



State of Arkansas
 ARKANSAS DEPARTMENT OF HEALTH
 4815 West Markham
 Little Rock, Arkansas 72205

COMPETITIVE BID (CB) Bid Solicitation Document

Bid Number:	DH-22-0006	Bid Opening Date:	October 20th, 2021
Description:	HIV Self Testing Promotion	Bid Opening Time:	2pm Central Time
ARKANSAS DEPARTMENT OF HEALTH CONTACT INFORMATION			
Name:	Steve McDonald	Phone:	501-280-4594
Fax:	501-280-4474	Email:	Steve.McDonald@arkansas.gov
MAILING ADDRESS:		BID OPENING LOCATION:	
Arkansas Department of Health Attn: Steve McDonald 4815 West Markham Street, Slot 58 Little Rock, AR 72205		Arkansas Department of Health Attn: Steve McDonald 4815 West Markham Street, Slot 58 Little Rock, AR 72205	

Instructions:

- Bids should be submitted by the time and date specified above.
- Faxed or emailed bids are acceptable and may be faxed or emailed to the above number/email address.
- The Prospective Contractor should provide the information below.

BIDDER INFORMATION			
Company Name: _____			
Name (type or print): _____		Title: _____	
Address: _____			
City: _____		State: _____	ZIP Code: _____
Telephone Number: _____		Fax Number: _____	
E-Mail Address: _____			
Signature: _____ <i>Use ink only.</i>			
Business Designation (check one):	Individual [] Partnership []	Sole Proprietorship [] Corporation []	Public Service Corp [] Government/ Nonprofit []

ILLEGAL IMMIGRANT CONFIRMATION

By signing and submitting a response to this CB, 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.

ISRAEL BOYCOTT RESTRICTION CONFIRMATION

By checking the box below, a Prospective Contractor agrees and certifies that they do not boycott Israel, and if selected, will not boycott Israel during the aggregate term of the contract.

Prospective Contractor does not and will not boycott Israel.

SECTION 1 - GENERAL INSTRUCTIONS & INFORMATION

1.1 PURPOSE

This competitive bid is issued by the Arkansas Department of Health (ADH) – HIV Prevention and Ending the HIV Epidemic programs to obtain pricing and a contract for rapid, HIV self-testing.

1.2 BACKGROUND

Arkansas is one of 48 jurisdictions across the nation supported by the Centers for Disease Control and Prevention (CDC), as well as other nationally recognized agencies, for expansion of a statewide HIV elimination plan. Since 2016, there has not been a significant change in the number of newly diagnosed HIV cases in the state. In 2019, there were 276 Arkansans newly diagnosed with HIV. Twenty-one percent of those cases were classified as Stage 3 (AIDS) at the time of their diagnosis. According to CDC, a late diagnosis is defined as having AIDS at the time of initial HIV disease diagnosis. Late diagnoses represent multiple missed opportunities to diagnose and treat HIV infection and to prevent transmission. Furthermore, of those 276 cases, 47.1% were men who have sex with men (MSM) – nearly half of all newly diagnosed cases. There is a need for early intervention; particularly amongst men who have sex with men.

The HIV Prevention and Ending the HIV Epidemic Programs strive to ensure multiple HIV testing options and resources are available statewide. The programs' goal is to offer self-testing to Arkansans who would like to be tested for HIV without fear of judgment. Self-testing allows someone to test for HIV in the comfort of their own home and eliminates potential stigma and discrimination. The programs will collaborate with an entity that provides HIV testing and resources.

1.3 TYPE OF CONTRACT

Any resulting contract **will** be a one (1) year **TERM** contract from the date of award. Upon mutual agreement by the contractor and agency, the contract may be renewed on a year-to-year basis, for up to **six (6)** additional one-year terms or a portion thereof. In no event **shall** the total contract term be more than **seven (7)** years.

1.4 ISSUING OFFICER

The ADH contact name listed on page one is the sole point of contact throughout this solicitation.

1.5 DEFINITION OF REQUIREMENT

- A. The words "**must**" and "**shall**" signify a requirement of this solicitation and that contractor's agreement to and compliance with that item is mandatory.
- B. Exceptions taken to any requirement in this *Bid Solicitation*, whether submitted in the contractor's bid or in subsequent correspondence, **shall** cause the contractor's bid to be disqualified.
- C. Contractor may request exceptions to NON-mandatory items. Contractor **must** clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies.

1.6 DEFINITION OF TERMS

The issuing officer has made every effort to use industry-accepted terminology in the competitive bid and will attempt to further clarify any point or item in question. The following acronyms will be used throughout the document.

ADH: Arkansas Department of Health
CB: Competitive Bid
OSP: Office of State Procurement

1.7 SIGNATURE PAGE

- A. An official authorized to bind the contractor(s) to a resultant contract **must** sign the solicitation document.
- B. Contractor's signature on this page **shall** signify contractor's agreement with all requirements within the document and that either of the following **shall** cause the contractor's bid to be disqualified:

1. Additional terms or conditions submitted intentionally or inadvertently.
2. Any exception that conflicts with a requirement of this *Bid Solicitation*.

1.8 SUBCONTRACTORS

- A. Prospective contractor should complete, sign, and submit the *Proposed Subcontractors Form* included in this solicitation.
- B. **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.

OR

Subcontractors will not be allowed.

1.9 PRICING

- A. All charges **must** be included on the Official Bid Price Sheet and **must** include all associated costs (including but not limited to delivery, freight etc.) for the goods or services being bid.
- B. Do not include sales taxes in pricing.
- C. Bid pricing **must** be valid for 90 days following the bid opening.
- D. Failure to complete and submit the Official Bid Price Sheet **shall** result in disqualification.
- E. All pricing **must** be in United States dollars and cents and limited to two (2) decimal places.

1.10 PRIME CONTRACTOR RESPONSIBILITY

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

1.11 PROPRIETARY INFORMATION

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. Information **shall** be open to public inspection under the Freedom of Information Act (FOIA).
- C. A copy of non-redacted documents, with the exception of financial data (other than pricing), shall be released in response to any request made under the Arkansas freedom of Information Act (FOIA).

1.12 CAUTION TO VENDORS

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through ADH.
- B. Contractor **must not** alter any language in any solicitation document provided by the State.
- C. Contractor **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 only 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. Contractor **must** provide clarification of any information in their response documents as requested by ADH.

1.13 REQUIREMENT OF ADDENDUM

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by ADH.
- B. An addendum issued 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.

1.14 AWARD CRITERIA AND RESPONSIBILITY

- A. This competitive bid **shall** be awarded to the lowest responsible, responsive bidder on an all or none basis.
- B. Bids **must** meet or exceed all defined specifications. Bids **must** meet all terms and conditions of this Competitive Bid and the laws of the State of Arkansas.
- C. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review and approval.
- D. ADH will be responsible for award and administration of any resulting contract.

1.15 MINORITY AND WOMEN-OWNED BUSINESS POLICY

- A. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses.
- B. Per Arkansas Code Annotated § 15-4-303, a minority-owned business is defined as a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons, and a minority is defined as 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

- C. Per Act 1080 of the 91st General Assembly Regular Session 2017, a women-owned business is defined 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.

D. Check certification type:

African American Hispanic American American Indian Asian American
 Pacific Islander American Service-Disabled Veteran Women-Owned

Arkansas minority-owned or women-owned Certification Number _____

1.16 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 by to have an EEO Policy **must** submit a written statement to that effect.

1.17 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 ADH stating that they do not employ or contract with illegal immigrants.
- B. Vendor(s) **must** complete their certification at <https://www.ark.org/dfa/immigrant/index.php/user/welcome> and should submit a hardcopy in response to this solicitation.

1.18 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:
 - 1. A company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.
 - 2. Contracts with a total potential value of less than \$1,000.
- C. By checking the designated box on the first page of this bid, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

1.19 CONFIDENTIALITY

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

1.20 PAST PERFORMANCE

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

1.21 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.

1.22 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM

The Prospective Contractor’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:

<http://www.dis.arkansas.gov/policiesStandards/Pages/default.aspx>. Only those standards which are fully promulgated or have been approved by the Governor’s Office apply to this solution.

1.23 PUBLICITY

A. Contractors **shall not** issue a news release pertaining to this *Bid Solicitation* or any portion of the project without ADH’s prior written approval.

B. Failure to comply with this Requirement **shall** be cause for a contractor’s bid to be disqualified.

1.24 RESERVATION

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

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 Act (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 award, the contractor **must** sign a Business Associate Agreement.

1.26 VENDOR PERFORMANCE REPORTS (VPR)

A. Vendor Performance Reports **shall** be utilized whenever the contractor is in default of the contract terms as outlined in this CB.

B. Upon notification of the VPR, the contractor **shall** promptly take all corrective actions to be in compliance with the contract terms. The agency and the contractor **shall** work together during the contractor's resolution of any non-compliance issue.

C. The contractor is hereby notified that non-compliance of the VPR may under certain circumstances be considered a (30) day cancellation if it is so stated in the VPR notice to the contractor issued by ADH.

SECTION 2 - MINIMUM REQUIREMENTS

2.1 SCOPE OF WORK

Statewide communication and distribution of HIV self-testing packets. HIV self-testing services will only be communicated throughout the state of Arkansas and HIV self-testing packets will only be distributed to persons with an Arkansas address.

2.2 MINIMUM QUALIFICATIONS

Vendors should have experience performing HIV self-testing activities and collaborating with state government agencies.

2.3 DELIVERY

Delivery address will be specified on each purchase order.

A. The agency requests delivery within 14 (calendar or working) days after receipt of the order. If this delivery date cannot be met, the prospective contractor **must** state the alternate number of days on the Official Bid Price Sheet. Failure to state the alternate delivery time obligates the contractor to complete delivery by the agency's requested date. Extended delivery dates may be considered when in the best interest of the State.

B. All deliveries **must** be made during normal state work hours and within the agreed upon number of days unless otherwise arranged and coordinated with the agency. The contractor **shall** give the agency immediate notice of any anticipated delays or plant shutdowns that will affect the delivery requirement.

C. Loss or damage that occurs during shipping, 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.

2.4 ACCEPTANCE STANDARDS

Inspection and acceptance/rejection of product(s) will be made within thirty (30) days of receipt. The State has the option to return any product(s) within the thirty (30) day timeframe for any reason. Bid **must** include a "total satisfaction" return policy for all products and **must not** impose any liability on the State for such returns.

2.5 SPECIFICATIONS

A. Communication Requirements:

- Perform digital advertisement of HIV self-testing availability in Arkansas on dating websites that includes, but not limited to, Grinder.
- Digital advertisement of HIV self-testing must be displayed on websites at a minimum of twice a month, and more frequently in areas with a high incidence of HIV.
- Digital graphics must be pre-approved by the ADH Infectious Disease Branch prior to placement.
- Vendor must have a host website for persons to request HIV self-testing kits. Website must also inform consumers about the following:
 - o Eligibility criteria
 - o The ability to order multiple testing packets
 - o Health Information Portability Protection Act (HIPPA) and privacy policies
 - o Information about where to access HIV confirmatory testing as well as other resources in Arkansas (i.e.: local health departments and other HIV service providers)

B. HIV Self-testing Packets Requirements:

- HIV self-testing packets should include at a minimum one to two rapid HIV oral swab test kits, instructions for administering the test, and resources for providing testing assistance and supportive counseling.
- HIV self-testing packets should include, but not limited to at a minimum three or more condoms, the ability to access HIV educational materials (i.e.: HIV Prevention or Living with HIV information), and Arkansas specific information for linkage to HIV care and treatment and pre-exposure prophylaxis (PrEP).

C. Distribution Requirements:

- Vendor will develop HIV self-testing packets based upon the packet requirements outlined above.
- HIV self-testing packets must be in discrete packaging and delivered to consumers utilizing the most effective and efficient means for shipping and handling.
- Vendor will distribute HIV self-testing packets to Arkansas residents only.

D. Reporting Requirements:

- Vendor must provide monthly reporting to the ADH Infectious Disease Branch that includes data components that include, but not limited to, number of kits distributed, client demographics, client level listing of persons ordering kits, and website "traffic" and analytics.
- Vendor must provide service evaluation reporting, such as quantitative and qualitative data utilizing proven evaluation techniques (i.e.: consumer follow-up and surveys)

2.6 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. *Table below: Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a contractor **must** meet in order to avoid assessment of damages.
- B. The ADH 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 ADH **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should ADH 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 **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.

- G. In the event a Performance Standard is not met, the contractor will have the opportunity to defend or respond to the insufficiency. ADH **shall** have 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 **shall** have final determination of the performance acceptability.
- H. Should any compensation be owed to the agency due to the assessment of damages, contractor **shall** follow the direction of the agency regarding the required compensation process.
- I. ADH reserves the right to deduct damages from any amount due or may become due to the contractor.

PERFORMANCE STANDARDS		
Service Criteria	Acceptable Performance	Damages for Insufficient Performance
Technical Support	48 hours response time	Response times exceeding 48 hours may result in 1% penalty for each occurrence and/or may result in below standard VPR rating
Reporting	Provide progress & status reports by established deadlines	Failure to provide reports by established deadline may result in payment delay, below standard VPR rating, and/or contract cancellation.
Distribution	90% packet distribution	Failure to distribute less than 90% of the packets may result in a 1% penalty for each packet and/or may result in below standard VPR rating.

Prospective Contractor Checklist

1. Read all pages of CB document.
2. Complete and sign page 1 of bid response.
3. Indicate Minority Business status, if applicable.
4. Complete Official Bid Price Sheet.
5. Provide copy of Equal Employment Opportunity Policy.
6. Complete Contract Grant and Disclosure Form (EO 98-04) for bids over \$10,000.
7. Complete Illegal Immigrant Certification Form for service bids over \$25,000 at <https://www.ark.org/dfa/immigrant/index.php/user/welcome>
8. Complete Business Associate Agreement, for HIPAA related bids.

OFFICIAL BID PRICE SHEET

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Rapid, HIV Self-Test Packets	3,478	PER HIV SELF-TEST PACKET (INCLUSIVE OF MARKETING AND DISTRUBTION)	\$	\$

Quantities stated within are for bidding purposes only. ADH may require more or less as needed.

Note

ADH will not be obligated to pay any costs not identified on the Official Price Sheet.

Any cost not identified by the respondent but subsequently incurred in order to achieve service **shall** be borne by the respondent.

If this delivery date requested by ADH cannot be met, the Prospective Contractor **must** state below the alternate number of days required to begin the service and/or place the commodity in the ordering agency's designated location. Failure to state the alternate delivery time obligates the Contractor to complete delivery by the agency's requested date. Extended delivery dates may be considered when in the best interest of the State.

Alternate Delivery: _____ **Days after receipt of order.**

SECTION 3 – GENERAL CONTRACTUAL REQUIREMENTS

3.1 PAYMENT AND INVOICE PROVISIONS

- A. All invoices **shall** be forwarded to: Danyiel.M.Evans@arkansas.gov
- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services by the agency.
- C. The State **shall not** be invoiced 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.

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 contractor/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:
 - The right to possession.
 - The right to accrued payments.
 - The right to expenses of de-installation.
 - The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- H. The laws of the State of Arkansas **shall** govern this contract.
- I. A contract **shall not** be effective prior to award being made by a State Procurement Official.
- J. In a contract with another party, the State will accept the risk of loss of the equipment or software and pay for any destruction, loss or damage of the equipment or software while the State has such risk, when:
 - 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
 - The contract has required the State to carry insurance for such risk.

3.3 CONDITIONS OF CONTRACT

- A. The contractor **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 contractor **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 contractor.

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 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 **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 contractor-owned items.
- B. The contractor's liability for damages to the State **shall** be limited to the total projected cost of the contract. 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 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 **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 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 **shall 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, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

3.5 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.

3.6 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 **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. ADH **shall** have the right to approve or deny the request.

3.7 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 **shall** be final and controlling.

3.8 CANCELLATION

- A. For Cause. The State may cancel any contract resulting from this solicitation for cause when the contractor fails to perform its obligations under it by giving the contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the contractor in writing of the reasons why the State is considering cancelling the contract and provide the contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. To the extent permitted by law and at the discretion of the parties, the parties may agree to minor amendments to the contract and avoid the cancellation for cause upon mutual agreement.
- B. For Convenience. The State may cancel any contract resulting from the solicitation by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.
- C. If upon cancellation the contractor has provided commodities or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, the contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

3.9 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 **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.

3.10 GOVERNOR'S EXECUTIVE ORDER 98-04

For bids over \$10,000, bidders should complete the Disclosure Forms issued with this competitive bid.

3.11 RESERVATION

This CB does not commit the State to award a contract(s) or to pay costs incurred in the preparation of a bid in response to this request.

3.12 DELEGATION AND/OR ASSIGNMENT

The Contractor **shall not** assign the contract in whole or in part or any payment arising therefrom without the prior written consent of the State Procurement Official. The Contractor **shall not** delegate any duties under this contract to a subcontractor unless the State Procurement Official has given written consent to the delegation.

SECTION 4 - STANDARD TERMS AND CONDITIONS

- 1. GENERAL:** Any special terms and conditions included in the competitive bid override these standard terms and conditions. The standard terms and conditions and any special terms and conditions 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 reserves 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:** Bids must be submitted to the Arkansas Department of Health on this form, with attachments when appropriate, on or before the date and time specified for bid opening. If this form is not used, the bid may be rejected. The bid must be typed or printed in ink. The signature must be in ink. Unsigned bids will be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Each bid should be placed in a separate envelope completely and properly identified. Late bids will 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 are firm and not subject to escalation unless otherwise specified in the bid invitation. 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 invitation.
- 5. QUANTITIES:** Quantities stated in term contracts are estimates only and are not guaranteed. 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.

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- 6. BRAND NAME REFERENCES:** Any catalog brand name or manufacturer's reference used in the bid invitation 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 reserves 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 bidder to supply additional descriptive material. The bidder guarantees that the product offered will meet or exceed specifications identified in this bid invitation. If the bidder takes no exception to specifications or reference data in this bid, he will be required to furnish the product according to brand names, numbers, etc., as specified in the invitation.
- 7. GUARANTY:** All items' bids 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 invitation. The bidder hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship, and material, that if sold by drawing, sample, or specification, it will conform thereto and will serve the function for which it was furnished. The bidder further guarantees that if the items furnished hereunder are to be installed by the bidder, such items will function properly when installed. The bidder also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The bidder'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 bidder's name and address, bid number and item number. If samples are not destroyed during reasonable examination, they will be returned at bidder's expense, if requested, within ten days following the opening of bids. All demonstrators will be returned after reasonable examination.
- 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 bidder.
- 10. AMENDMENTS:** The bid 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 bidder. 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 bidder.
- 13. DELIVERY ON FIRM CONTRACTS:** The competitive bid will show the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Arkansas Department of Health has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere, and any additional cost will be borne by the Prospective 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., 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 will be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications 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 bidders 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 competitive bid, (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, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned.
- 20. PATENTS OR COPYRIGHTS:** The contractor agrees 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 competitive bid is not 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

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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 bidder agrees that: (a) the bidder will 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 bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder 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 bidder 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 bidder will include the provisions of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or Prospective 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 competitive bid, the bidder named on the front of this competitive bid, 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.

PROPOSED SUBCONTRACTORS FORM

- **Do not** include additional information relating to subcontractors on this form or as an attachment to this form.

PROSPECTIVE CONTRACTOR PROPOSES TO USE THE FOLLOWING SUBCONTRACTOR(S) TO PROVIDE SERVICES.

Type or Print the following information

Subcontractor's Company Name	Street Address	City, State, ZIP

PROSPECTIVE CONTRACTOR DOES NOT PROPOSE TO USE SUBCONTRACTORS TO PERFORM SERVICES.

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR: Yes No SUBCONTRACTOR NAME: _____

TAXPAYER ID NAME: _____ IS THIS FOR: Goods? Services? Both?

YOUR LAST NAME: _____ FIRST NAME: _____ M.I.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____ COUNTRY: _____

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS *

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse *is* a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/ commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and how are they related to you? <small>[i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]</small>	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly	<input type="checkbox"/>	<input type="checkbox"/>					
Constitutional Officer	<input type="checkbox"/>	<input type="checkbox"/>					
State Board or Commission Member	<input type="checkbox"/>	<input type="checkbox"/>					
State Employee	<input type="checkbox"/>	<input type="checkbox"/>					

None of the above applies

FOR AN ENTITY (BUSINESS) *

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly	<input type="checkbox"/>	<input type="checkbox"/>						
Constitutional Officer	<input type="checkbox"/>	<input type="checkbox"/>						
State Board or Commission Member	<input type="checkbox"/>	<input type="checkbox"/>						
State Employee	<input type="checkbox"/>	<input type="checkbox"/>						

None of the above applies

Contract and Grant Disclosure and Certification Form

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.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

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 subcontract. The party 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 contractor.

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature _____ Title _____ Date _____
Vendor Contact Person _____ Title _____ Phone No. _____

Agency use only
Agency Number _____ Agency Name _____ Agency Contact Person _____ Contact Phone No. _____ Contract or Grant No. _____