



STATE OF ARKANSAS
OFFICE OF STATE PROCUREMENT
1509 West 7th Street, Room 300
Little Rock, Arkansas 72201-4222

REQUEST FOR QUALIFICATION
BID SOLICITATION DOCUMENT

SOLICITATION INFORMATION			
Bid Number:	SP-17-0033	Solicitation Issued:	September 15, 2016
Description:	Advertising, Marketing and Public Relations Services		
Agency:	The Office of the Arkansas Lottery		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	October 13, 2016	Bid Opening Time:	2:00 p.m., Central Time
Responses shall not be accepted after the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit responses at the designated location on or before the bid opening date and time. Responses received after the designated bid opening date and time shall be considered late and shall be returned to the vendor without further review. It is not necessary to return "no bids" to OSP.			

DELIVERY OF RESPONSE DOCUMENTS	
Delivery Address:	Office of State Procurement 1509 West 7 th Street, Room 300 Little Rock, AR 72201-4222 Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address.
Response's Outer Packaging:	Outer packaging must be sealed and should be properly marked with the following information. If outer packaging of response submission is not properly marked, the package may be opened for bid identification purposes. <ul style="list-style-type: none">• Bid number• Date and time of bid opening• Vendor's name and return address

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Angela Allman	Buyer's Direct Phone Number:	501-371-6156
Email Address:	angela.allman@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx		

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

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

1.1 PURPOSE

The Office of State Procurement (OSP) issues this Request for Qualifications (RFQ) on behalf of The Office of the Arkansas Lottery (OAL) to obtain proposals and a contract for comprehensive advertising, marketing, and public relations services. These services, used in collaboration with the OAL's administrative and marketing teams, **shall** develop and implement impactful and innovative communications effective in assisting the OAL in achieving its business objectives and core mission.

1.2 TYPE OF CONTRACT

- A. A Term contract will be awarded to a single vendor.
- B. The term of this contract **shall** be for five (5) years. The anticipated starting date for the contract is January 8, 2017. Upon mutual agreement by the vendor and agency, the contract may be renewed by OSP on a year-to-year basis, for up to two (2) additional one-year terms or a portion thereof.
- C. The total contract term **shall not** be more than seven (7) years.

1.3 ISSUING AGENCY

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

1.4 BID OPENING LOCATION

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

Office of State Procurement
1509 West Seventh Street, Room 300
Little Rock, AR 72201-4222

1.5 DEFINITION OF REQUIREMENT

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

1.6 DEFINITION OF TERMS

- A. The State Procurement Official has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.
- B. The words "bidder" and "vendor" are used synonymously in this document.
- C. The terms "Request for Qualifications", "RFQ" and "Bid Solicitation" are used synonymously in this document.
- D. "DFA" means the Arkansas Department of Finance and Administration and is the State agency that houses the Office of the Arkansas Lottery.
- E. "OAL" means The Office of the Arkansas Lottery and is the State agency that oversees lotteries in Arkansas.

- F. "ASL" means the Arkansas Scholarship Lottery and is a lottery whose net proceeds from the Office of the Arkansas Lottery are used to provide scholarships and grants to Arkansas residents to attend Arkansas colleges and universities.
- G. "AACCS" means the Arkansas Academic Challenge Scholarship Program and is the scholarship program funded by the Arkansas Scholarship Lottery.
- H. "ADHE" means the Arkansas Department of Higher Education and is the State agency that administers the Arkansas Academic Challenge Scholarship Program.
- I. "Arkansas Lottery Legislative Oversight Committee" is a Committee made up of 12 members from the Arkansas General Assembly whose duties consist of reviewing the ASL's financial reports, recommending scholarship amounts, and setting AACCS' eligibility requirements.

1.7 **RESPONSE DOCUMENTS**

A. Original Response Packet

1. The original *Response Packet* **must** be submitted on or before the bid opening date and time.
2. The *Response Packet* should be clearly marked "Original" and **must** include the following:
 - a. Original signed *Response Signature Page*. (See *Response Signature Page*.)
 - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
 - c. Original signed *Proposed Subcontractors Form*. (See *Subcontractors*.)
 - d. Response to the *Information for Evaluation* section included in the *Response Packet*.
 - e. Other documents and/or information as may be expressly required in this *Bid Solicitation*.
3. The following items should be submitted in the original *Response Packet*.
 - a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions, #27. Disclosure*.)
 - b. Copy of Vendor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

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

C. Additional Copies and Redacted Copy of the Response Packet

In addition to the original *Response Packet*, the following items should be submitted:

1. *Additional Copies of the Response Packet*
 - a. Three (3) complete hard copies (marked "COPY") of the *Response Packet*.
 - b. Four (4) electronic copies of the *Response Packet*, preferably on flash drives. CDs will also be acceptable.
 - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy **shall** govern.
 - d. If OSP requests additional copies of the response, the copies **must** be delivered within twenty-four (24) hours of request.

2. One (1) redacted copy (marked "REDACTED") the original *Response Packet*, preferably on a flash drive. A CD will also be acceptable. (See *Proprietary Information*.)

1.8 **ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that vendors adhere to the following format and suggestions when preparing their Response.
- B. The original *Response Packet* and all copies should be arranged in the following order.
 - *Response Signature Page.*
 - *All Agreement and Compliance Pages.*
 - *Proposed Subcontractors Form.*
 - Signed Addenda, if applicable.
 - E.O. 98-04 – *Contract Grant and Disclosure Form.*
 - *Equal Opportunity Policy.*
 - Other documents and/or information as may be expressly required in this *Bid Solicitation*. Label documents and/or information so as to reference the *Bid Solicitation's* item number.
 - Response to the *Information for Evaluation* section of the *Response Packet*.

1.9 **CLARIFICATION OF BID SOLICITATION**

- A. Vendors may submit written questions requesting clarification of information contained in this *Bid Solicitation*. Written questions **must** be submitted by 4:00 p.m., Central Time on September 19, 2016. Submit written questions by email to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.
 1. For each question submitted, vendor should reference the specific solicitation item number to which the question refers.
 2. Vendors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on September 30, 2016.
- B. Vendors may contact the OSP buyer with procurement-related questions at any time prior to the bid opening.
- C. Answers to verbal questions may be given as a matter of courtesy and **must** be evaluated at vendor's risk.

1.10 **RESPONSE SIGNATURE PAGE**

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

1.11 **AGREEMENT AND COMPLIANCE PAGES**

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

1.12 **SUBCONTRACTORS**

- A. Vendor **must** complete, sign and submit the *Proposed Subcontractors Form* included in the *Response Packet* to indicate vendor's intent to utilize, or not to utilize, subcontractors.

- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Response Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.
- C. Prior to subcontractors performing work under this contract, the vendor **shall** provide the OAL with the responsibilities of each subcontractor and **shall** obtain written approval from the OAL for any subcontractor proposed.
- D. The vendor **shall** retain ultimate responsibility for all services provided by any subcontractor. Any claims or liabilities arising from or related to the subcontractor's performance **shall** be borne by the vendor.

1.13 **PRICING**

Pricing will be negotiated with the apparent successful vendor after the evaluation of responses. Vendor **must not** include any pricing in their response. Should the hard copies or electronic copies of their *Response Packet* contain any pricing, the response **shall** be disqualified.

1.14 **PRIME CONTRACTOR RESPONSIBILITY**

- A. A joint response submitted by two or more vendors is acceptable. However, a single vendor **must** be identified as the prime contractor.
- B. The prime contractor **shall** be held responsible for the contract and **shall** be the sole point of contact.
- C. Any joint response submitted **must** completely define the roles, responsibilities, duties, and obligations of each contractor individually.
- D. Any joint response submitted **must** be signed by an official authorized to bind the each of the vendor(s) to a resultant contract. This requirement **shall** also apply to the *Response Signature Page and all Agreement and Compliance Pages* included in the *Response Packet*.

1.15 **PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Response Packet*. A CD is also acceptable.
- C. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- D. The vendor **shall** be responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- E. The redacted copy **shall** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor.
- F. If a redacted copy of the submission documents is not provided with vendor's response packet, a copy of the non-redacted documents, with the exception of financial data, **shall** be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- G. If the State deems redacted information to be subject to FOIA, the vendor will be contacted prior to release of the documents.

1.16 **CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this *Bid Solicitation* **must** be addressed through OSP.
- B. Vendor **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 contract.

- D. Responses **must** be submitted only in the English language.
- E. The State **shall** have the right to award or not award a contract, if it is in the best interest of the State to do so.
- F. Vendor **must** provide clarification of any information in their response documents as requested by OSP.
- G. Qualifications **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- H. Vendors may submit multiple responses.
- I. Pursuant to the Arkansas Scholarship Lottery Act §23-115-501(e)(1)(A) & (B) a vendor who provides or proposes to provide goods or services under a major procurement contract **shall not** provide a gift or compensation to:
- The Director of the OAL, an employee of the OAL, the Director of the Department of Finance and Administration (DFA), the Deputy Director of the DFA, or a member of the Arkansas Lottery Legislative Oversight Committee; or
 - A member of the immediate family of the Director of the OAL, an employee of the office, the Director of the DFA, the Deputy Director of the DFA, or a member of the Arkansas Lottery Legislative Oversight Committee.
 - A person who knowingly violates this code section, **shall** be guilty of a Class A misdemeanor. Further, the Arkansas Ethics Commission may investigate and enforce alleged violations of this section under the authority granted by sub-sections 7-6-217 and 7-6-218 of the OAL Ethics Code.

1.17 **REQUIREMENT OF ADDENDUM**

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by OSP.
- B. An addendum posted within three (3) calendar days prior to the bid opening **shall** extend the bid opening and may or may not include changes to the Bid Solicitation.
- C. The vendor **shall** be responsible for checking the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to bid opening.

1.18 **QUALIFICATION AND AWARD PROCESS**

A. Successful Vendor(s) Selection

The Grand Total Score for each Vendor, which **shall** be a sum of the Part I Technical Score and the Part II Oral Presentation Score, **shall** be used to determine the ranking of proposals. The State may move forward to negotiations with those responsible offerors determined, based on the ranking of the proposals, to be reasonably susceptible of being selected for award.

B. Negotiations

1. If the State so chooses, it **shall** have the right to conduct negotiations with the highest ranking Vendors. All negotiations **shall** be conducted at the sole discretion of the State. The State **shall** solely determine the items to be negotiated.
2. If negotiations fail to result in a contract, the State may begin the negotiation process with the next highest ranking Vendor. The negotiation process may be repeated until anticipated successful Vendors have been determined, or until such time the State decides not to move forward with an award.

C. Anticipation to Award

1. Once an anticipated successful vendor has been determined, the anticipated award will be posted on the OSP website at http://www.arkansas.gov/dfa/procurement/pro_intent.php.

2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Vendors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen day posting period.
3. OSP **shall** have the right to waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the vendor's responsibility to check the OSP website for the posting of an anticipated award.

D. Issuance of a Contract

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

1.19 ORAL PRESENTATIONS

- A. The three (3) highest ranking vendors from scores received in *Part I* of the Evaluation, **shall** qualify to proceed to *Part II—Oral Presentation* of the Evaluation.
- B. Qualifying vendors proceeding to *Part II—Oral Presentation* of the Evaluation, **shall** deliver an Oral Presentation, in person, to an Evaluation Committee appointed by the OAL.
- C. The anticipated scheduling for the Oral Presentations will be during the week of November 14, 2016 in Little Rock, Arkansas at a time and place to be determined by the OAL.
- D. Approximately two weeks prior to Oral Presentations, qualifying vendors will receive official notification from the OAL regarding specific scheduling and requirement details.
- E. The vendor's staff member(s) to be assigned to the possible resulting contract for the OAL account **shall** deliver the Oral Presentation.
- F. Oral Presentations **shall** be scored and evaluated as Part II of the Evaluation.
- G. The OAL reserves the right to record any and all Oral Presentations.
- H. The vendor **shall** be responsible for all expenses associated with the Oral Presentation including all travel and preparation expenses.
- I. Pricing **must not** be discussed or included in the Oral Presentation.
- J. The vendor receiving the highest ranking score resulting from the combined weighted scores from *Part I and Part II* of the Evaluation **shall** be selected as the apparent successful vendor and **shall** enter negotiations with the OAL.

1.20 MINORITY BUSINESS POLICY

- A. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this State who is:
 - African American
 - American Indian
 - Asian American
 - Hispanic American
 - Pacific Islander American
 - A Service Disabled Veterans as designated by the United States Department of Veteran Affairs
- B. The Arkansas Economic Development Commission conducts a certification process for minority businesses and disabled veterans. The vendor's Certification Number should be included on the vendor's *Response Signature Page*.

1.21 EQUAL OPPORTUNITY POLICY

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP is required to have a copy of the vendor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* may be submitted in electronic format to the following email address: 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 OSP 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.

1.22 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 OSP stating that they do not employ or contract with illegal immigrants.
- B. OSP 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.

1.23 PAST PERFORMANCE

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

1.24 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM

The respondent's solution **must** comply with the State's shared Technical Architecture Program which is a set of policies and standards that can be viewed at: <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.

1.25 VISA ACCEPTANCE

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

1.26 PUBLICITY

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

1.27 RESERVATION

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

SECTION 2 – MINIMUM REQUIREMENTS

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

2.1 INTRODUCTION

The Office of State Procurement (OSP) issues this Request for Qualifications (RFQ) on behalf of The Office of the Arkansas Lottery (OAL) to obtain proposals and a contract from for comprehensive advertising, marketing, and public relations services. In collaboration with the OAL's Advertising and Marketing Director and the OAL's administrative and marketing teams, the vendor **shall** develop and implement impactful and innovative communications effective in assisting the OAL in achieving its business objectives as outlined in the OAL's 5-year Business Plan. The OAL's 5-year Business Plan is included as Attachment 1 to this solicitation.

The purpose of the Office of the Arkansas Lottery is to oversee the operation of a lottery whose net proceeds provide scholarships and grants to Arkansas citizens for attending Arkansas' colleges and universities through the Arkansas Academic Challenge Scholarship Program. The OAL's mission and vision is to operate lotteries in a world class and exciting manner to make Arkansans proud of their lottery and to maximize proceeds to scholarships in a responsible way.

The successful vendor **shall** be a strategic business partner with the OAL in a way that will affect all of the OAL's far-reaching goals. Therefore, it is critical the successful vendor be highly skilled in utilizing television, radio, outdoor, print, and digital media for creating entertaining messages with a distinct brand of advertising that promotes awareness of the Arkansas Scholarship Lottery (ASL) and its games, as well as emphasizing the OAL's core mission and vision.

2.2 BACKGROUND AND CURRENT ENVIRONMENT

- A. In November of 2008, the Arkansas General Assembly approved an amendment to the Arkansas Constitution that established a lottery within the State of Arkansas to fund scholarships for tuition to Arkansas colleges and universities through the Arkansas Department of Higher Education (ADHE).
- B. The sale of ASL tickets began in 2009 and to date provides games to Arkansans such as *Mega Millions*, *Powerball*, and *Natural State Jackpot*, as well as numerous instant ticket games.
- C. Since ASL sales began in 2009, it has provided more than \$600 million in scholarships through the ADHE and the Arkansas Academic Challenge Scholarship Program, nearly \$2 billion in prizes, and more than \$170 million in commissions to ASL retailers.
- D. The ASL generated sales in FY2016 in excess of \$456 million, a gain of almost 12% over FY2015. A historic billion-dollar Powerball jackpot in February 2016 helped foster sales that may be difficult to match in future years.
- E. Threats to the ASL's future business growth include an increasingly competitive gaming environment in Arkansas and its neighboring states, as well as potential future legislative changes that may affect the operation of the ASL.
- F. In 2015, the Arkansas Legislature established the Office of the Arkansas Lottery within the Arkansas Department of Finance and Administration (DFA). The OAL oversees the operation of the Arkansas Scholarship Lottery, which is fundamentally an entertainment business working with a dedicated team of employees, business partners, and retailers to provide a host of innovative, fun, and entertaining games for ASL customers.
- G. The Office of the Arkansas Lottery operates from a government setting therefore requiring the OAL to work diligently to foster and promote positive legislation and public support in its operation and mission. In addition, since high jackpots exceeding predetermined levels require priority attention and high visibility through advertising and promotion, the OAL's need to gain consumer insight and track brand development is necessary and ongoing.
- H. The Office of the Arkansas Lottery is continuously active and labor intensive with multiple marketing, communications, public relations, and consumer tracking projects requiring attention and service simultaneously on a week-to-week and draw-to-draw basis. In addition, the OAL has oversight over the

ongoing creation and distribution of point-of-sale materials to ensure an effective retail presence at more than 1900 retail outlets throughout the State.

- I. With dynamic and effective marketing, advertising, and public relations, the successful vendor **shall** affect all of the OAL's far-reaching goals and play a vital role in the future of the OAL and the Arkansas Academic Challenge Scholarship Program by maximizing proceeds that go toward scholarships for Arkansas citizens.

2.3 MARKETING AND ADVERTISING OBJECTIVES

A. The marketing and advertising objectives of the Office of the Arkansas Lottery are as follows:

1. To generate revenue from the sales of current and future ASL games by recruiting new players, increasing the frequency of less committed players, and protecting the play of regular players
2. To expand awareness, comprehension, and appeal of existing and future ASL games and products, and the OAL's mission and vision among consumers and stakeholders
3. To expand customer loyalty and trust in the ASL program
4. To target the following audiences:
 - a. OAL and DFA staff
 - b. Arkansas Legislators
 - c. The Arkansas Lottery Legislative Oversight Committee
 - d. Former, current, and future Arkansas Academic Challenge Scholarship Program recipients and their families
 - e. ADHE as well as the Administrators and Faculty of Arkansas' colleges and universities
 - f. Current, lapsed, and potential lottery retailers
 - g. Current, lapsed and potential lottery players
 - h. Non-players
5. To develop and implement comprehensive advertising, marketing, and public or government relations campaigns across all applicable communication channels
6. To develop and/or expand the Arkansas Scholarship Lottery's business, brand, and product portfolio

2.4 VENDOR QUALIFICATIONS

- A. The vendor **must** be authorized to do business in the State of Arkansas.
- B. The vendor **must** be an advertising, marketing and public relations firm.
- C. The vendor **must** have a Certified Letter of Credit in the amount of \$500,000 from a banking institution with locations within the United States, or **must** have had an annual United States gross income of \$5 million or more during the most recent fiscal year. The vendor **must** have generated this gross income from providing advertising, marketing and public relations services.
- D. The vendor **must** currently have a minimum of five (5) active advertising and marketing accounts, with at least two (2) accounts having annual billings exceeding \$1 million.
- E. The vendor **must** have experience in multi-channel marketing, advertising, strategic planning, creative concepting, copywriting, media planning and buying, social and digital media, and public relations.
- F. The vendor **must** have a minimum of two (2) full-time, in house media buyers with buying experience in all of Arkansas' media markets.

2.5 GENERAL REQUIREMENTS

- A. The vendor **shall** purchase all media, marketing, and advertising materials required to provide services outlined in this RFQ.
- B. The vendor **shall** purchase all media within timelines and budgets established by the OAL, and/or in a manner consistent with approved Creative Briefs and **shall** remain vigilant and responsive in preparing, negotiating, and implementing last minute incremental media plans especially when jackpots reach and/or exceed pre-determined thresholds.
- C. The vendor **shall not** be reimbursed for fees of any unauthorized expenses or any expenses not previously approved by the OAL.
- D. Any fees associated with providing the services outlined in this RFQ, including but not limited to travel expenses, conference attendance, media purchases, and marketing material **shall** be included in the pricing as negotiated for any resultant contract.
- E. The vendor **must** adhere to and support the strategies set forth in the OAL's 5-year business plan, which is included as Attachment 1 to this RFQ.
- F. It is preferred the vendor have a working knowledge of the lottery industry in order to provide the OAL with informed recommendations and business decisions. In an effort to build and maintain the required knowledge of the lottery industry, the vendor and/or the vendor's staff assigned to the OAL's account, **shall** attend lottery and/or gaming conferences periodically throughout the contract term if requested by the OAL. Lottery and/or gaming conferences are typically held at various locations throughout the United States.
- G. The vendor **must** disclose any litigation or conflicts of interest to the OAL in writing within 15 days of occurrence.

2.6 ONGOING SERVICE REQUIREMENTS

- A. The vendor **shall** provide at least one (1) dedicated staff member to manage the daily operations of the OAL Account and to act as a liaison between the OAL's Advertising & Marketing Director and the successful vendor of this solicitation.
- B. Upon request by the OAL, the vendor **shall** replace any staff member assigned to the State's account. The vendor **shall** provide the OAL with a replacement having equal or higher qualifications and expertise than the staff member being replaced. The vendor **shall** provide the replacement in such a way that does not disrupt the daily operations of the OAL.
- C. As requested by the OAL, the vendor and/or the dedicated staff member assigned to the OAL account **shall** attend planning and follow-up meetings at the OAL offices in Little Rock, Arkansas. These meetings are typically held during normal business hours which are Monday through Friday, 8:00 a.m. until 5:00 p.m. CST. Scheduled times for meetings **shall** be at the OAL's discretion. Currently, planning and follow-up meetings are held a minimum of once per week however, the frequency is expected to fluctuate throughout the entire contract term.
- D. The vendor and/or the dedicated staff member assigned to the OAL account, **shall** participate in conference calls as requested by the OAL, and **shall** communicate with the OAL as needed. Daily communication is typically required for effective account management.
- E. The vendor and/or the dedicated staff member assigned to the OAL account **shall** participate in strategy development to ensure the strategies are consumer driven and in accord with the OAL's 5-year business plan, mission, and vision.
- F. As standard advertising practice, and/or per the OAL's discretion or approval, the vendor and/or the dedicated staff member assigned to the OAL account **shall** track the results of all comprehensive advertising, marketing, public or government relations campaigns implemented. The vendor **shall** provide the OAL with the tracking results in the Post Campaign Report.

- G. If requested, the vendor and/or the dedicated staff member assigned to the OAL account **shall** analyze, propose, and/or conduct market research to gain consumer insights that will drive the strategic direction of the ASL.
- H. The vendor and/or the dedicated staff member assigned to the OAL account **shall** assist the OAL in developing ASL game names, product logos, or other art that may be requested by the OAL.

2.7 ADVERTISING & MARKETING CAMPAIGNS

A. Traditional Campaigns

1. Traditional Campaigns **shall** include television, radio, outdoor, print, and digital media campaigns.
2. The vendor and/or the dedicated staff member assigned to the OAL account **shall** develop effective and cutting edge creative for television, radio, print, outdoor, direct and digital advertising, as well as merchandising items, and point of sale materials.
3. The vendor and/or the dedicated staff member assigned to the OAL account **shall** create traditional campaigns that correspond with ASL's stated goals, mission, and vision. Traditional campaigns **must** work synergistically with other advertising communications and with the OAL's approved Annual Advertising and Media Plan, or any future advertising plan that may be approved by the OAL.
4. Digital marketing campaigns **must** effectively communicate with target audiences through all digital consumer touch points.
5. The vendor and/or the dedicated staff member assigned to the OAL account **shall** place media, and **shall** audit and verify media is broadcasted and/or published according to the Annual Advertising and Media Plan approved by the OAL, or any future advertising and marketing plan that may be approved by the OAL.

B. Social Media Campaigns and Management

1. The vendor and/or the dedicated staff member assigned to the OAL account **shall** work in collaboration with the OAL's Advertising and Marketing Director to manage social media advertising, marketing, and communications.
2. The vendor and/or the dedicated staff member assigned to the OAL account **shall** develop strategies such as content development, creative development, and community management and optimization with the goal of increasing engagement among targeted audiences, effectively communicating the ASL brand and news, and reinforcing ASL's presence and initiatives in the social arena.

C. Public and Governmental Relations Campaigns

1. The vendor and/or the dedicated staff member assigned to the OAL account **shall** develop and manage Public and Governmental relations marketing programs including stakeholder communications and experiential marketing, events, and/or promotions.
2. The vendor and/or the dedicated staff member assigned to the OAL account **shall** develop and provide planning and creative assets for Public and Governmental Relations marketing programs so that they work synergistically with other communications, and with the OAL's approved Annual Advertising and Media Plan, or any other advertising plan that may be approved by the OAL.

2.8 WEBSITE HOSTING

- A. The vendor and/or the dedicated staff member assigned to the OAL account **shall** provide hosting for the ASL's website.

- B. The vendor and/or the dedicated staff member assigned to the OAL account **shall** provide creative input into ASL's website design and its contents in a way that enhances the consumer's experience with the ASL brand.
- C. The vendor and/or the dedicated staff member assigned to the OAL account **shall** manage the design of existing and newly created content for ASL's website so that it works synergistically with all other marketing and advertising communications and with the OAL's approved Annual Advertising and Media Plan, or any other advertising plan that may be approved by the OAL.
- D. Upon request by the OAL, the vendor and/or the dedicated staff member assigned to the OAL account **shall** provide website Search Engine Management (SEM) and Search Engine Optimizations (SEO) services.
- E. The source code for the current website hosting will be provided to the new hosting vendor by the OAL.
- F. See Attachment B *Website Hosting Agreement* for the current vendor's requirements for website hosting. These requirements **shall** remain the same for the new contractor and/or subcontractor, however the OAL **shall** reserve the right to make adjustments to these requirements for any resulting contract. Any changes to the hosting requirements will be negotiated with the new vendor. The OAL **shall** have the right to final determination of hosting requirements.

2.9 CREATIVE BRIEFS

- A. Using consumer led strategies, the vendor and/or the dedicated staff member assigned to the OAL account **shall** develop Creative Briefs for each new advertising initiative. The OAL will provide briefing documents that will outline the initiative's objectives, deadlines and any mandatory elements required by the OAL. The vendor **shall** use the briefing documents provided by the OAL as a guide for creating the Creative Briefs.
- B. When developing Creative Briefs, the vendor and/or the dedicated staff member assigned to the OAL account **shall** plan creative development schedules that allow for developing and presenting integrated solutions, editing and revising selected options, obtaining the OAL's final approval, and producing and distributing the finished product.
- C. Unless otherwise directed by the OAL, the vendor and/or the dedicated staff member assigned to the OAL account **shall** include the following information in the Creative Brief:
 - Campaign Summary
 - Timelines
 - Budget
 - Distribution Points
 - Target Audience
 - Deliverables
 - Mandatory Elements
 - Other pertinent information each initiative may require
 - Approval Requirements
- D. Unless waived by the OAL, the vendor and/or the dedicated staff member assigned to the OAL account **shall** have the Creative Brief approved and signed by the OAL's Marketing and Advertising Director, or his/her designee.
- E. Unless waived by the OAL, all creative submitted by the vendor and/or the dedicated staff member assigned to the OAL account **shall** be evaluated for approval based on its delivery against the approved Creative Brief.
- F. Unless waived by the OAL, the vendor and/or the dedicated staff member assigned to the OAL account **shall** produce and distribute all creative within the budgets and timelines submitted in the Creative Brief and approved by the OAL.

- G. Under circumstances when the preparation of creative briefs is not advantageous to the OAL, such as for the purchase of last minute incremental media plans when jackpots reach and/or exceed pre-determined thresholds, the OAL **shall** reserve the right to waive the creative brief development requirement.

2.10 **CREATIVE APPROVALS**

- A. Unless waived by the OAL, the vendor **must** obtain written approval from the OAL prior to developing or producing any advertisement or promotional product.
- B. The vendor **shall not** deviate from approved scripts, storyboards, print layouts, Creative Briefs, or any element of a previously approved advertisement, promotional item, or other creative media of any campaign or initiative without prior, written approval from the OAL.
- C. The vendor **shall** incorporate all changes to any creative element of any initiative or campaign as requested by the OAL. However, the vendor may submit for approval any alternative creative solutions deemed prudent by the vendor.
- D. Under circumstances when giving formal, written creative approvals is not advantageous to the OAL, such as for the purchase of last minute incremental media plans when jackpots reach and/or exceed pre-determined thresholds, the OAL **shall** reserve the right to waive the formal, written creative approval requirement.

2.11 **DEVELOPMENT AND PRODUCTION**

- A. The vendor and/or the dedicated staff member assigned to the OAL account **shall** develop advertising and marketing creative within the timelines and budgets approved by the OAL.
- B. The vendor and/or the dedicated staff member assigned to the OAL account **shall** develop advertising and marketing creative that represents the ASL brand in a positive light and in a manner consistent with the brand identity and the OAL's core mission and vision.
- C. The vendor and/or the dedicated staff member assigned to the OAL account **shall** produce developed creative within the budgets approved by the OAL using the most cost efficient manner possible while still achieving the highest quality production standard.
- D. The vendor and/or the dedicated staff member assigned to the OAL account **shall** produce developed creative with the timelines approved by the OAL.
- E. The vendor and/or the dedicated staff member assigned to the OAL account **shall** work in collaboration with the OAL's Advertising and Marketing Director to develop, produce, and manage all advertising, marketing, and communications campaigns and initiatives.
- F. The vendor and/or the dedicated staff member assigned to the OAL account **shall** develop effective and cutting- edge creative for all advertising and marketing campaigns, merchandising items, and point of sale materials.

2.12 **ANNUAL ADVERTISING AND MEDIA PLAN**

- A. The vendor **shall** submit an Advertising and Media Plan to the OAL before July 1 of each fiscal year. Arkansas' fiscal year is July 1 to June 30.
- B. The OAL will provide the vendor with an Annual Marketing Plan to be used as an aid in the creation of the Advertising and Media Plan. The vendor **must** work in collaboration with the OAL when creating the Advertising and Media Plan.
- C. The Advertising and Media Plan **must** be categorized by each business initiative and **must** include the following information:
- Innovative approaches to be used during the year

- Strategies to be used during the year to achieve the OAL's goals and objectives
- Key Performance Indicators (KPI's) for post initiative evaluations
- Proposed spending for media, production, talent, research, special events opportunities, promotional activities, and other expenses specified by the OAL
- Definition of target audiences
- Allocation amount categorized by media type and market
- Gross Rating Point (GRP) objectives with reach, frequency, and efficiency analysis
- Media Mix, Daypart Mix, and Unit Mix recommendations and rationale.

2.13 **REPORTS**

A. The vendor **shall** compile reports in partnership with the OAL's Director of Advertising and Marketing or his/her designee. The vendor **shall** submit all reports to the OAL in a format and within the timeframes approved by the OAL.

B. Post Campaign Reports

1. The vendor **shall** submit a Post Campaign Report to the OAL in the quarter following the conclusion of a campaign phase, media flight, promotional event, website or social media initiative, or public relations project. The report **must** include the following information:

- A recap of the initiative or media buy
- Total expenditures
- Performance against established KPI's
- Return on Investment
- The overall effectiveness of each initiative

C. Status Reports

1. The vendor **shall** submit a Status Report to the OAL weekly. The report **must** include the following information:

- A detailed status update of all current projects, production jobs and promotional events
- Timelines for all initiatives, allowing no fewer than 3 days for the OAL approval at any stage

D. Media Flowcharts

1. The vendor **shall** monitor and maintain Media Flowcharts on an ongoing basis to determine and improve the Return on Investment and effectiveness of all media buys. The flowcharts **must** be submitted to the OAL as requested and **must** be current to include the following information:

- Media type
- Market Tiers

- GRP Levels
- Creative rotation
- Costs for each campaign, summarized by campaign, month, quarter, and year

E. Approved Expenditure Reports

1. Approved Expenditure Reports will be utilized by the OAL to ensure all expenses are properly accounted for and budget plans remain aligned with marketing initiatives.
2. Upon request, the vendor **shall** provide any supporting documentation that may be needed for verification of expenditures such as documents regarding staffing, production hours, or other information deemed appropriate by the OAL.
3. The vendor **shall** submit Approved Expenditure Reports to the OAL the first week of each month and **must** include the following information from the previous month:
 - A summary of all approved and estimated expenditures to date
 - Available funding amount in the OAL budget
 - Amount of funding currently committed
 - Estimate of invoicing for approval and previously approved invoicing status

2.14 PROPERTY RIGHTS

- A. Upon expiration or termination of this contract, the vendor **shall** transfer property rights of all data and deliverables (intellectual and tangible) to the OAL and **shall not** hold ownership or an intellectual property claim to any data or deliverable associated with the OAL account including but not limited to the following:
- Patents
 - Trademarks
 - Logos
 - Television, radio, and outdoor advertising and marketing products
 - Printed advertising and marketing products
 - Media Schedules
 - Digital products including websites and social media
 - Third party data, analytics and/or records
- B. Upon expiration or termination of this contract, the vendor **shall** transfer all data, deliverables, and products the vendor has created, developed, produced, or managed while performing the services outlined in this contract to the OAL and **shall not** charge a fee to the OAL for this service.
- C. The vendor **shall** transfer all data and deliverables associated with the OAL account to the OAL within thirty (30) calendar days of the expiration or termination date of this contract and all data, deliverables, and products **shall** become the exclusive property of the OAL.
- D. The vendor **shall not** utilize any portion of the projects created, developed, produced, or managed including all deliverables and creative concepts without the prior, written consent of the Director of the Office of the Arkansas Lottery.

2.15 TRANSITION SERVICES

- A. Transition Upon Contract Start
 - 1. If the successful vendor is one other than the current service provider, upon execution of a contract with the OAL, the vendor **shall** initiate and coordinate the transition of services from the current provider.
- B. Transition Upon Termination or Expiration
 - 1. Should any subsequent contract for advertising and marketing services be awarded to a provider other than the awardee of this RFQ, the then current vendor **shall**, to the greatest extent possible and reasonable, cooperate with the OAL in initiating a smooth and orderly transition to the next vendor.

2.16 PERFORMANCE SECURITY

- A. The vendor **shall** provide a Performance Security in an amount of \$25,000 within ten (10) business days prior to the award of a resultant contract.
- B. The vendor **shall** provide the Performance Security by the issuance of a Performance Bond written and issued by a Surety Company licensed and authorized to do business in the State of Arkansas, an Irrevocable Letter of Credit from an Arkansas bank, or Certified Funds such as a Cashier's Check.
- C. The contract **shall not** be awarded prior to acceptance of the Performance Security by the State Procurement Official.
- D. Should the vendor fail to deliver the Performance Security within ten (10) days prior to award, the State **shall** declare the vendor as non-responsive and the State **shall** reserve the right to enter into negotiations with the next highest ranking vendor.
- E. At the State's discretion, the vendor's Performance Security **shall** be forfeited if the vendor fails to perform the contracted services as determined by the Office of State Procurement and the Office of the Arkansas Lottery.

2.17 PERFORMANCE STANDARDS

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. Below, *Table 1 Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **must** meet in order to avoid assessment of damages.
- B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration.
- C. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the vendor so as to establish standards that are reasonably achievable.
- D. All changes made to the Performance Standards **shall** become an official part of the contract.
- E. Performance Standards **shall** continue throughout the term of the contract.
- F. Failure to meet the minimum Performance Standards as specified **shall** result in the assessment of damages.
- G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend or respond to the insufficiency. The State **shall** have the right to waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services. In these instances, the State **shall** have final determination of the performance acceptability.
- H. Should any compensation be owed to the agency due to the assessment of damages, vendor **shall** follow the direction of the agency regarding the required compensation process.

Table 1: Performance Standards

Criteria	Standard	Damages
Dedicated Account Management	Provides a minimum of one (1) dedicated staff member assigned by the vendor to manage the OAL account.	\$50 per day for each day the assigned dedicated staff member is unavailable to the OAL.
Creative Development	Creative is developed within the timelines and budgets approved by the OAL	\$50 per occurrence when creative development exceeds budgets and/or timelines established and/or approved by the OAL.
Creative Production	Creative is produced within the timelines and budgets approved by the OAL	\$50 per occurrence when creative production exceeds budgets and/or timelines established and/or approved by the OAL.
Media Buys	Media buys are conducted within the timelines established by the OAL.	\$50 per occurrence for each missed media buy.

SECTION 3 – CRITERIA FOR SELECTION

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

3.1 **RESPONSE SCORE**

- A. OSP will review each *Response Packet* to verify submission Requirements have been met. *Response Packets* that do not meet submission Requirements **shall** be disqualified and **shall not** be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying technical proposal responses to *Part I*. This initial Evaluation will be based on vendor’s response to *Part I* in the *Information for Evaluation* section included in the *Response Packet*. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.
- C. After the Evaluation Committee has evaluated and scored *Part I: Technical Proposal*, the 3 highest scoring vendors from *Part I* **shall** deliver *Oral Presentations—Part II* to the agency-appointed Evaluation Committee.
- D. The *Information for Evaluation* section has been divided into sub-sections.
1. In each sub-section, items/questions have each been assigned a maximum point value of ten (10) points. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
 2. The agency has assigned Weighted Percentages to each sub-section according to its significance.

Information for Evaluation Sub-Sections	Maximum Raw Points Possible	Sub-Section’s Weighted Percentage	* Maximum Weighted Score Possible
<i>EVALUATION PART I—TECHNICAL PROPOSAL</i>			
E.1 Philosophy	10	5%	50
E.2 Qualifications and Experience	160	15%	150
E.3 Web Hosting	10	5%	50
E.4 Staffing	20	5%	50
E.5 Recognition and Certification	20	5%	50
E.6 Strategic Marketing Plan Sample Work Submission	140	25%	250
E.7 Strategic Public Relations Sample Work Submission	90	20%	200
<i>EVALUATION PART II—PRESENTATION</i>			
E.8 Oral Presentation	10	20%	200
Totals	460	100.0%	1,000

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

- E. The vendor’s weighted score for each sub-section will be determined using the following formula:

$$(A/B)*C = D$$

A = Actual Raw Points received for sub-section in evaluation
 B = Maximum Raw Points possible for sub-section
 C = Maximum Weighted Score possible for sub-section
 D = Weighted Score received for sub-section

- F. Vendor’s weighted scores for sub-sections will be added to determine the Total Score for the Response.

3.2 VENDOR ACCEPTANCE OF EVALUATION TECHNIQUE

- A. Vendor **must** agree to all evaluation processes and procedures as defined in this solicitation.
- B. The submission of a *Response Packet* **shall** signify the vendor's understanding and agreement that subjective judgments **shall** be made during the evaluation and scoring of the Technical Proposals.

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:

The Office of the Arkansas Lottery
Attn: Director of Advertising and Marketing
P.O. Box 3238
Little Rock, AR 72203

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of 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 vendor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The vendor should invoice the agency by an itemized list of charges. The agency's Purchase Order Number and/or the Contract Number should be referenced on each invoice.
- F. The vendor **shall** submit invoices for completed work on or before the 20th of each month.
- G. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- H. Selected vendor **must** be registered with the State in order to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/vendor/index.html>

4.2 GENERAL INFORMATION

- A. The State **shall not** lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a 30 day written notice to the vendor/lessor in the event funds are not appropriated.
- B. The State **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- C. The State **shall not** pay damages, legal expenses, or other costs and expenses of any other party.
- D. The State **shall not** continue a contract once any equipment has been repossessed.
- E. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- F. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- G. The State **shall not** enter a contract which grants to another party any remedies other than the following:
- The right to possession.
 - The right to accrued payments.
 - The right to expenses of deinstallation.
 - 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.

4.3 **CONDITIONS OF CONTRACT**

- A. The vendor **shall** at all times observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to the execution of a resulting contract which in any manner affect the completion of the work.
- B. The vendor **shall** indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the vendor.

4.4 **STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of vendor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The vendor **shall** retain total liability for equipment, software and technical and business or operations literature. The State **shall** not at any time be responsible for or accept liability for any vendor-owned items.
- B. The vendor's liability for damages to the State **shall** be limited to the value of the Contract or \$1,000,000, whichever is higher. The foregoing limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The vendor and the State **shall not** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.
- C. Language in these terms and conditions **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The vendor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

4.5 **RECORD RETENTION**

- A. The vendor **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.
- B. Financial and accounting records **shall** be made available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

4.6 PRICE ESCALATION

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

4.7 CONFIDENTIALITY

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

4.8 CONTRACT INTERPRETATION

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

4.9 CANCELLATION

- A. In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding. The State **shall** give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination. The effective date of termination **shall** be 30 days from the date of notification, unless a longer timeframe is specified in the notification.
- B. Upon default of a vendor, the State **shall** agree to pay only sums due for goods and services received and accepted up to cancellation of the contract.

4.10 SEVERABILITY

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

SECTION 5 – STANDARD TERMS AND CONDITIONS

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

1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
3. **BID SUBMISSION:** Original Response Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Response Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple responses **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Vendor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the vendor to supply additional descriptive material. The vendor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Vendors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.
7. **GUARANTY:** All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The vendor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The vendor **shall** further guarantee that if the items furnished hereunder are to be installed by the vendor, such items **shall** function properly when installed. The vendor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The vendor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the vendor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at vendor's expense. After reasonable examination, all demonstrators will be returned at vendor's expense.
9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the vendor.
10. **AMENDMENTS:** Vendor's responses cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD:** Term Contract: A contract award will be issued to the successful vendor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful vendor.
13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the vendor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **shall** be borne by the vendor.

- 14. DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
- 15. STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
- 16. DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the vendors list or suspension of eligibility for award.
- 17. VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
- 18. INVOICING:** The contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
- 19. STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the contractor's expense to the F.O.B. point provided by the agency or by OSP. Vendor **shall** properly identify items being returned.
- 20. PATENTS OR COPYRIGHTS:** The contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
- 21. ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
- 22. CLAIMS:** Any claims the Contractor may assert under this Agreement shall be brought before the Arkansas State Claims Commission ("Commission"), which shall have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor shall continue to provide the Services under this Agreement even in the event that the Contractor has a claim pending before the Commission.
- 23. CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the vendor written notice of such cancellation thirty (30) days prior to the date of cancellation.
- Any delivered but unpaid for goods will be returned in normal condition to the contractor by the State. If the State is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the contractor has provided services which the State has accepted, the contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**
- 24. DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the vendor agrees that: (a) the vendor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the vendor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the vendor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the vendor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.
- 25. CONTINGENT FEE:** The vendor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business.
- 26. ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the vendor named on the *Response Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
- 27. DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any contractor,

whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.