation. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the bid solicitation.
- 5. **QUANTITIES:** Quantities stated in a bid solicitation for term contracts are estimates only, and are not guaranteed. Contractor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual requirements of the ordering agency.
- 6. **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 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 proposals 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 Arkansas Department of Health **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 Arkansas Department of Health. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
- 15. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
- 16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Arkansas Department of Health 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 Arkansas Department of Health 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 and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
- 19. STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the contractor's expense to the F.O.B. point provided by the agency or by ADH. 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 any and all claims that the contractor may have arising from or in connection with this Agreement. Unless the contractor's obligations to perform are terminated by the State, the contractor **shall** continue to provide the services under this agreement even in the event that the contractor has a claim pending before the Commission.
- 23. CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the 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. ETHICAL STANDARDS:** Pursuant to Arkansas Code Annotated §19-11-708(a-c), it **shall** be breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.
- 26. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the contractor named on the Proposal 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.