



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

**INVITATION FOR BID**  
**BID SOLICITATION DOCUMENT**

SOLICITATION INFORMATION			
Bid Number:	SP-19-0093	Solicitation Issued:	September 18, 2019
Description:	Dairy Foods and Related Products		
Agency:	Statewide		

SUBMISSION DEADLINE FOR RESPONSE			
Bid Opening Date:	October 7, 2019	Bid Opening Time:	1:00 p.m., Central Time
<p>Deliver bid submissions for this Invitation For Bid to the Office of State Procurement on or before the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit bids at the designated location on or before the bid opening date and time. Bids received after the designated bid opening date and time may be considered late and may be returned to the Prospective Contractor without further review. It is not necessary to return "no bids" to OSP.</p>			

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

OFFICE OF STATE PROCUREMENT CONTACT INFORMATION			
OSP Buyer:	Julia Shackelford	Buyer's Direct Phone Number:	501-371-6079
Email Address:	Julia.shackelford@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	<a href="http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx">http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx</a>		

## **SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION**

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

### **1.1 PURPOSE**

The Office of State Procurement (OSP) issues this Invitation for Bid (IFB) on behalf of State Agencies and Political Subdivisions (hereinafter "Purchasing Entities") to obtain pricing and a contract for dairy foods and related products as specified within this IFB.

### **1.2 TYPE OF CONTRACT**

- A. As a result of this IFB, OSP intends to award a Statewide contract to a single Contractor.
- B. The anticipated starting date for any resulting contract is November 1, 2019, except that the actual contract start date may be adjusted forward unilaterally by the State for up to three (3) calendar months. By submitting a signed bid in response to the IFB, the Prospective Contractor represents and warrants that it will honor its bid as being held open as irrevocable for this period.
- C. The initial term of a resulting contract will be for one (1) year. Upon mutual agreement by the Contractor and agency, the contract may be renewed by OSP for up to six (6) additional one-year terms or portions thereof, not to exceed a total aggregate contract term of seven (7) consecutive years.

### **1.3 ISSUING AGENCY**

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

### **1.4 BID OPENING LOCATION**

Bids will be opened at the following location:

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

### **1.5 ACCEPTANCE OF REQUIREMENTS**

- A. A Prospective Contractor **must** unconditionally accept all Requirements in the Requirements Section(s) of this IFB to be considered a responsive Prospective Contractor.
- B. A Prospective Contractor's bid will be rejected if a Prospective Contractor takes exceptions to any Requirements in the Requirements Section(s) of this IFB.

### **1.6 DEFINITION OF TERMS**

- A. The State Procurement Official has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.
- B. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. "1% Milk" means milk that contains 1% Milkfat by weight and contains 2.5 grams of fat in a standard 8-ounce serving.
- D. "2% Milk" means milk that contains 2% Milkfat by weight and contains 5 grams of fat in a standard 8-ounce serving.
- E. "Bid Submission Requirement" means a task a Prospective Contractor **must** complete when submitting a bid response. These requirements will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- F. "Business Day" means a day occurring Monday through Friday excluding State Holidays. A current listing of State Holidays can be found on the Arkansas Secretary of State's website at <https://www.sos.arkansas.gov/news/state-holiday-calendar/>.

- G. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- H. "Grade A Milk" means a milk produced under sufficiently sanitary conditions to qualify for fluid (beverage) consumption. Only Grade A Milk is regulated under Federal milk marketing orders. This grading system is regulated by the USDA.
- I. The terms "Invitation For Bid", "IFB," "Bid Solicitation," and "Solicitation" are used synonymously in this document.
- J. "Local Farm or Food Products" means food products that are grown in Arkansas, packaged and processed in Arkansas, or both in accordance with Act 617.
- K. "Milkfat" means the amount of fat that is in milk by weight. Milkfat affects the number of calories that is in each serving.
- L. "Political Subdivision" means an agency, authority, board, branch, bureau, commission, council, department, institution, office, school district, or other entity and/or governmental body of any county, municipality, city, or town falling under the umbrella of the State of Arkansas and authorized by the laws of the State of Arkansas to participate in a State Contract or as otherwise determined authorized by the State of Arkansas.
- M. "Prospective Contractor" means a person who submits a bid in response to this solicitation.
- N. "Purchasing Entity" means a "State Agency" and/or "Political Subdivision".
- O. "Requirement" means a specification that a Contractor's product and/or service **must** perform during the term of the contract. These specifications will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- P. "Responsive Bid" means a bid submitted in response to this solicitation that conforms in all material respects to this IFB.
- Q. "Skim Milk", also known as "Fat Free Milk" means milk that contains 0% Milkfat by weight and contains 0 grams of fat in a standard 8-ounce serving.
- R. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.
- S. "State Agency or Agencies" includes any State of Arkansas institution, authority, department, board, commission, bureau, council, office, or other entity supported by the appropriation of State and/or Federal funds, including State supported institutions of higher education, the constitutional departments of the State of Arkansas, the General Assembly, including the Legislative Council, the Legislative Joint Auditing Committee and supporting agencies and bureaus thereof, the Arkansas Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the Administrative Office of the Courts or any other entity and/or governmental body authorized by the State of Arkansas to participate in a State Contract or as otherwise determined by the State of Arkansas.
- T. "USDA" means the United States Department of Agriculture and is the U.S. Federal Executive department responsible for developing and executing Federal laws related to farming, forestry, and food.
- U. "Whole Milk" means milk that contains at least 3.25% Milkfat by weight and contains 8-grams of fat in a standard 8-ounce serving.

## 1.7 **RESPONSE DOCUMENTS**

### A. Bid Response Packet

1. The following are Bid Submission Requirements and **must** be submitted in the original Bid Response Packet.
  - a. Original signed *Bid Signature Page*. (See *Bid Response Packet*.)

- i. An official authorized to bind the Prospective Contractor(s) to a resultant contract **must** sign the Bid Signature Page included in the *Bid Response Packet*.
  - ii. Prospective Contractor's signature signifies agreement to and compliance with all Requirements in this IFB, and that any exception that conflicts with a Requirement or Bid Submission Requirement of this *Bid Solicitation* will cause the Prospective Contractor's bid to be rejected.
  - iii. Bid response **must** be in the English language.
- b. One (1) original copy of the *Official Bid Price Sheet*. Pricing **must** be proposed in U.S. dollars and cents.
2. The following items should be submitted in the original *Bid Response Packet* preferably on a flash drive and in PDF format.
  - a. One (1) copy of the *Official Bid Price Sheet* (s).
  - b. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions, #25. Disclosure*.)
  - c. Copy of Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
3. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

#### 1.8 **CLARIFICATION OF BID SOLICITATION**

- A. Submit any questions requesting clarification of information contained in this *Bid Solicitation* in writing via email by 4:00 p.m., Central Time on or before September 23, 2019 to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.
  1. For each question submitted, Prospective Contractor should reference the specific solicitation item number to which the question refers.
  2. Prospective Contractors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on September 25, 2019. If Prospective Contractor questions are unclear or non-substantive in nature, the State may request clarification of a questions or reserves the right not to respond to that questions.
- B. The Prospective Contractor should notify the OSP buyer of any term, condition, etc., that precludes the Prospective Contractor from submitting a compliant, responsive proposal. Prospective Contractors should note that it is the responsibility of the Prospective Contractor to seek resolution of all such issues, including those relating to the terms and conditions of the contract, prior to the submission of a bid.
- C. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the bid opening.
- D. An oral statement by OSP will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by OSP.
- E. Prospective Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

#### 1.9 **SUBCONTRACTORS**

- A. Prospective Contractor should complete, sign and submit the *Proposed Subcontractors Form* included in the *Bid Response Packet*.
- B. **Do not** attach any additional information to the *Proposed Subcontractors Form*.

C. The utilization of any proposed subcontractor is subject to approval by the State agency.

#### 1.10 **PRICING**

- A. Prospective Contractor **shall** include all pricing on the *Official Bid Price Sheet(s)* only. If any cost is not identified by the successful Contractor but is subsequently incurred in order to achieve successful operation, the Contractor **shall** bear this additional cost.
- B. The Official Bid Price Sheet includes orange shaded pricing cells for the purposes described below.
1. Child Nutritional (CN) Label – The Prospective Contractor **shall** indicate whether or not each product listed on the *Official Bid Price Sheet* will have a USDA Child Nutritional (CN) Label on the product. The Prospective Contractor **shall** indicate “Yes” or “No” as applicable to the product listed. Additional information regarding USDA’s Child Nutritional Labeling Program can be found at <https://www.fns.usda.gov/cn/labeling-program>.
  2. Act 617 - Prospective Contractor **shall** indicate whether or not each product listed on the *Official Bid Price Sheet* is in compliance with ACT 617. The Prospective Contractor **shall** indicate “Yes” or “No” as applicable to the product listed.
  3. Unit Price – The Prospective Contractor **shall** provide a per Unit Price for each product listed. The Unit Price entered by the Prospective Contractor will be multiplied by the Annual Estimated Quantities provided on the *Official Bid Price Sheet*. The calculated amount (Unit Price x Annual Estimated Quantities) will be auto-populated into the Estimated Annual Price cell for each product listed and used to determine lowest cost based on the Total Estimated Cost for the Initial One Year Term.
- C. Prospective Contractor **shall** provide a Unit Price for each product listed on the *Official Bid Price Sheet* that **must** include all costs associated with providing the product listed.
1. Should the Prospective Contractor fail to provide a Unit Price for a product listed on the *Official Bid Price Sheet*, the State reserves the right to reject the Prospective Contractor’s bid submission.
- D. To allow time to review bids, prices **must** be valid for ninety (90) days following the bid opening.
- E. DO NOT submit any ancillary information not related to actual pricing on or with the Bid Price Sheet.

#### 1.11 **PRIME CONTRACTOR RESPONSIBILITY**

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

#### 1.12 **INDEPENDENT PRICE DETERMINATION**

- A. By submission of this bid, the Prospective Contractor certifies, and in the case of a joint response, each party thereto certifies as to its own organization, that in connection with this bid:
- The prices in the bid have been arrived at independently, without collusion.
  - No prior information concerning these prices has been received from, or given to, a competitive company.
- B. Evidence of collusion warrants consideration of this bid by the Office of the Attorney General. All Prospective Contractors **shall** understand that this paragraph may be used as a basis for litigation.

#### 1.13 **PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may

include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.

- C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
- D. By so redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- E. Under no circumstances will pricing information be designated as confidential.
- F. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Bid Response Packet*. A CD is also acceptable. Do not submit documents via email or fax.
- G. Except for the redacted information, the redacted copy **must** be identical to the original copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- H. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- I. The redacted copy will be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the Prospective Contractor.
- J. If a redacted copy of the submission documents is not provided with Prospective Contractor's *Bid Response Packet*, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- K. If the State deems redacted information to be subject to FOIA, the Prospective Contractor will be contacted prior to release of the documents.
- L. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

#### **1.14 CAUTION TO PROSPECTIVE CONTRACTORS**

- A. Prior to any contract award, address all communication concerning this *Bid Solicitation* through the OSP buyer.
- B. Do not alter any language in any solicitation document provided by the State.
- C. Do not alter the *Official Bid Price Sheet*.
- D. All official documents and correspondence related to this solicitation become part of the resultant contract.
- E. The State has the right to award or not award a contract, if it is in the best interest of the State to do so.
- F. As requested, provide clarification regarding Prospective Contractor's bid response to OSP.
- G. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- H. Prospective Contractors may submit multiple bids.

#### **1.15 REQUIREMENT OF ADDENDUM**

- A. Only an addendum written and authorized by OSP will modify this *Bid Solicitation*.

- B. An addendum posted within three (3) calendar days prior to the bid opening may extend the bid opening and may or may not include changes to the Bid Solicitation.
- C. The Prospective Contractor is expected to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to bid opening.

#### 1.16 **AWARD PROCESS**

##### A. Successful Contractor Selection

1. Award will be made to the lowest-bidding, responsible Prospective Contractor on an All or None basis.

##### B. Negotiations

1. If the State so chooses, negotiations may be conducted with the lowest-bidding Prospective Contractor. Negotiations are conducted at the sole discretion of the State.
2. If negotiations fail to result in a contract, the State may begin the negotiation process with the next lowest-bidding Prospective Contractor. The negotiation process may be repeated until the anticipated successful Contractor has been determined, or until such time the State decides not to move forward with an award.

##### C. Anticipation to Award

1. Once the anticipated successful Contractor has been determined, the anticipated award will be posted on the OSP website at [http://www.arkansas.gov/dfa/procurement/pro\\_intent.php](http://www.arkansas.gov/dfa/procurement/pro_intent.php).
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Prospective Contractors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen-day posting period.
3. OSP may waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the Prospective Contractor's responsibility to check the OSP website for the posting of an anticipated award.

##### D. Issuance of Contract

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

#### 1.17 **MINORITY AND WOMEN-OWNED BUSINESS POLICY**

##### A. A minority-owned business is defined by Arkansas Code Annotated § 15-4-303 as a business owned by a lawful permanent resident of this State who is:

- African American
- American Indian
- Asian American
- Hispanic American
- Pacific Islander American
- A Service-Disabled Veteran as designated by the United States Department of Veteran Affairs

##### B. A women-owned business is defined by Act 1080 of the 91<sup>st</sup> General Assembly Regular Session 2017 as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.

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

**1.18 EQUAL OPPORTUNITY POLICY**

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP **must** have a copy of the anticipated Contractor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* should be included as a hardcopy accompanying the solicitation response.
- C. Contractors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that **must** also comply with this statute.
- D. Prospective Contractors who are not required by law to have an *EO Policy* **must** submit a written statement to that effect.

**1.19 RESTRICTION OF BOYCOTT OF ISRAEL**

- A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in and agrees for the duration of the contract not to engage in, a boycott of Israel.
- B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.
- C. By checking the designated box on the Bid Signature Page of the response packet, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

**1.20 PAST PERFORMANCE**

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

**1.21 VISA ACCEPTANCE**

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

**1.22 PUBLICITY**

- A. Do not discuss the solicitation nor your bid response, nor issue statements or comments, nor provide interviews to any public media during the solicitation and award process.
- B. Failure to comply with this Requirement may be cause for a Prospective Contractor's bid to be rejected.

**1.23 RESERVATION**

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



## SECTION 2 – REQUIREMENTS

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

### 2.1 INTRODUCTION

The Office of State Procurement (OSP) issues this Invitation for Bid (IFB) on behalf of State Agencies and Political Subdivisions (hereinafter “Purchasing Entities”) to obtain pricing and a contract for dairy foods and related products as specified within this IFB.

### 2.2 BACKGROUND AND CURRENT ENVIRONMENT

A. State Agencies have purchased approximately 6.9 million units (i.e. ounces, quart, pounds, pints, gallons) of dairy foods and related products over the last seven (7) years. The information below provides a breakdown of the estimated 6.9 million units and the corresponding products purchased during that timeframe. The breakdown does not reflect purchases made by Political Subdivisions.

1.	Grade A Whole Milk	475,000
2.	Fat Free Skim Milk	1,100,000
3.	Reduced Fat 1% Milk	581,000
4.	Reduced Fat 2% Milk	2,900,000
5.	Skim or Fat Free Chocolate Milk	730,000
6.	Skim or Fat Free Strawberry Milk	31,300
7.	Buttermilk	69,000
8.	Cottage Cheese	18,000
9.	Sour Cream	11,000
10.	Yogurt	162,000
11.	Ice Cream	366,000
12.	Half & Half	11,000
13.	Fruit Drinks	13,000

B. Although the State of Arkansas has attempted to provide an accurate reflection of existing conditions, the State is providing estimates strictly as a courtesy to Prospective Contractors. The Prospective Contractor **shall not** interpret the existing conditions and estimates provided in this IFB or on the *Official Bid Price Sheet* to be a guarantee of actual contract volume or conditions existing during the terms of a contract resulting from this IFB.

C. State Agencies who have historically utilized the previous statewide dairy contract are:

1. Arkansas Community Correction
2. Arkansas Division of Correction
3. Arkansas Department of Human Services
4. Arkansas Law Enforcement Training Academy
5. Arkansas Parks and Tourism
6. Arkansas Rehabilitation Services
7. Arkansas School for the Blind
8. Arkansas State Police

### 2.3 **GENERAL REQUIREMENTS**

- A. Contractor **shall** comply with Federal and State laws applicable to the products and services provided including but not limited to USDA regulations and standards.
- B. Contractor **shall** provide products from Federally inspected and approved plants.
- C. Contractor **shall** provide products that conform to the minimum Requirements of Federal and State regulations concerning, but not limited to:
  1. Grade
  2. Weights and Measures
  3. Packaging
  4. Product Safety
  5. Shelf Life
  6. Food Safety Guidelines
  7. Proper Identification of Allergens
- D. Contractor **shall** provide master containers that are marked with accurate date codes concerning expiration dates and/or pack dates.
- E. Contractor **shall** provide products packaged in new, sanitary, and undamaged containers or cartons which **must not** be expired, salvaged, distressed, or spoiled in any manner.
- F. Contractor **shall** provide only fresh, unspoiled products.
- G. When requested by OSP, the Contractor **shall** submit, within seventy-two (72) hours, the manufacturer's specification sheets on products.
  1. Manufacturer's specification sheets **must** include, but are not limited to include the following:
    - a. Nutritional Information
    - b. Serving Size
    - c. Ingredients
    - d. Allergan Information
  2. When requested by OSP, the Contractor **shall** submit, within seventy-two (72) hours, the USDA Grade Certification sheets on products, if the certification grade is not previously listed on the manufacturer's specification sheets.
    - a. The USDA Grade Certification sheets and the manufacturer's specification sheets **must** be in either Portable Document Format (PDF) or Joint Photographic Experts Group (JPEG) format and submitted on an external Universal Serial Bus (USB) flash drive device or compact disc (CD).
- H. Shipments **must** be billed at the contract prices in effect at the time of the order, not the date the shipment is made.

### 2.4 **USDA CHILD NUTRITIONAL LABELING**

- A. Products that meet the requirements of the USDA Child Nutritional (CN) Labeling **must** be labeled as such. The CN labeled products **must** have the information printed on the principal display panel of the label. The CN Label statement **must** be an integral part of the product label and include the following information:

1. CN logo, which is a distinctive border around the CN statement.
  2. A six (6) digit product identification number appearing in the upper right-hand corner of the CN label statement.
  3. A statement of the product's contribution toward meal pattern requirements for the CN Program.
  4. A statement specifying that the use of the logo and CN label statement is authorized by the USDA Food and Nutrition Service.
  5. The month and year the label was approved by USDA Food and Nutrition Service.
- B. To be in compliance for CN requirements, the CN Label must include the following:
1. Product name.
  2. Ingredient listing, in descending order or predominance by weight for all ingredients.
  3. Inspection legend for the appropriate production plant.
  4. Manufacturer's or distributor's name and address.
- C. The Prospective Contractor may reference additional information regarding the CN Labeling Program by visiting <https://www.fns.usda.gov/cn/labeling-program>.

## 2.5 **PRODUCT HANDLING REQUIREMENTS**

- A. Products **must** be transported to the FOB delivery address in a vehicle equipped to maintain a temperature range for chilled products between 33° F to 40°F and for frozen products between 0°F to -20°F.
- B. The State will reject damaged, expired, salvaged, distressed, or spoiled products or packages.
- C. Products delivered **must** have a shelf life that provides proper agency utilization or consumption within the timeframe designated by the agency at time of order. The State will reject orders having an expiration date inconsistent with agency requirements designated at the time of order.
- D. Contractor **shall** issue a credit to the Purchasing Entity for rejected products within a reasonable timeframe as mutually agreed upon between the Contractor and the Purchasing Entity, not to exceed thirty (30) calendar days.

## 2.6 **RECALL PROGRAM AND PROCEDURES PLAN**

- A. At time of bid submission, Contractor **shall** have a recall program and procedures plan in place and **shall** submit a copy of each as requested by OSP throughout the contract term(s).
- B. Contractor **shall** notify Purchasing Entities, via email, of any recalls pertaining to contracted products immediately upon Contractor's knowledge of the recall(s).
- C. Contractor's recall program and procedures plan **must** identify, track, and locate recalled products delivered to each location within a twenty-four (24) hour timeframe after receipt of notification of a recall.
- D. Contractor **shall** perform a mock recall procedure once per contract year and email the results and a written summary to [OSP-Food@dfa.arkansas.gov](mailto:OSP-Food@dfa.arkansas.gov) or other email as provided by OSP.

## 2.7 **ACT 617 COMPLIANT PRODUCTS**

- A. Act 617 was enacted by the General Assembly of the State of Arkansas to facilitate a Local Food, Farm, and Jobs Act.
1. The objective of Act 617 is for State agencies to support local farms and for each agency to make it a goal to spend twenty percent (20%) of their budget on Local Farm or Food Products.

B. Contractor **shall** indicate on the *Official Bid Price Sheet*, all ACT 617 compliant products offered.

## 2.8 **SUBSTITUTIONS**

- A. In the event a substitution to the contracted dairy foods and related products is needed during the contract terms(s), the Contractor **shall**:
1. Only substitute dairy foods and related products twice per year during the dates below:
    - a. June 1 – June 15
    - b. December 1 – December 15
  2. Complete Attachment A: *Substitution Request Form* for each type of dairy food and related product for which the Contractor is requesting substitution.
    - a. Substitutions **must** be submitted for approval on Attachment A: *Substitution Request Form* and emailed to [OSP-Food@dfa.arkansas.gov](mailto:OSP-Food@dfa.arkansas.gov) or other email as provided by OSP.
    - b. Products **must not** be substituted until reviewed and approved by OSP.
    - c. Approved substitutions will become effective on the first Business Day of the month following approval.
    - d. Approved substitutions **must** be intended for the duration of the contract and affect dairy foods and related products ordered after the effective date.
  3. Contractor **shall** attach a copy of the manufacturer's product specifications sheet or other informative document as approved by OSP for the original product and for the substitution product(s) and include with Attachment A: *Substitution Request Form*.
  4. Contractor **shall** provide substitutions that meet or exceed the minimum specifications of the original product and those that are nutritionally equivalent to or better than the original product.
  5. Contractor **shall** provide the substitution at the same or lower cost for the product being substituted.
  6. Contractor **shall** provide the Purchasing Entity the opportunity to accept and/or reject the substitution of any product listed on the original purchase order(s).
    - a. The Purchasing Entity will notify the Contractor to pick up any substitute product(s) should they find the substituted product unacceptable.
    - b. The Purchasing Entity reserves the right to cancel the original purchase order(s) if substituted product is unacceptable.

## 2.9 **PRODUCT CANCELLATION**

- A. In the event a contracted dairy food or related product ceases to be produced by the manufacturer and there are currently no other products that can be used for substitution, either due to nutritional values or flavor profiles, the Contractor **shall**:
1. Notify the OSP Contract Administrator, via email at [OSP-Food@dfa.arkansas.gov](mailto:OSP-Food@dfa.arkansas.gov) or other email as provided by OSP, prior to depletion of Contractor's inventory or as soon as the Contractor is aware of the production ceasing for the product.
  2. Complete Attachment B: *Product Cancellation Form* for each cancellation and submit via email to [OSP-Food@dfa.arkansas.gov](mailto:OSP-Food@dfa.arkansas.gov) or other email as provided by OSP.

## 2.10 **QUARTERLY USAGE REPORTS**

- A. Contractor **shall** submit a Quarterly Usage Report, via email to [OSP-Food@dfa.arkansas.gov](mailto:OSP-Food@dfa.arkansas.gov) or other email as provided by OSP, on the first Business Day of the month of the quarter immediately following the quarter during which the contract was awarded and every quarter thereafter. For example, for purchases made in February of

Quarter 1, the Contractor would submit the report for Quarter 1 on the first Business Day in April (beginning of Quarter 2).

1. The quarters are:
  - a. Quarter 1: January – March
  - b. Quarter 2: April – June
  - c. Quarter 3: July – September
  - d. Quarter 4: October – December
2. For the quarter being reported, the Contractor **shall** include the following information in the quarterly reports:
  - a. Name of Purchasing Entity.
  - b. Purchase Order Number and the Outline Agreement Number.
  - c. Total dollar spend for each Purchasing Entity during the preceding quarter.
  - d. Type, brand name, State of Arkansas Material Code Number, and Contractor Product Number.
  - e. Contract price for each type of dairy foods or related products provided.
  - f. Total number of units of each product provided.
3. Contractor **shall** include contracted products on the report even if there is no purchase during the quarter and **shall** report usage as “0” on the report.
4. Contractor **shall** submit quarterly reports in a format provided by OSP after award.

#### **2.11 CONTRACT ADMINISTRATOR**

- A. Prior to award, Prospective Contractor **shall** identify a primary contact and contact information for communication concerning orders, compliance, conflict resolution, and other general questions and issues.
- B. OSP will provide the Contractor with contact information for OSP’s Contract Administrator prior to award.

#### **2.12 ACCEPTANCE STANDARDS**

Inspection and acceptance and/ or rejection of product(s) will be made within thirty (30) days of receipt. The State has the option to return any product(s) within the thirty (30) day timeframe for any reason. Contractor **shall not** impose any liability on the State for such returns.

#### **2.13 DELIVERY: FOB DESTINATION**

- A. Each Purchasing Entity will provide the delivery requirements when they issue a Purchase Order. Contractor **shall** comply with the delivery timeframes, schedules, and other requirements as requested by the Purchasing Entity.
- B. Deliveries should be made on Business Days (Monday through Friday) excluding State Holidays and within the agreed upon number of days unless otherwise arranged and coordinated with the Purchasing Entity.
- C. Contractor **shall** give the Purchasing Entity immediate notice of any anticipated delays or plant shutdowns that will affect the delivery requirement.
- D. Loss or damage that occurs during shipping, prior to the order being received by the Purchasing Entity, is the Contractor’s responsibility. Orders should be properly packaged to prevent damage during shipping.
- E. Deliveries are considered inside deliveries, unless a deviation is supplied by the Purchasing Entity prior to delivery.

- F. Due to the nature of the perishability of the dairy food products specified herein, the Purchasing Entity may specify an alternate delivery route and/or method to receive the products instead of issuing a Purchase Order to the Contractor.
1. Contractor **shall** coordinate with the Purchasing Entity to schedule acceptable route delivery dates for both parties upon contract award.
  2. Contractor **shall** notify the Purchasing Entity, via electronic mail format or telephone, if there is an issue with the scheduled delivery date and/or if the Contractor anticipates a delay or postponement of the delivery.

## **SECTION 3 – GENERAL CONTRACTUAL ITEMS**

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

### **3.1 PAYMENT AND INVOICE PROVISIONS**

- A. Invoices **must** be sent to the address as specified on the Purchasing Entity's purchase order.
- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance of goods and services by the agency.
- C. Do not invoice the State in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the Contractor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The Contractor should invoice the agency by an itemized list of charges. The agency's Purchase Order Number and/or the Contract Number should be referenced on each invoice.
- F. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- G. Selected Contractor **must** be registered to receive payment and future *Bid Solicitation* notifications. Contractors may register on-line at <https://www.ark.org/contractor/index.html>.

### **3.2 GENERAL INFORMATION**

- A. The State will not:
  1. Lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a thirty (30) day written notice to the Contractor/lessor in the event funds are not appropriated.
  2. Contract with another party to indemnify and defend that party for any liability and damages.
  3. Pay damages, legal expenses or other costs and expenses of any other party.
  4. Continue a contract once any equipment has been repossessed.
  5. Agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
  6. Enter a contract which grants to another party any remedies other than the following:
    - a. The right to possession.
    - b. The right to accrued payments.
    - c. The right to expenses of de-installation.
    - d. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
    - e. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- B. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- C. The laws of the State of Arkansas govern this contract.
- D. A contract is not effective prior to award being made by a State Procurement Official.

### 3.3 **CONDITIONS OF CONTRACT**

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

### 3.4 **STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of Contractor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The Contractor will retain total liability for equipment, software and technical and business or operations literature. The State will not at any time be responsible for or accept liability for any Contractor-owned items.
- B. The Contractor's liability for damages to the State will be limited to the value of the Contract or \$3,000,000, whichever is higher. The foregoing limitation of liability will not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The Contractor and the State will not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability will not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.
- C. Language in these terms and conditions **must not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, will be brought before the Arkansas Claims Commission as provided by Arkansas law and governed accordingly.

### 3.5 **RECORD RETENTION**

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

### 3.6 **PRICE ESCALATION**

- A. Price increases will only be considered at the time of contract renewal.
- B. The Contractor **shall** provide to OSP a written request for the price increase. The request **must** include supporting documentation demonstrating that the increase in contract price is based on an increase in market price.
  - 1. Documentation **must** include, but is not limited to the following:
    - a. A cover letter detailing the reasons for the price increase.
    - b. The amount of the price increase.
    - c. Conditions that necessitate the price increase, including future outlook forecasts.



- d. Percentage of price increase request compared to the previous price on contract.
  - e. Letter(s) from manufacturers explaining the reason for the increase.
  - f. Any State or Federal regulations impacting price increases explained and included.
- C. OSP has the right to require additional information pertaining to the requested increase.
- D. Increases will not be considered to increase profit or margins.
- E. OSP has the right to approve or deny the request.

### 3.7 **CONFIDENTIALITY**

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

### 3.8 **CONTRACT INTERPRETATION**

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

### 3.9 **CANCELLATION**

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

### 3.10 **SEVERABILITY**

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

**SECTION 4 – STANDARD TERMS AND CONDITIONS**

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

14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if the Contractor delivers within the time required and the agency cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting Contractor. The Contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the Contractors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The Contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Contractor hereunder or in contemplation hereof or developed by the Contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the Contractor's expense to the F.O.B. point provided by the agency or by OSP. Contractor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The Contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the Contractor agrees that: (a) the Contractor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor 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 Contractor 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 Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.
23. **CONTINGENT FEE:** The Contractor 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 Contractor for the purpose of securing business.
24. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor named on the *Bid Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
25. **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.