

State of Arkansas
OFFICE OF STATE PROCUREMENT
1509 West Seventh Street, Room 300
Little Rock, Arkansas 72201-3966

STATE TERM CONTRACT

THIS IS A **NON-MANDATORY** TERM CONTRACT ISSUED BY THE OFFICE OF STATE PROCUREMENT. THIS DOES NOT REPRESENT YOUR AUTHORITY TO SHIP. THE ORDERING AGENCY WILL ISSUE A PURCHASE ORDER TO AUTHORIZE SHIPMENT. THIS CONTRACT CONSTITUTES ACCEPTANCE OF YOUR BID ALONG WITH ALL TERMS AND CONDITIONS THEREIN AND SIGNIFIES THE OFFERER'S KNOWLEDGE AND ACCEPTANCE OF ALL TERMS AND CONDITIONS SET FORTH WITHIN THE REQUEST FOR QUALIFICATIONS.

INTRODUCTION: The Office of State Procurement (OSP) has issued this non-mandatory contract (SP-16-0124) for the Rental, Delivery and Service of Portable Toilets and Hand Wash Stations to be utilized on an as needed or emergency activation basis for all State Agencies.

CONTRACT PERIOD: The term of this contract shall be for a period of twelve (12) months beginning December 1, 2018 through November 30, 2019 with option to renew in three (3) one (1) year increments or a portion thereof upon mutual agreement by OSP and the contractor. In no event shall the total contract term be more than seven (7) years.

BUYER: JULIA SHACKELFORD @ 501-371-6079
E-mail: julia.shackelford@dfa.arkansas.gov

VENDOR CONTACT INFORMATION:

Fusionsite Little Rock LLC
dba Arkansas Portable Toilets
924 W. 15th Street, Suite A
North Little Rock, AR 72114

Scott Thone, President
Phone: 501-753-7140
Fax: 501-945-0187

E-mail: sathone@yahoo.com
or Bubba Wood @ 501-519-2409
E-mail: woodbubba@gmail.com

Outline Agreement #4600043401

Region Awarded for As Needed:
Region 3 Central

Region Awarded for Emergency Activation:
Region 5 Southeast

Portable Sanitation Inc.
dba Arkansas Portable Toilets
P.O. Box 34033
Little Rock, AR 72203

Scott Thone, President
Phone: 501-753-7140
Fax: 501-945-0187

E-mail: sathone@yahoo.com
or Bubba Wood @ 501-519-2409
E-mail: woodbubba@gmail.com

Outline Agreement #4600036375

Regions Awarded for As Needed:
Region 1 Northwest
Region 2 Northeast
Region 4 Southwest
Region 5 Southeast

Regions Awarded for Emergency Activation:
Region 1 Northwest
Region 2 Northeast
Region 3 Central
Region 4 Southwest

SECTION 1 - GENERAL INFORMATION

1.1 COOPERATIVE PROCUREMENT PROGRAM PARTICIPATION: Arkansas' Purchasing Law provides that local public procurement units (counties, municipalities, school districts, certain nonprofit corporations, etc.) may participate in state procurement contracts. Therefore, the contractor agrees to rent to Cooperative Procurement Program Participants. Unless otherwise stated, all standard and special terms and conditions listed within the Invitation for Bid must be equally applied to such participants.

1.2 PAYMENT AND INVOICE PROVISIONS: 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 goods and/or services. Payment will be made only after the contractor has successfully satisfied the requesting agency as to the goods and/or services rented. Vendors should invoice requesting agency by an itemized list of charges. Purchase Order Number and/or Contract Number should be referenced on each invoice.

All invoices should be forwarded to the requesting agency, as specified on Agency Purchase Order.

1.3 RECORD RETENTION: The contractor shall 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 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.

1.4 PRIME CONTRACTOR RESPONSIBILITY: The vendor will be required to assume prime contractor responsibility for the contract and will be the sole point of contact with regard to all commodities, services and support.

If any part of the work must be subcontracted, the vendor must include a list of subcontractors, including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractor's organizational activities.

The contractor shall give OSP immediate notice, in writing, by certified mail of any action which, in the opinion of the contractor, may result in litigation related in any way to the contract or the State.

1.5 CONTRACT INFORMATION

1. The State of Arkansas may not contract with another party:

- a) To lease any equipment for a period of time which continues past the end of a fiscal year unless the contract allows cancellation by the State Procurement Official upon thirty (30) days written notice whenever there are no funded appropriations for the equipment.
- b) To indemnify and defend that party for any liability and damages. However, the State Procurement Official may agree to hold the other party harmless from any loss or claim resulting directly from and attributable to the State's use or possession of equipment and reimburse that party for the loss caused solely by the State's uses or possession.
- c) Upon default, to pay all sums to become due under a contract.
- d) To pay damages, legal expenses or other costs and expenses of any party.
- e) To continue a contract once the equipment has been repossessed.
- f) To conduct litigation in a place other than Pulaski County, Arkansas
- g) To agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.

2. A party wishing to contract with the State of Arkansas should:

- a) Remove any language from its contract which grants to it any remedies other than:
 - i. The right to possession.
 - ii. The right to accrued payments.
 - iii. The right to expenses of de-installation.
 - iv. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - v. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- b) Include in its contract that the laws of the State of Arkansas govern the contract.
- c) Acknowledge that contracts become effective when awarded by the State Procurement Official.

3. The State of Arkansas may contract with another party:

- a) To accept the risk of loss of the equipment and pay for any destruction, loss or damage of the equipment while the State has such risk, when the extent of liability for such risk is based upon the rental price of the equipment at the time of any loss and the contract has required the State to carry insurance for such risk.
- b) To lease any equipment past the end of a fiscal year if the contract contains a provision to allow cancellation by the State Procurement Official upon a thirty (30) day written notice to the vendor/lessor in the event funds are not appropriated.

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

1.7 STATEMENT OF LIABILITY: The State will demonstrate reasonable care but shall not be liable in the event of loss, destruction, or theft of contractor-owned items to be delivered or to be used in the installation of deliverables. The vendor is required to retain total liability until the deliverables have been accepted by the "authorized agency official." At no time will the State be responsible for or accept liability for any vendor-owned items.

1.8 AWARD RESPONSIBILITY: The State Procurement Official will be responsible for award and administration of any contracts.

1.9 DELEGATION AND/OR ASSIGNMENT: The vendor shall not assign the contract in whole or in part or any payment arising there from without the prior written consent of the State Procurement Official. The vendor shall not delegate any duties under this contract to a subcontractor unless the State Procurement Official has given written consent to the delegation.

1.10 COST: All charges and associated cost includes for the delivery and pick-up of portable toilets and hand washing units.

1. The State will not be obligated to pay any costs not identified in the contract.
2. Any cost not identified in this contract but subsequently incurred in order to achieve the goods and services shall be borne by the vendor.

1.11 DELIVERY: FOB DESTINATION, FREIGHT PAID

a) As Needed Basis: The vendor should deliver units on the dates and times agreed upon by the agency and vendor. Vendor will be responsible for delivery, set-up and all transportation cost. Upon completion of the rental period, vendor will pick up the units on dates and times agreed upon by the agency and vendor.

b) Emergency Activation: The vendor should deliver units within eight (8) hours of the receipt of order. Vendor will be responsible for delivery, set-up and all transportation cost. Upon completion of the rental period, vendor will pick up the units on dates and times agreed upon by the agency and vendor.

NOTE: Statewide Emergency Activation may require an emergency delivery requirement. The best route of delivery, based on the emergency, will be requested at that time and agreed upon between the State of Arkansas and the awarded vendors.

1.12 FOB DELIVERY LOCATION: Delivery will be to various locations throughout the State of Arkansas and will be specified on the agency purchase order. All transportation expenses for delivery will be the responsibility of the contractor. Loss or damage that occurs during shipping, prior to the order being received by the agency, is the vendor's responsibility.

1.13 CANCELLATION: In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, the State may cancel the contract or purchase order by giving the contractor written notice of such cancellation thirty (30) days prior to the date of cancellation.

SECTION 2 - SPECIFIC REQUIREMENTS

2.1 LICENSES: The vendor shall maintain, in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the vendor as applicable to this contract. The vendor and all of his employees or agents will secure and maintain in force such licenses and permits as are required by law, and by the State, in connection with the furnishing of goods or services requested.

2.2 INSURANCE REQUIREMENTS: The vendor must furnish an approved "Certification of Insurance", and must keep the insurance in force throughout the contract period. The insurance may not be modified without the Office of State Procurement approval.

In the event a rental unit is damaged or destroyed during the rental period through no fault of vendor or the agency (i.e. through acts of God, fire, vandalism, or some other intentional act), the vendor will bear the risk of such loss and, at vendor's option, vendor will insure against such loss. The agency will have the right to request the replacement of the units provided such request is made by an authorized agency representative in writing.

Workers Compensation and Employee Fidelity Coverage: Standard limits as outlined by vendor's insurance carrier.

A. Workers Compensation and Employees Liability Policy

Workers Compensation Statutory Limits
Employers Liability: \$100,000.00 each accident

B. Comprehensive General Liability Policy

Premises and Operations, Contractual Insurance and Personal Injury
Bodily Injury: \$250,000.00 each person and \$500,000.00 each occurrence
Property Damage: \$100,000.00 each occurrence and \$100,000.00 aggregate

C. Automobile Liability: \$100,000.00 including non-owned and hired vehicles.

THE CONTRACTOR WILL ASSUME ALL LIABILITY FOR ANY ACCIDENTAL OR CRIMINAL OCCURRENCE.

2.3 ORDERING PROCEDURE: All orders placed against this contract should be in the form of an agency issued purchase order on an as-required basis.

2.4 REPORTING REQUIREMENTS: OSP reserves the right to request a usage report from the vendor at any time. The vendor will provide usage from state agencies and cooperative entities. OSP will determine an acceptable format for the report and when the report will be due. When requested, the report will be emailed to: julia.shackelford@dfa.arkansas.gov

SECTION 3: ITEM SPECIFICATIONS**3.1 PORTABLE TOILETS**

A. Each unit shall include a minimum of but is not limited to the following:

1. A urinal and toilet seat; separated from one another. Seat cover will be hinged and in working order.
2. Working lock system. Units with altered equipment will not be accepted, i.e., hook and eye as replacement for locking mechanism.
3. Occupied/Vacant indicator.
4. Tissue paper and hand sanitizer dispensers; firmly attached to the unit.
5. Consistent in color, appearance and age.
6. Sufficient ventilation.

B. Vendor Responsibility shall include but is not limited to the following:

1. Maintain units in operable condition, replacing paper dispensers, hinges, doors, etc.
2. Deliver units and hand wash stations cleaned and stocked upon delivery.
3. Be available to respond to service calls 24/7 including weekends and holidays.

C. Minimum services performed on each unit shall include but is not limited to the following:

1. Pump, remove and proper disposal of waste.
2. Refill and sanitize waste holding tank with chemicals and water to assure masking of odors.
3. Remove trash and mop and sanitize floor.
4. Provide and restock toilet tissue, minimum of two (2) rolls per day.
5. Refill hand sanitizing dispensers.
6. Perform repairs that have been reported by using agency.
7. Upright any overturned unit at no additional charge.
8. Remove graffiti that have been reported by using agency.

D. ADA wheel chair compliant portable toilets must accommodate wheel chair access and shall offer assistance devices such as handrails and extra space for wheel chair transfer.

3.2 HAND WASH STATIONS

A. Each unit shall include a minimum of but is not limited to the following:

1. Two-station unit with a sealed tank
2. Foot pump with fresh running water
3. Soap and paper towel dispenser

3.3 DEFINITIONS

A. Scheduled Services may include but is not limited to services rendered during normal business hours and/or after-hours, weekends and holidays.

B. Non-Scheduled Services: services where vendor receives less than twenty-four (24) hour notice. An example of non-scheduled services may include unforeseen circumstances where public health dictates servicing units prior to scheduled service due to heavy usage.

C. Daily Rental: seven (7) consecutive days or less with a minimum of three (3) consecutive days of rental. Delivery of units prior to date and time required or retrieval of units after designated date and time will be at no charge to the agency. If daily rental is higher than cost for weekly rental, vendor will invoice at lower weekly rate, whichever is less.

D. Weekly Rental: any consecutive seven (7) day usage by the agency based on date and time required by the agency (i.e., Monday through Sunday, Tuesday through Monday, and so forth). Delivery of units prior to date and time required or retrieval of units after designated date and time will be at no charge to the agency. If weekly rental is higher than cost for monthly rentals, vendor will invoice at lower monthly rate, whichever is less. Weekly rental shall include servicing of units once per week.

E. Monthly Rental: any consecutive thirty (30) day usage by the agency, based on date and time required by the agency (i.e., 15th of July to 14th of August, or 2nd of August to 1st of September). Delivery of units prior to date and time or retrieval of units after designated date and time will be at no charge to the agency. Monthly rentals shall include servicing of units once per week.

F. Normal Business Hours: Monday through Friday, 7:30 a.m. to 5:00 p.m. Central Time.

AWARD TERMS AND CONDITIONS

1. **GENERAL:** All terms and conditions stated in the invitation for bid govern this contract.
2. **PRICES:** Prices are firm and not subject to escalation, unless otherwise specified in the invitation for bid.
3. **DISCOUNTS:** All cash discounts offered will be taken if earned.
4. **TAXES:** Most state agencies must pay state sales tax. Before billing, the contractor should contact the ordering agency to find out if that agency must pay sales tax. Itemize state sales tax when applicable on invoices.
5. **BRAND NAME REFERENCES:** The contractor guarantees that the commodity delivered is the same as specified in the bid.
6. **GUARANTY:** All items delivered are to 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 contractor 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 furnished. The contractor further guarantees that if the items furnished hereunder are to be installed by the contractor, such items will function properly when installed. The contractor also guarantees 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 in the invitation for bid.
7. **AWARD:** This contract award does not authorize shipment. Shipment against this contract is authorized by the receipt of a purchase order from the ordering agency. A written purchase order mailed or otherwise furnished to the contractor results in a binding obligation without further action by either party.
8. **DELIVERY:** The term of the contract is shown on the face of the contract award. The contractor is required to supply the state's needs during this term. The number of days required to place the commodity in the receiving agency's designated location under normal conditions is also shown. Consistent failure to meet delivery without a valid reason may cause removal from the bidders' list or suspension of eligibility for award.
9. **BACK ORDERS OR DELAY IN DELIVERY:** Back orders or failure to deliver within the time required may be default of the contract. The contractor must give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. If the reason is not acceptable, the contractor is in default. 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.
10. **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.
11. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
12. **DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Default in promised delivery or failure to meet specifications authorizes the Office of State Procurement to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor.
13. **VARIATION IN QUANTITY:** The state assumes no liability for commodities produced, processed or shipped in excess of the amount specified herein.
14. **INVOICING:** The contractor shall submit an original and two copies of an itemized invoice showing the bid number and purchase request number when itemized in the invitation for bid. Invoices must be sent to "Invoice to" point shown on the purchase order.

15. STATE PROPERTY: Any specifications, drawing, 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 the use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized, and be returned at the contractor's expense to the F.O.B. point, properly identifying what is being returned.
16. ASSIGNMENT: This contract is not assignable nor the duties hereunder delegable by either party without the written consent of the other party to the contract.
17. 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.
18. 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.
19. QUANTITIES: The state may order more or less than the estimated quantity in the invitation for bid.
20. DISCLOSURE: Failure to make any disclosure required by the 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.