

## **SUPPLEMENTAL AGENDA**

**Suspension of the Rules Request  
ALC/Review Subcommittee**

**Tuesday, February 18<sup>th</sup>, 2020  
1:30 pm, Room A MAC**

**A. Review of Request for Qualifications (RFQ) OSP Approval - DHS**



Office of Procurement  
P.O. Box 1437, Slot W304  
Little Rock, AR 72203-1437  
P: 501.396.6078  
F: 501.683.6304  
TDD: 501.682.1442  
HUMANSERVICES.ARKANSAS.GOV

A

February 14, 2020

The Honorable Scott Flipppo, Chair  
The Honorable Andy Davis, Chair  
ALC-Review Subcommittee  
Arkansas Legislative Council  
State Capitol Building  
Little Rock, AR 72201

Dear Senator Flipppo and Representative Davis:

The Department of Human Services (DHS) respectfully requests that you allow a suspension of the rules requiring submission of items ten (10) days in advance of a committee hearing to review the attached Request for Qualification (RFQ) with Multiple Award Approval for Residential Group Home Services and the attached Request for Qualification with Multiple Award Approval for Community Based Services. Both RFQ's are requested by the Division of Youth Services (DYS).

The RFQ method is most suitable for the State of Arkansas for these services because the qualifications of the vendors are the most important factor in the selection process. The proposals will be evaluated and scored much like a Request for Proposals, but price will not be a factor as it will be set by the state at a fixed rate. Due to the uncertainty around the new legislation and rules regarding procurement practices, there was confusion regarding the new process for requesting an RFQ. Because of the critical nature of the services involved, and the short timeframe for procurement, DHS requests your consideration for a suspension of the rules to allow the two (2) identified requests to be included on the February 18, 2020 agenda.

Sincerely,

*Mary Kathryn Williams*

Mary Kathryn Williams, J.D.  
Chief Procurement Officer

cc: Cindy Gillespie, DHS Director  
Keesa Smith, DHS Deputy Director  
Michael Crump, DHS Director of the Division of Youth Services



Department of Transformation and Shared Services  
Governor Asa Hutchinson  
Secretary Amy Fecher  
Director Edward Armstrong

February 18, 2020

Senator Cecile Bledsoe, Co-Chair  
Representative Jeffery Wardlaw, Co-Chair  
Arkansas Legislative Council  
State Capitol Building, Room 315  
Little Rock, AR 72201

Dear Co-Chairs:

The Department of Transformation and Shared Services (TSS), Office of State Procurement (OSP), received requests from the Department of Human Services (DHS), dated February 13, 2020, to approve two requests for qualifications (RFQs): (1) a multiple award RFQ for qualified vendors interested in providing "Community Based Services for DYS;" and (2) an RFQ for qualified across the state who are interested in providing Residential Group Homes Services, including Sexual Rehabilitative Services. It submitted letters with supplemental information on February 14, 2020. Consistent with Ark. Code Ann. § 19-11-802(e), I am submitting the DHS correspondence and my determination for review by the Arkansas Legislative Council.

Respectfully,

A handwritten signature in dark ink, appearing to read "Edward R. Armstrong". The signature is fluid and cursive, with the first name "Edward" and last name "Armstrong" being the most prominent parts.

Edward R. Armstrong,  
Director, State Procurement

Cc: Amy Fecher, Secretary  
Ann Purvis, Chief of Staff



Office of Procurement  
P.O. Box 1437, Slot W304  
Little Rock, AR 72203-1437  
P: 501.396.6078  
F: 501.683.6304  
TDD: 501.682.1442  
HUMANSERVICES.ARKANSAS.GOV

February 13, 2020

Mr. Edward Armstrong, Director  
Transformation and Shared Services  
Office of State Procurement  
1509 West 7<sup>th</sup> Street, Suite 300  
Little Rock, Arkansas 72201

Re: Request for Qualification with Multiple Award Approval

Dear Mr. Armstrong:

Pursuant to A.C.A. §19-11-204, the Department of Human Services (DHS), Office of Procurement (OP), on behalf of the Division of Youth Services (DYS) requests approval to issue a multiple-award Request for Qualifications (RFQ). The RFQ will identify qualified vendors across the state who are interested in providing Community Based Services for DHS.

The RFQ method is the most advantageous to the State of Arkansas because the qualifications of the vendors are the most important factors in the selection process. DHS wishes to issue contracts to one (1) respondent within each of the specified catchment areas across the state who demonstrates the ability to implement the expectations of the program and also meets the following requirements:

- Must be registered to do business in the State of Arkansas;
- Must have non-profit status as required by Arkansas Code Annotated (ACA) § 20-47-202. For verification purposes, bidder must submit official documentation from the Internal Revenue Service (IRS) confirming non-profit status.
- Must have at least five (5) years of juvenile justice experience providing Family in Need, Diversion, and Supervision services;

P.O. Box 1437, Slot W304 • Little Rock, AR 72203-1437 • 501.396.6078  
HUMANSERVICES.ARKANSAS.GOV



Mr. Edward Armstrong  
February 13, 2020  
Page 2

- Must not have received a contract termination due to non-performance within the past three (3) years; and
- Must not have received civil or criminal regulatory enforcement action in connection with the Department of Justice (DOJ), the American Correctional Association (ACA), or similar federal or state regulatory body within the past three (3) years.

Furthermore, price competition will not be a factor in selecting the awardees given that they will all be reimbursed at a fixed rate, which will be fairly determined and clearly specified in the resultant RFQ. In an effort to contain costs, there will be funds appropriated by region that will be distributed monthly to each region. The funding formula for each region will be based on population census for each region and further adjusted for poverty associated in each region.

The expected initial term of resultant contracts will be from July 1, 2020 through June 30, 2021, with optional renewals not to exceed seven (7) years total.

Thank you for your consideration.

Sincerely,

*Mary Kathryn Williams*

Mary Kathryn Williams, J.D.  
Chief Procurement Officer

cc: Keesa Smith, DHS Deputy Director of Youth and Families, Office of the Secretary  
Michael Crump, DHS DYS Director  
Kathy Schmidt, Bureau of Legislative Research



Office of Procurement  
P.O. Box 1437, Slot W304  
Little Rock, AR 72203-1437  
P: 501.396.6078  
F: 501.683.6304  
TDD: 501.682.1442  
HUMANSERVICES.ARKANSAS.GOV

February 13, 2020

Mr. Edward Armstrong, Director  
Transformation and Shared Services  
Office of State Procurement  
1509 West 7<sup>th</sup> Street, Suite 300  
Little Rock, Arkansas 72201

Re: Request for Qualification with Multiple Award Approval

Dear Mr. Armstrong:

Pursuant to A.C.A. §19-11-204, the Department of Human Services (DHS), Office of Procurement (OP), on behalf of the Division of Youth Services (DYS) requests approval to issue a multiple-award Request for Qualifications (RFQ). The RFQ will identify qualified vendors across the state who are interested in providing Residential Group Home services, including Sexual Rehabilitative services, for DHS.

The RFQ method is the most advantageous to the State of Arkansas because the qualifications of the vendors are the most important factors in the selection process. DHS wishes to issue contracts to up to three (3) respondents for male youth, one (1) respondent for female youth, and one (1) respondent for youth requiring a placement for Sexual Rehabilitative services across the state who demonstrate the ability to implement the expectations of the program and also meets the following requirements:

A. The Contractor **must** be licensed as a Child Welfare Agency as set out in the Minimum Licensing Standards for Child Welfare Agencies and meet the DHS requirements for Placement and Residential outlined in the Minimum Licensing Standards for Child Welfare Agencies, Pub.04;

B. The Contractor **must** be available to accept DHS referrals upon the contract's effective date;

C. The Contractor **must** have verification of fiscal responsibility and sustainability. Contractors who currently contract with DHS **must** report funds received through DHS and the payment of all required federal and state taxes accrued through resultant contract; and

P.O. Box 1437, Slot W304 • Little Rock, AR 72203-1437 • 501.396.6078  
HUMANSERVICES.ARKANSAS.GOV

Mr. Edward Armstrong  
February 13, 2020  
Page 2

D. The business entity **must** be a licensed or eligible to be a corporation, professional association, or limited liability corporation authorized to do business in Arkansas at the time of contract approval.

Furthermore, price competition will not be a factor in selecting the awardees given that they will all be reimbursed at a fixed rate, which will be fairly determined and clearly specified in the resultant RFQ.

The expected initial term of resultant contracts will be from July 1, 2020 through June 30, 2021, with optional renewals not to exceed seven (7) years total.

Thank you for your consideration.

Sincerely,

*Mary Kathryn Williams*

Mary Kathryn Williams, J.D.  
Chief Procurement Officer

cc: Keesa Smith, DHS Deputy Director of Youth and Families, Office of the Secretary  
Michael Crump, DHS DYS Director  
Kathy Schmidt, Bureau of Legislative Research



Office of Procurement  
P.O. Box 1437, Slot W304  
Little Rock, AR 72203-1437  
P: 501.396.6078  
F: 501.683.6304  
TDD: 501.682.1442  
HUMANSERVICES.ARKANSAS.GOV

February 14, 2020

Mr. Edward Armstrong, Director  
Transformation and Shared Services  
Office of State Procurement  
1509 West 7<sup>th</sup> Street, Suite 300  
Little Rock, Arkansas 72201

Re: Request for Qualification with Multiple Award Approval

Dear Mr. Armstrong:

Pursuant to A.C.A. §19-11-204, the Department of Human Services (DHS), Office of Procurement (OP), on behalf of the Division of Youth Services (DYS) requests approval to issue a multiple-award Request for Qualifications (RFQ). The RFQ will identify qualified vendors across the state who are interested in providing Community Based Services for DHS.

The RFQ method is the most advantageous to the State of Arkansas because the qualifications of the vendors are the most important factors in the selection process. The proposals will be evaluated and scored much like a Request for Proposal (RFP), but price will not be a factor as it will be set by the state at a fixed rate. DHS wishes to issue contracts to one (1) respondent within each of the specified catchment areas across the state who demonstrates the ability to implement the expectations of the program and also meets the following requirements:

- Must be registered to do business in the State of Arkansas;
- Must have non-profit status as required by Arkansas Code Annotated (ACA) § 20-47-202. For verification purposes, bidder must submit official documentation from the Internal Revenue Service (IRS) confirming non-profit status.
- Must have at least five (5) years of juvenile justice experience providing Family in Need, Diversion, and Supervision services;

P.O. Box 1437, Slot W304 • Little Rock, AR 72203-1437 • 501.396.6078  
HUMANSERVICES.ARKANSAS.GOV



Mr. Edward Armstrong  
February 13, 2020  
Page 2

- Must not have received a contract termination due to non-performance within the past three (3) years; and
- Must not have received civil or criminal regulatory enforcement action in connection with the Department of Justice (DOJ), the American Correctional Association (ACA), or similar federal or state regulatory body within the past three (3) years.

Furthermore, price competition will not be a factor in selecting the awardees given that they will all be reimbursed at a fixed rate, which will be fairly determined and clearly specified in the resultant RFQ. In an effort to contain costs, there will be funds appropriated by region that will be distributed monthly to each region. The funding formula for each region will be based on population census for each region and further adjusted for poverty associated in each region.

The expected initial term of resultant contracts will be from July 1, 2020 through June 30, 2021, with optional renewals not to exceed seven (7) years total.

Thank you for your consideration.

Sincerely,

*Mary Kathryn Williams*

Mary Kathryn Williams, J.D.  
Chief Procurement Officer

cc: Keesa Smith, DHS Deputy Director of Youth and Families, Office of the Secretary  
Michael Crump, DHS DYS Director  
Kathy Schmidt, Bureau of Legislative Research



Office of Procurement  
P.O. Box 1437, Slot W304  
Little Rock, AR 72203-1437  
P: 501.396.6078  
F: 501.683.6304  
TDD: 501.682.1442  
HUMANSERVICES.ARKANSAS.GOV

February 14, 2020

Mr. Edward Armstrong, Director  
Transformation and Shared Services  
Office of State Procurement  
1509 West 7<sup>th</sup> Street, Suite 300  
Little Rock, Arkansas 72201

Re: Request for Qualification with Multiple Award Approval

Dear Mr. Armstrong:

Pursuant to A.C.A. §19-11-204, the Department of Human Services (DHS), Office of Procurement (OP), on behalf of the Division of Youth Services (DYS) requests approval to issue a multiple-award Request for Qualifications (RFQ). The RFQ will identify qualified vendors across the state who are interested in providing Residential Group Home services, including Sexual Rehabilitative services, for DHS.

The RFQ method is the most advantageous to the State of Arkansas because the qualifications of the vendors are the most important factors in the selection process. The proposals will be evaluated and scored much like a Request for Proposal (RFP), but price will not be a factor as it will be set by the state at a fixed rate. DHS wishes to issue contracts to up to three (3) respondents for male youth, one (1) respondent for female youth, and one (1) respondent for youth requiring a placement for Sexual Rehabilitative services across the state who demonstrate the ability to implement the expectations of the program and also meets the following requirements:

A. The Contractor **must** be licensed as a Child Welfare Agency as set out in the Minimum Licensing Standards for Child Welfare Agencies and meet the DHS requirements for Placement and Residential outlined in the Minimum Licensing Standards for Child Welfare Agencies, Pub.04;

B. The Contractor **must** be available to accept DHS referrals upon the contract's effective date;

C. The Contractor **must** have verification of fiscal responsibility and sustainability. Contractors who currently contract with DHS **must** report funds received through DHS and

P.O. Box 1437, Slot W304 • Little Rock, AR 72203-1437 • 501.396.6078  
HUMANSERVICES.ARKANSAS.GOV

the payment of all required federal and state taxes accrued through resultant contract; and

D. The business entity **must** be a licensed or eligible to be a corporation, professional association, or limited liability corporation authorized to do business in Arkansas at the time of contract approval.

Furthermore, price competition will not be a factor in selecting the awardees given that they will all be reimbursed at a fixed rate, which will be fairly determined and clearly specified in the resultant RFQ. DYS will be able to control costs through its authority for placement. DYS makes the determination of which vendor will be providing services for each placement. The agency determination will include information on each vendor's current placements and will take into consideration cost-containment strategy.

The expected initial term of resultant contracts will be from July 1, 2020 through June 30, 2021, with optional renewals not to exceed seven (7) years total.

Thank you for your consideration.

Sincerely,

*Mary Kathryn Williams*

Mary Kathryn Williams, J.D.  
Chief Procurement Officer

cc: Keesa Smith, DHS Deputy Director of Youth and Families, Office of the Secretary  
Michael Crump, DHS DYS Director  
Kathy Schmidt, Bureau of Legislative Research





Department of Transformation and Shared Services

Governor Asa Hutchinson  
Secretary Amy Fecher  
Director Edward Armstrong

Ms. Mary Kathryn Williams, CPO  
DHS Office of Procurement  
P.O. Box 1437, Slot W304  
Little Rock, AR 72203-1437

Re: Two February 13, 2020 Department of Human Services (DHS), Requests for Request for Qualification (RFQ) authorization

Dear Ms. Williams,

Thank you for your letters (the "Letters"), dated February 13, 2020, on behalf of the DHS Division of Youth Services (DYS), to issue: (1) a multiple award RFQ for qualified vendors interested in providing "Community Based Services for DHS;" and (2) an RFQ for qualified across the state who are interested in providing Residential Group Homes Services, including Sexual Rehabilitative Services. For ease of reference, I will refer to these as the solicitation for Community Based Services and the solicitation for Residential Group Home services.

Under Arkansas Procurement Law, the term "Request for qualifications" means "a solicitation document requiring submittal of qualifications or specialized expertise in response to the scope of work or services required and does not require pricing." Ark. Code Ann. § 19-11-204(10)(A). Except as provided in § 19-11-801 et seq., the RFQ process may only be used when the State Procurement Director determines in writing that the RFQ process is "warranted." See Ark. Code Ann. § 19-11-204(10)(B). In Ark. Code Ann. § 19-11-802 the law provides that an RFQ may be used if the State Procurement Director "approves the use of a request for qualifications and determines that it is *the most suitable method of procurement*." Ark. Code Ann. § 19-11-802(e)(2) (emphasis added). The statute goes on to provide:

In determining whether a request for qualifications under this subsection is the most suitable method of procurement, the director shall consider, based on information submitted by the requesting state agency:

- (A) Why the request for qualifications is the most suitable method of procurement;
- (B) Why cost should not be considered in the procurement; and
- (C) How the cost of the contract will be controlled if cost is not a factor in the procurement.

Ark. Code Ann. § 19-11-802.

The legal standard makes it clear that the first issue presented is whether an RFQ is "the most suitable" procurement method for the solicitation for Community Based Services and the solicitation for Residential Group Home services. Based on the Letters you sent me, it's evident that price competition will not be a basis for deciding between competing service providers since DHS will be controlling price by setting reimbursement rates. The DHS commitment to using established reimbursement rates as a means of cost control means that an invitation for bids (IFB) would be an unsuitable procurement method in this case, as it requires the contract award to be determined by the lowest bid amongst responsive and responsible bidders.

Office of State Procurement  
1509 West 7th Street, Suite 300 • Little Rock, AR 72201 • 501.324.9316





Department of Transformation and Shared Services

Governor Asa Hutchinson  
Secretary Amy Fecher  
Director Edward Armstrong

By law, the request for proposals (RFP) method requires award to be based on a consideration of which proposal is the most advantageous based on the "consideration of price and evaluation factors." See Ark. Code Ann. § 19-11-230(a)(4). The use of a predetermined reimbursement rate makes price consideration irrelevant to the determination of the award, leaving only the evaluation factors as the basis for awarding the contract. In some respects, this effectively would render the RFP an RFQ, as the evaluation would come down to factors other than price. Consequently, as between an RFP and an RFQ, it seems that an RFQ would be the procurement method most suitable to selecting contractors based on consideration of qualitative differences alone.

The second and third questions, "Why cost should not be considered in the procurement;" and "How the cost of the contract will be controlled if cost is not a factor in the procurement," are answered by the fact that cost is being considered and controlled in the procurements proposed through DYS fixing reasonable reimbursement rates for the: (1) Community Based Services; and (2) Residential Group Home services. Based on information you provided, DHS will set rates for Community Based Services based on its consideration of historical payments made to the provider community, and will provide a funding formula that will also ensure that funding for each region rests on population census and is further adjusted for poverty associated in each region. DYS also plans to gather encounter data to use with an actuary. With respect to the rates for Residential Group Home services, DHS will set the rates based on its consideration of the former DYS base rate established in 2010 of \$120 for residential group home per diem and \$140 for sexual offender placement per diem. My understanding, based on your representations, is that DHS used the average annual South Region (The South region is comprised of Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia) Consumer Price Index (CPI) from 2010 and the CPI from 2019 (Annual South Region CPI in 2010 = 211.338, Annual South Region CPI in 2019 = 246.265), as well as the Bureau of Labor Statistics inflation formula to produce the following results:

\$120 in 2010 = \$139.83 annualized in 2019

\$140 in 2010 = \$163.14 annualized in 2019

It is these CPI adjustments DYS is using to set the residential group home rates at \$140 per day for residential group home per diem and \$160 for sex offender placement per diem. By setting the rates in such a fashion, DHS proposes to control the cost of any contracts resulting from these RFQs and ensure that it is not paying an inordinately high reimbursement rate. These seem like reasonable controls, to which I would recommend that, to the extent practicable, DHS also consider a peer state analysis to ensure that the rates it offers are in line with other in the region.

Based on the aforesaid, I determine that an RFQ is the most suitable method given that DHS and DYS are planning to utilize fixed reimbursement rates.

Respectfully,

A handwritten signature in black ink, appearing to read 'Edward R. Armstrong'.

Edward R. Armstrong  
State Procurement Director

Office of State Procurement  
1509 West 7th Street, Suite 300 • Little Rock, AR 72201 • 501.324.9316



Department of Transformation and Shared Services  
Governor Asa Hutchinson  
Secretary Amy Fecher  
Director Edward Armstrong

Cc: Amy Fecher, Secretary;  
Ann Purvis, Chief of Staff