

State of Arkansas
OFFICE OF STATE PROCUREMENT
1509 West Seventh Street, Room 300
Little Rock, Arkansas 72201-4222

REQUEST FOR PROPOSAL

Bid Number: SP-09-0071

Buyer: JAN ROBERTS

Commodity: ENERGY EFFICIENCY

ARKANSAS ADVERTISING CAMPAIGN

Bid Opening Date: October 29, 2008

Date: September 16, 2008

Bid Opening Time: 10:00 A.M.

PROPOSALS WILL BE ACCEPTED UNTIL THE TIME AND DATE SPECIFIED ABOVE. THE PROPOSAL ENVELOPE MUST BE SEALED AND SHOULD BE PROPERLY MARKED WITH THE PROPOSAL NUMBER, DATE AND HOUR OF PROPOSAL OPENING AND VENDOR'S RETURN ADDRESS. IT IS NOT NECESSARY TO RETURN "NO BIDS" TO THE OFFICE OF STATE PROCUREMENT.

Vendors are responsible for delivery of their proposal documents to the Office of State Procurement prior to the scheduled time for opening of the particular proposal. When appropriate, vendors should consult with delivery providers to determine whether the proposal documents will be delivered to the OSP office street address prior to the scheduled time for proposal opening. Delivery providers, USPS, UPS, FedEx, and DHL deliver mail to our street address, 1509 W. 7th Street, Room 300, Little Rock, AR 72201-4222, on a schedule determined by each individual provider. These providers will deliver to our offices based solely on our street address.

PROPOSAL DELIVERY ADDRESS:

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

PROPOSAL OPENING LOCATION:

Office of State Procurement
1509 West Seventh Street, Room 300
Little Rock, AR 72201-4222
TELEPHONE NUMBER: 501-324-9316

Company Name:

Name (type or print):

Title:

Address:

Telephone Number:

Fax Number:

E-Mail Address:

Signature:

USE INK ONLY; UNSIGNED BIDS WILL NOT BE CONSIDERED

Identification:

*

*

Federal Employer ID Number

Social Security Number

FAILURE TO PROVIDE TAXPAYER IDENTIFICATION NUMBER MAY RESULT IN BID REJECTION

Business Designation
(check one):

Individual

*

Sole Proprietorship

*

Public Service Corp

*

Partnership

*

Corporation

*

Government/ Nonprofit

*

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SECTION 10: ADMINISTRATIVE OVERVIEW

10.01 INTENT, BACKGROUND, PURPOSE

The intent of this Request for Proposal (RFP) is to seek proposals that will suggest the most cost-effective method to provide integrated advertising and marketing communications services consistent with the requirements described herein.

The Office of State Procurement (OSP) for the Arkansas Energy Office (AEO), a division of the Arkansas Economic Development Commission (AEDC) will solicit qualified agencies, firms, partnerships, and corporations having specific experience in the area of creative development of a multi-media, message marketing campaign, development of collateral materials including news print ads, television, radio, media spot purchasing, and website development and management. Work will be performed under contract with the Arkansas Energy Office.

The Arkansas Public Service Commission (the "Commission") called for "utilities to take actions jointly with the [Arkansas Economic Development Commission-Energy Office ("AEO")] to design, construct, and fund a **statewide education** program that has a consistent message promoting the efficient use of electricity and natural gas."

Pursuant to this action, a new collaborative was formed by all the regulated investor owned gas and electric utilities and the electric cooperatives. The collaborative has been established and designated ENERGY EFFICIENCY ARKANSAS (EEA) as the name to be used to identify and communicate fuel neutral, cost effective energy efficiency information and programs.

The AEO will have the responsibility of administering the new EEA statewide education programs, in particular, a multi-media effort with a total budget of \$996,029. Following the Commissions ruling, the EEA statewide education programs will continue through June 30, 2010.

The purpose of the EEA is to deliver through multi-media outlets, relevant, consistent, and **fuel neutral** information that causes people, to consume less energy through **energy efficiency and conservation measures**.

The strategic goal is to make residential consumers aware of energy saving opportunities, to motivate individuals to accept responsibility and act, and to change individual or collective behavior. Information that helps to raise awareness and educate the end-consumer is an integral part of this initiative.

10.02 DEFINITION OF TERMS

The State Procurement Official 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.

10.03 ISSUING OFFICE

The Office of State Procurement 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: Jan Roberts, CPPB
Office of State Procurement
Phone: (501) 371-6057
Email: jan.roberts@dfa.state.ar.us

10.04 ANTICIPATED PROCUREMENT TIMETABLE

RFP Issued September 16, 2008

Closing date for receipt of questions: October 2, 2008 4:30 P.M. CST

Answers to submitted questions posted on OSP website : October 9, 2008

Closing date & time for receipt of proposals & public opening : October 29, 2008 @ 10:00 A.M.

10.05 SUBMISSION OF PROPOSALS

No later than October 29, 2008 at 10:00 A.M. CST, one original (marked "ORIGINAL") and ten (10) copies of the proposal should be received by:

Office of State Procurement
Arkansas Department of Finance and Administration
1509 West 7th, 3rd Floor
Little Rock, AR 72202

The envelope should be labeled:

Proposal Number: SP-09-0071

Title: Energy Efficiency Arkansas Advertising Campaign

Proposal Opening Time and Date

If the Office of State Procurement requests additional copies of the proposal or any portion 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 Request for Proposal (RFP).

This Request for Proposal 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 at the time and date listed on page 1.

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 Office of State Procurement will evaluate all proposals to insure that all minimum requirements are met.

Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the state, taking into consideration the evaluation factors set forth in Section 30.02 Proposal Evaluation Criteria of the Request for Proposals, and the results of any discussions conducted with responsible offerors.

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 ten (10) copies of their proposal. The original and each copy of the proposal shall have all appropriate and descriptive materials, literature, CDs, and etc.
- 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 State Procurement Office 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 of any proposed service, equipment or software to meet or exceed the minimum specifications.

10.10 CONDITIONS AND TERMS OF PROPOSAL

- A. To be considered, bidders must include as part of their proposals responses to 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 submits 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 Request for Proposal, the bidder's proposal, and Arkansas State law.
- B. Proposals will only be accepted in the English language.
- C. The original written or electronic language of the RFP shall not be changed or altered except by approved written addendum issued by the Office of State Procurement. 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.
- D. Bidders are cautioned to ensure that they have received or obtained and responded to any and all amendments to the bid by verification on the OSP website at www.arkansas.gov/dfa/procurement prior to proposal submission.

10.11 TYPE/TERM OF CONTRACT

This contract will be in effect from date of award (contingent upon review by the Arkansas Department of Finance and Administration Office of State Procurement, Arkansas Legislative Council and/or the Joint Budget Committee as well as other governmental funding sources, if applicable) until the end of the biennium, June 30, 2009, with the option to extend, subject to legislative review. The contract may only be extended upon mutual written agreement between the AEO and the contractor. The term of the original contract and any extensions may not extend past June 30, 2010.

The State shall notify the contractor at least 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 Office of State Procurement 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 State Finance and Administration Office of State Procurement, Arkansas Legislative Council and/or the Joint Budget Committee, as well as other governmental funding sources, as necessary.

10.15 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 by the 15th day of the following month.

All invoices shall be forwarded in quadruplicate to the Arkansas Economic Development Commission 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.

10.16 ACT 157 OF 2007 EMPLOYMENT OF ILLEGAL IMMIGRANTS

Pursuant to Act 157 of 2007, all bidders must certify prior to award of the contract that they do not employ or contract with any illegal immigrants in its contract with the State. Bidders shall certify online at:
http://www.arkansas.gov/dfa/procurement/pro_index.html.

SECTION 20: SCOPE OF WORK

20.01 SCOPE:

The objective is to enter into a contract to develop, create and implement a comprehensive, multi-media market plan **as described in 20.04 "Contractors Responsibilities,"** that can produce the best outreach marketing campaign for the statewide Energy Efficiency Arkansas program efforts; to make consumers aware of energy saving opportunities and how to evaluate the most cost effective measures.

The AEO is responsible for the administration of the overall EEA statewide education programs. The successful vendor will work with identified AEO staff.

The selected vendor will be expected to prepare, produce, implement and manage, a turn-key multi-media based campaign on the EEA message and program focus, to develop creative concepts, supportive collateral materials, develop and manage EEA's website, and to negotiate and book media placements, to evaluate campaign results on a monthly, quarterly and annual basis, and to serve as the AEO's advisor on matters concerned with budget, campaign design and implementation.

The vendor must be able to provide consulting services on limited notice, and its representatives will be expected to include the AEO in project status meetings, quarterly and annual marketing strategy sessions, and other planning and/or creative sessions as necessary.

TOTAL ESTIMATED MARKETING BUDGET \$996,029

20.02 GENERAL REQUIREMENTS

Over the period of the project, the Offeror, hereafter known as the contractor, shall meet with AEO and other necessary parties to assess and research the needs, and then coordinate the development, implementation, and management of an Energy Efficiency Arkansas advertising campaign.

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 AEO 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*) a 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 CONTRACTOR'S RESPONSIBILITIES

Contractor will provide all labor, equipment, facilities, supplies and other services as needed/specified.

Program Descriptions:

EDUCATIONAL OUTREACH AND PROMOTION: NO COST- LOW COST MEASURES - RESIDENTIAL

A multi-media effort will promote measures for which the consumer can take an action, at very little or no cost, in order to achieve energy savings without inconvenience or sacrificing comfort.

The promotions will run in conjunction with high profile national media campaigns, i.e., October Energy Awareness Month, Weatherization Day, Earth Day, etc. These examples are given to help direct the agency and not ment to be exclusive dates. For consistency the AEO and Utilities should be noted as the sponsors of EEA. The EEA website, www.EnergyEfficiencyArkansas.org and the toll free number, 1-888-524-4567 will be added to all tag lines.

Note: The agencies are expected to give a cost breakdown upon RFP submission of the seasonal (heating/cooling) advertising expenditures based on their market research.

1. Create two new TV spots and statewide spot placement:

The media plan provides for the creation, development, and distribution of two new creative TV spots; one for the winter (heating) season and one for the summer (cooling) season. The creative spots must be consistent with the EEA message and overall strategy; fuel neutral and make consumers aware of energy saving opportunities using action-oriented suggestions such those noted in the Home Energy Projects booklet, Fact Sheets and other resources. The spots must also make consumers aware of how/where to get more detailed information. The TV spots on a seasonally rotating basis will continue airing until the end of the contract award.

The Contractor will provide strategic planning for ad placement, purchasing ad time, monitoring and reporting. The EEA expressly requires that an aggressive, well-researched, targeted time slot schedule be developed to maximize customer viewing and response. Ad development and airing will begin in the fall/winter of 2008 and airtime purchasing for local and cable affiliates will continue through the until the end of the contract award. Seasonal funding levels for airtime will be recommended by the Agency.

2. Develop and distribute Radio Spots:

Two radio spots will be developed and created to complement action oriented, do-it-yourself energy efficiency tips (Home Energy Projects booklet and Fact Sheets), and TV spots. To optimize outreach to consumers, every effort to pursue well researched and targeted stations and available time slots, must be identified.

3. Development and Placement of Print Ads:

Two print ad message(s) will be created to complement the winter and summer TV and radio spots. These messages should identify low cost - no cost measures and contact information. The newsprint ads will be placed in selected local and identified consumer publications.

4. Design, Development, and Management of a fuel neutral ENERGY EFFICIENCY ARKANSAS website:

The AEO is proposing to contract for website development and management. The website is to be developed using ASP.net and/or Share Point Server 2007. The website will reside on the AEO network server; content and tracking to be managed by the contractor in coordination with the AEO staff. The website will offer fuel neutral information on energy efficiency measures, practices, resources and technologies for all customer classes (residential, commercial and industrial). The website will include direct links to participating partners as well as AEO and EEA publications, ENERGY EFFICIENCY ARKANSAS media advisories/spots/ads, upcoming events, etc. The contractor must provide web-tracking that is able to minimally track website visits, page and document views and downloads. Quarterly reporting on website activity will be required.

NOTE: **Outside the Scope** of this contract the following activities will be conducted by the AEO:

AEO will make available energy efficiency Fact Sheets that include low cost - no cost measures. Fact Sheets will focus on cooling, heating, locating and sealing air leaks, appliances and lighting, and water heating. Each fact sheet will provide the customer with an explanation of the appropriate action to take and the resulting benefits. Camera readings of the Fact Sheets will be posted on the website and be made available to EEA partners for use as bill stuffers or replication for utility events. Fact sheets will be printed in mass by the AEO for distribution through a call service/fulfillment contract and distributed by the AEO on special public events.

The AEO will contract with a separate agency to provide an in-coming call service for the toll-free phone number and direct response (fulfillment of requests for energy efficiency and conservation informational materials). As a part of the multi-media campaign, the 1-888-524-4567 number and website address, www.EnergyEfficiencyArkansas.org must be visible and/or clearly audible.

5. Suggest Alternative Tactics: Suggest alternative communications tactics to achieve the campaign goals:

This is a general solicitation for alternative tactics. As a part of this, vendors are expected to propose which communications to use. On the evaluation, alternative tactics will be assigned points as a part of "Project Understanding, Campaign Design and Message."

20.05 USING AGENCY (AEO) RESPONSIBILITIES

The AEO shall be responsible to the vendor to:

- A. Provide information necessary for the Contractor to begin development of appropriate advertising and collateral materials.
- B. Facilitate face-to-face meetings with appropriate AEO personnel to allow the Contractor to gain insight on campaign needs.
- C. Provide written approval of project plans and budgets.
- D. Receive, verify, and pay monthly invoices from the Contractor.

20.06 ORAL/WRITTEN CLARIFICATIONS OF VENDOR PROPOSALS

During the evaluation process, the Evaluation Team 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.

Oral and written clarifications of particular vendor's proposals will not be shared with all bidders. If questions or clarification requests are submitted by a vendor or vendors regarding the RFP, those questions and answers will be put on the website as an addendum so that all vendors are made aware of the submissions and responses.

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

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.

Proposals may be evaluated in three (3) phases. The first phase will determine if the mandatory requirements of this request for proposals 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 Office of State Procurement Issuing Officer.

The second phase will be based on the evaluation of the proposals by a committee appointed by AEO.

The third phase will be the oral presentation by the vendors selected in the second phase. Points will be awarded to each proposal based on a comparative formula of relative weights as described in this request for proposals.

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

CRITERIA

The Office of State Procurement will examine proposals for inclusion of minimum requirements and then forward responsive proposals to the Evaluation Team for consideration. 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 are available for each proposal. The evaluation areas for point scoring are:

- | | |
|--|---------------|
| 1. Project Understanding, Campaign Design and Message | (40) points |
| 2. Experience/ Qualification of Staff and Subcontractors | (20) points |
| 3. Case Studies | (15) points |
| 4. Oral Presentations | (25) points |
| TOTAL Evaluation | (100 points) |

Proposal Evaluation: The proposal evaluation will count for 75 points of the total score and will have a minimum passing score of 67.5 points. Proposals, which do not receive a minimum passing score, will be eliminated from further consideration. The proposal evaluation will cover the following areas:

1. Project Understanding, campaign design and message
2. Experience/Qualification of Staff and Subcontractors
3. Case Studies

After evaluating all the proposals and based on the evaluation scores, the EEA Team will develop a list of those agencies submitting the most advantageous proposals that would meet those requirements of 20.01 Scope and 20.04 Contractor's Responsibilities. Based on the evaluation scores, and at the sole discretion of the Evaluation Team, those vendors being considered will be contacted to schedule an oral presentation, which will include demonstration, and clarification of their proposal as it relates to the needs of EEA.

Prior to the finalist presentations, those agencies will have the opportunity to participate in a scheduled conference call with the AEO and ask questions about EEA's programs and initiatives and receive additional guidance around details they may be asked to expand upon in the final oral presentation.

The final selection of the successful firm shall be based on the firm's responsiveness to the RFP document, as well as satisfaction of EEA's requirements

30.03 Cost and Compensation

Each proposal shall address in detail the compensation approach and, at a minimum, shall include the following:

1. A Wage Rate Schedule segregated by major employee classification, e.g. Partner, Senior Account Executive, Production Coordinator, Creative Designer, etc. The Wage Rate Schedule should reflect the bill rate for each job classification and need only include those classifications that will provide services under this contract. The Wage Rate Schedule will be used to estimate the cost of projects that may be authorized as an element of this program and may be an agenda item for discussion during the agency/vendor negotiations.
2. Performance standards will be based on the specified television spots and statewide spot placement, radio spots, print ads, and website requirements. Dissatisfaction for failure to meet minimum performance standards will be issued in writing by AEO, stating a reasonable timeframe for the vendor to satisfy AEO.

30.04 EXPERIENCE

1. The proposal must detail the respondent's familiarity and proven experience with public awareness and behavioral change advertising campaigns.
2. The proposal must detail the number of years in service; full service advertising. At least three (3) years of experience showing the company's ability to produce excellent creatives and design must be detailed.
3. The proposal must show experience in developing and implementing public information campaigns on a statewide basis and have had program budgets of at least \$1,000,000.
4. The proposal must show experience in creative website development, management, and tracking. The respondent must detail its familiarity and ability to provide quality service meeting industry and government guidelines.

Minimum Qualifications of Offerors

Due to the need to select a qualified and experienced vendor, AEO has established the following minimum criteria:

- A. The vendor must have a home office located in Arkansas; however joint ventures that include both Arkansas-based and out-of-state partners are acceptable.
- B. The agency must have experience in developing marketing plans with expenditures of at least \$1,000,000.
- C. The vendor must have experience in conceptualizing, designing, and producing marketing collateral and promotional materials, including but not limited to television and radio advertisements, print ads, website development and maintenance.
- D. The vendor must have experience in researching and making media placements on a statewide level.
- E. The vendor must have experience in consumer-based, information/education-oriented campaigns.
- F. The vendor must have experience in tracking and/or monitoring results in order to provide accountability to the client.
- G. The vendor must have experience with providing clear, accurate, and timely invoicing and activity reporting. (Monthly, quarterly and annual).

Qualified candidates will demonstrate expertise in the following areas:

- A. Knowledge of evaluating and developing traditional advertising (TV, radio, print).
- B. Knowledge of evaluating and developing strategic promotions related to "behavioral" sales.
- C. Business to consumer experience.
- D. Interpretation of research.

- E. Knowledge in strategic planning – developing a marketing plan that maps to the EEA's statewide information and education plan.
- F. Understanding of audience segmentation, ethnic and economic diversity.
- G. Tenure and duration of experience with current clients.
- H. Access to resources, including research, around emerging new media for detailed POVs and execution, if desired.
- I. An established and flexible process for working with large clients with multiple points of contact.
- J. Excellent account services and written documentation on POVs, strategic briefs, backgrounders, etc.
- K. Creative website development, management and result tracking.

Organization Overview –Provide the following information regarding the agency's unique capabilities as a service provider.

- A. Corporate name
- B. Address
- C. Telephone
- D. Year agency founded
- E. Listing of other U.S. offices
- F. Response prepared by and title
- G. Number of employees in U.S. and in local office by year for last 3 years
- H. Billings (\$) in U.S. and in local office by year for last 3 years
- I. If this agency is a subsidiary of, or affiliated with, another company or advertising agency, please discuss your relationship with the parent, affiliates and with other offices of your company, including use of resources for creative, research, media, integrated marketing, etc.
- J. Brief biography of the principal employees in the agency (include name, title, years with firm, previous firm and skill sets)
- K. A brief biography (include name, title, years with firm, previous firm and skills) on the specific individuals who would be dedicated and assigned to the EEA account and the approximate amount of time (as a percentage) that each will spend in the development of the campaign.

Client Profile – Please provide the following information regarding the work your firm does in the following areas.

- What percentage of the agency's business falls into the following categories:
 - A. Consumer products/durables _____%
 - B. Consumer services _____%
 - C. Business to consumer _____%
 - D. Other _____%

- What percentage of the agency's payroll in 2007 accounted for the following services:
 - 1. Account Service _____%
 - 2. Creative Development _____%
 - 3. Media (planning and buying) _____%
 - 4. Research/account planning _____%
 - 5. Print production _____%
 - 6. Broadcast production _____%
 - 7. Public relations/media relations _____%
 - 8. Website development and management _____%
 - 9. Other _____%
- Provide a list of current customers, including at least three (3) current customers that have comparable advertising and marketing programs with similar operational requirements. The references must be from an organization where your company is considered the primary or preferred agency. **Please provide references that would be able to comment on the services provided by any individuals you would assign to the Arkansas Energy Office account.** The list shall provide the following:
 - A. Company name, address, and phone number
 - B. Company contact name, address and phone number
 - C. Contract award date and Completion date
 - D. Nature of services provided, including any sub-contracted services
 - E. The agreed upon dollar amount.
- Provide a list of previous customers, particularly those that were lost within the last twenty-four (24) months. State why each account was lost and include contact names and phone numbers.
- Provide a list of all major sub-contractors that will contribute to this project. This list need not include general services, e.g. courier services, voice talent, etc.

30.05 VENDOR REFERENCES AND CASE STUDIES

References: Each respondent is to provide a list of at least three (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.

Case Studies: Each provider is requested to include at least three (3) case studies which describe work similar to that specified in this RFP. Each study should identify the client; contain a statement about the scope of work and provide insight into how the campaign was developed and implemented. Case studies should also detail how surveys (or other performance indicators) were used to measure the success of each program.

Please provide a summary of your agency's experience in the following areas.

- Case Study 1: Building brand awareness and relevance for a company with low interest from consumers and/or a company that changed names.
- Case Study 2: Building statewide program awareness that results in program enrollment/participation for consumers.
- Case Study 3: Building a new product/service brand that involves highly targeted niche marketing to a broad cultural, socio-economic base.
- Work Samples: Provide in each copy of the submitted proposal, current representative agency work around creative development in the following formats:
 - A. TV on VHS or CD-ROM
 - B. Radio on CD-ROM
 - C. Interactive media on CD-ROM
 - D. Print, direct response, agency-produced strategic briefs and other supporting materials on 8 ½" by 11" paper
 - E. Website address that was created and developed the agency

30.06 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 on file in the Office of State Procurement at the time of the bid opening. Documentation may be in the form of either a written or an electronic report, VPR; memo, file or any other appropriate authenticated notation of performance to the vendor files.

30.07 PROJECT UNDERSTANDING

The proposal must respond in detail to each item within Section 20.01 "Scope", Section 20.04 "Contractors Responsibilities", and Section 30.04 Experience - "Minimum Qualifications of Offerors" (a) through (g), their EEA media message, strategic/creative ad placement plans and website development and management on meeting with AEO and other necessary parties to assess and research the needs, and then coordinate the development, implementation, and management of a public information advertising campaign meeting the objectives of the contract.

30.08 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 Campaign: Each provider will be required to provide a list of the company individuals who will be assigned to work on the campaign described in this RFP, and to designate the approximate amount of time (as a percentage) that each will spend in the development of this campaign. 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 AEO contact person.

30.09 ORAL PRESENTATION

Presentation Evaluation:

Those vendors who will be offered the opportunity to make oral presentations to the committee must submit a detailed agenda that outlines the material to be covered in the presentation. Only those who will directly be involved in design and implementation of the campaign should attend and present the oral evaluation presentation. Presentations must adhere closely to the pre-approved outline as established by the Evaluation Team and will be required to stay within the 90 minute time limit. Each presentation will be evaluated and scored based upon the following criteria:

Creativity

1. Creativity: 12 Points

- 1) Does the creative multi-media plan presented by the Vendor indicate a clear understanding of the EEA mission and message relative to the Scope of Work and section 20.05 Contractors Responsibilities?
- 2) Are the ideas original, engaging, and does the overall campaign meet the Evaluating Committee's expectations?

2. Vendor Qualifications: 11 Points

- 1) Is the team comprised of members with experience in the advertising/integrated campaign development, website development and management?
- 2) Does the account services team reflect responsiveness, attentiveness, business savvy and leadership qualities?
- 3) Is the creative team (the art director, writer, designers, etc.) familiar with the complexities of intangible messaging and experienced with communicating intangible services?
- 4) Is the media team experienced in new media (such as internet and search engine marketing) as well as more traditional media (TV, radio, print, outdoor)?

3. Adherence to Outline and Time line: 2 Points

- 1) Outline-Did the presentation stay on target and deal effectively with all of the agenda items? Did the presentation include items that were not originally provided for in the outline?
- 2) Time-Did the presentation stay within the time allotted?

SECTION 40:

PROCUREMENT

40.01 RULES OF PROCUREMENT

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

40.02 POINT OF CONTACT

The Request for Proposals Issuing Officer is the sole point of contact from the date of release of this Request for Proposals 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.

40.03 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 Office of State Procurement, in writing. All questions must be marked "Questions" and the proposal number indicated on the e-mail or fax transmission. The questions received by October 2, 2008, 4:30 P.M. CST will be answered in written form and posted on the OSP website <http://www.arkansas.gov/dfa/procurement/bids/index.php> as an addendum.

40.04 REQUEST FOR PROPOSALS AMENDMENTS

The State reserves the right to amend the request for proposals prior to the date for proposal submission. Amendments, addenda and clarifications will be posted on the OSP website. It shall be the bidder's responsibility to obtain all associated postings from the OSP website and resubmit the postings with the bidder's proposal.

40.05 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.

40.06 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 request for proposals. Selection or rejection of the proposal will not affect this right.

40.07 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 request for proposals 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 due date and time has passed.

Modification to or withdrawal of a proposal received by the Office of State Procurement 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 Office of State Procurement to the OSP website. If such addenda issuance is necessary, the Office of State Procurement reserves the right to extend the due date and time of proposals to accommodate such interpretations or additional data requirements.

40.08 ACCEPTANCE OF PROPOSALS

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

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

40.09 ANTICIPATION OF AWARD

After complete evaluation of the bid or proposal, the anticipated award will be posted on the Office of State Procurement website (www.arkansas.gov/dfa/procurement/pro_index.html) and/or the legal section of a newspaper of statewide circulation. The purpose of the posting is to establish a specific time in which vendors and agencies are aware of the anticipated award. The bid results will be posted for a period of five 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 five day posting period. Accordingly, any reliance on these preliminary results is at the agency/vendor's own risk.

SECTION 50: GENERAL TERMS AND CONDITIONS

50.01 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 request for proposals or any resultant contract shall be brought in the State of Arkansas administrative or judicial forums. Venue will be in Pulaski County, Arkansas.

50.02 ETHICAL STANDARDS LAW

The following sections of this request for proposals 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.

50.03 CONFLICT OF INTEREST

No official or employee of the AEO 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;
3. 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.

4. 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 State of Finance and Administration.

50.04 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.

50.05 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.

50.06 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 any one 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.

B. 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.

C. Selling to 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.

50.07 TERMINATION OF CONTRACT

The contract resulting from this request for proposals shall be subject to the following termination provisions.

TERMINATION OF BIENNIAL CROSSOVER OF FUNDS

Pursuant to Ark. Code § 19-11-238 OSP 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. AEO 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. The agency shall notify the Contractor and OSP immediately, in writing, in the event that the governing body responsible for such appropriations fails to make the necessary appropriation(s). OSP 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 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.

50.08 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.

50.09 SERVICES TO BE PROVIDED

Upon completion of the contract, all property rights, intellectual or otherwise, and technology transfer shall be passed to the State. This includes all rights in relation to any patents, trademarks, etc. that may be associated. Upon transfer, any and all code, data, and the like, both intellectual and tangible, pertaining to any responsibilities including but not limited to print ads; print, radio, television ads; website; records; data and products under the contract shall be delivered to the state without cost within a time frame of ninety (90) calendar days of completion of the contract. This job is considered a "work for hire" for the state. Contractor shall hold no ownership or intellectual property claim on any code, data or the like.

If a third party claims that the Hardware or Software infringes that party's patent or copyright, the vendor will defend the agency against that claim at the vendors' expense and pay all costs and damages that a court finally awards or are agreed to in settlement of that claim by the vendor, provided that the agency:

- A. Promptly notifies the vendor in writing of the claim, and
- B. Allows the vendor to control the defense and any related settlement negotiations and cooperates with the vendor in conjunction therewith. If such a claim is made or appears likely to be made, the vendor may, but agrees in the case in which an infringement has been found, at its option, to:
 1. Modify the Hardware or Software so that it is not infringing the claimed patent and/or copyright,
 2. Replace the Hardware or Software with functionally equivalent Hardware or Software which is not infringing the claimed patent and/or copyright, or
 3. Secure the right for the agency to continue to use the Hardware or Software without infringing the claimed patent and/or copyright.

50.10 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 AEO.

50.11 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.

50.12 DISPUTES

Any dispute concerning performance of the contract shall be decided by the contract administrator or the Director of AEDC – AEO, who shall reduce the decision to writing and serve a copy on the contractor. The decision by the contract administrator or Director of AEDC – AEO 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 AEDC – AEO.

50.13 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.

50.14 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.

50.15 INSPECTION OF WORK PERFORMED

The State of Arkansas, AEO, or their authorized representatives 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.

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

The contractor may, with the consent of the State and the AEO, 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.

50.17 INDEMNIFICATION

The contractor agrees to indemnify, defend, and save harmless the State, its officers, agents and employees, and the AEO from:

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.

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.

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.

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.

50.18 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.

50.19 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.

50.20 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.

50.21 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.

50.22 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.

50.23 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.

50.24 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.

50.25 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 AEO, 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.

50.26 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.

50.27 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.

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

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

SUBCONTRACTOR:

SUBCONTRACTOR NAME:

☐ Yes ☐ No

IS THIS FOR:

☐ Goods?

☐ Services? ☐ Both?

TAXPAYER ID NAME:

YOUR LAST NAME:

FIRST NAME:

M.I.:

ADDRESS:

CITY:

STATE:

ZIP CODE:

COUNTRY:

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

FOR INDIVIDUALS *

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

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

☐ None of the above applies

FOR AN ENTITY (BUSINESS) *

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

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

☐ None of the above applies

Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

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

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

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.
3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

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

Signature _____ Title _____ Date _____

Vendor Contact Person _____ Title _____ Phone No. _____

Agency use only

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

RFQ/RFP 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 Office of State Procurement 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 offered will meet or exceed specifications identified in this bid invitation. If the bidder takes no exception to specifications or reference data in this bid he will be required to furnish the product according to brand names, numbers, etc., as specified in the invitation.
7. **GUARANTY:** All items 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 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. Firm Contracts: A written state purchase order authorizing shipment will be furnished to the successful bidder.

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

14. **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 Office of State Procurement 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.

15. **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., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.

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

17. **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 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 bidders list or suspension of eligibility for award.

18. **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.

19. **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.

20. **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.

21. **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.

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

23. **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.

24. **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.

25. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that: (a) the bidder will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the bidder will include the provisions of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

26. **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.

27. **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.

28. **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.