

**STATE OF ARKANSAS  
ARKANSAS DEPARTMENT OF EMERGENCY MANAGEMENT  
BUILDING #9501  
CAMP JOSEPH T. ROBINSON  
NORTH LITTLE ROCK, AR 72199-9600**

**REQUEST FOR PROPOSAL**

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ADEM 10-0002	Glendon Graham
<b>Bid Number:</b>	<b>Buyer:</b>

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Public Assistance Program Closeout	December 1, 2010
<b>Commodity:</b>	<b>Issue Date:</b>

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January 6, 2011	11:00 am CST
<b>Bid Opening Date:</b>	<b>Bid Opening Time</b>

BIDS WILL BE ACCEPTED UNTIL THE TIME AND DATE SPECIFIED ABOVE. THE BID ENVELOPE MUST BE SEALED AND SHOULD BE PROPERLY MARKED WITH THE BID NUMBER, DATE AND HOUR OF BID OPENING AND BIDDER'S RETURN ADDRESS. IT IS NOT NECESSARY TO RETURN "NO BIDS" TO THE ARKANSAS DEPARTMENT OF EMERGENCY MANAGEMENT.

**BID OPENING LOCATION:**  
Arkansas Department of Emergency Management  
Training Room A, B, & C  
Building #9501  
Camp Joseph T. Robinson  
North Little Rock, AR 72199-9600

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**Company Name**

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<b>Name (Type or Print)</b>	<b>Title</b>
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<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
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<b>Telephone</b>	<b>Fax Number</b>	<b>Email Address</b>
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**FAILURE TO PROVIDE A TAXPAYER IDENTIFICATION NUMBER MAY RESULT IN BID REJECTION:**

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**Federal Employer Identification Number or Social Security Number**

**THE BID MUST BE SIGNED IN BLUE INK ONLY. UNSIGNED BIDS WILL NOT BE CONSIDERED.**

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**Signature**

**Business Designation (check one):**

- Individual
- Public Service Corporation
- Corporation

- Sole Proprietorship
- Partnership
- Government/Nonprofit

**GENERAL DESCRIPTION:** HURRICANE KATRINA PUBLIC ASSISTANCE PROGRAM CLOSEOUT

**TYPE OF CONTRACT:** TERM

**CONTRACT PERIOD:** 120 DAYS (4 MONTHS) FROM THE DATE OF AWARD WITH THE OPTION OF TWO (2) 30 DAY EXTENSIONS. TOTAL PROJECT TIME IS NOT TO EXCEED A TOTAL OF 6 MONTHS.

**BUYER:** GLENDON GRAHAM

**AGENCY P. R. NUMBER:** N/A

**STATE OF ARKANSAS  
DEPARTMENT OF EMERGENCY  
MANAGEMENT**

**REQUEST FOR PROPOSALS**

ADEM-10-0002

**ISSUED BY**

Arkansas Department of Emergency Management

**DESCRIPTION/TITLE**

HURRICANE KATRINA PUBLIC ASSISTANCE  
PROGRAM CLOSEOUT

**ISSUED DATE**

December 1, 2010

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## **SECTION 10: ADMINISTRATIVE OVERVIEW**

### **10.01 PURPOSE**

The purpose of this Request for Proposal (RFP) is to provide interested bidders the information to enable them to prepare and submit a proposal for consideration by the Arkansas Department of Emergency Management to review, audit, and reconcile supporting documentation that relates to Hurricane Katrina Public Assistance Program Closeout.

### **10.02 DEFINITION OF TERMS**

The Arkansas Department of Emergency Management has made every effort to use industry-accepted terminology in this RFP and will attempt to further clarify any point or item in question. The words "bidder", "vendor", "proposer" and "offeror" are used synonymously in this document.

ADEM refers to the Arkansas Department of Emergency Management

RFP refers to Request for Proposal(s)

### **10.03 ISSUING OFFICE**

The Arkansas Department of Emergency Management is the sole point of contact in the state of Arkansas for the selection process. Vendor questions regarding RFP-related matters should be addressed to the Issuing Officer.

Issuing Officer and Contract Administrator: Glendon Graham or Scott Bass, 501-683-6700, Fax 501-683-7892, [Scott.Bass@adem.arkansas.gov](mailto:Scott.Bass@adem.arkansas.gov) or [RecoveryBranch@adem.arkansas.gov](mailto:RecoveryBranch@adem.arkansas.gov).

### **10.04 ANTICIPATED PROCUREMENT TIMETABLE**

RFP Issued: 12/01/2010  
Closing date for receipt of questions: 12/15/2010  
Answers to submitted questions: 12/17/2010  
Closing date & time for receipt of proposals: 12/29/2010 4:30 PM  
Public opening of sealed proposals: 01/06/2011 11:00 AM  
Completion of proposal review and contract selections: 01/13/2011  
Anticipation to award posting: 01/17/2011  
Intent to award letter issued: 02/07/2011  
Expected award issued: 04/10/2011

### **10.05 SUBMISSION OF PROPOSALS**

"Delivery Notice: We strongly recommend that you NOT send bid documents by priority or certified United States Postal Service (USPS) mail. The Arkansas Department of Emergency Management cannot be responsible for delivery by the USPS. The Post Office does NOT deliver mail directly to our offices. Only UPS, FedEx, or similar delivery service will deliver to our offices if the street address is used. We regret any inconvenience this may cause"

No later than, Wednesday, December 29, 2010 at 4: 30 PM, one original (marked "ORIGINAL") and (5) copies of the proposal must be received by:

Arkansas Department of Emergency Management  
Attn: Scott Bass and Jamie Howell  
Building #950, Camp Joseph T. Robinson  
North Little Rock, AR 72199-9600

The envelope should be labeled:

**Proposal Number: (ADEM-10-0002)**  
**Title: Hurricane Katrina/PA Program Closeout**  
**Proposal Opening: 01/06/11**

If the Arkansas Department of Emergency Management requests additional copies of the proposal, they must be delivered by the vendor within twenty-four (24) hours. Envelopes must be marked with vendors name, bid/proposal number, bid opening time and date.

Addendums or amendments, if any, should be signed, dated and included with the respondent's proposal submission. Failure to do so may be cause for rejection of the proposal.

#### 10.06 REJECTION OF PROPOSALS

The State reserves the right to reject any and all proposals received as a result of this RFP.

This RFP does not commit the State to award a contract, to pay costs incurred in the preparation of a proposal in response to this request, or to procure or contract for services or supplies.

#### 10.07 PROPOSAL OPENING DATE AND LOCATION

A public opening of all proposals will be held on:

01/06/2011 at 11:00 AM CST

Training Room A, B, & C  
Arkansas Department of Emergency Management  
Building #9501  
Camp Joseph T. Robinson  
North Little Rock, AR 72199-9600

Any materials that the respondent wishes not to be made public through the state FOI Laws should be submitted in separate, sealed envelope(s) marked "Confidential" (See Section 10.12)

ALL SUBMITTALS BY PROPOSERS WILL BE AVAILABLE FOR REVIEW TO THE EXTENT PERMISSABLE, PURSUANT TO THE ARKANSAS FREEDOM OF INFORMATION ACT 25-19-101 ET SEQ.

#### 10.08 BID EVALUATION

The staff of the Arkansas Department of Emergency Management will evaluate all proposals to ensure all requirements are met. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, the evaluation factors set forth in the RFP, and the results of any discussions conducted with responsible offerors. No other factors or criteria shall be used in the evaluation.

#### 10.09 RESPONSE FORMAT AND SUBMISSION REQUIREMENTS

A. Vendors are requested to respond to each numbered paragraph of the RFP stating first the paragraph number, then specification, then the vendor's response. It is requested that responses be made to each item or paragraph of the RFP in sequence. Any statement in this document that contains the word "must" or "shall" means that compliance with the intent of the statement is mandatory, and failure by the bidder to satisfy that intent will cause the proposal to be rejected. Responses should reference each paragraph and be arranged in the same sequence as this RFP. Answers should be sufficiently detailed so as to substantiate that services offered meet or exceed all requirements. Vendors may "concur" or "acknowledge" items not needing a specific response. References to handbooks or other technical materials as part of a response must not constitute the entire response and must identify the specific page and paragraph being referenced.

B. Vendors must submit one (1) signed original and (5) copies of their proposal. One (1) copy of referenced or otherwise appropriate descriptive literature must accompany a submitted proposal.

C. For a proposal to be considered, an official authorized to bind the vendor to a resultant contract must have signed the original proposal.

D. All official documents, except those labeled and determined to be confidential in nature, and correspondence shall be included as part of the resultant contract.

E. The Arkansas Department of Emergency Management reserves the right to award a contract or reject a proposal for any or all line items of a proposal received as a result of this RFP, if it is in the best interest of the State to do so. Proposals will be rejected for one or more reasons not limited to the following:

1. Failure of the vendor to submit proposal(s) on or before the deadline established by the issuing office.
2. Failure of the vendor to respond to a requirement for oral/written clarification, presentation, or demonstration.
3. Failure to supply vendor references.
4. Failure to sign the title page of the Official Proposal Document.
5. Failure to complete the Official Proposal Price Sheet(s).
6. Failure to comply with the Equal Opportunity Policy Requirement.

#### 10.10 CONDITIONS AND TERMS OF PROPOSAL

A. To be considered, bidders must include as part of their proposals all of the provisions of the RFP. Bids must be signed by an official authorized to bind the bidder to the resultant contract. Any terms and/or conditions proposed by the respondent must be submitted with the proposal and must be clearly identified as such. If the bidder submit terms and/or conditions that conflict with the laws of the state of Arkansas, the State laws shall govern. Bidder's standard terms and conditions may need to be altered to adequately reflect and include all of the conditions of the RFP, the bidder's proposal, and Arkansas State law.

B. Proposal pricing and cost must be listed in United States dollars and cents.

C. Proposals will only be accepted in the English language.

D. The original written or electronic language of the RFP shall not be changed or altered except by approved written addendum issued by the Arkansas Department of Emergency Management. This does not eliminate an Offeror from taking exception(s) to these documents, but does clarify that the Offeror cannot change the original documents written or electronic language. If the Offeror wishes to make exception(s) to any of the original language, it must be submitted by the Offeror in separate written or electronic language in a manner that clearly explains the exception(s). If Offeror's submittal is discovered to contain alterations/changes to the original written or electronic documents, the Offeror's response may be declared as "non-responsible" and the response shall not be

considered.

E. Bidders are cautioned to ensure that they have received or obtained and responded to any and all amendments to the bid prior to submission.

#### 10.11 TYPE/TERM OF CONTRACT

This will be a 120-day (4 Month) contract to be in effect from date of award (contingent upon review by the Arkansas Legislative Council and/or the Joint Budget Committee as well as other governmental funding sources, if applicable) with option to extend two additional times in up to 30-day increments. Contract may only be extended upon mutual written agreement between the Arkansas Department of Emergency Management and the contractor.

The State shall notify the contractor at least thirty (30) days prior to the end of the contract period, or extension thereof, if the State intends to renew the contract. If notification is not made, the contract will terminate at the end of the contract period or current extension period.

#### 10.12 CONFIDENTIAL INFORMATION

Respondents are advised that materials contained in proposals are subject to the Arkansas Freedom of Information Act and, after the bid opening, may be viewed and copied by any member of the public, including news agencies and competitors. Respondents claiming a statutory exception to the Arkansas Freedom of Information Act must place all confidential documents in sealed envelope(s) clearly marked "Confidential" and must indicate on the outside of their proposal package that confidential materials are included. The State reserves the right to make determinations of confidentiality. If the State does not agree that the information designated is confidential under one of the disclosure exceptions to the Arkansas Freedom of Information Act, it may either reject the proposal or discuss its interpretation of the allowable exceptions with the respondent(s). If agreement can be reached, the proposal will be considered. If agreement cannot be reached, the State will remove the proposal from consideration for award and return the proposal to the respondent(s). The State will not determine prices to be confidential information.

ALL SUBMITTALS BY PROPOSERS WILL BE AVAILABLE FOR REVIEW TO THE EXTENT PERMISSIBLE, PURSUANT TO THE ARKANSAS FREEDOM OF INFORMATION ACT 25-19-101 ET SEQ.

#### 10.13 MINORITY BUSINESS POLICY

Minority participation is encouraged in this and all other procurements by state agencies. "Minority" is defined by Arkansas Code Annotated §1-2-503 as "black or African American, Hispanic American, American Indian or Native American, Asian, and Pacific Islander". The Division of Minority Business Enterprise of the State of Economic Development conducts a certification process for minority businesses. Bidders unable to include minority-owned businesses as subcontractors "may explain the circumstances preventing minority inclusion".

#### 10.14 AWARD RESPONSIBILITY

The Arkansas Department of Emergency Management will be responsible for issuing a Contract Award. The using agency will proceed with issuance and execution of a Professional Services contract from the Contract Award. The contract is contingent upon review by the Arkansas Legislative Council and/or the Joint Budget Committee, as well as other governmental funding sources, as necessary.

#### 10.15 PROPOSAL VALIDITY PERIOD

All charges must be included on the Official Proposal Price Sheets, must be valid for a period of not less than 120 days following proposal opening, and shall be included in the price evaluation.

#### 10.16 CONTRACT PAYMENT

The specific payment schedule for any contracts entered into as the result of this RFP will be mutually agreed upon by the agency and the contractor. The schedule should show payment amount and should reflect actual work done by the payment dates. As a general policy, statements shall be forwarded to the designated representative on a quarterly basis.

#### NOTE:

Any additional cost not identified in this RFP subsequently incurred in order to achieve a successful project will require advanced approval, in writing, by the Arkansas Department of Emergency Management. Official Proposal Price Sheets may be reproduced as needed.

All invoices shall be forwarded in quadruplicate to the Arkansas Department of Emergency Management and must show an itemized list of charges by type of service. Payment will be made in accordance with applicable state of Arkansas accounting procedures upon acceptance by the agency. The State may not be invoiced in advance of delivery and acceptance of any equipment or service.

## **SECTION 20: SCOPE**

### **20.01 SCOPE OF WORK:**

#### 20.01.1 - SCOPE

This project will consist of one (1) phase and be completed within a timeframe determined mutually between the successful bidder and the Arkansas Department of Emergency Management. Total project length should not exceed six (6) months including approved extensions.

#### 20.01.2 –PROJECT WORKSHEET REVIEW

The successful bidder is required to review and audit small and large project worksheets and subsequent versions that have been pre-determined by the Arkansas Department of Emergency Management. The successful bidder will complete the following tasks:

1. Complete a summary of each project reviewed. This summary will include a detailed description of the type of documentation reviewed, final eligible project costs, final non-eligible project costs, and third-party refunds and/or reimbursements. The project summary will be documented on a detailed spreadsheet that is provided by ADEM.
  - a. Review all supporting documentation and provide a cost reconciliation of eligible costs and non-eligible costs per project. The successful bidder will reconcile these costs with the Project Worksheet and the approved reports that are generated by the NEMIS (National Emergency Management Information System) database. The cost reconciliation will include eligible, non-eligible, and third-party refunds and/or reimbursements.
  - b. Review project worksheets that include medical reimbursements and/or costs. A review of all documentation and cost reconciliation will be completed. The cost reconciliation will include eligible, non-eligible, and third-party refunds and/or reimbursements.
2. Provide a detailed weekly schedule and status report on non-completed and completed project reviews/audits.
3. Complete and submit a final report of all projects reviewed to include a final total of eligible and/or non-eligible costs.

#### 20.01.3 – PROJECT DATA

This project will utilize data from Hurricane Katrina (FEMA 3215-EM-AR) project worksheets, supporting sub-grantee documentation, NEMIS (National Emergency Management Information System) database, and other administrative accounting reports.

#### 20.01.4 – STAFFING, LOCATION, AND SUPPLIES

The staffing of this project is limited to four (4) people and will be located in available office spaces at the Arkansas Department of Emergency Management. General office supplies and equipment (laptops, printers, etc.) will be supplied by the Arkansas Department of Emergency Management.

### 20.02 GENERAL REQUIREMENTS

Over the period of the project, the Offeror, hereafter known as the contractor; shall meet with the Arkansas Department of Emergency Management and other necessary parties to assess and research the needs, and then coordinate the development, implementation, and management of the Hurricane Katrina Public Assistance Program Closeout.

#### 20.03 PRIME CONTRACTOR RESPONSIBILITY

The selected bidder will be required to assume prime contractor responsibility for the contract and will be the sole point of contact with regard to all services and support.

The using agency prefers a contractor that can provide all of the services directly without sub-contracting. However, if any part of the work must be subcontracted, responses to this RFP must include a list of subcontractors, including firm name and address, contact person (and) complete description of work to be subcontracted. The contractor shall give the Contract Administrator immediate notice, in writing, by certified mail of any action or suit filed and prompt notice of any claim made against the contractor by any subcontractor or vendor which, in the opinion of the contractor, may result in litigation related in any way to the contract or the State.

#### 20.04 MINIMUM QUALIFICATIONS OF OFFERORS

- a. At least four (4) years of experience, working with the Public Assistance Grant Program, project worksheet audit, documentation review, reconciliation, and closeout.
- b. Preferred experience with the Public Assistance Grant Program administration, implementation and closeout of project worksheets, including data analysis. Working with state government is preferred.
- c. Program budgets in excess of \$200,000.00.
- d. Demonstration of work experience with the Public Assistance Program and program closeouts.

#### 20.05 CONTRACTOR'S RESPONSIBILITES

**Contractor will be responsible to fulfill all the requirements stated in Section 20.1 the Scope of Work.**

#### 20.06 ARKANSAS DEPARTMENT OF EMERGENCY MANAGEMENT RESPONSIBILITES

The Arkansas Department of Emergency Management shall be responsible to the vendor to:

- a. Provide information necessary for the Contractor to begin the review, audit, and reconciliation of the Project Worksheets.
- b. Facilitate face-to-face meetings with appropriate personnel to allow the contractor to gain insight into Plan requirements.
- c. Provide written approval of project plans and budgets.
- d. Receive, verify, and pay quarterly invoices from the Contractor.

#### 20.07 ORAL/WRITTEN CLARIFICATIONS OF VENDOR PROPOSALS

During the evaluation process, the evaluation committee may deem it necessary to invite the respondents to clarify or elaborate on matters of interest to the committee. The committee may request any, all or none of the respondents to appear before the committee, but is not required to request information from all respondents.

The committee will contact the Issuing Officer to set up the time and place for such a meeting, if requested. The committee shall forward a set of written questions to the Issuing Officer, who shall then forward to the vendor prior to the meeting. All responses will be subject to being recorded. Responses made during the oral presentations must be confirmed in writing and shall become a part of the respondent's final response.

A vendor's inability or decision not to provide a clarification may be cause for rejection of the proposal.

**SECTION 30: EVALUATION PROCESS AND CRITERIA**

**30.01 SELECTION PROCESS OVERVIEW**

Final determination will not be based on price alone. Proposals will be evaluated primarily on elements other than cost.

**30.02 PROPOSAL EVALUATION CRITERIA**

Submission of a proposal implies vendor acceptance of the evaluation technique and recognition that subjective judgments must be made by the Evaluation Team during the assignment of rating points.

The Arkansas Department of Emergency Management will examine proposals for inclusion of minimum requirements and then forward responsive proposals to the Evaluation Team for the technical evaluation. The evaluation of the proposal involves the point scoring of each proposal in the following areas according to pre-established criteria. A maximum of 100 points is available for each proposal. The evaluation areas for point scoring are:

**TECHNICAL Evaluation**

<b>1</b>	Relevant Experience	20 points
<b>2</b>	Qualifications (Accreditation, etc.)	20 points
<b>3</b>	Completion Time	20 points
<b>4</b>	Project Understanding	20 points
<b>Total Technical Evaluation Points</b>		<b>80 points</b>
PRICE (COST) Evaluation		20 points
<b>TOTAL Evaluation (Technical + Price Points)</b>		<b>100 points</b>

**30.03 EXPERIENCE**

The proposal must detail the respondent's familiarity and proven experience with documentation review, audits, reconciliation, and project closeout of the Public Assistance Grant Program. If the respondent has the above type and/or related experience, projects and examples of previously related completed projects should be submitted as a part of the case study portion of this RFP. If the respondent does not have the above type related experience, examples should be included that represent their experience. The proposal must detail the number of years in working the above mentioned areas; at least (4) years of experience, preferably working with State Government clients. Respondents must have had program budgets in excess of \$200,000. The respondent must detail its familiarity and ability to provide quality service meeting industry and government guidelines.

**30.04 VENDOR REFERENCES**

References: Each respondent is to provide a list of at least (3) client references. These references will be contacted and asked to confirm:

1. That the provider has, under previous agreement, successfully performed work of a similar nature to that detailed in this RFP.
2. That the provider met all obligations under the afore-mentioned agreement with regard to the quality of work, completion date, and agreed upon dollar amount.
3. That the provider and all staff conducted themselves in a highly professional and ethical manner.

References with experience in Public Assistance Program Closeouts, audits, documentation review, and reconciliation of projects on a regional and statewide basis and with budgets in excess of \$200,000.00 will be given priority.

Case Studies: Each provider is requested to include at least (1) case study which describe work similar to that specified in this RFP. The study should identify the client; contain a statement about the scope of work and provide insight into how the project was developed and implemented. Members of the evaluation committee will also look specifically for information in each study which demonstrates that the provider has:

1. Staff sufficient to complete the project on time.
2. Experience in documentation review, audits, reconciliation, and program closeout
3. Preferred expertise in emergency management and/or Homeland Security.
4. Creative capabilities

### 30.05 PAST PERFORMANCE

In accordance with provisions of the State Procurement Law, R7: 19-11-229 Competitive Sealed Bidding – Bid Evaluation paragraph (E) (i) & (ii): a vendor’s past performance with the State may be used in the evaluation of any offer made in response to this solicitation. The past performance should not be greater than three years old and must be supported by written documentation.

### 30.06 PROJECT UNDERSTANDING

The proposal must respond in detail to each item within the “Contractors Responsibilities” Section 20.05 and “Minimum Qualifications of Offerors” Section 20.04 (a) through (d), their plans on meeting with Arkansas Department of Emergency Management and other necessary parties to assess and research the needs, and then coordinate the development, implementation, and completion of the required audit and projects closeout and meeting the objectives of the contract.)

### 30.07 QUALIFICATION OF STAFF

The proposal should detail how the respondent has and will make available sufficient personnel resources to work and to maintain necessary performance levels. The proposal must detail the number and qualifications of personnel required to perform the work requested. Resumes must be provided for each individual assigned to work on this campaign.

Personnel Assigned to Project: Each provider will be required to provide a list of the company individuals who will be assigned to work on the plan described in this RFP, and to designate the approximate amount of time (as a percentage) that each will spend in the development of this plan. This information may be marked “Confidential” and submitted in a separate sealed envelope. Because of the importance of personnel in this contract, all parties to the contract will notify the other parties participating in the contract of any changes in personnel assignments. Incoming personnel must have equal or better credentials as compared to those they are to replace. Awarded vendor will be required to seek approval of any proposed change in personnel from the (Arkansas Department of Emergency Management) contact person.

## **SECTION 40: TECHNICAL AND PRICE PROPOSAL**

### **40.01 INTRODUCTION**

The Technical Proposal shall include the following:

- Signed Transmittal Letter
- Executive Summary
- Respondent's Background and Experience
- Case Studies
- References
- Statement of Project Understanding
- Proposer's Qualifications
- Project Organization and Staffing
- Independent Price Determination Certification Statement
- Bid Price Certifying Statement
- Governor's Executive Order 98-04 Disclosure Forms

ORIGINAL PROPOSAL AND COPIES SHALL BE INDEXED AND TABBED WITH THE ABOVE SECTIONS INDICATED.

The Price Proposal shall include the following:

- Price Proposal (Cost Analysis)

PRICE PROPOSAL MUST BE INCLUDED UPON SUBMISSION, BUT SEALED SEPARATELY AND SHOULD BE CLEARLY MARKED "PRICE PROPOSAL."

### **40.02 SIGNED TRANSMITTAL LETTER**

The Transmittal Letter will be signed by an individual authorized to legally bind the respondent. It will state that the respondent is a legal entity that will meet the specifications set forth in the RFP. Failure to furnish this signed document shall be cause for rejection of the proposal.

A transmittal letter must accompany the proposal. The transmittal letter should include the following:

1. Identify the submitting Provider (Organization / Company);
2. Identify the name and title of the person authorized by the Provider to contractually obligate the organization;
3. Identify the name, title phone and fax numbers and e-mail address of the person authorized to negotiate the contract on behalf of the Provider;
4. Shall be signed by an officer authorized to contractually obligate the company.

### **40.03 EXECUTIVE SUMMARY**

The Executive Summary will condense and highlight the contents of the respondent's proposal. The Executive Summary shall include the following:

- Explicitly indicate acceptance of, or proposed modifications to, the terms and conditions governing the procurement;
- Acknowledge receipt of any and all amendments to this RFP;
- Summary of ability and desire to supply products and services;
- Summary of Milestone – Describe any milestones proposed in the submittals;
- Summary of charges

- Other information the Provider may wish to briefly summarize.

#### 40.04 RESPONDENT'S BACKGROUND AND EXPERIENCE

This section will include details of the respondent's background and its size and resources as well as details of experience relevant to the proposed project.

Each respondent must submit a minimum of (3) current references. Each respondent must submit the company name, address, contact person, email address and telephone number of each of the references. It is the vendor's responsibility to provide current and accurate reference information. The evaluation committee shall contact references via information as provided by the vendors. Incorrect information, or a reference's policy of not supplying reference information, may result in point deductions by the committee.

References must be from parties who can attest to the respondent's qualifications relevant to providing the services outlined in the RFP. Organization or professional references must be submitted; personal recommendations and references will not be accepted. All references may be verified.

#### 40.05 PROPOSER'S QUALIFICATIONS AND CREDENTIALS AS RELATED TO THE PROPOSAL

In this section, the Proposer shall provide an organizational chart displaying his/her overall business structure and the proposed project structure. The Proposer shall also state the qualifications and credentials of his company, in terms of proven experience through similar projects, reputation, etc. Proposers shall include the number and a description of recent similar projects successfully completed. A statement shall be included specifying the extent of responsibility on each described project.

The Proposer shall provide the most recent annual report, and other evidence of the Proposer's financial status, and the Proposer's financial ability to carry out the project. Proposals shall include proof of the Proposer's financial soundness and successful completion of other projects of like size and scope. All evidence under this requirement shall be in sufficient detail to allow an adequate evaluation by the evaluation committee. Acceptable evidence shall include but shall not be limited to: recent financial statement from a bank evidencing their good standing; written statements from the Proposer evidencing the successful completion of other projects of like size and scope; and recent peer reviews of completed projects of like size and scope.

#### 40.06 PROJECT ORGANIZATION AND STAFFING

This section will describe in detail the respondent's organizational plan for meeting the requirements in this RFP. It will include organizational charts of proposed personnel at all levels of the organization.

#### 40.07 INDEPENDENT PRICE DETERMINATION CERTIFICATION STATEMENT

A proposal will not be considered for award if the price in the bid was not arrived at independently without collusion, consultation, communication or agreement as to any matter relating to such prices with any other offeror or with competitor. In addition, the offeror is prohibited from making multiple bids in a different form; i.e., as a prime offeror and as a subcontractor to another prime offeror.

The Offeror must include a certified statement with the bid certifying that the price was arrived at without any conflict of interest, as described above. Should conflict of interest be detected at any time during the contract, the contract shall be deemed null and void and the contractor shall assume all costs of this project until such time that a new contractor is selected. Failure to furnish this document may be cause for rejection of the proposal.

#### 40.08 BID PRICE CERTIFYING STATEMENTS AND BID PRICE

The total bid price will include services and requirements as described in this RFP, for the term of the contract period. The Offeror will include a statement certifying that all services, properly requested, will be performed as required. Failure to furnish this document may be cause for rejection of the proposal.

40.09 GOVERNOR’S EXECUTIVE ORDER 98-04 DISCLOSURE FORM

Bidders are required to complete Forms F1 and F2, sign them and return with the technical proposal. This is a mandatory requirement; failure to furnish these documents shall be cause for rejection of the proposal.

40.10 PRICE PROPOSAL (COST ANALYSIS)

The fees will include the services and requirements described in this RFP.

APPENDIX A  
OFFICIAL PROPOSAL PRICE SHEET

Proposal Pricing Sheet must be submitted no later than by the time and date as outlined in Section 10.05. Addenda or amendments, if any, should be signed, dated and included with the respondent's proposal submission.

**Respondent must include a breakdown of the following work items:**

- Item 1: Staffing & Personnel Plans and Salaries \$ \_\_\_\_\_ per item
- Item 2: Final Analysis and Executive Summary \$ \_\_\_\_\_ per item
- Item 2: Travel and Per Diem \$ \_\_\_\_\_ per item

NOTE: Vendor may use backside of this form when needed to address any of the above line items. The attached forms are the F1 and F2 disclosure forms referenced in Section 40.09 of this RFP. These two forms comprise Appendix B

Contract and Grant Disclosure and Certification Form

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

**Please see the attached disclosure form for completion.**

## **SECTION 50: PROCUREMENT**

### **50.01 RULES OF PROCUREMENT**

To facilitate the procurement of requests for proposal, various rules have been established. They are described in the following paragraphs.

### **50.02 POINT OF CONTACT**

The RFP Issuing Officer is the sole point of contact from the date of release of this RFP until the selection of the successful respondent. FAILURE TO ADHERE WITH THIS REQUIREMENT MAY RESULT IN PROPOSAL DISQUALIFICATION. Respondents wishing to submit questions and requests for clarification should email or fax all such correspondence to the Issuing Officer, as outlined in the Anticipated Procurement Timetable, Section 10.04.

### **50.03 WRITTEN QUESTIONS CONCERNING THE REQUEST FOR PROPOSALS**

If additional information is necessary to enable bidders to better interpret the information contained in the RFP, vendors must contact the Issuing Officer at the Arkansas Department of Emergency Management, in writing. All questions must be marked "Questions" and the proposal number indicated on the e-mail transmission. The questions received by December 8, 2010 will be answered by email only. All questions and answers will be posted on the ADEM Website (<http://www.adem.arkansas.gov>).

### **50.04 REQUEST FOR PROPOSALS AMENDMENTS**

The State reserves the right to amend the RFP prior to the date for proposal submission. It shall be the bidder's responsibility to obtain all associated postings from ADEM and resubmit the postings with the bidder's proposal.

### **50.05 COST OF PREPARING PROPOSALS**

Costs for preparing the proposals are solely the responsibility of the respondents. The State will provide no reimbursements for such costs. Any costs associated with any oral presentations to the State will be the responsibility of the respondent and may not be billed to the State.

### **50.06 DISPOSITION OF PROPOSALS**

All proposals become the public property of the State and will be a matter of public record subject to the provisions of the Freedom of Information Act. If the proposal includes material which is considered by the respondent to be proprietary or confidential under Arkansas law, the respondent shall so designate the material. The successful proposal will be incorporated into the resulting contract and will be a matter of public record. The State shall have the right to use all ideas, or adaptations of those ideas, contained in any proposal received in response to this RFP. Selection or rejection of the proposal will not affect this right.

### **50.07 PROPOSAL AMENDMENTS AND RULES OF WITHDRAWAL**

Prior to the proposal due date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to the State, signed by the respondent. Unless requested by the State, no amendments, revisions or alterations to the RFP will be accepted after the proposal due date.

### **MODIFICATION OR WITHDRAWAL OF OFFERS**

This RFP may be modified or withdrawn in writing prior to the exact hour and date specified for receipt of proposals. The proposal may also be withdrawn in person by the respondent's authorized representative, providing his or her identity is made known and he or she signs a receipt for the proposal. Proposals may not be withdrawn

after the proposal deadline date and time has passed.

Modification to or withdrawal of a proposal received by the Arkansas Department of Emergency Management after the exact hour and date specified for receipt of proposals will not be considered. If it becomes necessary to revise any part of this RFP or if additional data is necessary for an exact interpretation of provisions of this RFP prior to the due date for proposals, a supplement will be issued by the Arkansas Department of Emergency Management. If such addenda issuance is necessary, the Arkansas Department of Emergency Management reserves the right to extend the deadline date and time of proposals to accommodate such interpretations or additional data requirements.

#### 50.08 ACCEPTANCE OF PROPOSALS

The State reserves the right to request necessary amendments, reject any or all proposals received, or cancel this RFP according to the best interest of the State.

Where the State may waive minor irregularities, such waiver shall in no way modify the RFP requirements or excuse the respondent from full compliance with the RFP specifications and other contract requirements if the respondent is awarded the contract.

#### 50.09 EVALUATION OF PROPOSALS

Proposals will be evaluated in (2) phases. The first phase will determine if the mandatory requirements of this RFP have been agreed to and/or met. Failure to comply will deem a proposal non-responsive. Any proposal that is incomplete may be rejected by the State. However the State may waive minor irregularities. This phase is to be completed by the Arkansas Department of Emergency Management issuing Officer.

The second phase will be based on the evaluation of the Technical proposals by an impartial committee appointed by Arkansas Department of Emergency Management. Points will be awarded to each proposal based on a comparative formula of relative weights as described in this RFP.

The contract will be awarded to the highest cumulative point total, combining all sections for scoring, subject to final negotiations.

#### 50.10 ANTICIPATION OF AWARD

After complete evaluation of the bid or proposal, the anticipated award will be posted in the legal section of a statewide newspaper and/or ADEM's website [www.adem.arkansas.gov](http://www.adem.arkansas.gov). The purpose of the posting is to establish a specific time in which vendors and agencies are aware of the anticipated award. The results will be posted for a period of five (5) days prior to the issuance of any award. Vendors and agencies are cautioned that these are preliminary results only, and no official award will be issued prior to the end of the 14-day posting period. Accordingly, any reliance on these preliminary results is at the agency/vendor's own risk.

#### 50.11 CONTRACT NEGOTIATIONS

After recommendation of a selected Offeror(s) by appropriate officials of the State, contract negotiations may commence. The contract will be based on the required clauses in the RFP, clauses by the Offeror that are acceptable to the State and additionally, on any clauses agreed upon by all parties to be incorporated into the contract. Offeror(s) selected to participate in negotiation will be given an opportunity to submit a best and final offer to the committee. Prior to a specified cut-off time for best and final offers, vendors may submit revisions to their technical and business, and cost proposals. Meeting before the committee is not subject to the Arkansas Freedom of Information Act. All information received prior to the cut-off time will be considered part of the Offeror's best and final offer.

If at any time contract negotiations are judged ineffective by the Arkansas Department of Emergency Management Director or designee, negotiators will cease all activities with the Offeror and begin contract negotiations with the next highest ranked Offeror or Offeror the Director determines to be in the State's best interest. This process may continue until both the Offeror and the State of Arkansas (Arkansas Department of Emergency Management)

execute a completed contract determines that no acceptable alternative proposal exists.

#### 50.12 PROTEST OF AWARD

Within fourteen (14) days after the date that the proposer knew or should have known of the cause giving rise to protest, the prospective offeror must file a formal written notice of that protest with the director of the Arkansas Department of Emergency Management. Failure to do so shall constitute a waiver of any rights to administrative decision under Arkansas code Annotated Section 19-11-244. Further details on protesting awards may be obtained by contacting the Issuing Officer.

## **SECTION 60: GENERAL TERMS AND CONDITIONS**

### **60.01 LEGAL CONSIDERATIONS**

The proposed contract shall be construed according to the laws of the State of Arkansas. Any legal proceedings against the State regarding this RFP or any resultant contract shall be brought in the State of Arkansas administrative or judicial forums. Venue will be in Pulaski County, Arkansas.

### **60.02 ETHICAL STANDARDS LAW**

The following sections of this RFP reference sections within the "Arkansas Ethics in Public Contracting Laws" found in Arkansas Code Ann., Sections 19-11-701 et seq. Definitions used in this law can be found in Section 19-11-701 of the statutes.

### **60.03 CONFLICT OF INTEREST**

No official or employee of the Arkansas Department of Emergency Management and no other public official of the State of Arkansas or the Federal government shall participate directly or indirectly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract or subcontract, and any solicitation or proposal thereto in which, to the employee's knowledge:

1. The employee or any member of the employee's immediate family has a financial interest;
2. A business or organization has a financial interest in which business or organization the employee, or any member of the employee's immediate family has a financial interest; or:
  - a. Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, audit, or in any other capacity.
  - b. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the director of the Arkansas Department of Finance and Administration.

### **60.04 WARRANTY AGAINST BROKER'S FEE**

The contractor warrants that it has not been retained or retained a person to be retained, to solicit or secure a state contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

### **60.05 OFFER OF GRATUITIES OR KICKBACKS**

It shall be a 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.

It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of subcontract or order.

Any contract arising from this procurement may be terminated by the State if it is determined that gratuities of any

kind were either offered to or received by any of the aforementioned officials or employees from the offeror, his agent, or employee.

#### 60.06 EMPLOYMENT OF STATE PERSONNEL

Contemporaneous Employment Prohibited. It shall be a breach of ethical standards for any employee who is involved in procurement to become or be, while such an employee, the employee of any party contracting with the State agency by which the employee is employed.

##### A. Restrictions on Former Employees in Matters Connected with Their Former Duties.

1. Permanent Disqualification of Former Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for anyone other than the State in connection with any:

- a. Judicial or other proceeding, application, request for a ruling, or other determination;
- b. Contract;
- c. Claim; or
- d. Charge or controversy in which the employee participating personally and substantially through decision, approval, disapproval, recommendation, rendering of service, investigation, or otherwise while an employee, where the State is a party or has a direct and substantial interest.

2. One (1) Year Representation Restriction Regarding Matters for Which a Former Employee was Officially Responsible. It shall be a breach of ethical standards for any former employee, within one (1) year after cessation of the former employee's official responsibility in connection with any:

- a. Judicial or other proceeding, application, request for a ruling, or other determination;
- b. Contract;
- c. Claim; or
- d. Charge or controversy, to knowingly act as a principal or as an agent for anyone other than the State in matters which were within the former employee's official responsibility, where the State is a party or has a direct and substantial interest.

##### C. Disqualification of Partners

1. When partner is a state employee. It shall be a breach of ethical standards for a person who is a partner of an employee knowingly to act as a principal or as an agent for anyone other than the State in connection with any:

- a. Judicial or other proceeding, application, request for a ruling, or other determination;
- b. Contract;
- c. Claim; or
- d. Charge or controversy in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the State is a party or has a direct and substantial interest.

2. When partner is a former state employee. It shall be a breach of ethical standards for a partner of a former employee to knowingly act as an agent for anyone other than the State where such former employee is barred under Subsection (B) of this Section.

D. Selling to the State after termination of employment is prohibited. It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed ten thousand five hundred dollars (\$10,500), to engage in selling or attempting to sell commodities or services to the State for one (1) year following the date employment ceased. The term "sell" as used herein means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for

the purpose of obtaining, negotiating, or discussing changes in specification, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with the State. This Section is not intended to preclude an employee, a former employee, or a partner of an employee or former employee from filing an action as a taxpayer for alleged violations.

#### 60.07 TERMINATION OF CONTRACT

The contract resulting from this RFP shall be subject to the following termination provisions.

#### TERMINATION OF BIENNIAL CROSSOVER OF FUNDS

Pursuant to Ark. Code § 19-11-238 ADEM shall terminate any Contract resulting from this RFP at the end of any biennial period when funds have not been appropriated or are otherwise unavailable to continue the contract in the following biennial period. (Arkansas Department of Emergency Management) shall provide the Contractor written notice that the contract shall terminate in ninety (90) calendar days or at the beginning of the next biennial period, whichever comes first. ADEM shall notify the Contractor immediately, in writing, in the event that the governing body responsible for such appropriations fails to make the necessary appropriation(s). ADEM may cancel or curtail this Contract to the extent funds are no longer legally available for expenditures under this contract. The State shall honor outstanding commitments made and approved prior to the termination of the Contract and for services rendered including fees or obligations agreed to before the termination of the Contract. If the Contractor has provided services and there are no longer funds procedurally or legally available to pay for the services, the Contractor may file a claim with the Arkansas Claims Commission.

#### TERMINATION FOR DEFAULT

The State may terminate this contract in whole, or in part, when the Arkansas Department of Emergency Management determines that the contractor or subcontractor has failed to satisfactorily perform its contractual duties and responsibilities and is unable to cure such failure within a reasonable period of time specified by the State, taking into consideration the gravity and nature of the default. Such termination shall be referred to herein as "Termination for Default".

The State shall have an option to terminate this agreement if the Contractor fails to give satisfactory service, and the State shall be sole judge of service.

In the event of such termination, the State may contract for completion of services provided herein with the next higher bidder and contractor named herein shall be liable for payment to owner of any additional costs.

In the event of termination for default, in full or in part as provided by this clause, the State may procure, upon such terms and in such manner as the State may deem appropriate, supplies or services similar to those terminated, and the contractor shall be liable to the State for any excess costs for such similar supplies or services. In addition, the contractor shall be liable to the State for administrative costs incurred by the State in procuring such similar supplies or services.

In the event of termination for default, the contractor shall be paid for those deliverables which the contractor has delivered to the State. Payments for completed deliverables delivered to and approved by the State shall be at the contract price. Payment for partially completed deliverables delivered to and not yet approved by the State shall be an amount determined by the State.

The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

In the event that the anticipated term of this contract extends beyond the current biennial period, the contract will be terminable on the part of the state without cause. However, the state may agree to continue to contract but in no case will any renewal, automatic or otherwise, cause the contract to continue beyond a biennial period.

Any services or products on contract accepted by the state must be paid for but does not obligate the state to continue the contract beyond the end of a biennial period.

#### 60.08 PROCEDURE ON TERMINATION

Upon delivery by certified mail to the contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the contractor shall:

- \* Stop work under the contract on the date and to the extent specified in the Notice of Termination
- \* Place no further orders or subcontracts for materials or services
- \* Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
- \* Assign to the State in the manner and to the extent directed by the Contract Administrator all of the right, title, and interest of the contractor under the orders or subcontracts so terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts
- \* With the approval or ratification of the Contract Administrator, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or part, in accordance with the provisions of the contract.
- \* Transfer title to the State (to the extent that the title has not already been transferred) and deliver in the manner, at the time, and extent directed by the Contract Administrator, all files, processing systems (excluding equipment and operating systems), data manuals, or other documentation, in any form, that relate to the work terminated by the Notice of Termination.
- \* Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.
- \* Take such action as may be necessary, or as the Contract Administrator may direct, for the protection and preservation of the property to the contract which is in the possession of the contractor and in which the State has or may acquire an interest.
- \* The contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

#### TERMINATION CLAIMS

After receipt of a Notice of Termination, the contractor shall submit to the Contract Administrator any termination claim in the form and with the certification prescribed by the Contract Administrator. Such claims shall be submitted promptly. The contractor and the State may agree upon the amounts to be paid to the contractor by reason of the total or partial termination of work pursuant to this article. The contract shall be amended accordingly.

In the event of the failure of the contractor and the State to agree in whole or in part as to the amounts with respect to costs to be paid to the contractor in connection with the total or partial termination of work pursuant to this article, the State shall determine on the basis of information available the amount, if any, due to the contractor by reason of termination and shall pay to the contractor the amount so determined.

The contractor shall have the right of appeal, as stated under Disputes, from any such determination made by the Contract Administrator.

#### 60.09 SERVICES TO BE PROVIDED

All services to be performed and materials to be produced under the contract shall be accomplished in consultation with, and under the direction of (Arkansas Department of Emergency Management). All procedures developed and products provided under the contract shall be subject to final approval by (Arkansas Department of Emergency Management). All records, data and products pertaining to the contract shall remain the property of Arkansas Department of Emergency Management ).

#### 60.10 CONTRACTOR

It is expressly agreed that the contractor and any subcontractors and agents, officers, and employees of the contractor or any subcontractors in the performance of this contract shall act in an independent capacity and not as officers or employees of the State. It is further expressly agreed that this contract shall not be construed as a partnership or joint venture between the contractor or any subcontractor and the Arkansas Department of Emergency Management

#### 60.11 FORCE MAJEURE

The contractor will not be liable for any excess cost to the State if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, acts of God, fires, quarantine restriction, strikes and freight embargoes. In all cases, the failure to perform must be beyond the control and without fault or negligence of the contractor.

#### 60.12 DISPUTES

Any dispute concerning performance of the contract shall be decided by the contract administrator or the Director Arkansas Department of Emergency Management , who shall reduce the decision to writing and serve a copy on the contractor. The decision by the contract administrator or Director of the Arkansas Department of Emergency Management will be final subject to the contractor's right to administrative review pursuant to Arkansas Code Annotated, Section 19-11-246. Pending final determination of any dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the decision/direction issued by the contract administrator or the Director of the Arkansas Department of Emergency Management.

#### 60.13 CONFIDENTIALITY OF INFORMATION

The contractor shall treat all information, and in particular, information relating to recipients and providers, which is obtained by it through its performance under the contract as confidential information to the extent that confidential treatment is provided under State and Federal law, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securing of its rights hereunder.

#### 60.14 PUBLIC DISCLOSURE

Upon signing of the contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of Ark. Code Ann., Sections 25-19-101 et seq. The use or disclosure of information concerning recipients will be limited to purposes directly connected with the administration of the contract.

#### 60.15 INSPECTION OF WORK PERFORMED

The state of Arkansas, or the Arkansas Department of Emergency Management shall, at all reasonable times, have the right to enter into contractor's premises, or such other places where duties under the contract are being performed, to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work being performed. The contractor and all subcontractors must provide access to all reasonable facilities and provide

assistance, if deemed necessary by the requesting agency/personnel. All inspections and evaluations shall be performed in such manner as will not unduly delay work.

#### 60.16 SUBCONTRACTS

The contractor is fully responsible for all work performed under the contract.

The contractor may, with the consent of the State and Arkansas Department of Emergency Management, enter into written subcontract(s) for performance of certain of its functions under the contract. Subcontracts must be approved in writing by the Contract Administrator prior to the effective date of any subcontract.

No subcontract which the contractor entered into with respect to performance under the contract shall in any way relieve the contractor of any responsibility for performance of its duties.

The contractor shall give the Contract Administrator immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the contractor by any subcontractor or vendor which, in the opinion of the contractor, may result in litigation related in any way to the contract or the State.

#### 60.17 INDEMNIFICATION

The contractor agrees to indemnify, defend, and save harmless the State, its officers, agents and employees, and the Arkansas Department of Emergency Management from:

- 1 Any claims or losses resulting from services rendered by any subcontractor, person, or firm, performing or supplying services, materials, or supplies in connection with the performance of the contract.
- 2 Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts, including without limitation disregard of Federal or State regulations or statutes, of the contractors, its officers, employees, or subcontractors in the performance of the contract.
- 3 Any claims or losses resulting to any person or firm injured or damaged by the contractor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by Federal or State regulations or statutes.
- 4 Any failure of the contractor, its officers, employees, or subcontractors to observe Arkansas laws, including but not limited to labor laws and minimum wage laws.

#### 60.18 ASSIGNMENT

The contractor shall not assign the contract in whole or in part or any payment arising there from without the prior written consent of the Contract Administrator.

#### 60.19 WAIVER

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

#### 60.20 STATE PROPERTY

The contractor shall be responsible for the proper custody and care of any state owned property furnished for

contractor's use in connection with the performance of this contract and the contractor will reimburse the State for its loss or damage, normal wear and tear expected.

#### 60.21 CONTRACT VARIATIONS

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

#### 60.22 ATTORNEY'S FEES

In the event that either deems it necessary to take legal action to enforce any provision of the contract, in the event the State prevails, the contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.

#### 60.23 LIABILITY

In the event of non-performance of contractual obligation by the contractor or his agents which results in the determination by Federal authorities of non-compliance with Federal regulations and standards, the contractor will be liable to the State in full for all penalties, sanctions and disallowances assessed against the State.

#### 60.24 RECORDS RETENTION

In accordance with Federal regulation, the contractor agrees to retain all pertinent records for five (5) years after final payment is made under this contract or any related subcontract. In the event any audit, litigation or other action involving these pertinent records is started before the end of the five (5) year period, the contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later.

#### 60.25 CONDITIONS OF CONTRACT

The successful bidder shall at all times observe and comply with Federal and State laws, local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of this contract which in any manner affect the completion of the work. The successful bidder and surety shall indemnify and save harmless the Arkansas Department of Emergency Management, 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 successful bidder.

The Contractor will be required to maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and other procedures specified by the state of Arkansas. Access will be granted upon request, to State or Federal Government entities or any of their duly authorized representatives.

Financial and accounting records shall be made available, upon request, to the state of Arkansas' 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.

#### 60.26 ACCESS TO CONTRACTOR'S RECORDS

In accordance with Federal regulation governing contracts in excess of \$10,000, the contractor consents to the required access to pertinent records. This access will be granted upon request, to State or Federal Government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers or records of the contractor which are directly pertinent to any services performed under the contract.

The contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the pertinent records of subcontractors.

#### 60.27 EMPLOYMENT PRACTICES

The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliations, or handicap. The contractor must take affirmative action to ensure that employees, as well as applicants for employment are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law) marital status, political affiliation, or handicap. Such action shall include but not be limited to the following:

\* Employment \* Promotion \* Demotion or transfer \* Recruitment or recruitment advertising \* Layoff or termination  
\* Rates of pay or other forms of compensation and \* Selection or training, including apprenticeship.

The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the Clause.

The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or handicap, except where it relates to a bona fide occupational qualification.

The contractor shall comply with the nondiscrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60. The contractor and subcontractors shall comply with Arkansas Act 954 of 1977.

The contractor shall comply with regulations issued by the Secretary of Labor of the United States in Title 20, Code of Federal Regulations, Part 741, pursuant to the provisions of Executive Order 11753 and the Federal Rehabilitation Act of 1973. The contractor shall be responsible for insuring that all subcontractors comply with the above mentioned regulations.

The contractor and its subcontractors shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations there under, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973 as amended.

#### STANDARD TERMS AND CONDITIONS

1. GENERAL: Any special terms and conditions included in the invitation for bid override these standard terms and conditions. The standard terms and conditions and any special terms and conditions become part of any contract entered into if any or all parts of the bid are accepted by the state of Arkansas.

2. ACCEPTANCE AND REJECTION: The state reserves the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the state.

3. BID SUBMISSION: Bids must be submitted to the Arkansas Department of Emergency Management on this form, with attachments when appropriate, on or before the date and time specified for bid opening. If this form is not used, the bid may be rejected. The bid must be typed or printed in ink. The signature must be in ink. Unsigned bids will be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Each bid should be placed in a separate envelope completely and properly identified. Late bids will not be considered under any circumstances.

4. PRICES: Quote F.O.B. destination. Bid the unit price. In case of errors in extension, unit prices shall govern. Prices are firm and not subject to escalation unless otherwise specified in the bid invitation. Unless otherwise specified, the bid must be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids

are not acceptable unless requested in the bid invitation.

5. **QUANTITIES:** Quantities stated in term contracts are estimates only, and are not guaranteed. Bid unit price on the estimated quantity and unit of measure specified. The state may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual requirements of the ordering agency.

6. **BRAND NAME REFERENCES:** Any catalog brand name or manufacturer's reference used in the bid invitation is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the state may require the bidder to supply additional descriptive material. The bidder guarantees that the product offeror will meet or exceed specifications identified in this bid invitation. If the bidder takes no exception to specifications or reference data in this bid he will be required to furnish the product according to brand names, numbers, etc., as specified in the invitation.

7. **GUARANTY:** All items 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 invitation. The bidder hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which it was furnished. The bidder further guarantees that if the items furnished hereunder are to be installed by the bidder, such items will function properly when installed. The bidder also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The bidder's obligations under this paragraph shall survive for a period of one year from the date of delivery, unless otherwise specified herein.

8. **SAMPLES:** Samples or demonstrators, when requested, must be furnished free of expense to the state. Each sample should be marked with the bidder's name and address, bid number and item number. If samples are not destroyed during reasonable examination they will be returned at bidder's expense, if requested, within ten (10) days following the opening of bids. All demonstrators will be returned after reasonable examination.

9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specifications, the cost of the sample used and the reasonable cost of the testing shall be borne by the bidder.

10. **AMENDMENTS:** The bid cannot be altered or amended after the bid opening except as permitted by regulation.

11. **TAXES AND TRADE DISCOUNTS:** Do not include state or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.

12. **AWARD: Term Contracts:** A contract award will be issued to the successful bidder. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency.

13. **Firm Contracts:** A written state purchase order authorizing shipment will be furnished to the successful bidder.

14. **LENGTH OF CONTRACT:** The invitation for bid will show the period of time the term contract will be in effect.

15. **DELIVERY ON FIRM CONTRACTS:** The invitation for bid will show the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Arkansas Department of Emergency Management has the right to extend delivery if reasons appear valid. If the date is not acceptable, the

agency may buy elsewhere and any additional cost will be borne by the vendor.

16. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Arkansas Department of Emergency Management. Delivery shall be made during agency work hours only 8:00 a.m. to 4:30 p.m., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.

17. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.

18. **DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications authorize the Arkansas Department of Emergency Management to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor must give written notice to the Arkansas Department of Emergency Management and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the bidders list or suspension of eligibility for award.

19. **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.

20. **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 invitation for bid,
- (2) Delivery and acceptance of the commodities and
- (3) Proper and legal processing of the invoice by all necessary state agencies. Invoices must be sent to the "Invoice To" point shown on the purchase order.

21. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned.

22. **PATENTS OR COPYRIGHTS:** The contractor agrees to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.

23. **ASSIGNMENT:** Any contract entered into pursuant to this invitation for bid is not assignable nor the duties there under delegable by either party without the written consent of the other party of the contract.

24. **OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the state have the right to pursue any other remedy permitted by law or in equity.

25. **LACK OF FUNDS:** The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. 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. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.

26. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that: (a) the bidder will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder to comply with the statute, the rules and regulations

promulgated there under and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the bidder will include the provisions of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

27. CONTINGENT FEE: The bidder 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 bidder for the purpose of securing business.

28. ANTITRUST ASSIGNMENT: As part of the consideration for entering into any contract pursuant to this invitation for bid, the bidder named on the front of this invitation for bid, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the state of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this state for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.

29. 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.