

State of Arkansas
OFFICE OF STATE PURCHASING
1509 West Seventh Street, Room 300 72201-3966
P. O. Box 2940 72203-2940
Little Rock, Arkansas

INVITATION FOR BID

Bid Number: RFP-00-0796

Buyer: GERALD CONGLETON

Commodity: SCANNING OF PHOTOGRAPHIC
MATERIALS

Bid Opening Date: MARCH 3, 2000

Date: FEBRUARY 2, 2000

Bid Opening Time: 1:30 P.M.

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

MAILING ADDRESSES:

Office of State Purchasing
P. O. Box 2940
Little Rock, AR 72203-2940

BID OPENING LOCATION:

Office of State Purchasing
1509 West Seventh Street, Room 300
Little Rock, AR 72201-3966

Office of State Purchasing
1509 West Seventh Street, Room 300
Little Rock, AR 72201-3966

TELEPHONE NUMBER: 501-324-9316

Company Name: _____

Name (type or print): _____

Title: _____

Address: _____

Telephone Number: _____ Fax Number: _____

E-Mail Address: _____

FAILURE TO PROVIDE A TAXPAYER IDENTIFICATION NUMBER MAY RESULT IN BID REJECTION:

Federal Employer Identification Number OR Social Security Number

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

Signature: _____

Business Designation (check one): Individual Sole Proprietorship
 Public Service Corporation Partnership Corporation
 Government/Nonprofit

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.

SOCIAL SECURITY NUMBER: _____ OR _____ FEDERAL ID NUMBER: _____ SUBCONTRACTOR: _____ SUBCONTRACTOR NAME: _____

TAXPAYER ID #: _____ IS THIS FOR: Yes No

TAXPAYER ID NAME: _____ Goods? Services? Both?

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 <small>(senator, representative, name of board/ commission, data entry, etc.)</small>	For How Long?		What is the person(s) name and how are they related to you? <small>(i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.)</small>	Relation
	Current	Former		From MM/YY	To MM/YY		
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 <small>(senator, representative, name of board/ commission, data entry, etc.)</small>	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?	Ownership Interest (%)	Position of Control
	Current	Former		From MM/YY	To MM/YY			
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies

*NOTE: PLEASE LIST ADDITIONAL DISCLOSURES ON SEPARATE SHEET OF PAPER IF MORE SPACE IS NEEDED

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 _____

Entity Contact Person _____ Title _____ Phone No. _____

AGENCY USE ONLY

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

FORMS AVAILABLE FROM OFFICE OF DISCLOSURE AND REVIEW (501) 682-5407

*NOTE: PLEASE LIST ADDITIONAL DISCLOSURES ON SEPARATE SHEET OF PAPER IF MORE SPACE IS NEEDED

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 4

GENERAL DESCRIPTION: SCANNING OF PHOTOGRAPHIC MATERIALS

TYPE OF CONTRACT: TERM

CONTRACT PERIOD: ONE YEAR

BUYER: GERALD CONGLETON

AGENCY P. R. NUMBER: PHIS-0-CS0770

INVOICE TO: ARKANSAS HISTORY COMMISSION
ONE CAPITOL MALL
LITTLE ROCK, AR 72201

F.O.B.: ARKANSAS HISTORY COMMISSION
ONE CAPITOL MALL
LITTLE ROCK, AR 72201

MINORITY BUSINESS POLICY

It is the policy of the State of Arkansas that minority business enterprises shall have the maximum opportunity to participate in the state purchasing process. Therefore, the State of Arkansas encourages all minority businesses to compete for, win and receive contracts for goods, services, and construction. The state also encourages all companies to subcontract portions of any state contract to minority business enterprises.

DELIVERY: AS SPECIFIED WITHIN

STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION

REQUEST FOR PROPOSALS

ISSUED BY:
THE OFFICE OF STATE PURCHASING

RFP-00-0796

PROPOSAL NAME: SCANNING OF PHOTOGRAPHIC MATERIALS

ISSUED DATE: FEBRUARY 8, 2000

SCOPE AND SPECIFICATIONS

Scanning of Photographic Materials

Table of Contents

Introduction

1.0 Requirements for Submission of Proposals

- 1.1 Intention to Compete
- 1.2 Submission of Proposals
- 1.3 Confidentiality and Retention of Proposals
- 1.4 Amendment to RFP
- 1.5 Vendor Communications During the RFP Process
- 1.6 Test of Scanning Capabilities
- 1.7 Disqualification of Proposals
- 1.8 Award of Bid

2.0 General Terms of Agreement

- 2.1 Communication
- 2.2 Project Activity Worksheet
- 2.3 Delivery Schedule
- 2.4 On-Site Inspection of Vendor Facility
- 2.5 Vendor and Subcontracting
- 2.6 Default
- 2.7 Assignment of Rights
- 2.8 Rework
- 2.9 Invoices
- 2.10 Payment of Invoices

3.0 Evaluation of Vendor Proposals

- 3.1 Technical Capabilities
- 3.2 Ability to Execute Project
- 3.3 Prices Bid

4.0 Vendor Production Schedule

- 4.1 Summary Schedule
- 4.2 Detailed Schedule

5.0 Project Responsibilities--Arkansas History Commission

- 5.1 Shipping of Photo Materials to Vendor
- 5.2 Receipt of Photo Materials from Vendor
- 5.3 Testing and Calibration
- 5.4 Inspection of Digital Products

6.0 Project Responsibilities--Vendor

- 6.1 Testing and Calibration
- 6.2 Receiving Materials from AHC
- 6.3 Storage and Handling of Materials
- 6.4 Return of Materials to AHC
- 6.5 Scanning Procedures
- 6.6 Vendor Inspection of Images

7.0 Digital Image Standards

- 7.1 Archive File
- 7.2 Display File
- 7.3 Access File
- 7.3 Thumbnail File
- 7.4 Delivery Media

8.0 Volume Naming, File Naming, And File Header Standards

- 8.1 TIFF File Header Specifications
- 8.2 Inspection of TIFF File Header

9.0 Content of Proposals

- 9.1 Business Summary
- 9.2 Key Personnel and Technical Support
- 9.3 Vendor Facilities
- 9.4 Shipping Containers
- 9.5 Digital Image Standards
- 9.6 Scanning and Image Processing Techniques
- 9.7 Image File Headers
- 9.8 Quality Assurance
- 9.9 Vendor Production Schedule
- 9.10 Exceptions to RFP
- 9.11 Warranties Provided
- 9.12 References
- 9.13 Insurance

10.0 RFP Attachments and Forms

- A: Notification Of Intention To Bid--Fax Response Form
- B: Rights Over Products
- C: Prices For Scanning And Derivative Image Files
- D: Capability to Provide Digital Prints
- E: References
- F: Detailed Calendar of RFP Process and Vendor Production Schedule

Introduction

The Arkansas History Commission (AHC) has been awarded a grant from the Arkansas Natural and Cultural Resources Council to digitize photographic materials from the AHC collection. Approximately 13,000 negatives and prints will be selected from the collection, scanned, cataloged, and made available on-line via a web-based interface.

AHC is seeking a vendor to scan approximately 10,000 photographs and create one master digital image file and three derivative images files of each photograph. AHC plans to scan the remaining 3000 photographs in-house, but the vendor may be asked to process some or all of these 3000 photographs.

During a six (6) month period beginning in the month of March, the vendor will be expected to receive and process approximately 10,000 photographs. The processing of as many as 3000 additional photographs will be scheduled after the first 10,000 photographs are processed.

1.0 Requirements for Submission of Proposals

1.1 Intention to Compete

Fax to Gerald Congleton, Office of State Purchasing Buyer, no later than 4:30 PM Central Standard Time, February 15, 2000, your intention to submit a proposal or not. Use Attachment A for a fax response. FAX # (501) 324-9361

1.2 Submission of Proposals

Submit five (5) endorsed copies of your proposal. Only one set of sample test image files needs to be submitted. Only one set of photographs of facilities needs be submitted. Complete proposals must be delivered to the Office of State Purchasing no later than 1:30 pm Central Standard Time, March 3, 2000.

Proposals should be addressed to:

RFP # 00-0796 Scanning of Photographic Materials (AHC)
Office of State Purchasing
Arkansas Department of Finance and Administration
1509 West Seventh Street, 3rd. Floor
Little Rock, AR 72202

Issuing Officer - Gerald Congleton, (501) 324-9316
FAX # (501) 324-9361

A public opening of all Technical/Business proposals will be held on:
March 3 at 1:30 P.M.

1.3 Confidentiality and Retention of Proposals

All submitted proposals will become the property of the Arkansas History Commission. AHC will make reasonable efforts to maintain proposals in confidence and will release proposals only to personnel involved with the evaluation of the project

ANY CONFIDENTIAL, PROPRIETARY, COPYRIGHTED OR FINANCIAL MATERIAL SUBMITTED BY RESPONDENT, MUST BE MARKED AS SUCH AND SUBMITTED UNDER SEPARATED COVER.

All SUBMITTALS BY PROPOSERS WILL BE AVAILABLE FOR REVIEW TO THE EXTENT PERMISSIBLE, PURSUANT TO THE ARKANSAS FREEDOM OF INFORMATION (acc25-19-101 ET SEQ).

1.4 Amendment to RFP

If this RFP is amended by the State, the amendment will be sent to each vendor by fax or e-mail. Potential vendors will acknowledge receipt of each amendment by responding by e-mail or by fax to the Purchasing Office as listed above. Acknowledgement of receiving amendment must be indicated on the proposal.

1.5 Vendor Communications During the RFP Process

Vendor communication during the RFP process will be with the State Purchasing Office Purchasing. The Buyer will direct each question for response.

Gerald Congleton, Buyer
Office of State Purchasing
Arkansas Department of Finance and Administration
P.O. Box 2940
1509 West 7th Street, Room 300
Little Rock, AR 72203.2940
Tel 501 324-9316 Fax 501 324-9311 or 324-9361
E-mail gerald.congleton@dfa.state.ar.us

Communications between vendors and the Office of State Purchasing will be in writing by email or fax. All questions concerning the RFP should reference the RFP section and page number. In order for questions to be answered, all questions must be submitted no later than February 22, 2000. The Office of State Purchasing will make all questions and answers available to all bidding vendors.

If appropriate, the State may hold a vendor conference call to address vendor questions and resolve procedural problems.

1.6 Test of Scanning Capabilities

AHC will require the bidding vendors to submit sample scans and derivative images as part of the RFP process. On February 16, 2000, AHC will ship overnight to each bidding vendor a sample of photographic materials and instructions for scanning. The test photographic materials and sample digital files should be returned as part of the formal proposal.

1.7 Disqualification of Proposals

Failure of a bidding vendor to follow proposal submission instructions may be cause for disqualification of the proposal. False or misleading statements are cause for disqualification of the proposal. All expenses for the preparation of proposals are the responsibility of the bidding vendors.

1.8 Award of Bid

Office of State Purchasing reserves the right to accept or reject any or all proposals in whole or in part according to its evaluation criteria.

The vendor(s) chosen for award should be prepared to have this RFP and its proposal included in a contract and/or purchase order for services.

2.0 Special Terms of Agreement

2.1 Communication

The success of this project will depend on how well AHC and the vendor manage their respective project responsibilities.

AHC and the vendor will each designate representatives who will be available upon request to field questions and to discuss any aspect of the project. There will be regular telephone calls between the vendor representative and the AHC representative to plan schedules and to resolve problems.

2.1 Project Activity Worksheet

In order to control the shipments of photographic materials, production and delivery of image files, inspection, notification of rejected work, rework, re-inspection, and final sign-off by AHC, the vendor and AHC will mutually agree to the format of a worksheet for recording all project activity.

2.3 Delivery Schedule

AHC and the vendor will establish a regular delivery schedule for shipments of photo materials from AHC to the vendor and return of photo materials and digital products from the vendor to AHC.

2.4 On-Site Inspection of Vendor Facility

At any time during the period of the agreement, the vendor will permit representatives from AHC to inspect its facility during vendor's normal working hours.

2.5 Vendor and Subcontracting

The vendor's subcontracting of image scanning, digital file derivation creation, and inspection is allowed under this agreement with prior written approval of AHC, In the event of a subcontracting arrangement, the vendor will assume all responsibility for work performed by their subcontractor.

2.6 Default

AHC will notify the vendor in writing concerning potential conditions of default; e.g., untimely service, poor workmanship, etc. Failure of the vendor at the vendor's expense to correct the unsatisfactory conditions identified by AHC or to come to an amicable solution with AHC within thirty days of notice shall constitute default. Upon condition of default, AHC will have the option to cancel its agreement with the vendor.

AHC expects that the vendor will deliver image files and delivery media of such quality, that rework is a rare event. Request for rework exceeding 1% of product delivered will constitute a potential condition of default. For more information on default and termination, see Section 50.8 to 50.9.5

2.7 Assignment of Rights

The vendor understands that any work subject to copyright which the vendor creates in the course of the work related to this RFP constitutes "work for hire" as defined in 17 U.S.C. Section 201(b) of the federal Copyright Act and all ownership rights to such work belong to AHC. Should such work not constitute a "work for hire" under copyright law, the vendor hereby grants, transfers, assigns and conveys to AHC and its successors and assigns, the entire right, title and interest in the work or any part thereof, including but not limited to the right to reproduce, to prepare derivative works, to distribute by sale, rental, lease, lending or other transfer; to perform publicly, and to display the work, as well as the right to secure copyrights or patents and renewals, reissues, and extensions of any such copyrights or patents in the United States of America or any foreign country. Whether a copyright in the work will be maintained or registered in the United States of America or any foreign country will be at the sole discretion of AHC. The vendor agrees to cooperate fully with AHC in the preparation and execution of all documents necessary or incidental to granting the protection and preservation of rights to AHC.

2.8 Rework

AHC expects that the vendor will deliver image files and delivery media of such quality, that rework is a rare event. Request for rework exceeding 1% of product delivered will constitute a potential condition of default.

The vendor will correct any substandard image files or delivery media identified during either its or AHC's inspection process at no additional charge to AHC. If AHC identifies the problem, the vendor will replace the substandard product within twenty-five (25) working days of the vendor being notified.

2.9 Invoices

The vendor will provide a detailed invoice for the processing of each monthly shipment of photo materials within 10 (ten) working days of delivery and final acceptance of digital image files by AHC. The invoices will include the number of photographs scanned and derivative images made, unit charge per image processed, cost of recordable CD-R's used, cost for shipping and insurance and other expenses for goods and services requested by AHC.

2.10 Payment of Invoices

The State of Arkansas generally pays all invoices within three weeks of receipt. AHC will expedite the processing of each invoice upon receipt.

3.0

Proposals will be evaluated using the factors listed below. A grade will assigned for each factor in the vendor's response. The greatest weight is to be assigned to the vendor's technical capabilities for producing superior quality images. Of equal importance in valuation is the vendor's ability to execute the project.

The staff of Arkansas History Commission, Arkansas Department of Parks and Tourism and the Office of State Purchasing will evaluate all proposals to insure all requirements are met. The contract will be awarded on the basis of the proposal that receives the highest cumulative point total as defined in the evaluation criteria.

Weight

3.1 Technical Capabilities

40

Understanding of and compliance with the needs of AHC and the requirements of the RFP as shown in the proposal

Vendor's response to technical issues in RFP

Visual quality of sample image files submitted with proposal

Technical quality of sample image files submitted with proposal

Vendor facilities, scanning hardware and software

3.2 Ability to Execute Project

40

Qualifications and experience of vendor and its staff

Ability to meet or exceed the time table for production requested in RFP

Customer references for comparable projects

Financial stability and other business issues as outlined in the RFP

Guarantee of quality of work and the nature of on-going vendor support

3.3 Prices Bid

Respondent's price proposal (cost analysis)
for performance of work requested.

20

The lowest computed price proposal will be awarded maximum value.

The value of other proposals will be awarded on a basis proportionate to the lowest cost proposal.
(Attachment C)

4.0 Vendor Production Schedule

The vendor is expected to meet the following schedule for the scanning services requested in this RFP. After the award of bid and a period of testing and calibration, regular production scanning will begin.

4.1 Summary Schedule

All production of digital images will be planned around a repeating four month cycle. A new cycle will be started each month until all production is complete.

Month

- 1 AHC delivers approximately 1660 photographic negatives or prints to vendor.
- 2 Vendor scans photo materials, produces all deliverables, ships photo materials and deliverables to AHC.
- 3 AHC inspects digital files and CD-Rs and requests rework.
- 4 Vendor performs all rework.

4.2 Detailed Schedule

At least ten (10) business days prior to the beginning of the month scheduled for production, AHC will ship to the vendor all of photographic materials to be processed scheduled for the upcoming month. The vendor will report any discrepancy in shipment.

During the month scheduled for production, the vendor will scan the photographic materials, create derivative files, and record them to compact discs. The vendor will inspect all image files and recorded CD-Rs. The image files will be delivered to AHC five (5) business days after the close of the scheduled month of production. The vendor will return the photographic materials AHC at that time.

Within ten (10) business days of receipt of the image files from the vendor, AHC will examine and accept or reject any or all digital files and CD-Rs. At the end of that period, AHC will notify the vendor of necessary rework. The appropriate photo materials will be shipped to the vendor to perform the rework within twenty-five business days of request. Upon receipt, AHC will re-inspect rework.

The vendor should expect to process approximately 1660 photographs per month for a period of six (6) months. All rework requested by AHC must be accommodated by the vendor in addition to the regularly scheduled production.

5.0 Project Responsibilities Arkansas History Commission

5.1 Shipping of Photo Materials to Vendor

AHC project staff will be responsible for selecting, preparing, and shipping to the vendor 10,000 photographs divided into six (6) monthly shipments.

Photo materials will be sorted and packed by AHC. A detailed packing slip will be included with each shipment listing all items shipped. Each box will be clearly labeled.

Costs associated with the normal shipping and handling of photo materials to the vendor will be borne by AHC. AHC will reimburse the vendor for the cost of normal return shipping of photo materials. The vendor will bear the costs of additional shipping and reshipping of photo materials associated with any requested rework.

AHC will supply the vendor with written instructions for any special processing of the photographic materials contained within a shipment

5.4 Receipt of Photo Materials from Vendor

Upon the return of the photographic materials to AHC by the vendor, AHC will compare the materials received to a copy of the detailed packing list. AHC will immediately notify the vendor of any discrepancies.

5.5 Testing and Calibration

Prior to the start of formal production, the vendor will process a sample of photographic materials provided by AHC, and create digital files for review and testing by AHC on its network systems. The vendor will work with AHC to refine scanner settings, scanning techniques, choice of calibration targets, compression standards, image gamma, TIFF header content, etc.

In order to control the shipments photographic materials, production and delivery of image files, inspection, notification of rejected work, rework, re-inspection, and final sign-off by AHC, the vendor and AHC will mutually agree to the format of a worksheet for recording all project activity and to serve as a basis for packing lists.

5.6 Inspection of Digital Products

AHC will inspect all digital files and CD-Rs delivered by the vendor. The inspection will be recorded on a form. The image files will be expected to fully comply with the digital image standards described in this RFP and secondary standards agreed to by the vendor and AHC during the period of pre-production testing and calibration. The visual appearance and technical composition of each image file will be assessed. The volume, directory, file names, TIFF image file headers, CD-RS, etc. will be inspected.

AHC will request from the vendor a replacement for any digital products not passing inspection for any reason. The vendor will make all necessary adjustments, reproduce the products and return them to AHC at the vendor's expense.

6.0 Project Responsibilities Vendor

6.1 Testing and Calibration

Prior to the start of formal production, the vendor will process a sample of photographic materials provided by AHC, and create digital files for review and testing by AHC. The vendor will work with AHC to refine scanner settings, scanning techniques, choice of calibration targets, compression standards, image system gamma, TIFF header content, etc. The results of these tests as agreed to by the vendor and AHC will become part of the quality standards for all deliverables.

In order to control the shipments of photographic materials, production and delivery of image files, inspection, notification of rejected work, rework and re-inspection, and final sign-off by AHC, the vendor and AHC will mutually agree to the format of a worksheet for recording all project activity.

6.2 Receiving Material from AHC

The vendor will acknowledge receipt of each item in a shipment, using a copy of the packing slip. If any discrepancies to the packing slip are found, or notations or instructions for processing are problematic, the vendor will notify AHC immediately.

6.3 Storage and Handling of Materials

All materials will be stored by the vendor in a secure, dry, fireproof location. The vendor should take great care in handling the fragile photographic materials. Scanning operators should wear cotton gloves while handling photo materials. The scanning environment should be clean. No food or drink should be allowed near the photo materials.

Vendor is responsible for insuring AHC materials on his site at \$10.00 per image with a maximum of 3500 on site. Break out insurance on bid form.

6.4 Return of Materials to AHC

Photo materials will be sorted and packed by the vendor in a secure, orderly manner. A copy of the original detailed packing slip will be included with each box listing all items received and returned. Each package will be clearly labeled.

AHC will reimburse the vendor for the cost of the normal return shipping of photo materials. AHC will not reimburse the vendor for any shipping costs associated with rework.

The vendor will deliver photo materials and digital image products to:

Lynn Ewbank
Arkansas History Commission
One Capitol Mall
Little Rock, AR 72201
Phone: 501 682-6896 Fax: 501 682-6916
Email: lynn.ewbank@mail.state.ar.us

6.5 Scanning Procedures

Vendor will ensure that the scanning system is free of dust and other distorting materials, that the optical elements of the scanning system are clean, that the scanning system maintains calibration throughout all production, and that appropriate calibration targets are used.

Using a scanner or digital camera, the vendor will digitize each photographic negative or print to render a gray scale positive image. Because of the fragile nature of the photo materials, all material will be placed manually on the scanner platen or camera copy board. Automatic document feeders will not be used.

Prior to scanning, the vendor will carefully remove all dust from the photographic material. Cleaners or solvents should not be used on the photographic materials without prior permission of AHC. Scanning operators should wear archival quality gloves while handling photo materials. The scanning environment should be clean. No food or drink should be allowed near the photo materials.

Each photographic artifact is housed separately in an envelope. The vendor will be responsible for returning the photographic artifact to the appropriate envelope.

6.6 Vendor Inspection of Images

The vendor will inspect each digital image to assure that each photographic artifact is correctly rendered and meets all image standards specified in this RFP and negotiated with AHC during the period of testing and calibration. Inspection data shall be recorded on a worksheet accompanying each lot of photographic materials.

As encountered, the vendor will report to AHC problem photographic material that cannot be captured to meet specifications in order to reach a reasonable solution to processing problems prior to the scheduled delivery of digital images to AHC.

7.0 Digital Image Standards

For each photographic artifact, the vendor will create four (4) digital image files for delivery to AHC.

7.1 Archival File

The original digital file from the scanning process will be saved as an archive file in uncompressed TIFF 6.0, 8 bit gray scale format. No lossless compression will be used.

The file will be captured with a true optical resolution such that the image file will contain 4000 pixels (plus or minus 10 pixels) along the long dimension of the photograph whatever the physical dimensions of the original photograph. The short pixel dimension of the image will be proportionate to the short dimension of the photograph.

The image will be captured in the portrait or landscape format of the original photograph oriented so that the top, left and right sides of the image are appropriate for viewing. Scans of negatives should be oriented as would a proper print of the negative. There will be no apparent skew to the image unless the original photograph was significantly skewed. For original prints and negatives, each scan should capture all of the image content of the photograph without including non-image bearing print borders or edges of the negatives. For copy negatives, each scan should capture all of the image content of the photographic artifact being copied without including non-image bearing print borders of the original photographic artifact or of the copy negative itself.

Visually, the image should be appealing with a plausible rendering of fine detail and tones in the light, middle and dark portions of the image as would be apparent in a well made traditional photographic print. Photographic negatives will be rendered as positive images with similar attributes.

The histogram of the Archive 8 bit image file should contain all gray scale values from 0 to 255. The histogram should not show clipping of the black or white values but approximately .4% pixels (four tenths of one percent) should fall on average into the gray scale values of 0 and 255. No gray scale values should be missing from the interior of the histogram. No gray scale values should be overly compressed in the digital image.

For scans made from photographic materials containing flaws such as missing emulsion, tears, limited tonal range due to fading, etc., the vendor will make the scan so that the substantive portion of the image is rendered with a proper visual tonal range and histogram. For example, the histogram of a scanned negative missing some emulsion could appropriately contain a great number of black (gray scale value of 0) pixels related to the areas of missing emulsion. The tonal scale of scans of faded, low-contrast images should be adjusted to reveal as much image detail as possible and restore a plausible amount of contrast as would appear in a well-made print. Generally, all tonal values between 0 and 255 will be present.

There should be no moiré patterns, digital artifacts such as dropouts, or any other distorting elements. There should be no visual artifacts in the image files caused by the lighting system used in the scanning system. Dust and particles removable from the photograph should not appear in the image file.

The scans should be made at true optical resolution required for the archive file. In no case are lower resolution scans to be resampled or resized to increase the nominal resolution to that required.

The scan and all adjustments of white and black points, brightness, contrast, and tonal transformation scales will be done to full resolution working image files in a 12 bit (or greater) gray scale mode. After all tonal adjustments to the working image file have been made, the file will be saved as an uncompressed 8 bit gray scale TIFF file.

No "sharpening~, of the working or archive image files will be performed. No digital "retouching~, despeckling, or noise removal will be done to an image file.

7.2 Display File

The display file will be made from the final archive file by compressing and storing it in the JPEG format. Compression on the order of 12 to 1 is expected, but the appropriate JPEG compression settings will be determined by the vendor and AHC during initial testing prior to formal production.

7.3 Access File

The access file will be made from the final archive file, resized to be 640 pixels on the long dimension with the short dimension resized to maintain original proportions. The file will be compressed and stored in a JPEG format. Compression on the order of 12 to 1 is expected, but the appropriate JPEG compression settings will be determined by the vendor and AHC during initial testing prior to formal production.

7.4 Thumbnail File

The thumbnail file will be made from the final archive file, resized to be 160 pixels on the long dimension with the short dimension resized to maintain original proportions. The file will be compressed and stored in a JPEG format. Compression on the order of 12 to 1 is expected, but the appropriate JPEG compression settings will be determined by the vendor and AHC during initial testing prior to formal production.

7.5 Delivery Media

The vendor will deliver two copies of all digital image files to AHC on CD-R media of the highest archival quality. AHC will specify the two different brands of CD-R to be used and will reimburse the vendor for all CD-Rs used for delivery of image files.

8.0 Volume Naming, File Naming, And File Header Standards

The vendor will assure that all CD-R volume names, directories, and image file names meet ISO 9660 conventions. Lowercase letters should be uniformly used in naming volumes, directories and files. The vendor and AHC will agree to all naming schemes in writing prior to start of production.

For individual image files that have an innate sequence, or for which it may be desirable to process in an ordered manner, the vendor will pad initial leading zeros as requested by AHC. This will insure that the documents will sort as expected utilizing the natural sort order of ASCII-based computer systems.

8.1 TIFF File Header Specifications

The vendor will not assume that generated TIFF files have proper default values in the TIFF header fields. An error could affect the ability of TIFF readers to properly display the files. During the period of pre-production testing and calibration the vendor and AHC will determine which TIFF file fields should be used and possibly modified by the vendor at time of image capture:

AHC may also require additional information recorded in the TIFF header such as: Date and Time of Scan, Copyright or Source Statement, and Image Description.

8.2 Inspection of TIFF file Header

The vendor will inspect the TIFF headers. The TIFF headers will be read through a TIFF viewer capable of displaying the headers to ensure that all the information is readable and there will be no error messages indicating inaccurate entry of data, When necessary, the vendor will make corrections to ensure that TIFF headers are accurate.

9.0 Content Of Proposals

The narrative of the proposals should be not exceed 15 pages. Attachments required by this RFP are in addition to this. At a minimum a proposal should contain the following:

9.1 Business Summary

Provide a brief business history of your company including statement of ownership, years in the business, the number of full and part time employees, D&B and Federal tax numbers. Include a current financial statement or bank reference.

9.2 Key Personnel and Technical Support

Describe the qualifications and imaging experience of the staff assigned to this project.

Attach the resumes of imaging staff and other key personnel.

9.3 Vendor Facilities

Where are the digitization and image processing facilities located? Describe the scanning facility and environment. Attach photographs of the scanning facilities showing equipment, surrounding area, and ambient lighting. Any post capture image processing areas should also be illustrated.

How will AHC's photographic materials be stored while on your premises? Describe your secure, fireproof, and waterproof storage. Can the vendor provide insurance for AHC materials on his site at \$10.00 per image with a maximum of 3,500 images. Break out insurance on bid form.

9.4 Shipping Containers

Can you provide secure, waterproof shipping containers for the photo materials between AHC and the vendor and return? What brand are they? If not, where may AHC purchase such containers?

9.5 Digital Image Standards

Discuss the visual and technical image standards requested in this RFP. How and why will your images be of superior quality to your competitors both in appearance and functionality (i.e. access to contact for historical researchers)? Do you have alternatives to suggest?

9.6 Scanning and Image Processing Techniques

Discuss the processing procedures requested in this RFP. Do you have alternatives to suggest? Describe any special scanning techniques you will employ.

Describe the hardware (including brand and model, true optical resolutions, dynamic range, etc.) and software to be used for the processing of AHC photographs. What scanner (camera) will be used for the 2 ¼ negatives, the 4x5 and 5x7 sheet film, and the prints. AHC's 2 ¼ film negatives will need to be scanned at approximately 2000 dpi true optical resolution. How will you accomplish this?

Describe procedures for calibrating the scanning and image processing systems including monitors. What calibration targets will be used for this project? Describe color management procedures employed for the equipment.

The various versions of the image files created during this project will be used for multiple purposes. It is anticipated that the Archive file will be used as a source for half tone printing and digital photo murals, and that the Access and Thumbnail files will be used to provide Internet access to the public and low resolution printing on both Mac and PC platforms. Discuss the concept of "gamma~ as it affects the use of the image files for multiple uses and platforms. If it proves desirable to save the different versions of the image files with different gammas, describe the software procedure for changing the gamma settings.

What JPEG compression engine will be used?

Do you have the ability to deliver "raw~ 12 bit(or more) unadjusted image files? If such files are requested in addition to the files specified in this RFP, what will be the cost to AHC?

9.7 Image File Headers

Explain how you will record or modify information in the TIFF header for an image file. Describe the software used. Describe your quality assurance procedures for making the file headers. What viewer can you provide to AHC for inspecting TIFF header contents?

What information can be carried over from a TIFF file header to a JPEG file header? What information is lost? Do you have a utility for modifying JPEG headers?

9.8 Quality Assurance

Describe your procedures for inspecting and correcting image scans and derivative files. How will you inspect the CD-Rs after recording?

9.9 Vendor Production Schedule

Describe how you will meet the requested production schedule of 10,000 photographs during a six (6) month period. Do you have the capacity to process as many as 3000 additional photographs either during the six month period of the contract or during the two months immediately following the production of the first 10,000 photographs? How will you schedule rework?

9.10 Exceptions to RFP

Provide a list and explain the benefits of all exceptions taken to this RFP. An exception is defined as the vendor's inability to meet or desire to provide an alternative to the requirements specified in the RFP.

9.11 Warranties Provided

What warranties of work will you provide?

9.12 References

Please provide three (3) or more customer references including contact name, phone number, and a brief description of work performed. These references should be for products and services comparable to those requested in this RFP. If work product of references is on the Internet, list address. Use Attachment E: References form.

9.13 Insurance

Vendor is responsible for insuring Arkansas History Commission materials on his site at \$10.00 per image with a maximum of 3,500 on site. Break out insurance on bid proposal.

9.13 Prices for Scanning and Derivative Image Files

The item price bid by the vendor for each photographic print or negative processed should include the total cost to AHC for scanning, creation of all required derivative digital images files, image file header creation or modification, and recording of all image files to compact disk. In addition to payment for scanning services, AHC will reimburse the vendor for the actual cost of normal shipping of photographic materials and work products, cost of recordable compact disks used, and miscellaneous expenses approved by AHC. The vendor must bear the costs of any shipping associated with any rework requested by AHC.

AHC expects the vendor to process a minimum of 10,000 photographic items and may ask that the vendor process as many as 3,000 additional items at the same price.

Use the form in Attachment C for submitting bid prices in a seal envelope. If the vendor expects to be compensated for any other goods or services, explicitly state and explain these charges in the proposal.

10.0 Attachments to Proposal

The proposal should also include as attachments:

Attachment B: Rights Over Products (endorsed)

Attachment C: Prices For Scanning And Derivative Image Files
(endorsed)

Attachment D: Capability to Provide Digital Prints

Attachment E: References
Resumes of key staff including scanner operators
Test samples of image files on CD-RS.
Photographs of scanning facilities

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 23

**Attachment A:
Notification Of Intention To Bid
Fax Response Form**

Fax this form no later than **4:30 PM Central Standard Time, February 15, 2000** indicating whether you intend to respond to this RFP.

Vendor name _____

Mailing address _____

Phone Number _____

Fax Number _____

Email Address _____

___ Yes, I understand the requirements of AHC's RFP and will respond to it.

___ No, I will not respond to AHC's RFP.

Signature _____ Date _____

Printed name and title

Fax this form to:

RFP # 00-0796 Scanning of Photographic Materials (AHC)
Office of State Purchasing
Arkansas Department of Finance and Administration
1509 West Seventh Street, 3rd. Floor
Little Rock, AR 72202

Issuing Officer - Gerald Congleton, (501) 324-9316
FAX # (501) 324-9361

**Attachment B:
Rights Over Products**

ASSIGNMENT OF RIGHTS

The vendor understands that any work subject to copyright which the vendor creates in the course of the work related to this RFP constitutes "work for hire" as defined in 17 U.S.C. Section 201(b) of the federal Copyright Act and all ownership rights to such work belong to AHC. Should such work not constitute a "work for hire" under copyright law, the vendor hereby grants, transfers, assigns and conveys to AHC and its successors and assigns, the entire right, title and interest in the work or any part thereof, including but not limited to the right to reproduce, to prepare derivative works, to distribute by sale, rental, lease, lending or other transfer; to perform publicly, and to display the work, as well as the right to secure copyrights or patents and renewals, reissues, and extensions of any such copyrights or patents in the United States of America or any foreign country. Whether a copyright in the work will be maintained or registered in the United States of America or any foreign country will be at the sole discretion of AHC. The vendor agrees to cooperate fully with AHC in the preparation and execution of all documents necessary or incidental to this assignment and the protection and preservation of rights herein granted to AHC.

Vendor

Signature

Date

Printed name and title

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 25

**Attachment C:
Prices for Scanning and Derivative Image Files**

AHC expects the vendor to process a minimum of 10,000 of the items listed below and may ask that the vendor process some or all of the remaining 3,000 listed items at the same item price.

Collection	Number of Items	Photo Material	Item Price* Bid
Persistence of the Spirit	Approx. 600	4x5 b&w copy negatives modern film stock made mid 1980s excellent condition	_____
Ernie Deane	Approx. 9500	cut 2 ¼ roll film (mostly 1 image per strip) b&w negatives made 1950 to 1970 excellent condition	_____
Barbers	Approx. 2300	small b&w prints 2x3-5x7 made 1937 to 1987 good condition	_____
Shrader studio portraits	Approx. 500	4x5 and 5X7 nitrate negatives most flat, some wavy emulsion flaking on some made 1933 to 1950	_____
Central High Integration	Approx. 30	b&w prints as large 8x10 several 4x5 copy negs	_____

Vendor

Signature Date

Printed name and title

NOTE: Place attachment C in a sealed envelope included in proposal packet.

**Attachment D:
Capability to Provide Digital Prints**

The response to this question will not effect the award of bid under this RFP in any way. AHC is interested only in identifying potential vendors for supplying digital prints.

AHC intends to sell high quality prints made from its image files and is interested in identifying vendors with the capability for providing such prints upon demand.

Do you have an interest in or capability for making high quality prints from AHC's image files? _____

Describe printing hardware and software that will be used.

Vendor

Attachment E
References

Submit at least three references.

Organization _____ Contact _____

Telephone _____ E-mail _____

Description of work performed _____

Internet address _____

Organization _____ Contact _____

Telephone _____ E-mail _____

Description of work performed _____

Internet address _____

Organization _____ Contact _____

Telephone _____ E-mail _____

Description of work performed _____

Internet address _____

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 28

Attachment F
Key Dates for Request for Proposal

February 8, 2000

Office of State Purchasing will fax, e-mail, or mail RFP to potential vendors. Bid Advertise in Arkansas Newspaper.

February 15, 2000

Vendor notifies Office of State Purchasing Buyer by fax indicating whether it will be responding to this RFP and wishes to receive sample photographs for scanning tests.

February 16, 2000

Arkansas History Commission will supply bidders with sample photo materials and accompanying instructions for a test of the vendor's scanning capabilities.

February 22, 2000

Last date for bidding vendors to submit written questions concerning RFP by fax or email to Office of State Purchasing Buyer.

February 24, 2000

Written question response submitted to Vendors.

March 3, 2000, 1:30 pm bids Received and Public Opening

Vendors deliver their complete proposal to the Office of State Purchasing.

SECTION 50 GENERAL TERMS AND CONDITIONS

50.1 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.

50.2 Ethical Standards Law

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

50.3 Conflict of Interest

No official or employee of the Arkansas History Commission 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.

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 Department of Finance and Administration.

50.4 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, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business. 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.

50.5 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, except for retention of bonafide employees, or bona fide established commercial selling agencies maintained by the contract for the purpose of securing business.

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 offerer, his agent, or employee.

50.6 Employment of State Personnel

A. 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.

B. 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;

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 31

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

C. Disqualification of Partners

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

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

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 32

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

D. Selling to 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.

50.7 Term of the Contract

The contract period begins March, 2000 and terminates on March, 2001.

50.8 Termination of Contract

The contract resulting from this invitation for bid shall be subject to the following termination provisions. The contract may be terminated by the state:

- * For default
- * For convenience
- * For unavailability of funds

50.9.1 Termination For Default

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

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.

50.9.2 Termination for Convenience

The State may terminate performance of work under the contract in whole or in part whenever the State shall reasonably determine that such termination is in the best interest of the State.

Upon receipt of notice of termination for convenience, the contractor shall be paid the following:

- * At the contract price(s) for completed deliverables delivered to and accepted by the State
- * At a price mutually agreed by the contractor and the State for partially completed deliverables.

50.9.3 Termination for Unavailability of Funds

In the event that Federal and/or State funds for the contract become unavailable, the State shall have the right to terminate the contract without penalty and upon the same terms and conditions as a termination for convenience. Availability of funds will be determined at the sole discretion of the State.

50.9.4 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.

50.9.5 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.

50.10 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 State of Arkansas.

50.11 Force Majeure

The contractor will not be liable for any excess cost to the State of Arkansas 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 Arkansas History Commission or the Director of the Office of State Purchasing who shall reduce his/her decision to writing and serve a copy on the contractor. The Director's or Arkansas History Commission decision 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 Director's or the Arkansas History Commission direction.

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 Arkansas History Commission or the Office of State Purchasing, 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.

50.16 Subcontracts

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

The contractor may, with the consent of the State, 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 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 contractor, its officers, employees, or subcontractors in the performance of the contract.

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 38

- * 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 therefrom without the prior written consent of the Contract Administrator.

50.19 Employment Practices

The contractors 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.

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 39

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 thereunder, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973 as amended.

50.20 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.

50.21 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.

50.22 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.

50.23 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.

50.24 Environmental Protection

The contractor shall be in compliance with all applicable standards, orders, or requirements issued under Section 305 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clear Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities. The contractor shall report violations to both the State of Arkansas and to the U.S. EPA Administrator for Enforcement.

50.25 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.

50.26 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.

50.27 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.

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 41

SECTION 60 PROCUREMENT

60.1 Rules of Procurement

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

60.2 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. Respondents wishing to submit questions and requests for clarification should mail or fax all such correspondence to the Issuing Officer, as outlined in the Anticipated Procurement Timetable (Section 10.5)

60.4 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 sent to all organizations requesting copies of the request for proposals.

60.5 Cost of Preparing Proposals

Costs for preparing the proposals are solely the responsibility of the respondents. The State of Arkansas 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.

60.6 Disposition of Proposals

All proposals become the public property of the State of Arkansas and will be a matter of public record subject to the provisions of Act 482 of 1979, as amended by Act 600 of 1981 and Acts 517 and 760 of 1983, Arkansas Purchasing Law. 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 subject to the provisions of Arkansas Code Annotated, Sections 25-19-101 et seq. The State of Arkansas 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.

60.7 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, the State will not accept any amendments, revisions, or alterations to the request for proposals after the proposal due date.

60.8 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.

60.9 Evaluation of Proposals

Proposals will be evaluated in three 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 nonresponsive. Any proposal that is incomplete may be rejected by the State. However the State may waive minor irregularities. This phase is completed by the Office of State Purchasing.

The second phase will be based on evaluation of the Technical/Business proposal by an impartial committee appointed by the Arkansas History Commission. 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 respondent whose proposal receives the highest cumulative point total.

The third phase will be the opening of the cost proposal by the Office of State Purchasing , and review by the Office of State Purchasing. The awarding of points will be determined by the following formula: $a/b \times c = d$ (Dividing lowest price (a) by the next lowest price (b) and multiplying by the total points for cost (c) will equal the number of cost points awarded (d). The effect of the formula is to insure that the lowest proposal receives the maximum number of points and each of the other proposals receive proportionately fewer points based on proposed bid price.

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 43

60.10 Award Notice

The notice of intended contract award will be sent to all respondents, by certified mail, return receipt requested.

60.11 Protest of Award

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

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 44

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 Purchasing 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.

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 45

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 Purchasing 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.

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 46

15. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Purchasing. 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 Purchasing 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 Purchasing 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.

STATE OF ARKANSAS
REQUEST FOR PROPOSAL

BID NO: RFP-00-0796

PAGE 47

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.