



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

## NOTICE OF FUNDS AVAILABILITY SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
NOFA Number:	NOFA-18-0001R	NOFA Issued:	04/06/2018
Description:	Healthcare facility reporting of Antibiotic Use/Antibiotic Resistance Data to the Centers of Disease Control and Prevention's National Healthcare Safety Network		
Agency:	Arkansas Department of Health – HAI / Epidemiology / Center for Public Health Practice		

SUBMISSION DEADLINE FOR RESPONSE	
Application Due Date/Time:	April 20th, 2018 at 2:00 p.m. CST
<p>Applications <b>shall not</b> be accepted after the due date and time. It is the responsibility of the applicant to submit responses at the designated location on or before the application due date and time. Responses received after the designated application due date and time <b>shall</b> be considered late and <b>shall</b> be returned without further consideration.</p>	

SUBMISSION OF RESPONSE DOCUMENTS	
Delivery Method:	Applications <b>must</b> be submitted electronically to the issuing officer's email address shown below.

ARKANSAS DEPARTMENT OF HEALTH CONTACT INFORMATION			
Issuing Officer:	Karrie Duncan	Phone Number:	501-280-4594
Email Address:	<a href="mailto:Karrie.Duncan@arkansas.gov">Karrie.Duncan@arkansas.gov</a>	Fax Number:	501-280-4474
ADH Website:	<a href="http://www.healthy.arkansas.gov/aboutADH/Pages/GrantBidOpportunities.aspx">http://www.healthy.arkansas.gov/aboutADH/Pages/GrantBidOpportunities.aspx</a>		

SUB-GRANT TYPE		
<input checked="" type="checkbox"/> Discretionary	<input type="checkbox"/> Non-Discretionary	<input type="checkbox"/> Discretionary but Exempt

## **SECTION 1 - GENERAL INFORMATION**

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

### **1.1 PURPOSE**

- A. The Arkansas Department of Health (ADH) issues this Notice of Funds Availability (NOFA) on behalf of the Epidemiology Branch of the Center for Public Health Practice and the Healthcare-associated Infections Program to obtain applications for funding to assist facilities with participation in the National Healthcare Safety Network (NHSN) module which contains two options:
- Option One: Antibiotic Use (AU)
  - Option Two: Antibiotic Resistance (AR)
- B. ADH will use the data to evaluate trends over time at each facility to conduct comparative analysis.
- C. Additional information may be found at <https://www.cdc.gov/nhsn/pdfs/pscmanual/11pscaurcurrent.pdf>.

### **1.2 BACKGROUND**

- A. Antibiotic resistance (AR) is an emerging public health threat that requires action across the spectrum of healthcare delivery and throughout communities in Arkansas. The Centers for Disease Control and Prevention (CDC) estimates that two million people a year will develop an infection that is resistant to at least one antibiotic. The federal government has introduced a coordinated action plan to address this issue entitled the Combating Antibiotic Resistance Bacteria (CARB) plan which has provided a framework for multiple federal agencies to combine efforts and develop robust prevention and control strategies. In addition, the Arkansas Department of Health (ADH), with numerous local stakeholders, has been promoting antibiotic stewardship and the prevention and control of antibiotic resistant bacteria for a number of years.
- B. The Healthcare-associated Infections (HAI) Program has incorporated the efforts to promote antibiotic stewardship, prevent and control antibiotic resistant bacteria, and perform surveillance of antibiotic prescribing and antibiotic resistant organisms into core activities of the program. HAIs are infections caused by a wide variety of both common and unusual bacteria, fungi, and viruses that develop during the course of receiving medical care.
- C. HAI and AR objectives have been established to reflect the commitment of the U.S. Department of Health and Human Services (HHS) to prevent and reduce the incidence of these infections. Specifically, these high-priority objectives address reducing facility-onset methicillin-resistant *Staphylococcus aureus* (MRSA) infections by 50% and facility onset *Clostridium difficile* infections (CDI) by 30%.
- D. The Centers for Disease Control and Prevention (CDC) has measured impact in a few targeted areas called "Winnable Battles." HAIs have been identified as one of ten Winnable Battles based on the scope of the burden and the ability to make significant progress in improving outcomes. CDC focuses on three key strategies to advance the HAI/AR combined Winnable Battle: 1) promoting the use of National Healthcare Safety Network (NHSN) data; 2) expanding collaborations at state and local levels; and 3) developing innovative approaches for prevention.
- E. Almost all hospitals in the U.S. currently use the CDC's NHSN to report certain HAIs and healthcare worker influenza immunization data as part of the Centers for Medicaid and Medicare Services (CMS) Inpatient Quality Reporting Program (IQRP) for hospital reimbursement. A new option within NHSN accepts electronically submitted, de-identified antibiotic prescribing and antibiotic resistance data that enables facilities to benchmark their antibiotic utilization to other facilities, both facility-wide and by patient care unit, and evaluate the amount of resistance identified from their laboratory in a systematic process.
- F. The NHSN Antibiotic Use (AU) and Antibiotic Resistance (AR) module solely uses electronic collection, transmission, and submission of data (i.e. no manual entry is possible); therefore, hospitals reporting to the system must have or obtain certain electronic health record and messaging capabilities to participate.

**1.3 GRANT PERIOD**

- A. The anticipated grant period **shall** be from July 1, 2018 to June 30, 2019.
- B. The resulting sub-grant will be for a one (1) year period with no option to renew.

**1.4 FUNDING AVAILABILITY**

- A. Maximum amount of funding is \$30,000 per entity.
- B. Funding will be available according to the following:
1. Five (5) healthcare facilities with greater than 200 beds
  2. Five (5) healthcare facilities less than 200 beds
- C. Funds **must** be used in accordance with the budget provided.
- D. ADH reserves the right to determine allowable costs.

**1.5 ELIGIBILITY & FUNDING REQUIREMENTS**

- A. Up to ten (10) applicants will be accepted and funded.
- B. Applicant **must** meet the following to be eligible to obtain funding:
- C. The recipient **must** be one of the following:
- healthcare facility with greater than or equal to 150 beds
  - healthcare network with three (3) or more facilities with greater than or equal to 25 beds
- D. The recipient **must** meet the requirements for AU and/or AR data submission (refer to section 2 requirements).

**1.6 BUDGET & JUSTIFICATION**

Applicant **must** complete the budget worksheet provided in a separate excel file.

**1.7 ISSUING AGENCY**

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

**1.8 DEFINITION OF REQUIREMENT**

- A. The words "**must**" and "**shall**" signify a requirement of this solicitation and that vendor's agreement to and compliance with that item is mandatory.
- B. Exceptions taken to any requirement in this *Solicitation*, whether submitted in the applicant's response or in subsequent correspondence, **shall** cause disqualification.
- C. Applicants may request exceptions to NON-mandatory items. Any such request **must** be declared on, or as an attachment to the *Response Packet*. Applicant **must** clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies.

**1.9 DEFINITION OF TERMS**

- A. The issuing officer has made every effort to use industry-accepted terminology in this *Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Solicitation*.
- B. The words "applicant" and "vendor" are used synonymously in this document.
- C. The terms "Notice of Funds Availability", "NOFA" and "Solicitation" are used synonymously in this document.
- D. The words "response," "application," and "proposal" are used synonymously in this document.
- E. The words "contract" and "sub-grant" are used synonymously in this document.
- F. The words "module" and "portal" are used synonymously in this document.

## 1.10 RESPONSE AND ORGANIZATION OF DOCUMENTS

### A. Application Packet

1. The Application Packet **must** be submitted on or before the application due date/time.
2. The *Application Packet* **must** include and should be arranged as follows:
  - a. *Signed Application Signature Page*. (See *Application Signature Page*.)
  - b. Agreement and Compliance Pages. (If included)
  - c. Signed Addenda, if applicable.
  - d. Budget Worksheet.
  - e. E.O. 98-04 – Contract Grant and Disclosure Form.
  - f. Equal Employment Opportunity Policy. (See Equal Opportunity Policy)
  - g. LLL-Form (Disclosure of Lobbying Activities), if applicable.
  - h. Any addition documents provided within the application packet.
3. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.
4. Label documents and/or information so as to reference the solicitation item number.

### B. Additional Information

- A. If ADH requests additional information, it **must** be delivered within five (5) business days of the request.
- B. ADH reserves the right to disqualify applicant's if additional information is not received within the timeframe specified.

## 1.11 CLARIFICATION OF SOLICITATION

- A. Any questions requesting clarification of information contained in this *Solicitation* **must** be submitted in writing via email by 4:00 p.m., Central Time on or before April 11, 2018 to the issuing officer as shown on page one (1) of this *Solicitation*.
  1. For each question submitted, applicant should reference the specific solicitation item number to which the question refers.
  2. Applicants' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the ADH website by the close of business on April 17, 2018.
- B. Applicants may contact the issuing officer with non-substantive questions at any time prior to the Application due date.
- C. Oral statements by ADH **shall not** be part of any contract resulting from this solicitation and may not reasonably be relied on by any applicant as an aid to interpretation unless it is reduced to writing and expressly adopted by ADH.

## 1.12 APPLICATION SIGNATURE PAGE

- A. An official authorized to bind the recipient(s) to a resultant contract **must** sign the *Application Signature Page* included in the *Application Packet*.
- B. Applicant's signature on this page **shall** signify agreement that either of the following **shall** cause the vendor's response to be disqualified:

- Additional terms or conditions submitted intentionally or inadvertently.
- Any exception that conflicts with a Requirement of this *Solicitation*.

### 1.13 **AGREEMENT AND COMPLIANCE PAGES**

Applicant **must** sign all *Agreement and Compliance Pages* relevant to the *Solicitation Document*. The *Agreement and Compliance Pages* are included in the *Application Packet*.

Submission of application and applicant's signature on these pages **shall** signify agreement to and compliance with all requirements within the solicitation and application.

### 1.14 **PRIME CONTRACTOR RESPONSIBILITY**

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

### 1.15 **PROPRIETARY INFORMATION**

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

### 1.16 **CAUTION TO APPLICANTS**

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

### 1.17 **REQUIREMENT OF ADDENDUM**

- A. This *Solicitation* **shall** be modified only by an addendum written and authorized by ADH.
- B. An addendum posted within three (3) calendar days prior to the application deadline, **shall** extend the due date and may or may not include changes to the Solicitation.
- C. The applicant **shall** be responsible for checking the ADH website, <http://www.healthy.arkansas.gov/aboutADH/Pages/GrantBidOpportunities.aspx> for any and all addenda up to application deadline.

### 1.18 **QUALIFICATION AND AWARD PROCESS**

ADH will provide funding based on the receipt, review, and acceptance of applications.

#### A. Anticipation to Award

1. Once anticipated awardees are determined, the anticipated award will be posted on the ADH website at <http://www.healthy.arkansas.gov/aboutADH/Pages/GrantBidOpportunities.aspx>
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of award. Applicants 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 **shall** have the right to waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the applicant's responsibility to check the ADH website for the posting of an anticipated award.

#### B. Issuance of an Award

1. Any resultant sub-grant of this **shall** be subject to State approval processes which may include Legislative review.
2. The issuing officer will be responsible for award and administration of any resulting sub-grant.

### 1.19 **MINORITY BUSINESS POLICY**

A. 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

B. 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.

C. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses. If certified, the Prospective Contractor's Certification Number should be included on the *Proposal Signature Page*.

### 1.20 **EQUAL OPPORTUNITY POLICY**

A. In compliance with Arkansas Code Annotated § 19-11-104, the State is required to have a copy of the vendor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.

B. *EO Policies* may be submitted in electronic format to the following email address: [eeopolicy.osp@dfa.arkansas.gov](mailto:eeopolicy.osp@dfa.arkansas.gov), but should also be included as a hardcopy accompanying the solicitation response.

C. The submission of an *EO Policy* to ADH is a one-time requirement. Vendors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute.

D. Vendors who are not required by law by to have an *EO Policy* **must** submit a written statement to that effect.

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

A. Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected vendor(s) **must** have a current certification on file with ADH stating that they do not employ or contract with illegal immigrants.

- B. ADH will notify the selected vendor(s) prior to award if their certification has expired or is not on file. Instructions for completing the certification process will be provided to the vendor(s) at that time.

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

- A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.
- B. By checking the designated box on the Proposal Signature Page of the response packet, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

#### **1.23 CERTIFICATION REGARDING LOBBYING**

- A. The applicant will comply with Public Law 101-121, Section 319 (Section 1352 of Title 31 U.S.C.) by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with awarding of any federal contract, sub-grant, loan or cooperative agreement for an award in excess of \$100,000.
- B. If the applicant has paid or will pay for lobbying using funds other than appropriated federal funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included with the Application Packet.

#### **1.24 CERTIFICATOIN REGARDING DEBARMENT AND SUSPENSION**

The recipient, as a lower tier recipient of federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions). By signing and submitting this application package, the applicants understands and agrees, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

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

#### **1.25 PAST PERFORMANCE**

A vendor's past performance with the State may be used to determine if the applicant is "responsible". Responses submitted by vendors determined to be non-responsible **shall** be disqualified.

#### **1.26 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 an applicant's proposal to be disqualified.

#### **1.27 OWNERSHIP OF DATA**

The State **shall** retain sole ownership, right, title and interest to all data collected, stored by ADH. All data submitted into NHSN, is protected by Act 634 of 2011.

#### **1.28 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 (HIPPA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, and consistent with the Business Associate Agreement executed between the parties.

#### **1.29 RESERVATION**

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

## **SECTION 2 – SPECIFIC REQUIREMENTS**

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

### **2.1 RECIPIENT SYSTEM REQUIREMENTS**

To participate in either option, each facility **must** coordinate with information technology providers and or staff to configure the system to enable the generation of standard formatted files to be imported into NHSN.

### **2.2 DATA SUBMISSION REQUIREMENTS**

#### **A. AU Data Submission**

1. Recipient **must** utilize an Electronic Medication Administration Record (eMAR) or a Bar Coding Medication Administration (BCMA) system as outlined by CDC protocols.
2. Recipient **must** have the ability to collect and package data using HL7 standardized format for Clinical Document Architecture as outlined by CDC protocols.

#### **B. AR Data Submission**

1. To participate in the AR option, the facility **must** currently submit AU data into the NHSN AU/AR Module and have conferred rights to the ADH group for verification.
2. Recipient **must** utilize an Electronic Laboratory Information System (LIS).
3. Recipient **must** utilize an Admission Discharge Transfer (ADT) System.
4. Recipient **must** have electronic access to required data elements.
5. Recipient **must** have the ability to collect and package data using HL7 standardized format: Clinical Document Architecture.

### **2.3 RECIPIENT RESPONSIBILITIES**

- A. Once the reporting module is in place, recipient **must** successfully upload a minimum of one (1) month of CDC validated AU or AR data by expiration of initial sub-grant period.
- B. Recipient **must** participate in bi-monthly conference calls with HAI program staff. Time and date of calls will be determined by the HAI program.
- C. Recipient **must** submit monthly progress reports regarding the implementation of reporting. Time and date of reporting will be determined by the HAI program.

### **2.4 DATA ENTRY REQUIREMENTS**

Recipient **must** enter data in accordance with the standardized NHSN format.

Additional information can be found on the CDC website at: <https://www.cdc.gov/nhsn/cdaportal/index.html>

### **2.5 ADH ACCESSIBILITY**

- A. Recipient **must** confer rights to ADH to access and monitor NHSN data.
- B. ADH **must** have the ability to generate reports using the data collected.
- C. ADH **must** have access to raw data and the ability to export data in Excel spreadsheets within NHSN to compile information specific to the needs of the agency.

### **2.6 VENDOR PERFORMANCE REPORTS (VPR)**

Vendor Performance Reports **shall** be utilized whenever the Vendor is in default of the contract terms as outlined in this RFA. Upon notification of the VPR, the recipient **shall** promptly take all corrective actions to be in compliance with the contract terms. The agency and the recipient **shall** work together during the recipient's resolution of any non-compliance issue. The recipient 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 recipient issued by ADH.



## 2.7 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. The table below: *Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a recipient **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.
- C. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the recipient so as to establish standards that are reasonably achievable.
- D. All changes made to the Performance Standards **shall** become an official part of the contract.
- E. Performance Standards **shall** continue throughout the term of the contract.
- F. Failure to meet the minimum Performance Standards as specified **shall** result in the assessment of damages.
- G. In the event a Performance Standard is not met, the recipient will have the opportunity to defend or respond to the insufficiency. The State **shall** have the right to waive damages if it determines there were extenuating factors beyond the control of the recipient 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, recipient **shall** follow the direction of the agency regarding the required compensation process.

Performance Standards		
Service Criteria	Acceptable Performance	Damages for Insufficient Performance
Successfully upload a minimum of one (1) month of CDC validated data	Initial upload due by June 30, 2019.	For each week past due, may result in a \$500 payment reduction and/or may result in below standard VPR rating
Participation	Monthly as scheduled by HAI program.	For each missed call, may result in a \$100 payment reduction and/or may result in below standard VPR rating.
Monthly Status Reports	Due monthly by date/time specified by HAI program.	Failure to provide notes may result in below standard VPR rating.

## SECTION 3 – CRITERIA FOR SELECTION

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

### 3.1 APPLICATION REVIEW PROCESS & PROCEDURE

- A. ADH will collect applications via email and review the first five (5) applications with facilities greater than 200 beds then the first five (5) facilities with less than 200 beds.
- B. The order of receipt of applications will be identified by the State's email system.
- C. ADH will review each Application Packet to verify submission requirements have been met. Applications that do not meet requirements will be disqualified.
- D. In the event that an application is disqualified, ADH will review the next consecutive application.

### **3.2 ACCEPTANCE OF REVIEW TECHNIQUE**

- A. Applicant **must** agree to the review process and procedure as defined in this solicitation.
- B. The submission of an Application Packet signifies the vendor's understanding and agreement that subjective judgments will be made during the review.

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

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

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

- A. All invoices **shall** be forwarded to:

Arkansas Department of Health  
Attn: Rachel Mahurin  
4815 West Markham St, Slot # 32  
Little Rock, AR 72205

- B. Payments will be made as follows:

- I. Fifty percent (50%) totaling \$15,000 of the grant award will be paid upon completion of the following activities:
  1. Purchase of a software system with built-in capacity and/or reimbursement of dedicated information technology (IT) staff time to create a data infrastructure capable of reporting to either the AU or AR module of NHSN (whichever module selected on application) which meets the CDC standards outlined in the NHSN AU/AR protocol found at <https://www.cdc.gov/nhsn/pdfs/pscmanual/11pscaurcurrent.pdf>.
- II. Fifty percent (50%) totaling \$15,000 of the grant award will be paid upon completion of the following activities:
  1. Successful upload of one (1) month of CDC validated AU or AR data to NHSN.
  2. Confer rights for data access of AU or AR data to the ADH NHSN AU/AR group.
  3. Submission of monthly status reports to HAI Program staff regarding progress of implementation of reporting.
  4. Bi-monthly conference calls with HAI program as mentioned in the Performance Standards.

Note: Data upload must occur during the initial sub-grant period and must be submitted to the ADH HAI program no later than June 30, 2019.

- Final invoices **must** be submitted to the Arkansas Department of Health within thirty (30) calendar days of contract expiration.
- C. Pursuant to Arkansas Code Annotated 19-4-206, the agency **shall** certify that services have been performed or the goods received prior to payment being authorized and processed.

### **4.2 GENERAL INFORMATION**

- A. The State **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- B. The State **shall not** pay damages, legal expenses, or other costs and expenses of any other party.
- C. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- D. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- E. 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.

F. The laws of the State of Arkansas **shall** govern this contract.

G. A contract **shall not** be effective prior to award being made by ADH.

H. 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.

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

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

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

A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of vendor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The recipient **shall** retain total liability for equipment, software and technical and business or operations literature. The State **shall** not at any time be responsible for or accept liability for any vendor-owned items.

B. The vendor's liability for damages to the State **shall** be limited to the value of the Contract or \$30,000, whichever is higher. The foregoing limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The recipient and the State **shall not** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

C. Language in these terms and conditions **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The recipient agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

#### 4.5 **RECORD RETENTION**

A. The applicant **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.

- B. Records **shall** be made available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, for a period of five (5) years from the date this sub-grant expires, or if an audit is pending at the end of the five-year period, until resolution of the audit. Department access to all books, records, and other documents will be according to the procedures outlined in Section VIII, A, of this sub-grant. HIPAA-related records will be retained for a minimum of six (6) years from the date of sub-grant expiration.

#### **4.6 ACCESS TO RECORDS**

The recipient will grant access to its records upon request by duly authorized representatives of state or federal government entities. Access will be given to any books, documents, papers, or records of the recipient related to any services performed under the sub-grant.

#### **4.7 CONFIDENTIALITY**

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

#### **4.8 CONTRACT INTERPRETATION**

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

#### **4.9 LEGISLATIVE REVIEW**

- A. Act 1032 of 1999 specifies that no state agency shall award any discretionary sub-grant that exceeds \$10,000.00 prior to review by the Arkansas Legislative Council or the Joint Budget Committee.
- B. If the state agency determines that an emergency exists, the state agency may award the subgrant prior to review, and shall immediately notify the Legislative Council or Joint Budget Committee as to the facts consulting the emergency.
- C. All non-discretionary sub-grants are exempt from review.
- D. Certain discretionary sub-grants are exempt from review. These include:
- sub-grants to another governmental entity such as a state agency, public educational institution, federal governmental entity or body of a local government
  - disaster relief sub-grants
  - sub-grants identified by the Arkansas Legislative Council to be exempt
  - sub-grants deemed to contain confidential information that would be in violation of disclosure laws
  - sub-grants for scholarship or financial assistance award to or for a post-secondary student

#### **4.10 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.

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.

**4.11 SEVERABILITY**

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

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

- **Do not provide responses to items in this section.**
  - 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the solicitation 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 an application or any and all applications, to waive minor technicalities, and to award the sub-grant to best serve the interest of the State.
  - 3. **APPLICATION SUBMISSION:** Application Packets **must** be submitted to the Arkansas Department of Health on or before the date and time specified. The Application Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Solicitation*. The application **must** be typed or printed in ink. The signature **must** be in ink. Unsigned applications **shall** be disqualified. The person signing the application should show title or authority to bind his/her firm in a contract. Late applications **shall not** be considered under any circumstances.
  - 4. **FORCE MAJEURE:** Neither party will be held responsible for the delay or failure to perform any part of this subgrant when such delay or failure results from fire, flood, epidemic, war or insurrection, unusually severe weather, or the legal acts of public authorities.
  - 5. **STATE AND FEDERAL LAWS:** Performance of this sub-grant by the recipient and the Department must comply with state and federal laws, rules, and regulations. If any statute or regulation is enacted which requires changes in this sub-grant, the recipient will receive notification of the required changes. This sub-grant shall then be amended.
  - 6. **COMPLIANCE WITH NONDISCRIMINATION LAWS:** The recipient will comply with all applicable provisions of the following federal regulations related to nondiscrimination, both in service delivery to clients and in employment, including, but not limited to, the following:
    - Title 45 Code of Federal Regulations
      - Part 80 (Nondiscrimination on the Basis of Race or Sex)
      - Part 84 (Nondiscrimination on the Basis of Handicap)
      - Part 90 (Nondiscrimination on the Basis of Age)
    - Americans with Disabilities Act of 1990, U.S.C. Section 12101 et. Seq.
    - Title 28 Code of Federal Regulations
      - Part 35 (Nondiscrimination on the Basis of Disability in State and Local Government Services)
    - Title 41 Code of Federal Regulations
      - Part 60-74 (OFCCP: Affirmative Action Regulations on Handicapped Workers)ADH will furnish a copy of these regulations to the recipient upon request.
  - 7. **CONFIDENTIALITY OF CLIENT RECORDS:** The recipient will maintain the confidentiality of all client records. This restriction does not apply to disclosures made with the informed, written consent of the client, or if the client is not a competent adult or is a minor, with such consent of the client's parent, guardian, or legal representative.
  - 8. **LIMITATION OF THE DEPARTMENT'S OBLIGATION TO PAY:** The Department is not obligated to make payment under this sub-grant if the Department does not receive sufficient monies from the funding source(s) designated in this sub-grant to fund said obligations and other obligations of the Department, or is not given legal authority from the Arkansas Legislature to expend these funds. The Department is not obligated to make payment if sufficient state or local matching money is not available at the time the bill is presented for payment.
  - 9. **PAYMENT FROM DEPARTMENT CONSIDERED PAYMENT IN FULL:** Payment received from the Department under this sub-grant shall be payment in full for all services and/or costs covered by the payment. No fee or other charge shall be made against a client or a third party for these services and/or costs. This paragraph does not preclude allocation of costs among two or more funding sources, or payment of portions of a service and/or cost under different funding sources, so long as there is no duplication of payment.
  - 10. **AUDIT REQUIREMENT:** For awards in excess of \$300,000.00 a current audit report is due. Recipient shall comply with the ADH audit requirements as outlined in Arkansas Department of Health "Audit Guidelines."
- Arkansas Department of Health  
Internal Audit Section  
4815 West Markham Street, Slot 54  
Little Rock, AR 72205-3867
11. **DEPARTMENTAL RECOVERY OF FUNDS:** The Department shall seek to recover funds not utilized in accordance with the terms and conditions of this sub-grant.

12. **AMENDMENTS:** Any amendment to this sub-grant shall be valid only when in writing and when duly signed by the authorized representative(s) of the Recipient and the Arkansas Department of Health. Recipient and Department acknowledge that no verbal or written representations, other than those contained herein, have been made as an inducement to enter into this agreement and that this writing constitutes the entire agreement.
13. **AWARD:** Term Contract: A contract award will be issued to the successful recipient. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful vendor.
14. **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. Recipient **shall** properly identify items being returned.
15. **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.
16. **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.
17. **CLAIMS:** Only those claims for costs and services specifically authorized under this sub-grant will be allowed by the Department. Any work performed, material furnished, or costs incurred not covered by this sub-grant shall be solely the responsibility of the Recipient.
18. **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 recipient written notice of such cancellation thirty (30) days prior to the date of cancellation.

**NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**

19. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the recipient agrees that: (a) the recipient **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 recipient **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the recipient 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 recipient 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 recipient **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.
20. **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.
21. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the recipient named on the *Application 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.
22. **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.