



Request for Proposal (RFP)
RFP No. 062121
Energy Savings Performance Contract Financing

RFP RELEASE DATE: June 21, 2021

PROPOSAL DUE DATE: July 13, 2021*
PROPOSAL DUE TIME: 10:00 AM CST*
BID OPENING EVENT: 2:30 PM CST

SUBMIT ALL PROPOSALS TO: **By USPS:**
University of Arkansas – Business Services
UPTW Room 101
1 University of Arkansas
Fayetteville, AR 72701

By FedEx, UPS or another private carrier to Physical Location:
University of Arkansas – Business Services
UPTW Room 101
1001 East Sain Street
Fayetteville, AR 72703

Signature Required For Proposal

Respondent complies with all articles of the Standard Terms and Conditions documents as counterpart to this RFP document, and with all articles within the RFP document. If Respondent receives the University's purchase order, Respondent agrees to furnish the items and/or services listed herein at the prices and/or under the conditions as indicated in the RFP.

Respondent Name:	
Mailing Address:	
City, State, Zip:	
Telephone:	
Email:	

Authorized Signature: _____

Date: _____

Typed/Printed Name of Signor: _____

Title: _____

***Under no circumstances will late bids be accepted. Failure to deliver by overnight carriers or other such methods shall not be taken into consideration. Bids MUST arrive and be time-stamped by the Procurement Office, located at:**

University of Arkansas – Business Services
UPTW Room 101
1001 East Sain Street
Fayetteville, AR 72703

prior to the due date/time specified in the RFP. RESPONDENT NAME, RFP NUMBER, AND PROPOSAL DUE DATE MUST BE CLEARLY NOTED ON OUTSIDE OF PACKAGE IN ORDER FOR BID TO BE ACCEPTED.

COVID-19 TEMPORARY CONSIDERATIONS:

- Under current circumstances and restrictions with COVID-19, packages delivered directly:

By USPS:

University of Arkansas – Business Services
UPTW Room 101
1 University of Arkansas
Fayetteville, AR 72701

By FedEx, UPS or another private carrier to Physical Location:

University of Arkansas – Business Services
UPTW Room 101
1001 East Sain Street
Fayetteville, AR 72703

- In the event the University is closed to the public during a scheduled bid opening event, virtual access will be provided. Information on joining a virtual bid opening will be posted on [HogBid](#) prior to the bid opening date.
- Login access details will be furnished prior to the RFP opening event in the form of an Addendum which will be posted on HogBid.

INTERGOVERNMENTAL/COOPERATIVE USE OF COMPETITIVELY BID PROPOSALS AND CONTRACTS:

In accordance with Arkansas Code Annotated § 19-11-249, any State public procurement unit, including any University of Arkansas System campus or unit, may participate in any contract resulting from this solicitation with a participating addendum signed by the contractor and approved by the chief procurement officer of the procurement agency issuing this solicitation.

MINORITY AND WOMEN-OWNED BUSINESS (MWOB) POLICY:

It is the policy of the State of Arkansas to support equal opportunity as well as economic development in every sector. In accordance with the Minority and Women-Owned Business Economic Development Act, UA shall support to the fullest all possible participation of companies owned and controlled by minority persons and women in state-funded and state-directed public programs and in the purchase of goods and services to meet an annual goal of fifteen percent (15%) of the total expended.

Pursuant to Ark. Code Ann. § 19-11-229, 19-11-230 the State of Arkansas encourages all small, minority, and women owned business enterprises to submit competitive sealed bids and proposals for University projects. Encouragement is also made to all general contractors that in the event they subcontract portions of their work, consideration is given to the identified groups.

- A. Minority-Owned Business** is defined by Arkansas Code Annotated § 15-4-303 as a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons who are lawful permanent residents of the State of Arkansas:

- African American
- Hispanic American
- American Indian
- Pacific Islander American

- Asian American
- A Service-Disabled Veteran as designated by the United States Department of Veterans Affairs

B. Women-Owned Business is defined by Act 1080 of the 91st General Assembly Regular Session 2017 as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of the State of Arkansas.

C. Eligibility and Certification

The Arkansas Economic Development Commission (AEDC) conducts a certification process for minority-owned and women-owned businesses. Increase the opportunity for your minority or women-owned business to sell products and services to the State of Arkansas: <https://www.arkansasedc.com/community-resources/Minority-and-Women-Owned-Business-Enterprise-Resources/detail/get-certified>. Certification indicates that your company has undergone a review process to show that it is 51% or more owned, controlled and operated by a minority or woman as defined above. Certification is granted for two years and allows participation in the procurement process as a MWOB.

If certified, the Prospective Contractor's Certification Number should be included on the Proposal/Response Signature Page.

D. Recommended Resources

- Doing Business with UA
 - Vendor registration: <https://businessservices.uark.edu/doing-business-at-university.php>
- Doing Business with the State
 - Registering your company with the Office of State Procurement as a vendor allows you to do business with the State of Arkansas: <https://www.dfa.arkansas.gov/procurement/vendor-information/>
 - Arkansas Procurement Technical Assistance Center assists Arkansas small businesses to succeed in obtaining government contracts: <https://www.uaex.edu/business-communities/arkansas-ptac/default.aspx>

General Campus Background for University of Arkansas

Founded in 1871 as a land-grant institution, the University of Arkansas, Fayetteville Arkansas (UofA), is the flagship campus of the University of Arkansas System. Our students represent all 50 states and more than 120 countries. The UofA has 10 colleges and schools offering an internationally competitive education for undergraduate and graduate students in more than 200 academic programs. The UofA contributes new knowledge, economic development, basic and applied research, and creative activity while also providing service to academic and professional disciplines. As of Fall 2020, student enrollment totaled approximately 27,562. The faculty count totaled 1,564 and the staff count totaled 3,346. The UofA is one of the nation's top public research universities and the state's foremost partner and resource for education and economic development. Its public service activities reach every county in Arkansas, throughout the nation, and around the world. The Carnegie Foundation classifies the UofA as having "the highest possible level of research," placing us among the top three percent (3%) of colleges and universities nationwide.

1. DESCRIPTION AND OVERVIEW OF RFP

The Board of Trustees of the University of Arkansas, acting for and on behalf of the University of Arkansas Fayetteville (the UA) is seeking proposals from qualified financial institutions for a tax-exempt loan or lease (the "Loan") pursuant to the specifications, terms and conditions stated in this RFP ("Proposal").

The University of Arkansas will use the proceeds from the Loan issuance to assist in financing the implementation costs of Energy Conservation Measures (ECMs) to be provided by a qualified Energy Savings Performance Contractor (ESCO). The ESCO has already been chosen and the contract executed. The University selected Entegrity Energy Partners of Little Rock, Arkansas.

The UA is seeking to award financing to the firm that can provide the best overall value. This value will be determined by the UA based on the overall competence, compliance, pricing, format and presentation of each RFP response.

The data, specifications, and administrative requirements outlined herein are intended to serve as a general guideline for each proposal. Each firm is expected to submit a fully detailed proposal which adequately describes the advantages and benefits which the UA would realize by accepting its proposal.

2. SCOPE OF WORK

The UA is issuing this Request for Proposal ("RFP") to solicit proposals for a total principal amount of approximately \$11 million over a ten-year term provided by a qualified firm to assist the UA in the financing of our ECM implementation.

The Fayetteville Energy Conservation and Facility Improvements (ESPC 4) project is designed to reduce overall campus energy consumption and improve building energy efficiency across the University. The University placed the emphasis of the Investment Grade Audit (IGA) analysis primarily on high financial return/rapid payback energy conservation measures (ECMs).

A qualifying ECM can be any building related change or improvement that produces a measurable and verifiable reduction in consumption of energy or natural resources or a reduction in operating and maintenance costs. Typical examples can include, but are not limited to lighting upgrades, improvements to insulation, doors and windows, installation of variable speed motors & drives, changes in building operations, water reduction strategies and installation of renewable energy projects.

The project will consist primarily of new energy efficient LED Lighting, building envelope improvements, retro-commissioning (utilizing existing HVAC controls and equipment to optimize building performance), and HVAC equipment upgrades.

The overall project is sub-divided and budgeted by User Groups, which include Athletics, Bookstore, Campus Dining, Campus E&G, Transit, Arkansas Union and Utilities. Each User Group has their own individual scope of work, capital requirement and guaranteed savings and the associated debt service for any financing. A requirement of the University was that each User Group must stand alone financially so that no user group is subsidizing another.

This financing will be a general obligation of the Board of Trustees, back up by the guaranteed savings generated by the project supplemented by other revenues generated across the different User Groups. This will not be parity debt.

We would anticipate we would need funds to be available for drawdown by the end of July, or early August 2021.

3. COSTS / PRICING

Please provide a description of the interest rate structure and any fees on the Official Bid Price Sheet provided within this RFP document (**see Appendix I**).

Any additional pricing lists should remain attached to the Official Price Sheet for purposes of accurate evaluation. Pricing must be valid for 90 days following the bid response due date and time. The UA will not be obligated to pay any costs not identified on the Official Price Sheet. The respondent must certify that any costs not identified by the respondent, but subsequently incurred in order to achieve successful operation of the service, will be borne by the respondent. Failure to do so may result in rejection of the bid.

4. **RESPONDENT REFERENCES**

Respondents must provide a minimum of three (3) references, preferably in higher education, (including the organization's name, address, persons to contact, telephone numbers, and email addresses) located in the continental United States currently served by respondent. References are to be parties who can attest to the qualifications relevant to providing services requested. The UA reserves the right to contact any references provided to evaluate the level of performance and customer satisfaction. **See Appendix II for format.**

5. **INTENTIONALLY OMITTED**

6. **RESPONDENT'S RESPONSIBILITY TO READ RFP**

It is the Respondent's responsibility to thoroughly examine and read the entire RFP document, including any and all appendices. Failure of Respondents to fully acquaint themselves with existing conditions or the amount of goods and work involved will not be a basis for requesting extra compensation after the award of a Contract. This engagement is separate from any other engagement bidder may be currently pursuing with the University of Arkansas. Interpretation by and of the University of Arkansas is final.

7. **PROJECTED TIMETABLE OF ACTIVITIES**

The following schedule will apply to this RFP, but may change in accordance with the UA's needs:

June 21, 2021:	RFP released to prospective respondents
June 28, 2021:	[5:00 PM] CST - Last date/time UA will accept questions
July 6, 2021:	Last date UA will issue an addendum
July 13, 2021:	Proposal submission deadline 10:00 AM CST
July 13, 2021:	Bid Opening Event 2:30 PM CST
	Note: Attendance at RFP opening is not required. No award will be made. Only names of respondents, and a preliminary determination of proposal responsiveness, will be made at this time.
TBD	Respondent Presentations (if necessary)
TBD	Notice of Intent to Award
Upon Intent to Award TBD*	Contract Negotiations Begin (upon intent to award)
Upon Contract Approval:	Service to Commence (upon final legislative approval, if applicable)

*UA places a value on all elements of this RFP. As such, after evaluation of Proposals and selection of Contractor(s), the UA reserves the right to further negotiate with the selected respondent on any or all elements, and to award accordingly.

Closing cannot be before the Economic Feasibility Review by the Arkansas Higher Education Coordinating Board. Next scheduled dates of regular meetings are July 30 and October 29, 2021.

8. **CONTRACT TERM AND TERMINATION**

The term ("Term") of any resulting contract will be for a period beginning from the date of Contract award. Term will be as described in Section 2.

a) If at any time the services become unsatisfactory, UA will give thirty (30) days written notice to the Contractor. If at the end of the thirty (30) day period the services are still deemed unsatisfactory, the Contract shall be cancelled by UA, Office of Business Affairs. Additionally, the Contract may be terminated, without penalty, by UA without cause by giving thirty (30) days written notice of such termination to Contractor.

b) Upon award, the agreement is subject to cancellation, without penalty, either in whole or in part, if funds necessary to fulfill the terms and conditions of this Contract during any biennium period of the Term (including any renewal periods) are not appropriated.

c) In no event shall such termination by UA as provided for under this section give rise to any liability on the part of UA, its trustees, officers, employees or agents including, but not limited to, claims related to compensation for

anticipated profits, lost business opportunities, unabsorbed overhead, misrepresentation, or borrowing. UA's sole obligation hereunder is to pay Contractor for services ordered and received prior to the date of termination.

The terms, conditions, representations, and warranties contained in the Contract shall survive the termination of the Contract.

9. GENERAL INFORMATION FOR RESPONDENTS

9.1 Distributing Organization

This RFP is issued by the Office of Business Affairs at UA. The University Purchasing Official is the sole point of contact during this process. Only written communication is considered formal and can be supported throughout this process.

Respondent Questions and Addenda: Respondent questions concerning all matters of this RFP should be sent via email to:

Ellen Ferguson, Sr. Procurement Coordinator
Office of Business Affairs
ellenf@uark.edu

Questions received via email will be directly addressed via email, and compilation of *all* questions and answers (Q&A), as well as any revision, update and/or addenda specific to this RFP solicitation will be made available on HogBid, the UA bid solicitation website: <http://hogbid/>. During the time between the bid opening and contract award(s), with the exception of Respondent's questions during this process, any contact concerning this RFP will be initiated by the issuing agency and not Respondent. Specifically, the persons named herein will initiate all contact.

Respondents shall not rely on any other interpretations, changes, or corrections. It is Respondent's responsibility to thoroughly examine and read the entire RFP document and any Q&A or addenda to this RFP. Failure of Respondents to fully acquaint themselves with existing conditions or information provided will not be a basis for requesting extra compensation after the award of a Contract.

9.2 Agency Employees and Agents

Contractor shall be responsible for the acts of its employees and agents while performing services pursuant to the terms of any Contract. Accordingly, Contractor agrees to take all necessary measures to prevent injury and loss to persons or property while on the UA premises. Contractor shall be responsible for all damages to persons or property on and off campus caused solely or partially by Contractor or any of its agents or employees. Contractor's employees shall conduct themselves in a professional manner and shall not use UA's facilities for any activity or operation other than the operation and performance of services as herein stated. UA reserves the right to deny access to any individual. The following conduct is unacceptable for Contractor's employees and agents: foul language, offensive or distasteful comments related to age, race, ethnic background or sex, evidence of alcohol influence or influence of drugs, refusal to provide services requested, refusal to make arrangements for additional services needed and general rudeness. Contractor shall require standard criminal background checks on all employees of the Contractor's business in advance of the performance of any on-campus duties. Employees whose background checks reveal felony convictions of any type are to be either removed from all support activities on the UA campus or reported to UA for review and approval in advance of the performance of any on-campus duties.

9.3 Tobacco Free Campus

Smoking and the use of tobacco products (including cigarettes, e-cigarettes, cigars, pipes, smokeless tobacco, and other tobacco products) by students, faculty, staff, contractors, and visitors, are prohibited at all times on and within all property, including buildings, grounds, and facilities, owned or operated by UA, including all vehicles on UA property.

9.4 Disputes

Contractor and UA agree that they will attempt to resolve any disputes in good faith. Contractor and UA agree that the State of Arkansas shall be the sole and exclusive jurisdiction and venue for any litigation or proceeding that may

arise out of or in connection with any Contract. The Respondent acknowledges, understands and agrees that any claims, demands, suits, or actions for damages against UA may only be initiated and pursued in the Arkansas Claims Commission, if at all. Under no circumstances does UA agree to binding mediation or arbitration of any disputes or to the payment of attorney fees, court costs or litigation expenses.

9.5 Conditions of Contract

Contractor shall at all times observe and comply with federal and Arkansas State laws, local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of the Contract which in any manner affect the completion of work. Contractor shall indemnify and hold harmless UA and all its trustees, officers, employees, volunteers, students, and agents against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the Contractor.

To the extent Contractor shall have access to, store or receive student education records, Contractor agrees to abide by the limitations on use and re-disclosure of such records set forth in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and 34 CFR Part 99. Contractor agrees to hold student record information in strict confidence and shall not use or disclose such information except as authorized in writing by UA or as required by law. Contractor agrees not to use the information for any purpose other than the purpose for which the disclosure was made. Upon termination, Contractor shall return all student education record information or provide evidence that it was destroyed within thirty (30) days.

When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. Contractor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that system meets the statutory requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2019 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2019 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, CONTRACTOR SHALL EXPRESSLY REPRESENT AND WARRANT to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template ("VPAT") or similar documentation to demonstrate compliance with 36 C.F.R. § 1194.21, as it existed on January 1, 2019 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2019 (web-based intranet and internet information and applications) that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

- Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means;
- Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
- After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
- Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
- Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;

- Integrating into networks used to share communications among employees, program participants, and the public; and
- Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

If the information technology product or system being offered does not completely meet these standards, the Respondent must provide an explanation within the VPAT detailing the deviation from these standards.

State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. If products are reasonably available that meet some but not all of the standards, the agency must procure the product that best meets the standards or provide written documentation supporting selection of a different product, including any required reasonable accommodations.

For purposes of this section, the phrase “equivalent access” means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired **shall** be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2019.

If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

9.6 Contract Information

Respondents should note the following regarding the State’s contracting authority and amend any documents accordingly. Failure to conform to these standards may result in rejection of Respondent’s bid:

A. The State of Arkansas may not contract with another party to perform any of the following:

1. Pay any penalties or charges for late payment or any penalties or charges which in fact are penalties for any reason.
2. Indemnify or defend that party for liability or damages. Under Arkansas law UA may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from prospective damages.
3. Pay all sums that become due under a contract upon default.
4. Pay damages, legal expenses, attorneys’ fees or other costs or expenses of any party.
5. Conduct litigation in a place other than the State of Arkansas.
6. Agree to be subject to or bound by governing law, jurisdiction, or venue of any state, country or province other than the State of Arkansas.
7. Agree to any provision of a contract that violates the laws or constitution of the State of Arkansas.

B. A party wishing to contract with UA should:

1. Remove any language from its contract which grants to it any remedies other than:
 - The right to possession.
 - The right to accrued payment.
 - The right to expenses of de-installation.
2. Include in its contract that the laws of the State of Arkansas govern the contract and that the State of Arkansas is the exclusive jurisdiction and venue for any and all claims, disputes, actions or suits between the parties or related to the Contract.
3. Include in its Contract that the UA is an instrumentality of the State of Arkansas entitled to sovereign immunity from suit and that all claims, demands, suits, or actions for loss, expense, damage, liability or other

relief, either at law or in equity, against UA or its trustees, officers, employees, volunteers, students, agents or designated representatives acting within the official scope of their position, must be brought before the Claims Commission of the State of Arkansas.

4. Include in its Contract all other terms and conditions stated in this RFP.
5. Acknowledge in its contract that contracts become effective when awarded by UA Purchasing Official.

9.7 Reservation

This RFP does not commit UA to award a contract, to pay costs incurred in the preparation of a Proposal to this request, or to procure or contract for services or supplies. UA reserves the right to accept or reject (in its entirety), any Proposal received as a result of this RFP, if it is in the best interest of UA to do so. In responding to this RFP, respondents recognize that UA may make an award to a primary Respondent; however, UA reserves the right to purchase like and similar services from other agencies as necessary to meet operation requirements.

9.8 Qualifications of Respondent

UA may make such investigations as deems necessary to determine the ability of Respondents to meet all requirements as stated within this RFP, and Respondent shall furnish to UA all such information and data for this purpose that UA may request. UA reserves the right to reject any bid if the evidence submitted by, or investigations of, such Respondent fails to satisfy UA that such Respondent is properly qualified to carry out the obligations of the Contract.

9.9 Non Waiver of Defaults

Any failure of UA at any time, to enforce or require the strict keeping and performance of any of the terms and conditions of the Contract shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair same, or the right of UA at any time to avail itself of same.

9.10 Independent Parties

Contractor acknowledges that under the Contract it is an independent contractor and is not operating in any fashion as the agent of UA. The relationship of Contractor and UA is that of independent contractors, and nothing in this contract should be construed to create any agency, joint venture, or partnership relationship between the parties.

9.11 Governing Law

This RFP, any resulting Contract and all performance thereunder, transactions and subsequent amendments thereto between Respondent(s) or Contractor(s) and UA shall be governed and construed in all aspects in accordance with the laws of the State of Arkansas without regard to its choice of law principles (including without limitation any and all disputes, claims, counterclaims, causes of action, suits, rights, remedies, promises, obligations, demands, and/or defenses related thereto that may be asserted by either party). The parties agree that the State of Arkansas shall be the sole and exclusive venue and jurisdiction for any litigation or proceeding that may arise out of or in connection with this RFP or any Contract with UA. The parties waive any objection to the laying of jurisdiction and venue of any claim, action, suit or proceeding arising out of the Contract or any transaction contemplated hereby, in the State of Arkansas, and hereby further waive and agree not to plead or assert that any claim, action, suit or proceeding has been brought in an inconvenient forum. Nothing contained herein shall be deemed or construed as a waiver of any immunities to suit available to UA or its trustees, officials, employees and representatives. In no event shall UA or any of its current and former trustees, officials, representatives and employees (in their official or individual capacities) be liable to Respondent(s) or Contractor(s) for special, indirect, punitive, or consequential damages, attorneys' fees or costs or any damages constituting lost profits or lost business opportunities.

9.12 Proprietary Information

Proprietary information submitted in response to this bid will be processed in accordance with applicable UA procurement procedures. All material submitted in response to this RFP becomes the public property of the State of Arkansas and will be a matter of public record and open to public inspection subsequent to bid opening as defined by the Arkansas Freedom of Information Act. Respondent is hereby cautioned that any part of its bid that is considered confidential, proprietary, or trade secret, must be labeled as such and submitted in a separate envelope along with the bid, and can only be protected to the extent permitted by Arkansas law.

Note of Caution: Respondents should not attempt to mark the entire Proposal as "proprietary" or submit letterhead or similarly customized paper within the proposal to reference the page(s) as "Confidential" unless the information is sealed separately and identified as proprietary. Acceptable proprietary items may include references, resumes, and financials or system/software/hardware manuals. **Costs and pricing terms are not considered as proprietary.**

9.13 Disclosure

A. Contract and Grant Disclosure

Disclosure is a condition of the resulting Contract and UA cannot enter into any contract for which disclosure is not made. Arkansas's Executive Order 98-04 requires all potential contractors disclose whether the individual or anyone who owns or controls the business is a member of the Arkansas General Assembly, constitutional officer, state board or commission member, state employee, or the spouse or family member of any of these. If this applies to Respondent's business, Respondent must state so in writing.

B. Respondent Conflict of Interest Form

Only when applicable, for any RFP that requires the disclosure of existing conflict of interest circumstances, Respondent should complete the *Bidder Conflict of Interest Form* and submit with bid Proposal. It is the responsibility of Respondent desiring to be considered for a bid award to complete and return this form, along with the *Contract and Grant Disclosure and Certification Form*. The purpose of these forms is to give Respondent an opportunity to disclose any actual or perceived conflicts of interest. The determination of UA regarding any questions of conflict of interest shall be final.

9.14 Proposal Modification

Proposals submitted prior to the Proposal opening date may be modified or withdrawn only by written notice to UA. Such notice must be received by the UA Purchasing Official prior to the time designated for opening of the Proposal. Respondent may change or withdraw the Proposal at any time prior to Proposal opening; however, no oral modifications will be allowed. Only letters or other formal written requests for modifications or corrections of a previously submitted Proposal that are addressed in the same manner as the Proposal and that are received prior to the scheduled Proposal opening time will be accepted. The Proposal, when opened, will then be corrected in accordance with such written requests, provided that the written request is contained in a sealed envelope that is clearly marked with the RFP number and "Modification of Proposal". No modifications of the Proposal will be accepted at any time after the Proposal due date and time.

9.15 Prime Contractor Responsibility

Single and joint Respondent bids and multiple bids by Respondents are acceptable. However, the selected Respondent(s) will be required to assume prime contractor responsibility for the Contract and will be the sole point of contact with regard to the award of this RFP.

9.16 Period of Firm Proposal

Prices for the proposed services must be kept firm for at least ninety (90) days after the Proposal Due Date specified on the cover sheet of this RFP. Firm Proposals for periods of less than this number of days may be considered non-responsive. The Respondent may specify a longer period of firm price than indicated here. If no period is indicated by the Respondent in the Proposal, the price will be firm for ninety (90) days or until written notice to the contrary is received from the Respondent, whichever is longer.

9.17 Intentionally Omitted

9.18 Errors and Omissions

The Respondent is expected to comply with the true intent of this RFP taken as a whole and shall not avail itself of any errors or omissions to the detriment of the services. Should the Respondent suspect any error, omission, or discrepancy in the specifications or instructions, the Respondent shall immediately notify the UA Purchasing Official, in writing, and UA shall issue written instructions to be followed. The Respondent is responsible for the contents of its Proposal and for satisfying the requirements set forth in the RFP.

9.19 Award Responsibility

The UA Purchasing Official will be responsible for award and administration of any resulting Contract(s). UA reserves the right to reject any or all bids, or any portion thereof, to re-advertise if deemed necessary, and to investigate any or all bids and request additional information as necessary in order to substantiate the professional, financial and/or technical qualifications of the Respondent(s).

Contract(s) will be awarded to the Respondent(s) whose Proposal adheres to the conditions set forth in the RFP, and in the sole judgment of UA, best meets the overall goals and financial objectives of UA. A resultant Contract will not be assignable without prior written consent of both parties.

9.20 Confidentiality and Publicity

From the date of issuance of the RFP until the opening date, the Respondent must not make available or discuss its Proposal, or any part thereof, with any trustee, official, employee or agent of UA. The Respondent is hereby warned that any part of its Proposal or any other material marked as confidential, proprietary, or trade secret, can only be protected to the extent permitted by law. All material submitted in response to this RFP becomes the property of UA.

News release(s) by a Respondent pertaining to this RFP or any portion of the project shall not be made without prior written approval of the UA Purchasing Official. Failure to comply with this requirement is deemed to be a valid reason for disqualification of the Respondent's bid. The UA Purchasing Official will not initiate any publicity relating to this procurement action before the Contract award is completed.

Employees of the Contractor may have access to records and information about UA processes, employees, including proprietary information, trade secrets, and intellectual property to which UA holds rights. Contractor agrees to keep all such information strictly confidential and to refrain from discussing this information with anyone else without written authorization from an authorized official of UA.

9.21 Respondent Presentations

UA reserves the right to, but is not obligated to, request and require that final contenders determined by the Evaluation Committee provide a formal presentation of their Proposal at a date and time to be determined by the Evaluation Committee. Respondents are required to participate in such a request if the UA chooses to engage such opportunity.

9.22 Excused Performance

Notwithstanding any other provisions in this RFP or any resultant Contract, in the event that the performance of any terms or provisions of this RFP or any resultant Contract shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, acts of terrorism, public disturbances, unavailability of materials meeting the required standards, strikes, lockouts, differences with workmen, fires, floods, Acts of God, or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence, such party is unable to prevent (the foregoing collectively referred to as "Excused Performance"), the party so interfered with may at its option suspend, without liability, the performance of its obligations during the period such cause continues, and extend any due date or deadline for performance by the period of such delay, but in no event shall such delay exceed six (6) months.

9.23 Funding Out Clause

If, in the sole discretion of UA, funds are not allocated to continue any resultant Contract, or any activities related herewith, in any future period, then UA will not be obligated to pay any further charges for services, beyond the end of the then current period. Contractor will be notified of such non-allocation at the earliest possible time. No penalty shall accrue in the event this section is exercised. This section shall not be construed so as to permit UA to terminate any Contract awarded in order to acquire similar service from a third party.

9.24 Indicia

The Respondents and the Contractor acknowledge and agree that UA owns the rights to its name and its other names, symbols, designs, and colors, including without limitation, the trademarks, service marks, designs, team

names, facilities images, uniforms, nicknames, abbreviations, city/state names in the appropriate context, slogans, logo graphics, mascots, seals, color schemes, trade dress, and other symbols associated with or referring to UA that are adopted and used or approved for use by UA (collectively the "Indicia") and that each of the Indicia is valid. Neither any Respondent nor Contractor shall have any right to use any of the Indicia, derivative, or any similar mark as, or a part of, a trademark, service mark, trade name, fictitious name, domain name, company or corporate name, a commercial or business activity, or advertising or endorsements anywhere in the world without the express prior written consent of an authorized representative of UA. Any domain name, trademark or service mark registration obtained or applied for that contains the Indicia or any similar mark upon request shall be assigned or transferred to UA or its Board of Trustees without compensation.

9.25 RFP Interpretation

Interpretation of the wording of this document shall be the responsibility of UA and that interpretation shall be final.

9.26 Time is of the Essence

Respondent and UA agree that time is of the essence in all respects concerning this RFP and any Contract and performance therein.

9.27 Formation of the Contract

At its option, UA may take either one of the following actions in order to create a Contract between the UA and the selected Respondent:

A. Accept a Proposal as written by issuing a written notice to the selected Respondent, which refers to the Request for Proposal and accept the Proposal submitted in response to it.

B. Enter negotiations with one or more Respondents in an effort to reach a mutually satisfactory written agreement, which will be executed by all parties and will be based upon this Request for Proposal, the Proposal submitted by one or more Respondents and any negotiations concerning these documents.

Because UA may use alternative (A) above, each Respondent shall accept the contents of this RFP which will be incorporated into any final Contract documents and will include standard UA terms and conditions.

If the Respondent submits standard terms and conditions with the bid, and if any section of those terms is in conflict with the laws of the State of Arkansas, the State laws shall govern. Standard terms and conditions submitted may need to be altered to adequately reflect all the conditions of this RFP, the Respondent's Proposals and Arkansas State law.

Notwithstanding any terms or conditions to the contrary, nothing within the Contractor's proposal shall constitute a waiver of any immunities to suit legally available to UA, its trustees, officers, employees or agents, including, but not limited state and federal constitutional and statutory sovereign immunity of the State of Arkansas and its officials.

NOTE: The successful bidder may be required to enter into a Professional Services or Technical/General Services Contract that will require approval prior to any work conducted. See the following link for reference: <http://procurement.uark.edu/resources/documents/TGSForm.pdf>. (Additional processing time must be allotted if subsequent contract is subject to this requirement).

9.28 Permits/Licenses and Compliance

Contractor covenants and agrees that it shall, at its sole expense, procure and keep in effect all necessary permits and licenses required for its performance of obligations under this RFP, and shall post or display in a prominent place such permits and/or notices as required by law. Contractor is responsible for compliance with all applicable laws and regulations, including but not limited to, OSHA requirements as well as any Fair Labor Standards Act requirements pertaining to compensation of Contractors employees or subcontractor (if any) working on the project; further, upon request, Contractor shall provide copies of all such permits or licenses to UA.

9.29 Web Site Accessibility

Respondent represents that web-based services substantially comply with the accessibility guidelines of Section 508 of the Rehabilitation Act of 1973 and with Web Content Accessibility Guidelines ("WCAG") Version 2.0 Level AA, and agrees to promptly respond to and resolve any accessibility complaints received from UA.

9.30 Prohibition Against Boycotting Israel

In accordance with Ark. Code Ann. § 25-1-503, Respondent hereby certifies to UA that Respondent: (a) is not currently engaged in a boycott of Israel; and (b) agrees for the duration of any Contract not to engage in any boycott of Israel. A breach of this certification will be considered a material breach of contract. In the event that Respondent breaches this certification, UA may immediately terminate any Contract without penalty or further obligation and exercise any rights and remedies available to it by law or in equity.

9.31 Campus Restrictions

Contractor shall not permit tobacco, electronic cigarettes, alcohol, or illegal drugs to be used by any of its officers, agents, representatives, employees, subcontractors, licensees, partner organizations, guests or invitees while on the campus of UA. Respondents further agrees that it will not permit any of its officers, directors, agents, employees, contractors, subcontractors, licensees, partner organizations, guests or invitees to bring any explosives, firearms or other weapons onto the campus of UA, except to the extent expressly permitted by UA policies and the Arkansas enhanced concealed carry laws. Respondent shall not allow any of its officers, directors, agents, employees, contractors, subcontractors, licensees, partner organizations, guests or invitees that are registered sex offenders to enter the campus of the University. Respondent agrees that it will not permit any of its officers, directors, agents, employees, contractors, subcontractors, licensees, partner organizations, guests or invitees who have been convicted of a felony involving force, violence, or possession or use of illegal drugs to work on this campus. Respondent will fully comply with all applicable UA policies, and federal, state and local laws, ordinances, and regulations.

9.32 Performance Standards

Contractor acknowledges that the use of performance-based standards on any resultant Contract by UA are required pursuant to Arkansas Code Annotated § 19-11-267. Contractor shall provide prompt, responsive, courteous, and high-quality products, services and customer service in the performance of its obligations under this RFP and any resulting Contract with UA. Contractor shall warrant that the equipment placed on the UA campus shall be of good quality, safe and suitable for their intended use by customers and properly installed. Contractor acknowledges that all products and services provided to UA or tailgate customers on the UA campus are to be of high quality and rendered in a timely and professional manner. Contractor represents and warrants that it will provide all products and services related to any resulting Contract in a manner consistent with industry standards. In addition, Contractor shall respond to all production, service, maintenance and customer service and support requests by in a polite and timely manner. Further, Contractor recognizes that failure to perform hereunder may cause UA financial or reputational harm or damages or require it to acquire replacement services on short notice. Therefore, any failure to provide the agreed upon products or services to UA or customers at the quality, times or in the manner specified, or for the duration required hereunder shall constitute a breach of any Contract between Contractor and UA subject to termination.

9.33 Background Checks

Contractor shall be responsible to obtain and to pay for background checks (including, but not limited to, checks for registered sex offenders) for *all* individuals performing any services related to this RFP on the UA campus, whether on a paid or volunteer basis, in a manner requested by UA and consistent with procedures established by UA for its background checks. No person may perform any duties or services for Contractor on the UA campus under any circumstances whatsoever until a satisfactory background check has been completed for each individual and copies furnished to UA.

9.34 Service Expectations

Contractor and its officers, employees, agents, volunteers, subcontractors and invitees understand that they are working at an institution of higher learning and are required to conduct themselves in a manner that is commensurate with that environment. Contractor, its officers, employees, agents, volunteers, subcontractors and invitees shall do all things reasonably necessary or required by UA to maintain the high standard of quality and management for the products and services outlined in this RFP and any resulting Contract. Contractor agrees that it shall hire, train, supervise and regulate all persons employed by it in the conduct of the related services so that they

are aware of, and practice, standards of cleanliness, courtesy and service required and customarily followed in the conduct of similar operations. Contractor shall not employ any current student-athletes. Contractor shall be responsible for the conduct of its officers, employees, agents, volunteers, subcontractors, vendors, guests and other representatives including, without limitation, training and informing them that violations of UA policy, theft, violence, profanity, unlawful discrimination, boisterous or rude conduct, intoxication, mishandling funds, and offensive or disrespectful behavior toward spectators, customers and UA trustees, officials, employees, agents, licensees, contractors, subcontractors, vendors, students, alumni and guests is impermissible, will not be tolerated and could result in their removal from UA's campus.

9.35 No Assignment and Sublicensing

Respondents may not assign or sublicense any resulting Contract without the prior written consent of an authorized representative of UA as provided by UA's Board of Trustee Policy.

9.36 PCI DSS Compliance

Any third-party service provider utilized by the Contactor that engages in electronic commerce on behalf of the UA or other services contemplated under this RFP or any resulting Contract with UA, shall protect all card holder data ("CHD") and sensitive authentication data ("SAD") in accordance with the Payment Card Industry Data Security Standard ("PCI DSS"), if applicable, or using secure standard financial industry practices, if PCI DSS standards are not applicable. UA reserves the right at any time to request either proof of PCI DSS compliance or a certification (from a recognized third-party security auditing firm) verifying that the Contactor (and/or any third party service provider utilized by the Contactor) uses secure standard financial industry practices in its financial transactions, and maintains ongoing compliance under PCI DSS standards and/or secure financial industry practices as they change over time. The Contactor will comply with all laws, rules and regulations relating to the access, transfer, storage, processing, collection, use, protection and breach of all CHD and SAD. The Contactor shall not share with the University or grant the University access to any CHD or SAD accessed, transferred, stored, processed, collected, used or transacted by the Contactor or any third party provider utilized by the Contactor related to the purchase, sale, resale, offer to resell, return, credit, or reserving the rights to any services contemplated under the RFP or any resulting Contract with UA. The Contactor further acknowledges that neither it nor any third-party service provider utilized by the Contactor shall be granted access to UA's system in connection with any financial transaction under the Contract, and will not access, transfer, store, process, collect, use or otherwise transmit CHD or SAD using UA's systems. The Contactor will provide their Attestation of PCI Compliance and network scans to UA on an annual basis. The Contactor will give immediate notice to UA of any actual or suspected unauthorized disclosure of, access to or other breach of the CHD or SAD. The Contactor will indemnify UA for any third-party claim brought against UA arising from a breach by the Contactor of the representations or obligations of this section. This section and its indemnity will survive the termination of this RFP and any resulting Contract between Contractor and UA.

9.37 NCAA AND SEC

The Contractor shall at all times comply with all NCAA and SEC rules and regulations, and the rules of any other conference or association to which UA's athletic teams may belong. Any resulting Contract may be terminated for any such violations by the Contractor, its official, employees, representatives, agents, subcontractors or guests. This provision applies to those engagements involving the function of athletics and/or athletics activities and affairs.

10. INSTRUCTION TO RESPONDENTS

10.1 Respondents must comply with all articles of the Standard Terms and Conditions documents posted on our Hogbid website as counterpart to the RFP document, and any associated appendices, as well as all articles within the RFP document. UA is not responsible for any misinterpretation or misunderstanding of these instructions on the part of the Respondents.

10.2 Respondents must address each section of the RFP. A Word version of the RFP document will be posted on our Hogbid website. Respondents can insert Proposals into the document provided or create their own Proposal

document making sure to remain consistent with the numbering and chronological order as listed in our RFP document. Ultimately, Respondents must "acknowledge" each section of our document in their bid Proposal.

In the event that a detailed Proposal is not necessary, the Respondent shall state ACKNOWLEDGED as the response to indicate that the Respondent acknowledges, understands, and fully complies with the specification. If a description is requested, please insert detailed response accordingly. Respondent's required Proposal should contain sufficient information and detail for UA to further evaluate the merit of the Respondent's Proposal. Failure to respond in this format may result in bid disqualification.

- 10.3** Any exceptions to any of the terms, conditions, specifications, protocols, and/or other requirements listed in this RFP must be clearly noted by reference to the page number, section, or other identifying reference in this RFP. All information regarding such exceptions to content or requirements must be noted in the same sequence as its appearance in this RFP.
- 10.4** Proposals will be publicly opened in the Purchasing Office, **located at UPTW Room 101, 1001 East Sain St., Fayetteville, AR 72703**, at the date and time as listed on the coversheet of this RFP (bid opening event). All Proposals must be submitted in a sealed envelope with the Proposal number clearly visible on the OUTSIDE of the envelope/package. No responsibility will be attached to any person for the premature opening of a Proposal not properly identified.

Respondents must submit one (1) signed original, one (1) signed copy, and two (2) soft copies of their Proposal (i.e. CD-ROM or USB Flash drive) labeled with the Respondent's name and the Bid Number, readable by UA, with the documents in Microsoft Windows versions of Microsoft Word, Microsoft Excel, Microsoft Visio, Microsoft PowerPoint, or Adobe PDF formats; other formats are acceptable as long as that format's viewer is also included or a pointer is provided for downloading it from the Internet. Proposals must be received at the following location prior to the time and date specified within the timeline of this RFP:

**University of Arkansas - Business Services
UPTW Room 101
1001 East Sain Street
Fayetteville, Arkansas 72703**

NOTE: No award will be made at bid opening. Only names of Respondents and a preliminary determination of Proposal responsiveness will be made at this time.

Additional Redacted Copy REQUIRED

Proprietary information submitted in response to this RFP will be processed in accordance with applicable State of Arkansas procurement law. Documents pertaining to the RFP become the property of UA and shall be open to public inspection **after** a notice of intent to award is formally announced.

It is the responsibility of the Respondent to identify all proprietary information included in their bid Proposal. The Respondent shall submit one (1) separate electronic copy of the Proposal from which any proprietary information has been removed, i.e., a redacted copy (marked "REDACTED COPY"). The redacted copy should reflect the same pagination as the original, show the empty space from which information was redacted, and should be submitted on a CD or flash drive, preferably in a PDF format. Except for the redacted information, the redacted copy must be identical to the original hard copy submitted for the bid Proposal to be considered. The Respondent is responsible for ensuring the redacted copy on CD/flash drive is protected against restoration of redacted data. The redacted copy may be open to public inspection under the Freedom of Information Act ("FOIA") without further notice to the Respondent **after** a notice of intent to award is formally announced. If during a subsequent review process the University determines that specific information redacted by the respondent is subject to disclosure under FOIA, the Respondent will be contacted prior to release of the information.

Respondents may deliver their responses either by hand or through U.S. Mail or other available courier services to the address shown above. **Include the RFP name and number on the outside of each package and/or correspondence related to this RFP.** No call-in, emailed, or faxed Proposals will be accepted. The Respondent remains solely responsible for ensuring that its Proposal is received at the time, date, and location specified. UA

assumes no responsibility for any proposal not so received, regardless of whether the delay is caused by the U.S. Postal Service, University Postal Delivery System, or some other act or circumstance. Proposals received after the time specified in this RFP will not be considered. **All Proposals received after the specified time will be returned unopened.**

- 10.5** For a Proposal to be considered, an official authorized to bind the Respondent to a resultant Contract must include signature in the blank provided on the RFP cover sheet. Failure to sign the Proposal as required will eliminate it from consideration.
- 10.6** All official documents, including Proposals and any responses to this RFP, and correspondence shall be included as part of any resultant Contract.
- 10.7** The UA Purchasing Official reserves the right to award a Contract or reject a Proposal for any or all line items of a bid received as a result of this RFP, if it is in the best interest of UA to do so. Bid Proposals may be rejected for one or more reasons not limited to the following:
1. Failure of the Respondent to submit the bid Proposal(s) and bid Proposal copies as required in this RFP on or before the deadline established by UA.
 2. Failure of the Respondent to respond to a requirement for oral/written clarification, presentation, or demonstration in the Proposal.
 3. Failure to provide the bid security or performance security if required.
 4. Failure to supply Respondent references if required.
 5. Failure to sign an Official Bid Proposal Document.
 6. Failure to complete the Official Bid Price Sheet.
 7. Any wording by the Respondent in their Proposal or any response to this RFP, or in subsequent correspondence, which conflicts with or takes exception to a bid requirement in this RFP.

If the Respondent submits standard terms and conditions with the bid, and if any section of those terms is in conflict with the laws of the State of Arkansas, the State laws shall govern. Standard terms and conditions submitted may need to be altered to adequately reflect all the conditions of this RFP, the Respondent's Proposals and Arkansas State law.

- 10.8** *According to Ark. Code Ann. § 4-27-1501 and OSP Rule R4:19-11-217, A foreign corporation may not transact business in Arkansas until it obtains a certificate of authority from the Secretary of State.*

11. INDEMNIFICATION AND INSURANCE

The successful Respondent or Contractor shall indemnify, defend, and hold harmless University, its trustees, officers, directors, employees, agents and volunteers from and against any and all losses, costs, expenses, damages, and liabilities resulting from or relating to: (a) any breach by Contractor or Contractor's members, officers, employees, subcontractors, vendors, and agents of any representation, warranty, or other provision of this RFP, any resulting Contract or any document delivered by Contractor in connection with the products and services contemplated by this RFP; (b) any damage to property or bodily injury, including, but not limited to illness, paralyzation, dismemberment and death, arising from or relating to any products or services provided by the Contractor or uses of the UA campus by Contractor, its officers, employees, agents, volunteers, customers, subcontractors or guests under this RFP or any resulting Contract, or any other activities conducted on the UA campus (whether such activity is authorized or unauthorized by UA); (c) any use of or damage to UA property and any defect in any building and improvement thereon, including, but not limited to, any damage to any parking lots arising from or relating to any permitted uses under this RFP or any resulting Contract; (d) any act or omission of Contractor or any of its officers, agents, employees, invitees, or subcontractor's employees and invitees; and (e) any violation by Contractor of any applicable NCAA or SEC rules or regulations or state, federal or local laws.

The obligation to indemnify UA shall include, but shall not be limited to, the obligation to pay any and all losses, costs, expenses, attorneys' fees, damages, and liabilities incurred, as well as any attorneys' fees and court costs (including, but not limited to, any appellate or appellate-related proceedings). At no cost or expense to UA, UA's

in-house counsel may participate in any proceedings. The indemnification obligations under this RFP or any resulting Contract shall survive the expiration or termination of such RFP or resulting Contract.

The successful Respondent or Contractor shall purchase and maintain at Contractor's expense, the following minimum insurance coverage for the period of any Contract. Certificates evidencing the effective dates and amounts of such insurance must be provided to UA:

- Workers Compensation: As required by the State of Arkansas. Additionally, the Contractor shall maintain Employer's Liability Insurance with a policy limit of not less than \$100,000 each accident, \$500,000 disease, and \$100,000 disease each employee.
- Comprehensive General Liability, with no less than \$1,000,000 each occurrence/\$2,000,000 aggregate for bodily injury, products liability, contractual liability, and property damage liability.
- Comprehensive Automobile Liability, with no less than combined coverage for bodily injury and property damage of \$1,000,000 each occurrence.

Policies shall be issued by an insurance company authorized to do business in the State of Arkansas and shall provide that policy may not be canceled except upon thirty (30) days prior written notice to UA. Any policy shall cover any vehicle being used in the management, operation, or delivery deriving from Contractor's operations on UA's campus. Contractor shall also be responsible for payment of workers' compensation insurance for all Contractor's employees as required by the State of Arkansas.

Contractor shall furnish UA with a certificate(s) of insurance effecting coverage required herein. Failure to file certificates or acceptance by UA of certificates which do not indicate the specific required coverages shall in no way relieve the Contractor from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of Contractor concerning indemnification. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to UA, its trustees, officials, employees, agents or volunteers. Proof of Insurance must be included in bid Proposal.

Contractor shall, at their sole expense, procure and keep in effect all necessary permits and licenses required for its performance under the Contract, and shall post or display in a prominent place such permits and/or notices as are required by law.

12. CONTRACTOR OVERVIEW

The Contractor shall provide a general overview of its business including the following information:

- Foundation date
- Description of core activities
- Major company and distributor locations
- Total number of clients
- Total number of clients in higher education
- Current financial status and revenues – Overview only

13. BEST AND FINAL OFFER

UA reserves the right to request an official "Best and Final Offer" from bid Respondents if it deems such an approach is in the best interest of the institution. In general, the "Best and Final Offer" will consist of an updated cost Proposal in addition to an opportunity for the Respondent to submit clarification response to specific questions or opportunities identified in subsequent discussions related to the original Proposal response submitted to UA. If the UA chooses to invoke a "Best and Final Offer" option, all responses will be re-evaluated by incorporating the information as requested in the official "Best and Final Offer" document, including costs and answers to specific questions presented in the document. The specific format for the official "Best and Final Offer" request will be determined during evaluation discussions. The official request for a "Best and Final Offer" will be issued by the UA Procurement Department.

14. SPECIFICATIONS / GOALS AND DELIVERABLES

Each Proposal should contain the following information at a minimum:

a. BACKGROUND/OVERVIEW

The University of Arkansas System is comprised of eighteen campuses and related units, organized under various laws of the State of Arkansas and governed by the University's ten-member Board of Trustees.

In the Moody's Investors Service, Inc. report dated March 11, 2021 certain debt issued by the University of Arkansas was rated Aa2/Stable.

Certain financial information on the University of Arkansas System can be found on <https://emma.msrb.org/>. In addition, to assist you in the preparation of your proposal, we have enclosed the following with this Request for Proposals ("RFP") as **EXHIBIT A**:

- 1) University of Arkansas System consolidated financial statements for Fiscal 2020 and 2019.
- 2) University of Arkansas Fayetteville financial statements for Fiscal 2020 and 2019.

Each respondent is responsible for conducting its own credit review of the System. The University will use its best efforts to answer any questions and to provide additional information requested in connection with your credit analysis. The information provided by the University in this RFP or in connection with it should be considered confidential and should be appropriately controlled.

b. DESCRIPTION OF NEW MONEY PROJECTS

Background

The Guaranteed Energy Cost Savings Act, ACA §19-11-1201, (the "Act") gives the University a methodology to contract for energy efficiency assessments and implementation of qualifying improvements through a pool of providers prequalified by the Arkansas Energy Office ("AEO"). Utility savings, operations and maintenance cost reductions and avoided capital expenses realized from the improvements are allowed under the Act to be used to pay for the work. By contract, the qualified Energy Savings Performance Contractor (ESCO) agrees to guarantee the savings against a contractual baseline, and is required to pay the campus the savings shortfall, if in any year, the savings do not exceed the combined cost of the improvements and the cost of financing as specified in the contract pro forma.

In June 2018 the U of A-Fayetteville (UAF) requested approval to begin the process to select a qualified ESCO for the UA Fayetteville Energy Conservation and Facility Improvements (ESPC 4) project. As noted by the reference, this will be the fourth ESPC project executed at the Fayetteville campus. President Bobbitt granted approval to proceed on July 2, 2018.

On September 18, 2018, all 14 of the state prequalified ESCO firms were invited to submit a Statement of Interest to the University for the project. Of those 14 firms, seven responded as interested and five of the firms were invited to participate in the formal selection process. As required by the Act, the UAF ESPC 4 Project Committee and AEO jointly conducted interviews, reviewed specific written project responses, evaluated project cost criteria and checked references for previous similar work. The evaluation process was very analytical and objective in nature.

c. DESIRED FINANCING STRUCTURE

The details of the desired financing structure are provided below.

- Tax-exempt, direct placement (loan) or master lease agreement.

- *Amount* – Not to exceed \$13 million loan amount, which could be structured as a single disbursement or with draws periodically over the first year.
- *Interest Rate Mode* - Fixed rate.
- *Term/Amortization* - 10-year final maturity; level debt service (mortgage style) amortization.

d. REQUESTED INFORMATION

Each interested firm must submit a proposal that responds to the requirements/questions provided in **Appendix III** of this RFP. The UA reserves the right to request and consider additional information from submitters and to reject any and all submissions.

Proposals must be submitted in accordance with instructions in Section 9. Instructions to Respondents.

Any questions regarding this request for proposals should be submitted in writing via email to:
Ellen Ferguson, Procurement Coordinator
Office of Business Affairs
ellenf@uark.edu

The UA's management team and Board must not be contacted in connection with this RFP.

15. EVALUATION AND SELECTION PROCESS

It is the intent of the UA to award a Contract to the Respondent(s) deemed to be the most qualified and responsible firm(s), who submits the best overall Proposal based on an evaluation of all Proposal responses. Selection shall be based on UA assessment of the Respondent's ability to provide adequate service, as determined by the evaluation committee elected to evaluate proposals. UA reserves the right to reject any or all Proposals or any part thereof, to waive informalities, and to accept the Proposal or Proposals deemed most favorable to UA. Where Contract negotiations with a Respondent do not proceed to an executed Contract within a time deemed reasonable by UA (for whatever reasons), UA may reconsider the Proposals of other Respondents and, if appropriate, enter into Contract negotiations with one or more of the other Respondents. Proposals shall remain valid and current for the period of ninety (90) days after the due date and time for submission of Proposals. Each Proposal will receive a complete evaluation and will be assigned a score of up to 100 points possible based on the following items:

A. Ability to Provide Full Range of Services as Indicated in the RFP Above (40 Points)

Respondent with the highest rating shall receive forty (40) points.

B. Vendor History and Past Performance (30 Points)

Respondent with highest rating shall receive thirty (30) points.

C. Cost (30 Points)

Points shall be assigned for the cost of the specific categories of services, which comprise the overall system, including annual maintenance cost, as follows:

- Cost points will be assigned on the specific component basis as reflected on the Official Price Sheet, for comparison and evaluation purposes.
- The bid with the lowest estimated cost of the overall system will receive the maximum points possible for this section.
- Remaining bids will receive points in accordance with the following formula:

$$(a/b)(c) = d$$

a = lowest cost bid in dollars

b = second (third, fourth, etc.) lowest cost bid

c = maximum points for Cost category (30)

d = number of points allocated to bid

Failure of the Respondent to provide in his/her proposal any information requested in this RFP may result in disqualification of his/her proposal and shall be the responsibility of the respondent.

16. SERVICE PERFORMANCE STANDARDS

Service Criteria	Acceptable Performance	Compensation / Damages
Adherence to University Requirements	Reference standard terms, conditions and all articles of RFP	Termination of Contract: Reference Section 8 of RFP. This termination clause will apply for insufficient performance of services by Contractor at the sole discretion of the University of Arkansas, Fayetteville.
Scope of Services	Reference Sections 1 & 2 of RFP: Description, Overview and Scope	Termination of Contract: Reference Section 8 of RFP. This termination clause will apply for insufficient performance of services by Contractor at the sole discretion of the University of Arkansas, Fayetteville.
Specifications, Goals and Deliverables	Reference Section 14 of RFP: Specifications/Goals and Deliverables	Termination of Contract: Reference Section 8 of RFP. This termination clause will apply for insufficient performance of services by Contractor at the sole discretion of the University of Arkansas, Fayetteville.

APPENDIX I: OFFICIAL PRICE SHEET

RFP NAME: Energy Savings Performance Contract Financing

RFP NUMBER: 062121

PROPOSAL DUE DATE: July 13, 2021, 10:00 AM CST

RESPONDENT INFORMATION CONTACT: _____ **PHONE/EMAIL:** _____

Reference Section 3-Costs / Pricing for further instruction, and the corresponding Bid Price Sheet provided below. Please complete the Price Sheet as provided and submit within your proposal. If pricing is dependent on any assumptions that are not specifically stated on the Official Price Sheet, please list those assumptions accordingly on a separate spreadsheet and show detailed pricing. Any additional pricing lists should remain attached to the Official Price Sheet for purposes of accurate evaluation. **Pricing must be valid for ninety (90) days following the bid Proposal due date and time.**

UA will not be obligated to pay any costs not identified accordingly. The Respondent must certify that any costs not identified by the Respondent, but subsequently incurred in order to achieve successful operation of the service, will be borne by the Respondent. Failure to do so may result in rejection of the bid.

NOTE: Bids must be submitted on this official bid form to be considered. Respondents must use this Official Bid Price Sheet when submitting bids in response to this RFP. Provide pricing and/or discount where applicable next to the item listed below, per minimum specifications as listed within this bid document. Pricing must include shipping and handling charges.

Item	Description	Estimated Closing Costs	Proposed Finance Rate %	Total Financing Cost Over Life of Debt
1.		\$	%	\$
2.		\$	%	\$
3.		\$	%	\$
4.		\$	%	\$
5.		\$	%	\$
	GRAND TOTAL	\$		\$

APPENDIX II: RESPONDENT INFORMATION / REFERENCES

Respondent must provide the following information as part of this proposal:

1. Respondent Representative
 - Contact Name
 - Telephone
 - Email Address
 - Address

2. References of your current customer(s) as specified in **Section 4** of this RFP document:
 - a. Company/Organization Name:
 - Contact Name
 - Telephone
 - Email Address
 - Address

 - b. Company/Organization Name:
 - Contact Name
 - Telephone
 - Email Address
 - Address

 - c. Company/Organization Name:
 - Contact Name
 - Telephone
 - Email Address
 - Address

EXHIBIT A (Reference Section 14.a.):

- 1) University of Arkansas System consolidated financial statements
 - a. Fiscal 2020:
<https://www.uasys.edu/wp-content/uploads/sites/16/2021/01/2020-UA-System-Annual-Report-secured1.pdf>
 - b. Fiscal 2019:
<https://www.uasys.edu/wp-content/uploads/sites/16/2019/12/2019-UA-System-Annual-Report-secured.pdf>
- 2) University of Arkansas Fayetteville financial statements
 - a. Fiscal 2020:
<https://financial-affairs.uark.edu/PDFs/1920annualrept.pdf>
 - b. Fiscal 2019:
<https://financial-affairs.uark.edu/PDFs/1819annualrept.pdf>

APPENDIX III. RFP Requirements/Questions (Reference Section 14.d.):

Respondents are to submit a comprehensive proposal describing your qualifications, outlining all anticipated costs and detailing the material terms and conditions of the principal legal documents. **Outlined below are the requirements/questions that should be specifically addressed in your firm's response.**

- a. **Name of Bank:** Provide the name of the entity that will be providing the proposed loan or lease. Please describe the lender and the businesses in which it is engaged.
- b. **Credit Rating:** Provide the short-term and long-term credit ratings (including the rating outlooks) from all rating agencies currently rating the lender. Indicate if any of your ratings are currently under review by a credit rating agency.
- c. **Personnel:** Provide the contact information (email, address, and phone) of the individuals who will be working on this engagement.
- d. **Maximum Commitment Amount (up to):** Provide a maximum commitment amount for the proposed transaction. Would you have any additional lending capacity for the UA over time?
- e. **Mandatory Tender or Put Provisions:** If applicable, please describe the mechanics of any mandatory tender or put provisions including timing and notice. In addition, please describe the terms under which your firm would agree to waive the mandatory tender or put provisions and extend the term of the loan.
- f. **Security/Collateral:** Security/Collateral can be established via the equipment and assets for the project. Information pertaining to the equipment and assets being installed for the project can be provided upon request.
- g. **Financial Covenants:** The UA prefers no financial covenants. However, if RFP respondents require certain financial covenants, please clearly describe all proposed financial covenants in your proposal. Provide a definition of key terms, testing frequency, as well as an example calculation of each of the financial covenants based on the most recent audited financial statements. Also, describe any proposed limitations on additional debt.
- h. **Reporting Requirements:** Describe the requirements for ongoing financial reporting.
- i. **Prepayment Provisions:** Describe the proposed prepayment provisions. Explain the terms and calculation methodology for any proposed pre-payment penalties. Provide definitions of key terms, as necessary.
- j. **Other Conditions:**
 - a. Detail any other conditions that would be required as part of your proposal. Define any terms necessary to understand these conditions.
 - b. *Increased costs* - Explain if any adverse changes reserve requirements for the bank or other events (e.g. change in tax rates) would result in a change in the interest rate on the proposed loan. **Provide proposed language.**
 - c. The University prefers no Material Adverse Change clause and no Most Favored Nation clause.
- k. **Fees & Legal Counsel:**
 - a. Provide any upfront/commitment fee required by the bank (if any).
 - b. Provide a not-to-exceed figure for legal fees. In addition, provide the name of the legal firm you would use and the person from that firm that would serve as the primary contact.
- l. **Syndication:** Will the loan be syndicated to other banks? If so, who would be in the banking syndicate and at what level?
- m. **Timing:** Describe your timing to receive internal credit approval upon award of the transaction.
- n. **Conflicts of Interest:** Describe any conflicts of interests that could impact the contemplated transaction.