

Appendix G: Standard Terms and Conditions

1. Notice

The Little Rock Municipal Airport Commission members are appointed by the Little Rock City Board of Directors. The seven (7) members **must** be qualified electors of the municipality, with at least one (1) of the members being experienced in aviation, holding some pilot aeronautical rating. The City of Little Rock selects its board and commission members through a process that utilizes an executive session. Under Arkansas law, this fact deems a volunteer an employee for a limited purpose. The Airport cannot contract with an employee and cannot contract with a corporation with an employee in an executive or managerial position who also serves as a volunteer on a City board or Commission unless the Little Rock Municipal Airport Commission first approves the contract. If any person involved with this solicitation is an employee of the Airport or a commission member who also holds an executive or managerial position with the Company, then the Company **must** identify the person(s) and the nature of the relationship. THIS NOTICE DOES NOT MEAN that the Company is disqualified, but an apparent company will not be selected if the Commission fails to authorize the contract.

2. Correspondence

2.1 All notices required by this agreement **must** be in writing and sent to the following:
Procurement Department
Abdoul Kabaou, Director – Procurement
One Airport Road
Little Rock, AR 72202 Phone:
(501)372-3439
E-mail: procurement@clintonairport.com

2.2 All notices are effective

- when delivered in person,
- upon confirmation of receipt when transmitted by electronic mail,
- upon receipt after dispatch by registered or certified mail, postage prepaid,
- on the next business day if sent by overnight courier (with confirmation of delivery), or
- three (3) business days after the date of mailing, whichever is earlier.

3. Cone of Silence

For purposes of this solicitation, all communication **must** be directed to the Director – Procurement (procurement@clintonairport.com). The Little Rock Municipal Airport Commission has imposed an absolute prohibition against any communication or contact with other Airport personnel, Commission member, or Consultant regarding the solicitation generally referred to as a "Cone of Silence." The prohibition begins with the publication of this solicitation document and remains in place through Commission selection. It ends after successful negotiations with the selected Company have concluded in an executed agreement. The prohibition is suspended only during Airport sponsored and publicly announced meetings conducted for clarification. **A violation of this provision may result in a rejection of the solicitation response submitted by the offending Company.**

4. Acceptance of Terms

Submission of a response or acceptance of a Purchase Order from the Airport constitutes acceptance of all terms and conditions described herein. If a conflict of interest exists between this solicitation and the Standard Terms and Conditions, the terms of this solicitation **must** control. The Airport's Standard Terms and Conditions **must** become a part of the contract and **must** supersede all prior or contemporaneous representations, agreements, or understandings between the parties, whether written or oral. To the extent the Standard Terms and Conditions conflict with an existing Master Agreement previously executed by the Airport, the terms of the Master Agreement control.

5. Exceptions

The Company may submit a list of any necessary exceptions to the solicitation's terms and conditions. All exceptions **must** be described on one (1) attachment to the Company's Response and **must** include the legal basis for each exception. The Airport will not consider an exception unless the Company establishes that the exception is justified by a requirement or prohibition of federal law, Arkansas law, Arkansas Public Service Commission Rules, or applicable tariff requirements. Exceptions **must** be approved in writing and signed by the Airport's Procurement Director.

6. Governing Law

The contract with the Company **must** be governed and construed per Arkansas law. In the event of any legal action to enforce or interpret the contract, the sole and exclusive venue **must** be a court of competent jurisdiction in Pulaski County, Arkansas. The statute of limitations, as provided under Arkansas law, **must** not be waived.

7. Compliance

7.1 The Company **must** comply with applicable Federal laws, state laws, local ordinances and regulations in effect during the contract term, and these Standard Terms and Conditions.
The Company **must** not be debarred or suspended as designated in the federal System for Award Management.

8. Addenda, Changes, and Alterations

8.1 This solicitation and the Standard Terms and Conditions for all of the Airport's solicitations **must** remain unchanged or unaltered except by an official written addendum issued by the Airport's Procurement Department. Addenda to this solicitation will be posted on the Airport's website at www.clintonairport.com. The Company's responsibility is to review the solicitation information online to ensure that they have received and responded to all addenda to the solicitation.

9. Publicity

9.1 The Company **must** not issue a news release on this solicitation or any portion of the project without the Airport's prior written approval.
9.2 Failure to comply with this requirement may be cause for a company's Response to be disqualified.

10. Reservations

10.1 THE AIRPORT RESERVES THE RIGHT TO REJECT ANY AND ALL RESPONSES.
10.2 The Airport's Procurement Department reserves the right to award items, all or none, or by line item(s).
10.3 Responses submitted by the Company are factors in making an award.

- 10.4 Any ambiguity in a solicitation that results from omission, error, lack of clarity, or non-compliance by the Company **must** be construed in the light most favorable to the Airport.
- 10.5 Any minor or insubstantial deviations from the requirements of this solicitation, as determined at the sole and exclusive discretion of the Airport Procurement Office, **must** be permitted.
- 10.6 Any material or substantive deviations from the requirements of this solicitation, as determined at the sole and exclusive discretion of the Airport's Procurement Department, **must** result in the disqualification of the Response.

11. Response Submission

- 11.1 Responses **must** be submitted and time-stamped on or before the date and time specified. LATE RESPONSES **MUST BE DISQUALIFIED**.
- 11.2 Responses **must** contain all documents, information, and attachments as specifically and expressly required in the solicitation.
- 11.3 Responses **must** be typed or legibly printed in ink. The signature **must** be in ink or an electronic signature. The official authorized to sign contracts on behalf of the Company **must** sign the Response and the price sheets. RESPONSES THAT ARE NOT SIGNED **MUST BE DISQUALIFIED**.
- 11.4 For example, the solicitation number, 21001IFB or 21002RFP, **must** be on the face of the sealed envelope that contains the Response. If it is not, the envelope will be opened to identify the solicitation number.

12. Brand Name References

Specifications furnished with a solicitation are intended to establish a desired quality or performance level or other minimum dimensions and capacities, which will provide the best product available at the lowest possible price. Other designated brands or models approved by the Airport, at its sole discretion, as equal to designated brand name products **must** receive equal consideration. When listing a brand or model other than specified, the brand or model number **must** be stated by the item in the solicitation and descriptive literature submitted with the Response.

13. Substitutions

When responding to this solicitation, if the Company does not believe a submitted response meets the exact requirement of a specification requested but is in compliance with the result to be met by the requirement or specification, then the Response can note that a substitution is being submitted. Whether a substitution complies with this solicitation **must** be determined at the sole and exclusive discretion of the Airport's Procurement Department.

14. Samples

Samples of items, when required, **must** be furnished to the Airport free of charge. If the Company does not retrieve the samples within thirty (30) days of the end of testing, they become the property of the Airport.

15. Quantities

Quantities stated in a solicitation for term contracts are estimates only and are not guaranteed. The Company **must** submit the unit price based upon the estimated quantity specified. The Airport may order more or less than the estimated quantity on term contracts. The requirements of the ordering department determine quantities stated on purchase orders.

16. Pricing

- 16.1 Pricing **must** be valid for ninety (90) days after the response opening and **must** remain firm for the contract term. Prices are to be based on the unit price for the items or services described on the price sheet(s).
- 16.2 Prices quoted **must** be "Free on Board" (FOB) destination to the designated Airport facility unless otherwise agreed by the Airport.
- 16.3 Pricing **must** include all associated costs. The Airport **must** not be obligated to pay any costs not included in the Company's Response even though such cost is subsequently incurred by the Company to provide the contracted services or equipment or to achieve the required quality of service unless agreed to in writing by the Airport.
- 16.4 Prices quoted are to be net prices. If the Company makes an error in extending total prices, the Airport may accept the lesser amount, whether reflected by extension or by the correct multiple of the unit price.
- 16.5 The Airport should receive any discounts offered by or available to the Company. For term contracts, the beginning date for computing discounts will be the date of invoice or the date of delivery and acceptance, whichever is later.
- 16.6 The prices in the Response **must** have been arrived at without collusion.

17. Tax

Applicable sales or compensating use tax **must not** be included in the Response but **must** be added to the Company's invoice. An exception is made for construction projects; as such, construction bids **must** include taxes. Companies are to register and pay taxes pursuant to Arkansas law.

18. Price Escalation.

- 18.1 During the term of a resulting contract, the opportunity for price escalations may be made available at the time of renewal. The Company **must** submit a written request for price increases at least 30 days prior to the renewal date. Written price increase requests **must** be supported by documentary evidence, including manufacturer or broker discounts and chargebacks to justify the increase. Price increases will be limited to the actual dollar increase incurred by the Company from their supplier or manufacturer. Invoices including manufacturer/broker rebates, discounts, and chargebacks, both prior and current to the date of request, **must** be submitted to support a price adjustment request.

NOTE: COMPANIES MUST NOT DELAY OR STOP DELIVERIES PENDING PRICE CHANGES. PRICE CHANGES WILL BE EFFECTIVE ON ITEMS WITH AN ORDER DATE AFTER THE EFFECTIVE PRICE CHANGE DATE. THE ORDER DATE IS THE DATE OF THE AIRPORT-ISSUED PURCHASE ORDER TO THE COMPANY. ITEMS THAT HAVE AN ORDER DATE PRIOR TO THE NEWEST EFFECTIVE PRICE CHANGE DATE WILL BE INVOICED AT THE CURRENT PRICE AS OF THE DATE OF THE PURCHASE ORDER REGARDLESS OF WHEN DELIVERY IS ACCEPTED.

- 18.2 The Airport reserves the right to reject any price adjustment request.

19. Tie Prices

- 19.1 In the event of a tie on the lowest price between two (2) or more responses that meet the specifications as required and where only one (1) of the companies is a Little Rock company, then the award **must** be made to that Little Rock company.
- 19.2 In the event of a tie on the lowest price between two (2) or more responses that meet the specifications as required:
- where just two (2) of the companies are Little Rock companies, the award **must** be determined by a flip of a coin between the Little Rock companies; or
 - where just two (2) of the companies are out-of-state companies, the award will be determined by a flip of a coin among those companies;

- C. where there are more than two (2) Little Rock companies, the award **must** be determined by drawing lots;
- D. where there are more than two (2) out-of-state companies, the award **must** be determined by drawing lots.

20. Funds Availability:

In accordance with Art.16, Sec. 12 of the Arkansas Constitution, in the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable by any means whatsoever in any fiscal period for the payments due under the contracted agreement, the Airport will immediately notify the Company of such occurrence and the agreement **must** terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Airport of any kind whatsoever, except as to the portions of the contracted agreement herein agreed upon for which funds have been appropriated and budgeted or are otherwise available. Airport represents that funds have been appropriated and budgeted to fund this project fully.

21. Purchase Orders

The Airport reserves the right to cancel any Purchase Order at any time prior to shipment of the goods and **must not** be subject to any charges or other fees whatsoever as a result of such cancellation. The Airport may, by written communication, cancel or make changes to any Purchase Order subject to an equitable adjustment in the price, delivery schedule, or both, where appropriate.

22. Invoicing

22.1 The Company **must** be paid upon the completion of all the following:

- A. submission of an original specified number of copies of an adequately itemized invoice showing the purchase order number,
- B. delivery and acceptance of the commodities, or completion and approval of described service,
- C. proper and legal processing of the invoice by the Airport.

22.2 Invoices **must** be sent to ap@clintonairport.com.

22.3 The Airport **must** not be invoiced in advance of delivery and acceptance of any goods or services.

22.4 Invoices must be Net30 terms. The Company may submit a request for exceptions to the standard Net30 terms. This exception **must** be approved by an authorized member of the Airport's Procurement Department staff prior to invoicing.

23. Force Majeure

Neither the Airport nor the Company will be liable for any delay, failure in performance, loss, or damage due to fire, explosion, cable/fiber cuts, power blackout, earthquake, flood, embargo, fuel, energy, acts of civil or military authority, war, riot, terrorism, acts of God, pandemics, acts of public enemy, acts of regulatory or governmental agencies, delays from third parties deterring the Company from obtaining necessary licensing/construction permits/right of ways, or other causes beyond such party's reasonable control.

24. Recordkeeping

The Company **must** maintain all financial and accounting records in accordance with generally accepted principles of accounting. Upon reasonable request by the Airport, such records **must** be made available for inspection.

25. Confidentiality

The Arkansas Freedom of Information Act ("FOIA"), as amended, is extremely broad in its scope. Any company submitting a response to a solicitation that includes proprietary information should be on notice that such Response may be deemed a public record subject to disclosure upon completion of the selection process.

25.1 Disclosure of Company's Information

Pursuant to Arkansas statute, all information contained in any submitted bid, request for proposals, or request for qualifications document to the Commission will be available for public review upon FOIA request. All companies are hereby advised that any information they may consider confidential or proprietary and would give a competitive advantage if disclosed should be identified, along with a statement as to whether or not a claim of confidential or proprietary privilege is being asserted. If such information is later sought by a FOIA request, the Company will be allowed to justify its claim of privilege, and the Commission will assess the validity of the said claim in advance of any release.

25.2 Inspection and Review of Company

The Company may be subject to inspection and review by the Federal Aviation Administration (FAA), Transportation Security Administration (TSA), the Airport, or any of their duly authorized representatives, at any time. Such inspections include but are not limited to documents, papers, records, evidence of compliance from the Company that is directly pertinent to the Airport. Cooperation of the Company's assigned personnel with these agencies **is** required.

26. Construction

26.1 Bonding

A. Bid Security (Bid Bond)

Any construction bid exceeding the minimum amount set by the State of Arkansas **must** be accompanied by a cashier's check or bid bond prepared on an Airport-approved form of a bid bond, duly executed by the Company as principal and having as surety thereon a surety company approved by the Airport, in the amount of five (5) percent of the bid. Such cashier's check or bid bonds will be returned to all except the three (3) lowest companies within three (3) days after the opening of bids. The remaining cashier's checks or bid bonds will be returned promptly after the Airport and the accepted Company have executed a contract, or the purchase order has been issued. A valid contract will not be executed or valid purchase order issued until the Airport has received an acceptable bid bond.

B. Performance/Payment Bonds

A Performance Bond equaling the total amount of any bid exceeding the minimum amount set by the State of Arkansas **must** be provided for any contract for the repair, alteration, or erection of any public building, public structure, or public improvement pursuant to Ark. Code Ann. Sec. 18-44-503 (a).

Simultaneously with the delivery of the executed contract, the Company **must** furnish a surety bond or bonds as a security for the faithful performance of this contract and the payment of all persons performing labor on the project under contract and furnishing materials in connection with the contract. The surety on such bond or bonds **must** be duly authorized to do business in the State of Arkansas and **must** be satisfactory to the Airport.

C. **Bond Verification**

Pursuant to Act 1015 of 2013 that became effective on August 16, 2013, all bonds submitted to the Airport (bid bonds and Performance/Payment Bonds) **must** be issued by surety companies listed on the current United States Department of Treasury's Listing of Approved Sureties. Any bid bonds submitted by a company that is not issued by a surety company qualified and authorized to do business within Arkansas and listed as an approved surety on the US Department of Treasury list will be rejected.

Any performance and payment bonds provided by the Company, that are not issued by a surety company qualified and authorized to do business within Arkansas and listed as an approved surety on the US Department of Treasury list, **must** be considered as a Company's default in failing to execute and deliver the contract and bonds. The Company is liable to the Airport as project owner in the amount of the five (5) percent bid surety. To verify the current list of surety companies, go to: https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm.

26.2 Construction Licensing

If required by law, companies **must** comply with the requirement of Act 150 of 1965 of the State of Arkansas, effective June 3, 1965, (codified as amended at Ark. Code Ann. §§ 17-25-301 through 17-25-316), which is the current Arkansas State Licensing Law for Contractors. Companies should indicate on the bid form the current license number as issued by the applicable licensing entity.

27. Conditions of Work

Each Company **must** become fully informed of the conditions relating to the construction of the project and the employment of labor. Failure to do so **must not** relieve a company of its obligation to furnish all material and labor necessary to carry out the provisions of the contract. Insofar as possible, the Company, in carrying out the work, **must** employ such methods or means as will not cause any interruption of or interference with the work of any other company.

28. Badging Requirements (if applicable)

28.1 All personnel assigned to this contract must pass the Airport Security Identification Display Area (SIDA) training.

28.2 All personnel assigned to this contract must be badged by the Airport prior to beginning work at the Airport. No Exceptions.

28.3 All personnel assigned to this contract must pass the Federal Bureau of Investigation (FBI) fingerprint-based Criminal History Records Check (CHRC).

28.4 The Airport will immediately remove any employee assigned to this contract's access if the employee ceases to meet the FBI's CHRC requirement upon notification from the FBI.

28.5 All personnel assigned to this contract must pass the Transportation Security Administration (TSA) Security Threat Assessment (STA).

28.6 The Company must designate at least one (1) signatory authority.

A. The Company's signatory **must** be badged by the Airport.

B. The Company's signatory **must** maintain all of the Company's badging records.

C. The Company's signatory **must** ensure the completeness, correctness, and accuracy of badge applications for all its employees applying for and receiving Airport ID.

28.7 There will be no charge for the initial Airport-issued badge or CHRC.

28.8 The Company must be responsible for the replacement cost to any lost or damaged badge.

A. The current replacement cost for a damaged badge is \$10.

B. Lost badges cost \$25 for the first, \$50 for the second, and \$100 for the third.

C. These charges will be applied via a deduction to your monthly invoice.

D. These rates are subject to change during the length of this contract.

28.9 The Airport will charge the Company for any badge not returned due to a change in personnel.

A. A badge is due immediately upon termination for any reason and is currently subject to a \$100 charge via a deduction to your monthly invoice.

B. These rates are subject to change during the length of this contract.

29. Past Performance

A company's past performance with the Airport is used to determine if the Company is "responsible." Responses submitted by companies who have prior experience with Clinton National Airport and are determined to be non-responsible **must** be disqualified.

30. Insurance and Warranties

30.1 Insurance.

The Company **must** supply the Airport with evidence of having and maintaining proper and complete insurance, specifically Worker's Compensation Insurance, in accordance with the laws of the State of Arkansas, Public Liability Insurance, and Property Damage Insurance.

The Company **must** pay all premiums and costs of said insurance. The Airport **must not** be responsible or liable in case of an accident.

30.2 When submitting a response to this solicitation, the Company warrants that the commodities covered by the Response must be free from defects in material and workmanship under normal use and service. In addition, the Company must deliver new commodities of the latest design and model, unless otherwise specified in the solicitation.

30.3 Guarantees and warranties should be submitted with the Response, as they may be a consideration in making an award.

31. Liability

The Airport assumes no liability for damages or injuries caused by the Company's equipment or personnel, including but not limited to passing vehicular or pedestrian traffic struck by objects displaced by the Company's equipment or operations.

32. Damages

If applicable and if the Airport elects to pursue liquidated damages, damages may be assessed beginning on the first day following the maximum delivery or completion time entered on the bid form or as provided for by the plans and specifications.

33. Indemnification

The Company **must** indemnify and hold harmless the Airport against any claim or liability arising from the Company's violation of any applicable law, statute, ordinance, permit, or regulation in the performance of the contract.

The company covenants and agrees that it will indemnify and hold harmless the Airport and all of its officers, agents, and employees from any

claim, loss, damage, cost, charge, or expense arising out of any act, action, neglect, or omission by the Company, or the Company's subcontractors, employees, agents or servants, whether direct or indirect, or whether to any person or property to which the Airport or said parties might be subject. If the Airport defends any claim, demand, cause of action, or lawsuit arising out of any act, action, negligent acts or negligent omissions, or willful misconduct of the Company, its subcontractors, employees, agents, or servants during the performance of the contract, whether directly or indirectly, the Company agrees to reimburse the Airport for all expenses, attorney's fees, and court costs incurred in defending such claim, cause of action or lawsuit.

34. Intellectual Property

34.1 The Company **must** not hold ownership or intellectual property claim on any deliverable produced for the Airport. For any architectural drawings or custom software developed for the Airport, all property rights, intellectual or otherwise, and technology transfer **must** be passed to the Airport upon completion of the contract. This includes all rights in relation to any patents, trademarks, copyright, etc., that may be associated. Upon transfer, all code, data, and the like, both intellectual and tangible, pertaining to any responsibilities including but not limited to reports, records, data, graphic art design, and products under the contract **must** be delivered to the Airport without cost within a time frame of thirty (30) calendar days upon completion of the contract.

34.2 Each deliverable/product produced for the Airport **must** become the exclusive property of the Airport. The Company **must** not utilize any portion of this project, including deliverables and data, without the prior written consent of the Airport.

35. Diversity and Non-Discrimination

35.1 Diversity Goal

It is Commission policy to provide the maximum opportunity for the inclusion of Certified Diverse Companies in all contractual relationships. A Commission goal of nineteen percent (19%) of the total dollar value of all contractual relationships has been set to promote participation. Further, the Company agrees to comply with all provisions of the Airport's Diversity program.

35.2 Definition

The Commission defines a Diverse Company or business as any Disadvantaged Business Enterprise (DBE), Minority-Owned Business Enterprise (MBE), or Woman-Owned Business Enterprise (WBE) that is certified through the Arkansas Department of Transportation (ARDOT), Arkansas Economic Development Commission (AEDC), or an airport approved certification agency. This definition also includes the Small Business Administration (SBA)'s Historically Underutilized Business Zones (HUBZone), 8(a) Business Development Program (8(a)), Woman-Owned Small Business (WOSB), Veteran-Owned Small Business (VOSB), and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs. For more information, please visit our website for more information. <https://www.clintonairport.com/airport-business/bids-solicitations/dbe-program/>

35.3 Good Faith Efforts

All Companies **must** make good faith efforts, as defined in Appendix A of 49 CFR Part 26, Regulations of the Office of the Secretary of Transportation, to subcontract with diverse companies. **If a Company fails to identify/demonstrate that it will achieve the contract goal as stated herein, the Company MUST provide documentation demonstrating good faith efforts in attempting to do so. A submission failing to meet these requirements will be considered non-responsive.** If a Company qualifies as a Diverse Company, the contract goals **must** be deemed to have been met.

35.4 Non-Discrimination

- A. The Company **must not** discriminate based on race, color, creed, religion, sex, national origin, age, disability, marital status, sexual orientation, gender identity, or genetic information, as such relates to the performance of the contract and **must** require such compliance in contracts with subcontractors and sub-subcontractors.
- B. The Company's Response **must** meet all applicable accessibility requirements through the incorporation of features or other reasonable means to comply with the provisions of the Americans with Disabilities Act.

36. Title VI Civil Rights Act Implementation and Assurances

36.1 If the contract involves the use of federal funds, and the Airport so requires, the Company **must** comply with the following:

- A. require any sub-recipients, sub-grantees, companies, successors, transferees, or assignees to comply;
- B. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252), (which prohibits discrimination on the basis of race, color, national origin); and its applicable federal statutory, regulatory authorities, other pertinent directives, circulars, policy, memoranda, and/or guidance and will give assurance that it will promptly take any measures necessary to ensure such;
- C. with all applicable provisions governing the Airport and applicable federal department's or agency's access to records, accounts, documents, information, facilities, and staff;
- D. with any program, or compliance reviews, or complaint investigations, or a combination of such, conducted by the Airport or applicable federal department or agency;
- E. with record retention, reporting requirements, and all requests materials in a timely, complete, and accurate way; and
- F. with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance

The Airport, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the applicable federal regulations, hereby notifies all companies that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit responses to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award

37. Sex Offender

THE AIRPORT DOES NOT EMPLOY SEX OFFENDERS OF ANY LEVEL. THE COMPANY AND ANY SUBCONTRACTORS MUST NOT HAVE SUCH AN EMPLOYEE ON AIRPORT PROPERTY PURSUANT TO ANY AGREEMENT ENTERED SUBJECT TO THIS AGREEMENT.