

Agency Procurement Manual for Services

State Purchasing Bureau

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**This manual was written and prepared by
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Periodic updates to this manual may be found on our website.

Nothing contained herein shall be construed to amend or override any statute, rule or regulation, policy or procedure of the State of Nebraska. The State Purchasing Bureau reserves the right to modify this manual without prior notice and without issuance of such modifications to all holders of this manual.

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PUBLIC PROCUREMENT

The spending of public tax dollars is an issue that ranks high in public opinion and sentiment. An effective public procurement process reduces the cost of government and directly improves the quality of services rendered by state agencies. For agencies, procurement is a vital function, supporting programs by the acquisition of supplies and services. For potential contractors, it is an opportunity to provide supplies and services to government agencies.

Neb. Rev. Stat. § 81-1118 establishes the State Purchasing Bureau (SPB) under the Materiel Division of the Department of Administrative Services (AS) and assigns responsibility for the procurement process to SPB. SPB adheres to the following purposes as established by § 81-1118.06:

- Increase public confidence in the procedures followed in public procurement
- Ensure the fair and equitable treatment of all persons who deal with the procurement process of this state
- Provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of the public funds of the state
- Foster effective, broad-based competition within the free enterprise system
- Provide safeguards for the maintenance of a procurement system of quality and integrity

Statutes may be viewed on the following website:
<http://nebraskalegislature.gov/laws/browse-statutes.php>.

The following is a list of statutes specific to the services procurement process:

48-1122	Contracts with state and political subdivisions; requirements
73-101.01	Resident bidder, defined; preference
73-101.02	Resident bidder; preference; exception
73-102 – 73-104	Fair labor standards
73-105	Violations; penalties
73-107	Resident disabled veteran or business located in a designated enterprise zone; preference; contract not in compliance with section; null and void
73-201	Legislative findings
73-202	Terms, defined
73-203	Contingent fee contract; executed by state; void; exception
73-205	Technology access clause; requirements
73-301	Director of Administrative Services; duties
73-302	State agency; duties
73-303	State agency; displaced state employees; plan of assistance
73-304	Director of Administrative Services; approve contract; when
73-305	Direct of Administrative Services; report required
73-306	Rules and regulations
73-307	Sections; applicability; how construed
73-401	Contract with state agency; Public Counsel; jurisdiction
73-501	Purposes of sections
73-502	Terms, defined
73-503	Documentation; requirements
73-504	Competitive bidding requirements

73-505	State agency directors; duties
73-506	State agency contracts for services; requirements
73-507	Exceptions
73-508	Pre-approval; required; when
73-509	Pre-process; required; when; procedure
73-510	Proposed contract in excess of fifteen million dollars; submission of contract and proof-of-need analysis; information required; division; duties; state agency; filing required
73-601 – 73-605	Transparency in Government Procurement Act
81-1118	Materiel division; established; duties; administrator; branches; established
81-1118.04	Materiel division; purposes
81-1118.05	Materiel division; powers and duties
81-1118.06	Materiel division; state purchasing bureau; purposes
81-2401 – 81-2408	Prompt Payment Act
84-602.02	Web site; contents; link to Department of Administrative Services web site; contents; actions by agency, board, commission, or department prohibited; Department of Administrative Services; duties
84-712	Public records; free examination; memorandum and abstracts; copies; fees
84-712.01	Public records; right of citizens; full access; fee authorized
84-712.05	Records which may be withheld from the public; enumerated
84-712.06	Public record; portion provide; when

PROCUREMENT FOR SERVICES

Neb. Rev. Stat. §§ 73-501–73-510 requires agencies to use a standardized, open, and fair process for the selection of contractual services. Service procurements in excess of \$50,000 shall be bid in the manner prescribed in this Agency Procurement Manual for Services. Agencies may complete the bid process at the agency level, request assistance from the AS Materiel Division State Purchasing Bureau to include performing the bid process for the agency, or request the AS Director to approve an alternate process for the procurement of services.

In order to facilitate the procurement of services for state agencies, SPB has established several procurement processes:

- Request for Information (RFI) – SPB or agency-processed
- Post Draft Request for Proposal to SPB website for vendor comment
- SPB Request for Proposal (RFP) – Standard, Cost Only, Cafeteria/Vending
- Agency-processed RFP - Standard, Cost Only, Cafeteria/Vending
- SPB Deviations – Emergency, Sole Source, Contract pricing established by GSA, Cooperative Service Contracts, and Other Circumstances

These processes will be further explained in this Agency Procurement Manual for Services. While most of the options are fairly straightforward, the procurement process continues to evolve. The dynamic nature of new legislation and court rulings continue to modify and define the service procurement process. The underlying premise is that state agencies need a procurement tool where factors other than price alone (such as service capabilities, technical requirements, corporate reputation, etc.) can be evaluated in determining the overall best value to the state.

DETERMINING THE BEST SERVICE PROCUREMENT PROCESS

Selecting the correct procurement process is an important step in the procurement of services. The following processes are options for State agencies:

1. Request for Information (RFI) – a general invitation to vendors requesting information for a potential future solicitation. The RFI is used as a research and information gathering tool for preparation of a solicitation. This may be processed through SPB or the agency may release an RFI on its own. Information gathered from RFI responses may be used to draft a Request for Proposal to solicit competitive bids or determine make the decision not to move forward with the project.
2. Draft Request for Proposal (RFP) posted to SPB website for vendor comment. A general invitation to vendors requesting comments regarding the RFP as written. This may be either an SPB or agency processed RFP. Comments and information is gathered from vendors in response to the draft RFP. This information may be used to revise and finalize the RFP and release to vendors to solicit competitive proposals. See #3 and #4 below for types of RFP's that may be processed either through SPB or agency may solicit on their own.
3. SPB Request for Proposal– The RFP is used to solicit competitive proposals. A proposal is requested in cases where the selection of a contractor is based on performance offered rather than price alone. There are three (3) types of RFPs that may be processed through SPB:
 - a. Standard – most common type of RFP; used to evaluate a service or a product/service combination based on technical, corporate, and financial factors.
 - b. Cost Only – does not consider technical or corporate factors in the evaluation; used to procure services based solely on price. Specification requirements are provided for in the RFP and the vendor bids a price(s).
 - c. Cafeteria/Vending – used to procure cafeteria or vending services where rent payments are made to the State; may involve preference considerations for blind vendors, if indicated on proposal response, which may affect the evaluation process. Rent is not a consideration if preference is indicated.
4. Agency-processed RFP - The RFP is used to solicit competitive proposals. A proposal is requested in cases where the selection of a contractor is based performance offered rather than price alone. This RFP process is handled entirely by the agency. There are three (3) types of RFPs that may be processed by the agency:
 - a. Standard – most common type of RFP; used to evaluate a service or a product/service combination based on technical, corporate, and financial factors.
 - b. Cost Only – does not consider technical or corporate factors in the evaluation; used to procure services based solely on price. Specification requirements are provided for in the RFP and the vendor bids a price(s).
 - c. Cafeteria/Vending – used to procure services where rent payments are made to the State; may involve preference considerations for blind

vendors, if indicated on proposal response that may affect the evaluation process. Rent is not a consideration if preference is indicated. Game & Parks and the University of Nebraska are exempt from considering the preference for blind vendors under Neb. Rev. Stat. § 71-8611.

- 5.** SPB Deviation – This process is for Emergency, Sole Source, Contract pricing established by GSA, Cooperative Service Contracts, and Other Circumstances.
 - a.** Emergency – Emergency means when procurement is necessary to meet an urgent or unexpected requirement, or when the health and public safety or the conservation of public resources is at risk.
 - b.** Sole Source, single source – Sole source means of such a unique nature that the contractor selected is clearly and justifiably the only practical source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required.
 - c.** Contract pricing established by GSA.
 - d.** Contract competitively bid by another state or group of states, a group of states and any political subdivision of any other state, or a cooperative purchasing organization on behalf of a group of states, or
 - e.** Exception – Exceptions include other circumstances or specific contracts when any of the requirements of Neb. Rev. Stat. §§ 73-504, 73-508, and 73-509 are not appropriate or not compatible with the services or the contract.

State statute requires state agencies (which include any state agency, board, commission, the courts, the Legislature, and any other office or agency established by the Constitution of Nebraska, other than the University of Nebraska) and the state colleges to process and document all service contracts through the procurement of services function in the State's accounting system, Payroll and Financial Center (PFC). Thus, all of the processes EXCEPT the RFI have corresponding document types in PFC.

I. REQUEST FOR INFORMATION (RFI)

An RFI is a general invitation to vendors requesting information for a potential future solicitation. The RFI is used as a research and information gathering tool for preparation of a solicitation. This may be processed through SPB or the agency may release an RFI on its own. An RFI is helpful when an agency is seeking to procure a new service or to get an estimated budget for planning purposes.

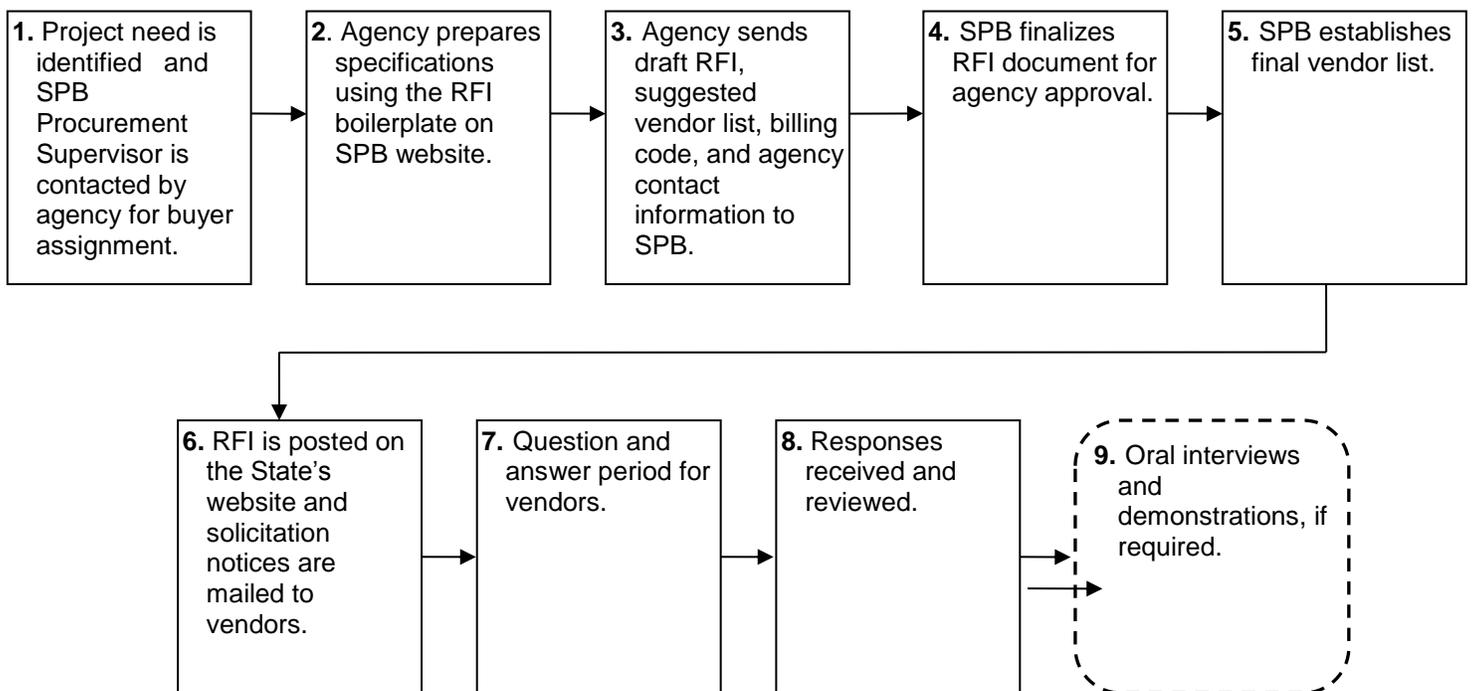
The basic steps of an RFI are the same whether it is processed by SPB or by the agency:

1. Agency defines services needed
2. RFI process selected
 - a. RFI solicitation
 - b. RFI advertisement
 - c. Receipt of presentations/information
 - d. Review process

A. SPB-Processed RFI

If an agency determines to process the RFI through SPB, follow the flow chart shown below and complete the SPB-Processed RFI boilerplate by following the instructions outlined in the document.

1. Process flow chart:



2. Boilerplate

SPB has developed boilerplate documents for all of its developed procurement processes. The boilerplate for an SPB-Processed RFI can be found at http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html

- a. The agency shall not make any changes to the boilerplate without approval from SPB, as the General Counsel for Administrative Services has reviewed this document. If any additions or changes are requested,

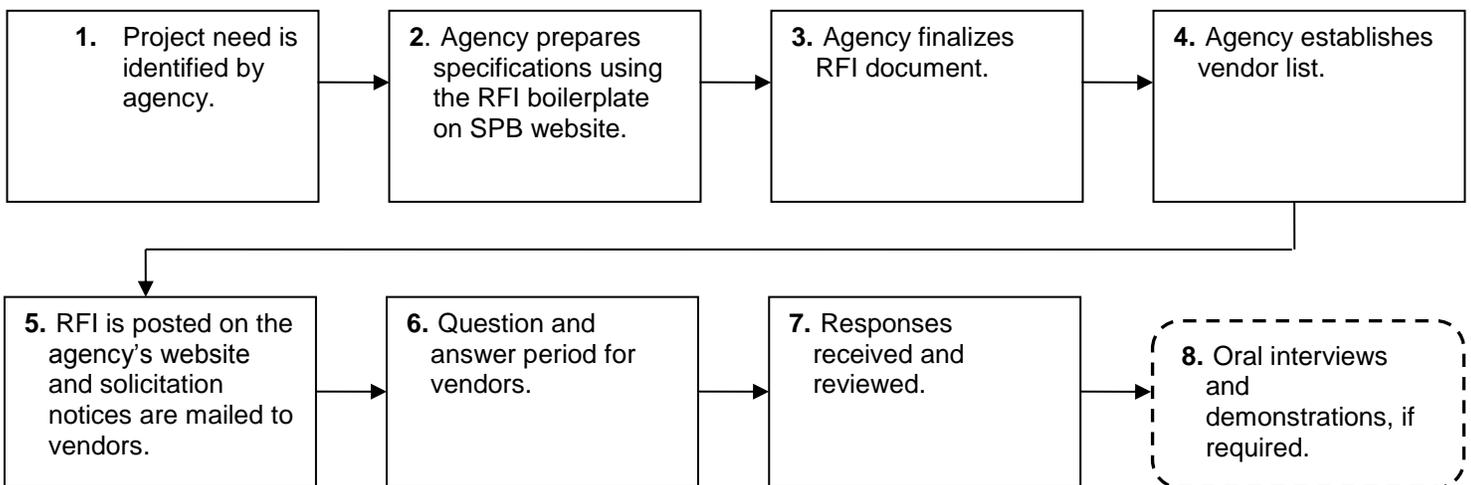
SPB requires that ANY and ALL changes be made using the “Track Changes” function in Word in the draft document.

- b. When editing the boilerplate document, there are sections highlighted in **green** for the agency to act on and delete as required. The sections highlighted in **yellow** are for the agency to supply information as required.
- c. RFI solicitation number is determined by SPB in conjunction with the agency.

B. Agency-Processed RFI

If an agency determines to process an RFI on its own, follow the flow chart shown below and complete the Agency-Processed RFI boilerplate by following the instructions outlined in the document.

1. Process flow chart



2. Boilerplate

SPB has developed boilerplate documents for all of its developed procurement processes. The boilerplate for an Agency-Processed RFI can be found at http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html

- a. When editing the boilerplate document, there are sections highlighted in **green** for the agency to act on and delete as required. The sections highlighted in **yellow** are for the agency to supply information as required.
- b. RFI solicitation number is determined by the agency.
- c. Agency may forward final documents to SPB for posting on SPB’s website if so desired.

C. Frequently Asked Questions – RFI

- 1. How does the agency notify SPB that it wants to process an RFI through SPB?
Answer: An email to the Procurement Manager or the Procurement Supervisor for services will get the process started.
- 2. Does an agency need to do anything in PFC for the RFI process?
Answer: No, RFIs do not process through PFC as they are merely requests for information and do not involve any funds.

II. DRAFT REQUEST FOR PROPOSAL (RFP) FOR VENDOR COMMENT

A draft RFP is a general invitation to vendors to provide comments, express concerns, or provide information on new technology or alternative concepts that may be available which may be of benefit to the State. After comments and/or information is provided, the State may elect to revise the RFP based on information provided or release the final RFP for competitive proposals. This may be processed through SPB or the agency may release a Draft RFP on its own. A draft RFP may be beneficial to the State as vendors may be able to identify potential problems with the draft RFP as written, and may reduce the number of protests received after an RFP is evaluated and awarded.

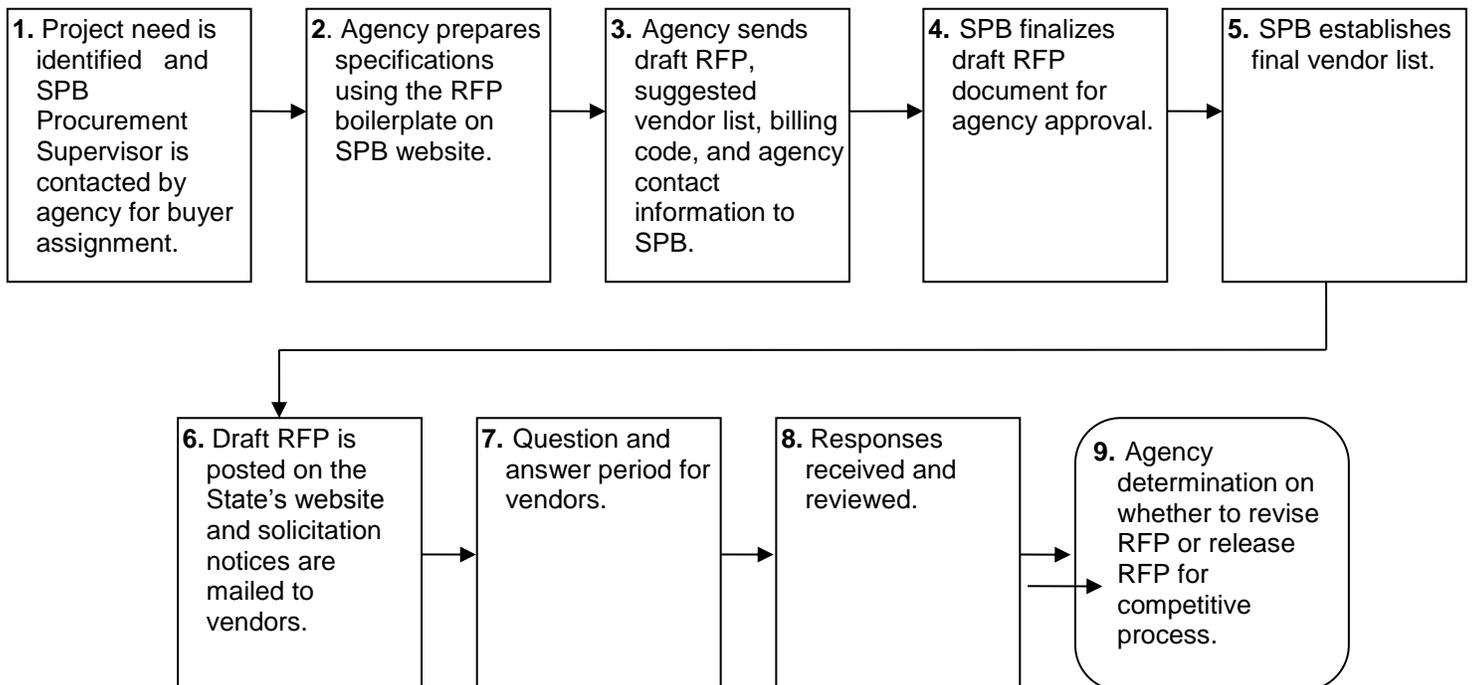
The basic steps of a draft RFP are the same whether it is processed by SPB or by the agency:

3. Agency defines services needed
4. Draft RFP process selected
 - a. Draft RFP solicitation
 - b. Draft RFP advertisement
 - c. Receipt of information
 - d. Review process

A. SPB-Processed Draft RFP

If an agency determines to process the draft RFP through SPB, follow the flow chart shown below and complete the SPB-Processed RFP boilerplate by following the instructions outlined in the document.

1. Process flow chart:



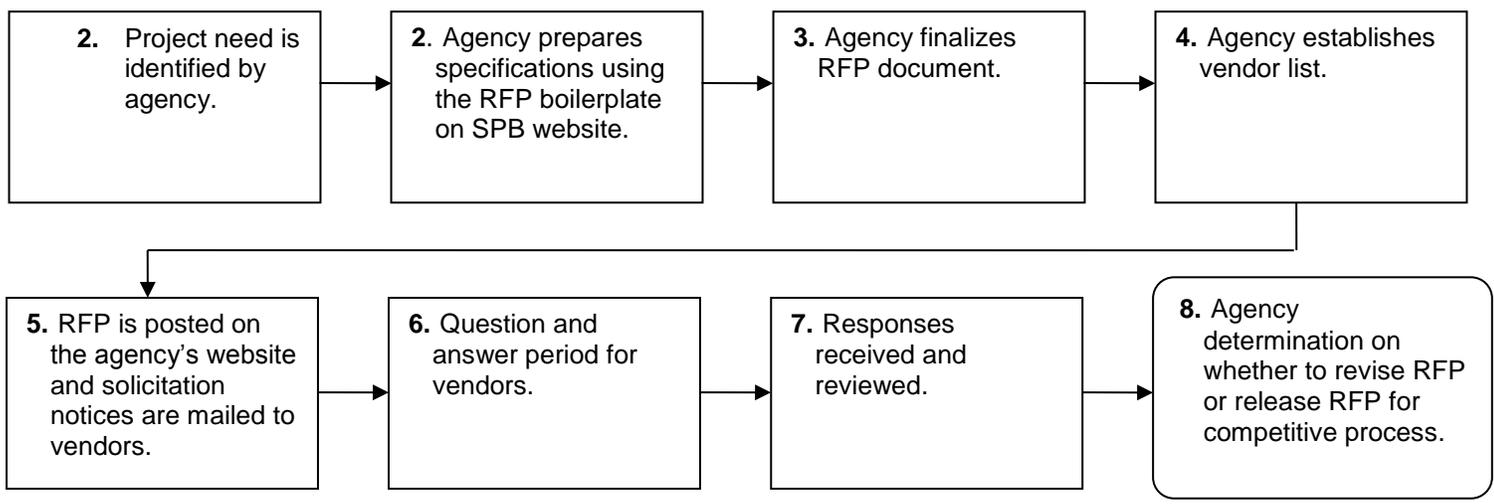
2. Boilerplate (Use same for both regular RFP or for draft RFP)
SPB has developed boilerplate documents for all of its developed procurement processes. The boilerplate for an SPB-Processed RFP can be found at http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html

- a. The agency shall not make any changes to the boilerplate without approval from SPB, as the General Counsel for Administrative Services has reviewed this document. If any additions or changes are requested, SPB requires that ANY and ALL changes be made using the “Track Changes” function in Word in the draft document.
- b. When editing the boilerplate document, there are sections highlighted in green for the agency to act on and delete as required. The sections highlighted in yellow are for the agency to supply information as required.
- c. RFP solicitation number is determined by SPB in conjunction with the agency.

B. Agency-Processed RFP

If an agency determines to process a draft RFP on its own, follow the flow chart shown below and complete the Agency-Processed RFP boilerplate by following the instructions outlined in the document.

1. Process flow chart



- 2. Boilerplate (Use same for both regular RFP or for draft RFP)
 SPB has developed boilerplate documents for all of its developed procurement processes. The boilerplate for an Agency-Processed RFP can be found at http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - a. When editing the boilerplate document, there are sections highlighted in green for the agency to act on and delete as required. The sections highlighted in yellow are for the agency to supply information as required.
 - b. RFP solicitation number is determined by the agency.
 - c. Agency may forward final documents to SPB for posting on SPB’s website.

C. Frequently Asked Questions – Draft RFP

- 1. How does the agency notify SPB that it wants to process a draft RFP through SPB?
Answer: An email to the Procurement Manager or the Procurement Supervisor for services will get the process started.

III. SPB-PROCESSED REQUEST FOR PROPOSAL

A. What is a Request for Proposal?

A Request for Proposal (RFP) is a formal invitation to potential vendors to submit a proposal for providing a solution based on a problem or a need that the agency has identified. An RFP is also a procurement process where the state has the ability to judge if a bidder's qualifications, experience, and approach will provide the best solution to the state's needs.

RFPs are used to procure services or projects including a large service component. Any agency may request that SPB handle the RFP process, or an agency may choose to handle the RFP process themselves following SPB's procedures provided for in this manual. According to Neb. Rev. Stat. § 73-504, any RFP estimated to be \$50,000 or greater for the total contract period (including renewals) MUST use the boilerplate provided by SPB, must be pre-reviewed by SPB prior to release, and must be posted on the SPB website. Whether the RFP is processed by SPB or the agency, an RFP requires agency decisions and input. A successful RFP is a collaborative event.

The basic steps of an RFP when it is processed by SPB are:

1. Agency defines services needed
2. RFP process selected
 - a. O5 requisition and RFP documents submitted in PFC
 - b. RFP finalization
 - c. RFP advertisement
 - d. Question and answer period
 - e. Receipt of proposals
 - f. Evaluation process
 - g. Contract award
 - h. Acceptance of deliverables
 - i. Payment

B. When is an RFP used?

- The agency has defined a need and requests potential contractors to propose the best method for accomplishing it
- The agency would like to evaluate other factors in addition to cost when determining whether to make an award
- The skills, expertise, or technical capability of the potential contractors will be evaluated
- The need is fairly detailed or complex
- The need involves services or a combination of supplies and services
- The state may need the opportunity to ask potential contractors to clarify their proposals by issuing questions or to request revisions
- The specifications of the project cannot be clearly defined; the problem is described and the vendor proposes a solution

If the project fits any of these situations, then an RFP is most likely the best procurement process. Generally, RFPs are a direct result of an agency's desire to secure a service without having their choice limited to the lowest cost.

C. **Pros and Cons of the RFP Process**

Some of the advantages of the RFP process can include:

- **Creative Competition.** The RFP process presents the need for a competitive, creative solution. Competition promotes quality and generally results in lower prices, more value, greater flexibility in approaches, and more creative solutions.
- **All Aspects Considered.** The RFP process does not constrain the selection process to the lowest possible price. Rather, it allows for a comprehensive evaluation of multiple factors when addressing the solution to a typically complex problem.
- **Clear Information.** The RFP process keeps the playing field level by ensuring that all vendors receive the same information by describing the problem in writing. It can also provide protection to the agency in the event of a protest.
- **Clear Solutions.** Preparing an RFP allows the agency to consider all of its options. In some circumstances, the situation appears to be obvious. By going through the RFP process, the agency will be compelled to define and refine its needs in sufficient detail to allow vendors to provide realistic solutions at affordable prices.
- **Clear Format.** By requiring vendors to conform to the format specified in the RFP, the agency will be able to equitably and efficiently evaluate the proposals without wasting time searching for information.
- **Fair Evaluation.** Formalizing the requirements and the selection process produces better results. Having specific, predetermined evaluation criteria simplifies the selection process and ensures that all vendors are evaluated fairly.

The major disadvantage of the RFP process can be:

- **Major Time Commitment.** The RFP process requires an extensive amount of time to define the requirements, prepare the RFP document, establish the evaluation process, perform the evaluation, justify any award, and negotiate the final contract.

D. **Types of SPB-Processed RFPs**

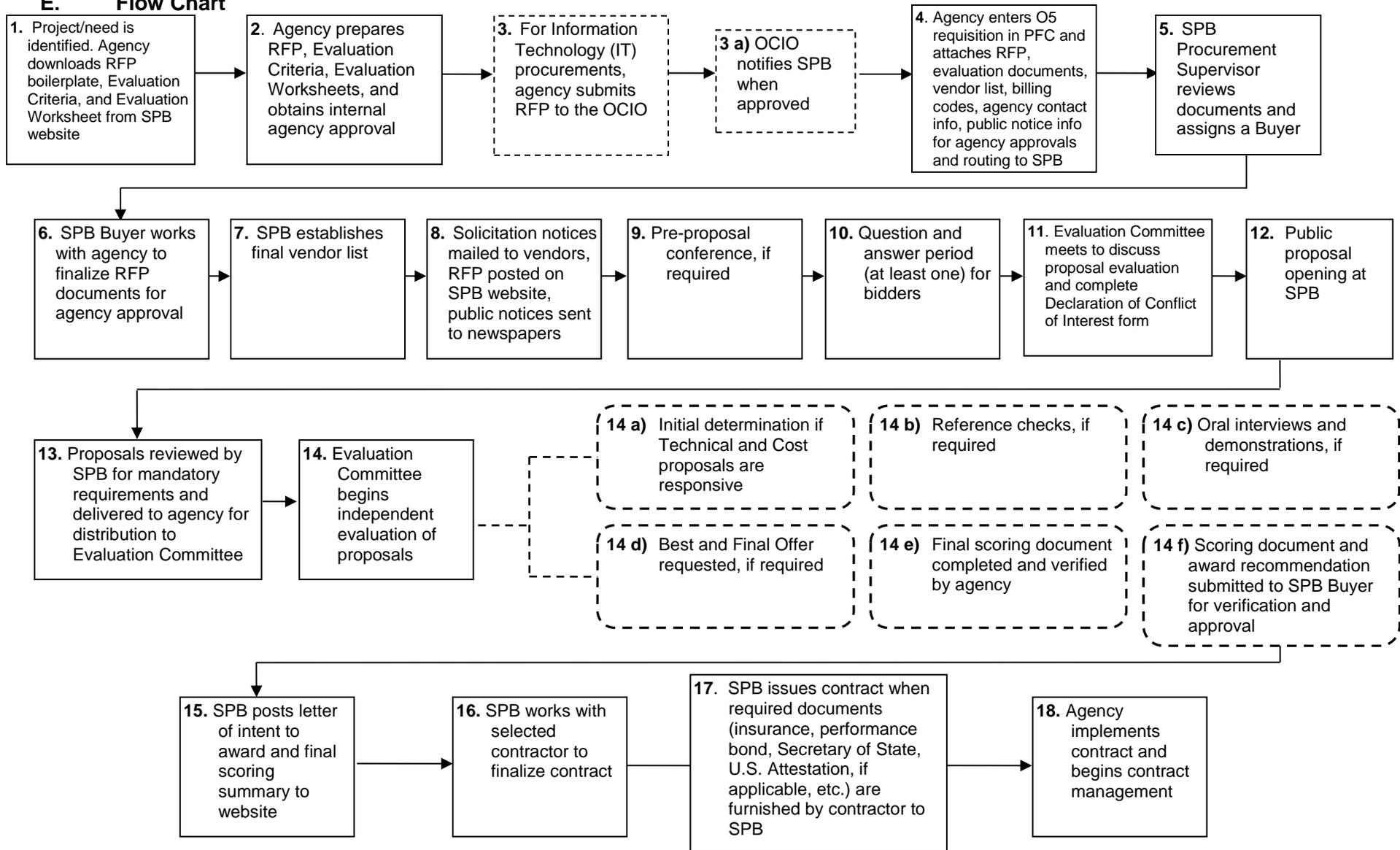
RFPs must be used for service procurements in excess of \$50,000.00 including all renewal option periods. The agency may decide to process it themselves, in which case it must be reviewed by SPB or the agency may decide to process it through SPB. If it is determined to process the RFP through SPB, the flow chart which follows this section outlines the process (and will be described further).

There are three (3) types of RFPs that may be used depending on the nature of the project:

1. **Standard** – most common type of RFP; used to evaluate a service or a product/service combination based on technical, corporate, and financial factors.
2. **Cost Only** – does not consider technical or corporate factors in the evaluation; used to procure services based solely on price. Specification requirements are provided for in the RFP and the vendor bids a price(s).
3. **Cafeteria/Vending** – used to procure cafeteria or vending services where rent payments are made to the State; may involve preference considerations for blind vendors, if indicated on proposal response that may affect the evaluation process. Rent is not a consideration if preference is indicated. Game & Parks and the University of Nebraska are exempt from considering the preference for blind vendors under Neb. Rev. Stat. § 71-8611.

State Purchasing Bureau (SPB) Request for Proposal (RFP) Process

E. Flow Chart



F. The RFP Process

An RFP is a complex, multi-step process, each leading towards a contract. Some of the steps are optional depending on the nature of the project. Agencies should contact their agency procurement contact or SPB early in the process for guidance and assistance in making decisions regarding the optional components.

1. Initiate the Project
 - a. Define the project goals
 - b. Develop a plan for reaching the goals
 - c. Evaluate if an RFP is the best procurement tool to use, and which RFP format best suits the project
 - d. Obtain necessary management approvals
 - e. Organize the manpower necessary to carry out the RFP process

2. Establish the Core Requirements
 - a. Incorporate all special legal requirements (special licenses, certifications, etc.)
 - b. Determine minimum standards that will be acceptable
 - c. Define the project; describe business needs, and goals for the project. Let the vendor offer the solution (Solution Based). This puts the responsibility on the vendor to offer the solution to meet the business needs and requirements of the agency.
 - d. Determine any special terms and conditions
 - e. Establish budgetary considerations/constraints

3. Establish the Evaluation Criteria – For more in-depth information, please see the **RFP Evaluation & Scoring Manual for Services.**
 - a. Establish how the proposals will be evaluated
 - i. Identify the major criteria that are critical to the success of the project
 - ii. Commonly used criteria include (but are not limited to):
 - a) Company qualifications
 - b) Relevant experience
 - c) Quality of work
 - d) References
 - e) Service
 - f) Physical facilities
 - g) Key staff and support personnel
 - h) Cost
 - i) Technical capabilities
 - j) Proposed Timelines
 - b. Tips to keep in mind
 - i. RFPs can *only* be evaluated according to the stated criteria, so include everything that will be measured.
 - ii. The evaluation criteria must be in terms that can be measured and evaluated. Avoid words that are subjective, arbitrary, or too general.
 - iii. The evaluation criteria **MUST** be developed and submitted with the requisition. The evaluation criteria should be developed simultaneously with the requirements of the RFP. Developing the evaluation criteria simultaneously will help ensure an agency has

accounted for all the requirements of the RFP. Remember, an agency cannot score something that has not been requested in the RFP. If bidding for a solution based RFP response from the vendor, the criterion should reflect such.

- c. Detail how much each criterion is worth
 - i. Each RFP section must be stated in the form of specific points.
 - ii. The importance of each criterion and the points given to each will largely depend on what the agency desires from the resulting contract. What is the agency trying to accomplish?
 - iii. Cost Proposals should constitute at least 20% or more of the total available points.
 - iv. Time constraints may also be a factor in the awarding of a contract.
 - d. Select an Evaluation Committee
 - i. Select a group of subject matter experts
 - ii. Explain time commitment
 - iii. Explain potential conflict of interest issues
 - iv. Have each committee member obtain necessary supervisory approval for participation and time commitment
 - v. Select committee chairperson
 - vi. Explain restrictions on communication
 - vii. Explain the evaluation process
4. Submit Required Materials to State Purchasing Bureau
- a. O5 requisition in PFC – attach the following:
 - i. RFP in Word format –
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - ii. Evaluation Criteria –
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - iii. Evaluator Scoring Worksheet –
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - iv. Business unit and billing code for copies and public notice
 - v. Vendor list
 - vi. Agency contact information

PLEASE NOTE: SPB has **75 business days from receipt of all required documentation** to put the RFP together and release it. Please take this into consideration when planning service procurement via RFP.

5. Final Preparation of the RFP
- SPB's process begins upon receipt of the complete RFP package from the agency. SPB will work with the agency to:
- a. Review boilerplate language for any changes made by agency
 - b. Review Section IV (Scope of Work) for consistency and detail
 - c. Ensure the RFP is free, to the extent possible, from ambiguities, inconsistencies, or unduly restrictive specifications, and that all evaluation criteria are in a measurable format
 - d. Ensure that deliverables and cost sheet are aligned

- e. Establish the Schedule of Events
 - f. Review and finalize evaluation criteria and worksheet – the RFP will not be released without the evaluation pieces being completed
6. RFP Release
- To make the RFP available to potential bidders, SPB will:
- a. Send a hardcopy notification letter to all vendors on the list provided by the agency. If a minimum of 10 vendors are not identified by the agency, SPB will add vendors who are registered with SPB by NIGP code, including incumbent vendor, unless the incumbent vendor has been suspended from bidding on the State's needs.
 - b. Submit final RFP and related forms and/or attachments to SPB for posting on SPB website. Agency may put a link on their website to the SPB website, if desired.
 - c. Public Notice Cover and Announcement are required for all RFP's in excess of \$50,000 including all renewal options. Adequate public notice of an RFP solicitation is required. A public notice must appear in a newspaper of statewide distribution for a minimum of one (1) day. Refer to website for forms at:
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
7. Pre-proposal Conference – OPTIONAL (may include site visit)
- a. If desired, SPB may conduct a face-to-face or conference call pre-proposal conference for vendors. This conference may be either *mandatory* or *optional* for vendors to attend, and must be identified as one or the other in the RFP. Mandatory conferences should be used only when necessary.
 - b. The SPB Buyer will conduct the pre-proposal conference.
 - c. Agencies may choose to record the conference, but it is not required.
 - d. A sign-in sheet must be circulated and collected at the conference. A sign-in sheet listing all attendees is *required* for mandatory conferences, as only bidders who attend or are represented at the mandatory conference are then allowed to submit a proposal.
 - e. Attendees must be aware that any oral responses to questions at a pre-proposal conference are not binding until they are in writing.
 - f. Typically occurs 10-14 days after release of RFP.
8. Question and Answer Period
- a. Typically, vendors are provided an opportunity to submit written questions concerning the RFP at least once (some RFPs will have multiple question and answer periods). A specific deadline for the submission of questions is set out in the Schedule of Events and identified on the front page of the RFP. Subsequent to any Question and Answer Period, if a vendor has additional questions, the vendor may contact the buyer. The State reserves the right to consider additional questions and provide responses provided there aren't any time constraints.
 - b. Questions are submitted in writing to the SPB Buyer, who then forwards them to the agency contact once the submission deadline has passed. Sometimes, however, questions are forwarded as they are received due to complexity and/or time constraints.

- c. The agency prepares the answers and submits them to SPB for review and approval.
 - d. The Buyer works with the agency to make sure all questions are answered as well as possible, and prepares an Addendum to the RFP for posting on SPB's website.
 - e. Typically, questions should be submitted one (1) or two (2) days after a pre-proposal conference; if no pre-proposal conference is held, the questions should be submitted 10-14 days after the RFP release date.
- 9. Final Preparations/Receipt of Proposals**
- a. Prior to the opening date, the agency contact will meet with the RFP evaluation committee to make the final preparations for the evaluation process, including scheduling any necessary meetings, appointing a project lead to compile the scores of all the evaluators, and answer evaluator questions.
 - b. All proposals must be received in SPB by the date and hour indicated on the RFP form. *Late proposals will not be accepted, regardless of cause.* Late proposals will be considered invalid and returned to the bidder unopened at their expense upon request.
 - c. The proposals will be delivered to the agency after SPB has reviewed them for compliance with the mandatory requirements, and CD's or copies are made for the evaluators as instructed by the agency.
 - d. The proposals will be available for public viewing:
 - i. At the opening, or
 - ii. After the Intent to Award has been posted, by submitting a Public Records Request.
 - iii. No proposals will be available for viewing during the evaluation period.
 - iv. Proposals made available to the public will have all confidential/proprietary information removed per state statute.
- 10. Opening Date**
- a. Anyone may attend the opening. It is considered a public.
 - b. At the opening, the Buyer will examine the proposals for conformance with mandatory requirements and for any proprietary/confidential information.
 - c. If any proprietary/confidential information is present and properly packaged, the Buyer will remove said material while making the remainder of the proposal available for anyone in attendance.
 - d. Once the proposal opening has concluded, proposals will not be available for public viewing until the Intent to Award has been issued.
 - e. Evaluation Criteria and Proposal Respondents will be posted to the SPB website.
- 11. Distribution of Proposals**
- The proposals will be distributed to the evaluation committee after:
- a. The Buyer has reviewed all submissions for confidential/proprietary information.
 - b. The proposals have been scanned to CD or copied per agency's instructions.

- c. The evaluation committee will receive its required copies, including the confidential/proprietary information, after the Buyer has discussed the proper procedure for handling such information with the agency contact.
- d. A Declaration Concerning Conflict of Interest and Confidential Information **has** been signed and turned in by each member of the evaluation committee. Agencies may choose to have those involved in other actions related to the RFP, including but not limited to, research, RFI, development of RFP requirements, evaluation criteria provide the Declaration as well.
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - i. The form ensures that there is no conflict of interest with any person involved in the RFP process.
 - ii. If confidential/proprietary materials are received as part of a proposal, the form advises the evaluation committee members that they must maintain the confidentiality of these documents during and after the RFP evaluation process.
 - iii. If there are any questions about a potential conflict of interest, legal counsel should be consulted.
 - iv. Release of confidential/proprietary information could lead to disciplinary action or monetary damages against any individual who fails to keep the information confidential.
 - v. This form must be signed, collected, and returned to the agency contact, along with completed evaluation documents and submitted to SPB.

12. Evaluation Process

- a. Prior to scoring each proposal, the evaluation committee should meet to discuss the evaluation process so that each member of the committee has a clear understanding of the scoring process and how points are assigned based on the evaluation criteria.
- b. Scoring should be done on an individual and independent basis. Proposals should be scored independently from each other. An evaluator should not compare one proposal against another. Evaluation and scoring is based upon the response to the RFP requirements. Evaluators should not discuss the scoring amongst themselves or with anyone else until after the score sheets have been turned in.
- c. Any questions that arise during the scoring period should be directed to the Buyer via the agency contact person.
- d. Clarification to and RFP response may be sought in order to score the response.
- e. Clarification:
 - i. Vendor cannot change substance of response and cannot alter cost to the State.
 - ii. Happens prior to intent to award.
 - iii. Allows state to remove confusion regarding a vendor response for the purpose of evaluation.
 - iv. Information provided by vendor for the purpose of clarification, if relied upon by the State for the purposes of an award, is binding upon the vendor.
- f. The score sheets are collected by an agency representative and entered into the Final Evaluation Document and checked for accuracy prior to

submitted to SPB.

http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html This document along with the individual score sheets are then turned over to SPB for score review and verification by the Buyer.

- g.** Any requests for clarification will be handled by the Buyer. Evaluation committee members discuss any questions of this type with the agency contact person, who will then work with SPB to obtain the needed clarification.

13. Oral Interviews/Demonstrations – OPTIONAL

The Evaluation Committee may decide to request that top scoring bidders make an oral presentation and/or demonstration to the Committee.

- a.** The agency notifies the Buyer in writing of the request for Oral Interviews/Demonstrations.
- b.** Buyer works with agency to select the appropriate version of the Oral Interview Letter (see http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html for all three (3) versions). Questions to be asked at the Oral Interview are sent to the bidder(s) with the Oral Interview Letter. Agencies may request that the bidder(s) respond to the questions in writing as well as during the presentation.
- c.** Agency develops a scoring worksheet for the Oral Interviews.
- d.** Buyer conducts the Oral Interviews, including making presentations and handling the question and answer time. No informal conversations between the bidder and evaluators and/or state staff are permitted. Only evaluators may ask questions. The State strongly discourages the presence of observers who are not evaluators.
- e.** The Evaluation Committee turns in the score sheets to the Buyer after each presentation.

14. References – OPTIONAL

- a.** The Evaluation Committee may decide to do reference checks on any/all of the bidders.
- b.** See Reference Check Worksheet, http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
- c.** The State has the right to disqualify a bidder based on negative references.

15. Best and Final Offer (BAFO) – OPTIONAL

A BAFO is used to elicit a Best and Final Cost to the State. Time permitting, agencies should always consider utilizing a BAFO. If a bidder also submits other parts of the RFP response with changes, those changes are not considered.

- a.** Buyer works with agency to develop BAFO letter. This letter establishes an opening date and time for the BAFO.
- b.** The BAFO is conducted like a Proposal Opening.
- c.** The BAFO may contain a Question and Answer Period in order to respond to questions that BAFO participants may have regarding the BAFO Instructions or content.
- d.** BAFO instructions should indicate a response must be returned by the vendor by the date and time indicated in the BAFO instructions, even if there are no changes to the vendor's proposal response. Failure to do so

may be cause to reject vendor's proposal and disqualify from further evaluation and consideration or BAFO instructions should indicate that if a vendor does not respond to the BAFO the vendor's original proposal will be utilized for evaluating the BAFO response.

- e. A submitted BAFO will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each vendor requested to submit a BAFO.

16. Final Evaluation Document

- a. The Final Evaluation Document is completed using the proposal scores. If Oral Interviews were held, those scores are added in. If a BAFO was requested and submitted by a bidder, those scores are used in place of the original Cost Proposal scores.
- b. The agency must submit Final Evaluation Document to the Buyer *prior* to the posting of the Letter of Intent to Contract.
- c. The documentation submitted must include the final scoring summary matrix, and the cost proposal score matrix, and any Oral Interview and/or BAFO score matrix along with a written award recommendation.
- d. Copies of each evaluator's worksheet and any other pertinent information must also be submitted to the Buyer.

17. Letter of Intent to Contract

- a. Once the Buyer has verified the scores and confirmed the selection with the agency, the Letter of Intent to Contract is prepared.
- b. The Letter of Intent to Contract and the Final Evaluation Document are posted to SPB's website.

18. Contract Finalization

- a. The Buyer sends a letter to the selected contractor with instructions concerning the required documentation.
 - i. Nebraska Secretary of State Registration – any bidder awarded a contract must be registered and in good standing with the Nebraska Secretary of State, and must submit a Letter or Certificate of Good Standing dated within 90 days.
 - ii. Performance Bond – if a performance bond was required by the RFP, the selected contractor will submit it at this time.
 - iii. Certificate of Insurance (COI) – a current, compliant COI must be received by SPB before the contract award can be finalized.
 - iv. If the vendor is an individual or sole proprietorship, the vendor must complete the United States Citizenship Attestation form. The vendor should submit this form with their Request for Proposal response.
- b. If the selected contractor took any exception(s) to any of the Terms and Conditions, the Buyer works with the contractor and General Counsel to reach an agreement acceptable to both parties.
- c. A contract may not be signed until all required documents have been received and determined compliant.
- d. The agency and the contractor may not have any contact, nor may any work begin, until the contract is fully executed.
- e. Negotiation may be necessary during contract finalization.

- i. Post Award between the state and the awarded vendor for the purposes of finalizing terms and conditions of the contract.
- ii. Negotiations cannot increase cost to the state, nor can it materially alter the RFP specifications or broaden the RFP beyond its original intent and scope.
- iii. If State is unable to finalize terms and conditions of the contract through negotiations, the State reserves the right to reject a vendor's bid; to withdraw the intent to award and to award to the next high scoring vendor or reject all proposals.

G. Entering the Requisition in PFC

- 1. Documents to be attached
 - a. RFP Boilerplate
SPB has developed boilerplate documents for all of its developed procurement processes. Instructions for completing the boilerplate for an SPB-processed RFP can be found in Exhibits A (Standard), B (Cost Only), and C (Cafeteria/Vending). The boilerplates are found at http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - i. When editing the boilerplate document, there are sections highlighted in green for the agency to act on and delete as required. The sections highlighted in yellow are for the agency to supply information as required.
 - b. Evaluation Criteria – http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - c. Evaluation Worksheet – see http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - d. Vendor List – agency should submit a list of vendors to receive notification of the RFP.
- 2. Requisition – after the above documents are completed by the agency, the agency enters an O5 requisition in PFC and attaches all documents. After the agency approval routes are completed, the O5 and attached documents will route to SPB.

NOTE: If OCIO approval is required, this should be done by the agency, as the approval routes will not automatically route it through the OCIO. Attach approval document from OCIO. SPB will verify with OCIO that they have reviewed and approved the RFP specifications.

H. Frequently Asked Questions – SPB-Processed RFP

- 1. What are “evaluation criteria”?
Answer: Evaluation criteria are the factors an agency uses to determine which of several competing proposals submitted in response to an RFP would best meet the agency's needs. In establishing effective evaluation criteria, an agency must clearly identify the factors relevant to its selection of a contractor and then prioritize these factors according to their importance in satisfying the agency's needs. Together, the proper identification of and assignment of points to the evaluation criteria will form an evaluation framework that will provide the agency with a common standard by which to judge the merit of the competing proposals. This allows the agency to rank the proposals received while simultaneously offering bidders a fair basis of comparison. Additionally, effective evaluation

criteria will allow proposals to accurately reflect the bidder's understanding of and ability to deliver the requirements of the agency.

2. How is cost scored?

Answer: For Standard RFP's SPB uses an objective mathematical formula to assign points. Lowest cost submitted receives the maximum points. To assign points to all others, the following formula should be followed:

Lowest Cost Submitted ÷ Cost Submitted x Maximum Possible Cost Points = Cost Points to Award (see samples below)

	Formula	Sample	Sample	Sample
	Lowest Cost Submitted	\$100,000	\$100,000	\$100,000
÷	Cost Submitted	\$100,000	\$200,000	\$150,000
x	Maximum Possible Cost Points	40	40	40
=	Points To Award	40	20	26.7

For Cafeteria/Vending RFPs, SPB reverses the mathematical formula to assign points. Highest payment submitted receives the maximum points unless preference has been given. If blind preference has been given, rent is not evaluated. To assign points to all others, the following formula should be followed:

Payment Submitted ÷ Highest Payment Submitted x Maximum Possible Payment Points = Payment Points to Award (see samples below)

	Formula	Sample	Sample	Sample
	Payment Submitted	\$700	\$350	\$500
÷	Highest Payment Submitted	\$700	\$700	\$700
x	Maximum Possible Payment Points	40	40	40
=	Points To Award	40	20	28.57

3. How late is too late for a bidder to submit a proposal?

Answer: Proposals must be received in SPB and time/date stamped no later than the published opening time and date. A proposal received even one minute after the designated time and date will be considered late and will be rejected.

4. Can an agency ask someone outside of the agency to be an evaluator?

Answer: Yes. If a subject matter expert is brought in as an evaluator, he or she must sign the Declaration Concerning Conflict of Interest and Confidentiality just as any evaluator from within the agency.

5. Can the agency answer questions if bidders contact the agency directly?

Answer: No. All questions and communication from and to bidders during the RFP process must be go through the Buyer. The agency may not have any contact with any of the bidders until a contract has been signed. Agencies should refrain from communicating with third parties regarding an RFP or while an RFP is in process.

6. Does SPB provide a debriefing or explanation to the bidder(s) that were not awarded a contract?

Answer: No. SPB's procedures do not provide a mechanism for debriefing.

AGENCY-PROCESSED RFP

A. What is an Agency-Processed RFP?

RFPs are used to procure services or projects including a large service component. Any agency may request that SPB handle the RFP process, or an agency may choose to handle the RFP process themselves following SPB's procedures. According to Neb. Rev. Stat. § 73-504, any RFP estimated to be \$50,000 or greater for the total contract period (including renewals) MUST use the boilerplate provided by SPB, must be pre-reviewed by SPB prior to release, and must be posted on the SPB website. Whether the RFP is processed by SPB or the agency, an RFP requires agency decisions and input. A successful RFP is a collaborative event.

The basic steps of an RFP when processed by the agency are:

1. Agency defines services needed
2. RFP process selected
 - a. O3 requisition and RFP documents submitted in PFC
 - b. RFP finalization
 - c. RFP advertisement
 - d. Question and answer period
 - e. Receipt of proposals
 - f. Evaluation process
 - g. Contract award
 - h. Acceptance of deliverables
 - i. Payment

B. Comparison of an SPB-Processed RFP and an Agency-Processed RFP

The following chart gives a comparison of the work involved in an RFP depending on which entity is processing it.

	SPB-Processed	Agency-Processed
Identification of project	Agency	Agency
Creation of documents; submission of requisition	Agency	Agency
Review of RFP	SPB	SPB
Finalization of all documents	SPB	Agency
Posting of documents	SPB	SPB
Solicitation Letters	SPB	Agency
Question and Answer Period	SPB	Agency
Proposal Opening	SPB	Agency
Evaluation	Agency	Agency
Intent to Contract	SPB	Agency
Contract Finalization	SPB	Agency
Contract Preparation and Signing	SPB	Agency
Contract Administration	SPB	Agency
Contract Management	Agency	Agency

C. Types of Agency-Processed RFPs

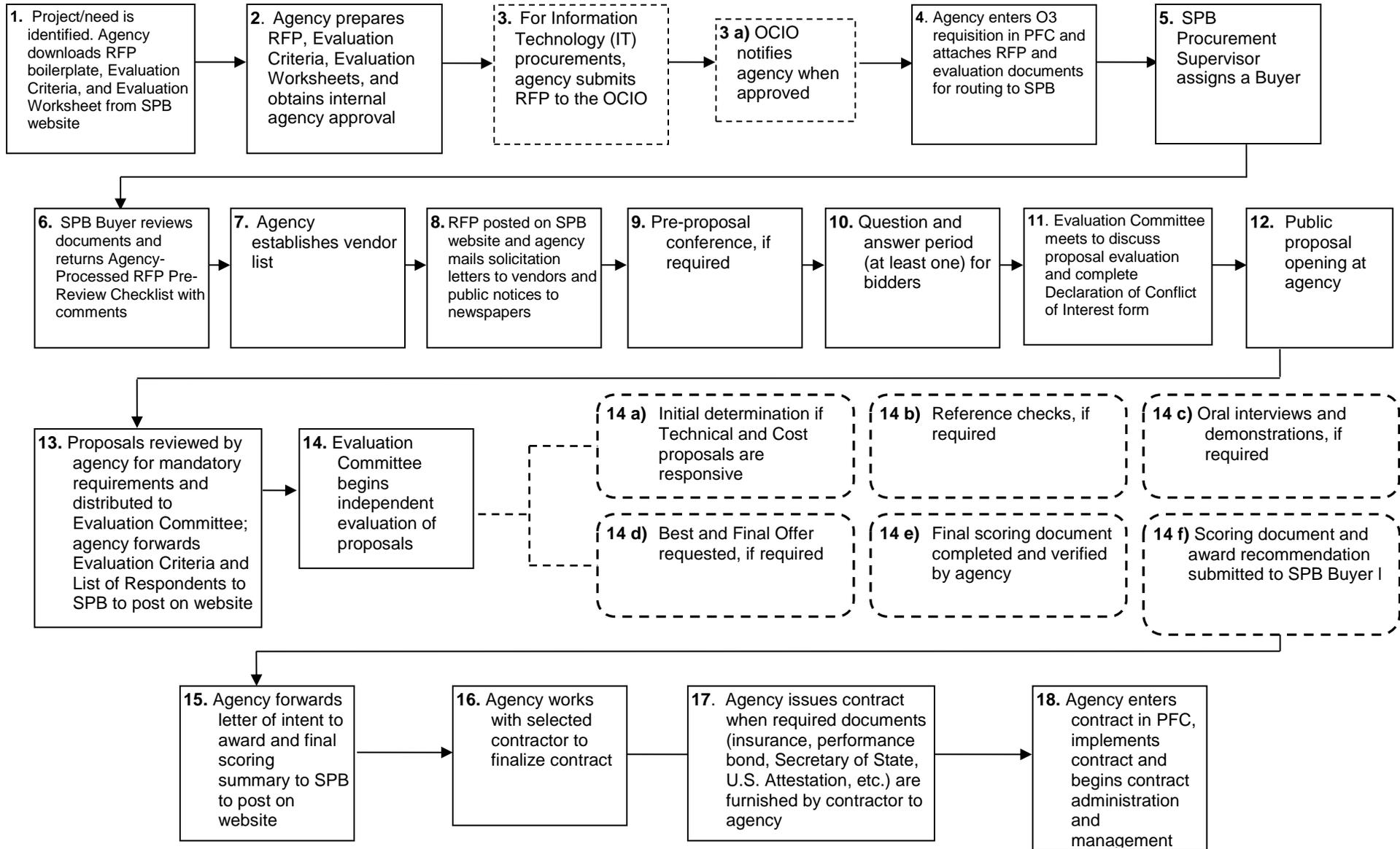
RFPs must be used for service procurements in excess of \$50,000.00 including all renewal options. The agency may decide to process it themselves, in which case it must be pre-reviewed by SPB. If the agency decides to process the RFP itself, the flow chart which follows this section outlines the process (and will be described further).

There are three (3) types of RFPs that may be used depending on the nature of the project:

1. Standard – most common type of RFP; used to evaluate a service or a product/service combination based on technical, corporate, and financial factors.
2. Cost Only – does not consider technical or corporate factors in the evaluation; used to procure services based solely on price.
3. Cafeteria/Vending – used to procure cafeteria or vending services where rent payments are made to the State; involves preference considerations for blind vendors that may affect the evaluation process; Game & Parks and the University of Nebraska are exempt from considering the preference for blind vendors under Neb. Rev. Stat. § 71-8611.

Agency-Processed RFP Process (mandatory if >\$50,000)

D. Flow Chart



E. The RFP Process

An RFP is a methodical, multi-step process, leading to a contract award. Some of the steps are optional depending on the nature of the project. Agencies should contact their agency procurement contact or SPB early in the process for guidance and assistance in making decisions regarding the optional components.

1. Initiate the Project
 - a. Define the project goals
 - b. Develop a plan for reaching the goals
 - c. Evaluate if an RFP is the best procurement tool to use, and which RFP format best suits the project
 - d. Obtain necessary management approvals
 - e. Organize the manpower necessary to carry out the RFP process
2. Establish the Core Requirements
 - a. Incorporate all special legal requirements (special licenses, certifications, etc.)
 - b. Determine minimum standards that will be acceptable
 - c. Determine any special terms and conditions
 - d. Establish budgetary considerations/constraints
3. Establish the Evaluation Criteria – For more in-depth information, please see the **RFP Evaluation & Scoring Manual for Services**
 - a. Establish how the proposals will be evaluated
 - i. Identify the major criteria that are critical to the success of the project
 - ii. Commonly used criteria include (but are not limited to):
 - a) Company qualifications
 - b) Relevant experience
 - c) Quality of work
 - d) References
 - e) Service
 - f) Physical facilities
 - g) Key staff and support personnel
 - h) Cost
 - i) Technical capabilities
 - j) Proposed Timelines
 - b. Tips to keep in mind
 - i. RFPs can *only* be evaluated according to the stated criteria, so include everything that will be measured.
 - ii. The evaluation criteria must be in terms that can be measured and evaluated. Avoid words that are subjective, arbitrary, or too general.
 - iii. The evaluation criteria **MUST** be developed and submitted with the requisition. The evaluation criteria should be developed simultaneously with the requirements of the RFP. Developing the evaluation criteria simultaneously will help ensure an agency has accounted for all the requirements of the RFP. Remember, an agency cannot score something that has not been requested in the RFP.
 - c. Detail how much each criterion is worth

- i. Each RFP section must be stated in the form of specific points.
 - ii. The importance of each criterion and the points given to each will largely depend on what the agency desires from the resulting contract.
 - iii. Cost Proposals should constitute at least 20% or more of the total available points.
 - iv. Time constraints may also be a factor in the awarding of a contract.
 - d. Select an Evaluation Committee
 - i. Select a group of subject matter experts.
 - ii. Explain time commitment
 - iii. Explain potential conflict of interest issues
 - iv. Have each committee member obtain necessary supervisory approval for participation and time commitment.
 - v. Select committee chairperson
 - vi. Explain restrictions on communication
 - vii. Explain evaluation process
- 4. Submit Required Materials to State Purchasing Bureau
 - a. O3 requisition in PFC – attach the following:
 - i. RFP in Word format –
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - ii. Evaluation Criteria –
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - iii. Evaluator Scoring Worksheet –
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html

PLEASE NOTE: SPB desires **10 business days from receipt of all required documentation** to review the RFP and return the Agency-Processed Pre-Review Checklist to the agency. Please take this into consideration when planning service procurement via RFP.

- 5. Final Preparation of the RFP

Once the agency receives SPB's Pre-Review Checklist and sign off:

 - a. Review boilerplate for SPB suggestions
 - b. Review Section IV (Scope of Work) for consistency and detail
 - c. Ensure the RFP is free, to the extent possible, from ambiguities, inconsistencies, or unduly restrictive specifications, and that all evaluation criteria are in a measurable format
 - d. Ensure that deliverables and cost sheet are aligned
 - e. Establish the Schedule of Events
 - f. Review and finalize evaluation criteria and worksheet – the RFP will not be released without the evaluation pieces being completed
- 6. RFP Release

To make the RFP available to potential bidders, the agency shall:

- a. Send a hardcopy notification letter to all vendors on the list developed by the agency. SPB recommends a minimum of ten (10) vendors to receive solicitation letters, including incumbent contractor, if applicable.
 - b. Submit final RFP and related forms and/or attachments to SPB for posting on SPB website. Agency may put a link on their website to the SPB website, if desired.
 - c. Public Notice Cover and Announcement are required for all RFP's in excess of \$50,000 including all renewal options. Adequate public notice of an RFP solicitation is required. A public notice must appear in a newspaper of statewide distribution for a minimum of one (1) day. Refer to website for forms at:
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
7. Pre-proposal Conference – OPTIONAL (may include site visit)
- a. If desired, the agency may conduct a face-to-face or conference call pre-proposal conference for potential vendors. This conference may be either *mandatory* or *optional* for potential vendors to attend, and must be identified as one or the other in the RFP. Mandatory conferences should be used only when necessary.
 - b. The agency procurement contact will conduct the pre-proposal conference.
 - c. Agencies may choose to record the conference, but it is not required.
 - d. A sign-in sheet must be circulated and collected at the conference. A sign-in sheet listing all attendees is *required* for mandatory conferences, as only bidders who attend or are represented at the mandatory conference are then allowed to submit a proposal.
 - e. Attendees must be aware that any oral responses to questions at a pre-proposal conference are not binding until they are in writing.
 - f. Typically occurs 10-14 days after release of RFP.
8. Question and Answer Period
- a. Typically, vendors are provided an opportunity to submit written questions concerning the RFP at least once (some RFPs will have multiple question and answer periods). A specific deadline for the submission of questions is set out in the Schedule of Events and identified on the front page of the RFP. Subsequent to any Question and Answer Period, if a vendor has additional questions, the vendor may contact the buyer. The State reserves the right to consider additional questions and provide responses provided there aren't any time constraints.
 - b. Questions are submitted in writing to the agency contact listed in the RFP, who then forwards them to the appropriate internal personnel once the submission deadline has passed. Sometimes, however, questions are forwarded as they are received due to complexity or time constraints.
 - c. The agency prepares an Addendum to the RFP for posting on SPB's website (and the agency's website, if desired).
 - d. Typically, questions should be submitted one (1) or two (2) days after a pre-proposal conference; if no pre-proposal conference is held, the questions should be submitted 10-14 days after the RFP release date.
9. Final Preparations/Receipt of Proposals

- a. Prior to the opening date, the RFP evaluation committee must make the final preparations for the evaluation process; including scheduling any necessary meetings and appointing a project lead to compile the scores of all the evaluators.
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- d. The proposals will be available for public viewing:
 - i. At the opening, or
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- a. Anyone may attend the opening. It is considered a public.
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- e. Evaluation Criteria and Proposal Respondents are sent to SPB for posting to SPB website.

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The proposals will be distributed to the evaluation committee after:

- a. The agency contact has reviewed all submissions for confidential/proprietary information.
- b. The proposals have been scanned and/or copied per agency's instructions.
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- d. A Declaration Concerning Conflict of Interest and Confidential Information **has** been signed and turned in by each member of the evaluation committee. Agencies may choose to have those involved in other actions related to the RFP, including but not limited to, research, RFI, development of the RFP and evaluation criteria, provide the Declaration as well. http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html

- i. The form ensures that there is no conflict of interest with any person involved in the RFP process.
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The evaluation committee may decide to request that highest scoring bidders make an oral presentation and/or demonstration to the Committee.

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 - d. The Evaluation Committee turns in the score sheets to the agency contact after each presentation.
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 - b. The BAFO is conducted exactly like a Proposal Opening.
 - c. The BAFO may contain a Question and Answer Period in order to respond to questions that BAFO participants may have regarding the BAFO Instructions or content.
 - d. BAFO instructions should indicate a response must be returned by the vendor by the date and time indicated in the BAFO instructions, even if there are no changes to the vendor's proposal response. Failure to do so may be cause to reject vendor's proposal and disqualify from further evaluation and consideration or BAFO instructions should indicate that if a vendor does not respond to the BAFO the vendor's original proposal will be utilized for evaluating the BAFO response.
 - e. A submitted BAFO will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each vendor requested to submit a BAFO.
- 16. Final Evaluation Document**
- a. The Final Evaluation Document is completed using the proposal scores. If Oral Interviews were held, those scores are added in. If a BAFO was requested and submitted by the bidder, those scores are used in place of the original Cost Proposal scores.

- b. The Final Evaluation Document and the Letter of Intent to Contract are sent to SPB for posting on their website. Agency may put a link to SPB website on their website, if desired.
 - c. Copies of each evaluator's worksheet and any other pertinent information must be maintained in the file.

- 17. Letter of Intent to Contract
 - a. Once the agency has verified the scores and confirmed the selection, the Letter of Intent to Contract is prepared.
 - b. The Letter of Intent to Contract and the Final Evaluation Document are posted to SPB's website.

- 18. Contract Finalization
 - a. The agency sends a letter to the selected contractor with instructions concerning the required documentation.
 - i. Nebraska Secretary of State Registration – any bidder awarded a contract must be registered and in good standing with the Nebraska Secretary of State, and must submit a Letter or Certificate of Good Standing dated within 90 days.
 - ii. Performance Bond – if a performance bond was required by the RFP, the selected contractor will submit it at this time.
 - iii. Certificate of Insurance (COI) – a current, compliant COI must be received by SPB before the contract award can be finalized.
 - iv. If the vendor is an individual or sole proprietorship, the vendor must complete the United State's Attestation form. Vendor should return this form with their proposal.
 - b. If the selected contractor took any exception(s) to any of the Terms and Conditions, the agency works with the contractor and internal legal counsel to reach a document acceptable to both parties.
 - c. A contract may not be signed until all required documents have been received and determined compliant.
 - d. The agency and the contractor may not have any other contact, nor may any work begin, until the contract is fully executed.
 - e. Negotiation may be necessary during contract finalization.
 - i. Post Award between the state and the awarded vendor for the purposes of finalizing terms and conditions of the contract.
 - ii. Negotiations cannot increase cost to the state, nor can it materially alter the RFP specifications or broaden the RFP beyond its original intent and scope.
 - iii. If State is unable to finalize terms and conditions of the contract through negotiations, the State reserves the right to reject a vendor's bid; to withdraw the intent to award and to award to the next high scoring vendor or reject all proposals.
 - f. If the final contract is different than the original RFP, the final unsigned contract must be reviewed by SPB prior to signing the contract.

F. Entering the Requisition in PFC

- 1. Documents to be attached
 - a. RFP Boilerplate

SPB has developed boilerplate documents for all of its developed procurement processes. Instructions for completing the boilerplate for an Agency-processed RFP can be found in Exhibits D (Standard), E (Cost Only), and F (Cafeteria/Vending). Boilerplates themselves are found at http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html

- i. When editing the boilerplate document, there are sections highlighted in **green** for the agency to act on and delete as required. The sections highlighted in **yellow** are for the agency to supply information as required.
- b. Evaluation Criteria – http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
- c. Evaluation Worksheet – see http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
2. Requisition – after the above documents are completed by the agency, the agency enters an O3 requisition in PFC and attaches all documents. After the agency approval routes are completed, the O3 and attached documents will route to SPB.

NOTE: If OCIO approval is required, this should be done by the agency, as the approval routes will not automatically route it through the OCIO and attach approval document from OCIO. SPB will verify w/OCIO if they have reviewed and approved the RFP specifications.

Once SPB reviews the RFP, attaches the Pre-Review Checklist in PFC, and approves the requisition, the RFP routes back to the agency for further processing.

3. RFP – The agency may choose to generate a Z1 number in PFC for the RFP, or it may proceed using the O3 number.
4. Once the RFP process is completed and the agency is ready to generate the contract, an O4 contract is generated from either the O3 or the Z1 document.

G. Frequently Asked Questions – Agency-Processed RFP

1. Why do agencies have to follow SPB's procedures for the RFP process?
Answer: Neb. Rev. Stat. § 73-504(2) states: "All proposed state agency contracts for services in excess of fifty thousand dollars shall be bid in the manner prescribed by the division procurement manual or a process approved by the Director of Administrative Services. Bidding may be performed at the state agency level or by the division. Any state agency may request that the division conduct the competitive bidding process."
2. What happens if an agency decides not to follow SPB's procedures?
Answer: Agencies are bound by statute to follow SPB's policies and procedures for service procurements in excess of \$50,000.00. Any deviation by an agency will be the agency's responsibility to explain. SPB maintains a record of all documents reviewed along with recommended changes.
3. How is cost scored?
Answer: For Standard RFP, SPB uses an objective mathematical formula to assign points. Lowest cost submitted receives the maximum points. To assign points to all others, the following formula should be followed:

**Lowest Cost Submitted ÷ Cost Submitted x Maximum Possible Cost Points
= Cost Points to Award (see samples below)**

	Formula	Sample	Sample	Sample
	Lowest Cost Submitted	\$100,000	\$100,000	\$100,000
÷	Cost Submitted	\$100,000	\$200,000	\$150,000
x	Maximum Possible Cost Points	40	40	40
=	Points To Award	40	20	26.7

For Cafeteria/Vending RFPs, SPB reverses the mathematical formula to assign points. Highest payment submitted receives the maximum points. To assign points to all others, the following formula should be followed:

**Payment Submitted ÷ Highest Payment Submitted x Maximum Possible
Payment Points = Payment Points to Award (see samples below)**

	Formula	Sample	Sample	Sample
	Payment Submitted	\$700	\$350	\$500
÷	Highest Payment Submitted	\$700	\$700	\$700
x	Maximum Possible Payment Points	40	40	40
=	Points To Award	40	20	28.57

4. How late is too late for a bidder to submit a proposal?
Answer: Proposals must be received at the location and by the time and date indicated in the RFP no later than the published opening time and date. A proposal received even one minute after the designated time and date will be considered late and will be rejected.
5. Can an agency ask someone outside of the agency to be an evaluator?
Answer: Yes. If a subject matter expert is brought in as an evaluator, he or she must sign the Declaration Concerning Conflict of Interest and Confidentiality just as any evaluator from within the agency.
6. Can the agency answer questions if bidders call the agency directly?
Answer: No. All questions and communication from and to bidders during the RFP process must be go through the agency contract. The agency may not have any other contact with any of the bidders until a contract has been signed. Agencies should refrain from communicating with third parties regarding an RFP or while an RFP is in process.
7. May the agency provide a debriefing or explanation to the bidder(s) who were not awarded a contract?
Answer: No. SPB's procedures do not provide a mechanism for debriefing.

IV. SPB DEVIATIONS

A. What is a deviation?

1. The process for requesting approval and procuring services by contract for a **Sole Source, single source** (service only available from one supplier based on uniqueness of service or service availability at required location) valued in excess of \$50,000.00 including all renewal options without going through the usual RFP process.
 - a. Contract value is calculated using the entirety of the requested service contract period including initial contract period and any renewal options provided for in the contract.
2. The process for documenting an **Emergency** (when a procurement is necessary to meet an urgent or unexpected requirement, or when the health and public safety or the conservation of public resources is at risk) service contract valued at \$50,000.00 or more.
3. **Exceptions** to the RFP process and covered under a deviation include other circumstances or specific contracts when any of the requirements of Neb. Rev. Stat. §§ 73-504, 73-508, and 73-509 are not appropriate or not compatible with the services or the contract. Neb. Rev. Stat. § 73-507 lists the exceptions to the RFP process, including:
 - a. Contracts for services when the price has been established by the General Services Administration (GSA)
 - b. Service contracts that have been bid out by other states, group of states, a political subdivision of another state, or a cooperative purchasing organization on behalf of a group of states (such as WSCA)
4. A deviation cannot be used to amend, extend, or renew a contract that already exists. A deviation always results in a new contract.

B. When is a deviation used?

- The agency has a justifiable reason, as provided for in statute, for bypassing the normal RFP procedure
- The agency would like to take advantage of a GSA contract
- The agency would like to take advantage of a contract competitively bid by another state, group of states, a political subdivision of another state, or a cooperative purchasing organization on behalf of a group of states (such as WSCA)
- The service is truly only available from one source, or a single source due to the uniqueness of the service or the availability of the service in the required location (sole source deviation)
- An emergency has arisen that is urgent or unexpected, or when health and public safety or the conservation of public resources is at risk
- There may be other valid reasons for seeking a deviation. SPB can provide input and guidance in the event that a deviation is sought that does not fall under one of the clearly defined categories.
- The exceptions listed in §§ 73-507(1)(a)-(b) do follow the deviation process. The exceptions listed in §§ 73-507(2)(a)-(k) do not require a deviation request because they are excluded from the RFP process.

When in doubt, agencies are encouraged to work with their legal counsel and/or SPB for guidance.

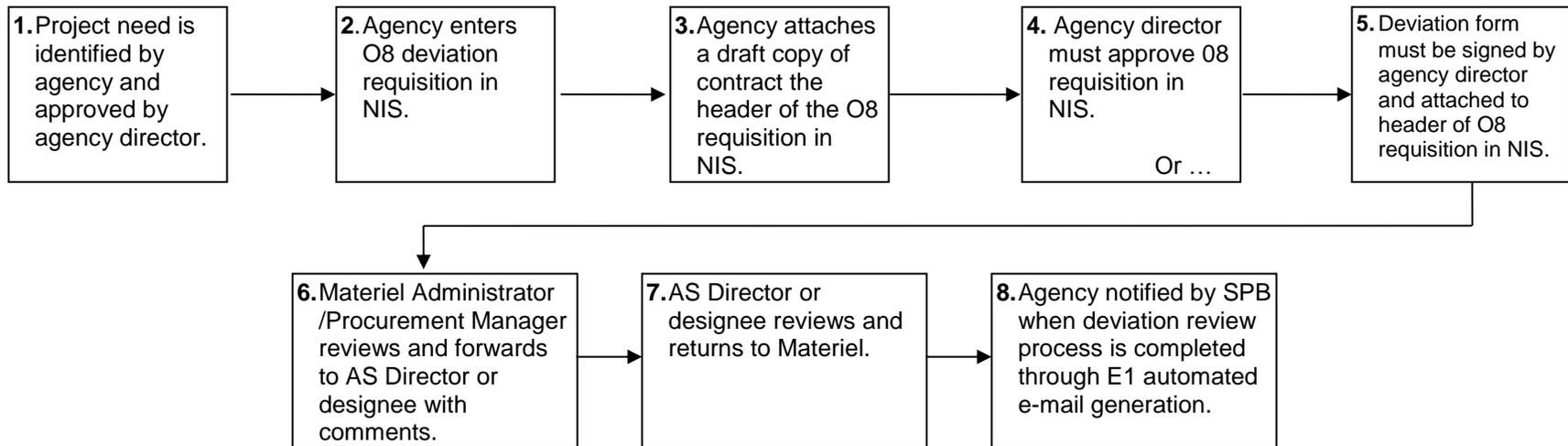
C. Sole Source Deviation

Nev. Rev. Stat. § 73-502 defines sole source as “of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or the sole availability at the location required.”

1. Questions to ask when considering a sole source deviation
 - a. Is the contractor legitimately the only supplier of the service being requested?
 - b. What is so unique about the service that only this contractor can provide this service?
 - c. Is the contractor the only provider in the area where the service is to be provided?
2. Sole source justification
 - a. A justification for a sole source deviation **MUST BE PROVIDED** on the Deviation from Contractual Services Contract Process Form and must include thoughtful responses to the questions in Item 1.
 - b. The justification should clearly explain why the service cannot be competitively bid.
 - c. A sole source justification should be a stand-alone explanation; that is, it should be clear, thorough, and written for an audience who does not know the details of the agency’s needs. It should not assume prior knowledge on the part of the audience.
 - d. A sole source justification:
 - i. **DOES NOT** explain why the contractor is a good provider of the service
 - ii. **DOES** describe why the contractor is the *only* provider of the service
 - e. Unique elements of the service should be clearly described, including but not limited to (as applicable):
 - i. Customization(s) already in place
 - ii. Work in progress
 - iii. Relationship to federal programs, funding, or requirements
 - iv. Other circumstances that have a bearing on the situation
 - f. A sole source **DOES NOT**:
 - i. Request extension or renewal of an existing contract that is out of renewal options – a deviation can only be used to create a new, stand-alone contract
 - ii. Request retention of an existing provider simply because of past performance
 - iii. Broaden the scope of services as originally bid

SPB Deviation Process (except Emergency Deviations)

D. Flow Chart



E. The Deviation Process (except Emergency Deviations)

1. Identify dollar amount
 - a. Agency must have a good grasp on the total dollar value of the proposed contract.
 - b. A deviation creates a contract, not an RFP.
 - c. The total dollar value of the contract includes the initial contract period and all renewal periods.

2. Develop proposed contract
 - a. Agency must develop a proposed contract OR attach a copy of the service contract that was bid by another state/group of states per Neb. Rev. Stat. § 73-507 (SPB will finalize a Participating Addendum in the case of a cooperative contract).
 - b. GSA contracts
 - c. The contract period may not begin until the Director of Administrative Services has approved the O8 Deviation Request.
 - d. It is strongly recommended that the contract developed by the agency use the Terms and Conditions from the Standard RFP boilerplate.
 - i. These Terms and Conditions afford the State and its agencies proven levels of protection, having already undergone extensive legal review and approval.
 - ii. Agencies are always encouraged to seek the advice of their legal counsel in regard to any term and/or condition proposed by the potential contractor that may be at variance with standard RFP clauses.
 - e. Draft contract may not be an ITB, an RFP, or a contractor's proposal.
 - f. All proposed renewal periods **MUST** be included in the contract in order to exercise those renewal periods after the expiration of the initial period.

3. Complete Deviation From Contractual Services Contract Process Form
 - a. Available on SPB website at:
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
 - b. Indicate appropriate reason for deviation
 - c. Justification goes on this form
 - d. Draft contract is attached
 - e. Estimated Dollar Value is for total contract, including initial period and all proposed renewal periods.
 - f. Agency director must sign Deviation Form OR be part of the approval route in PFC.

4. Submit Required Materials to State Purchasing
 - a. O8 requisition in PFC – attach the following:
 - i. Deviation from Contractual Services Contract Process Form
 - ii. Draft contract

F. Entering the Requisition in PFC (except Emergency Deviations)

1. Requisition – after the above documents are completed by the agency, the agency enters an O8 requisition in PFC and attaches both documents.
 - a. Must mirror the initial contract period AND all proposed renewal period(s).
 - b. Use separate line for each renewal period.

- c. Total dollar value of contract must match in PFC and on Deviation from Contractual Services Contract Process Form
- 2. Completed Deviation from Contractual Services Contract Process Form is attached to O8
 - a. Agency director MUST sign OR be in approval route in PFC
 - b. Justification must be included on Form (if sole source)
- 3. Draft contract is attached to O8
 - a. If deviation is to participate in a cooperative contract, a copy of the cooperatively bid contract must be attached, or
 - b. GSA contract.
- 4. O8 routes to SPB for approval
 - a. SPB reviews documentation
 - b. Agency may be asked for further explanation, justification, or clarification to ensure compliance with statutory requirements.
 - c. Sufficient time for review and approval is necessary.
 - d. Contractor may not begin providing services until the contract is signed.
 - e. Agency must have approval from Administrative Services before moving forward with contract and service(s).
 - f. If deviation is to participate in a cooperative contract, SPB will finalize a Participating Addendum after approval of the O8.

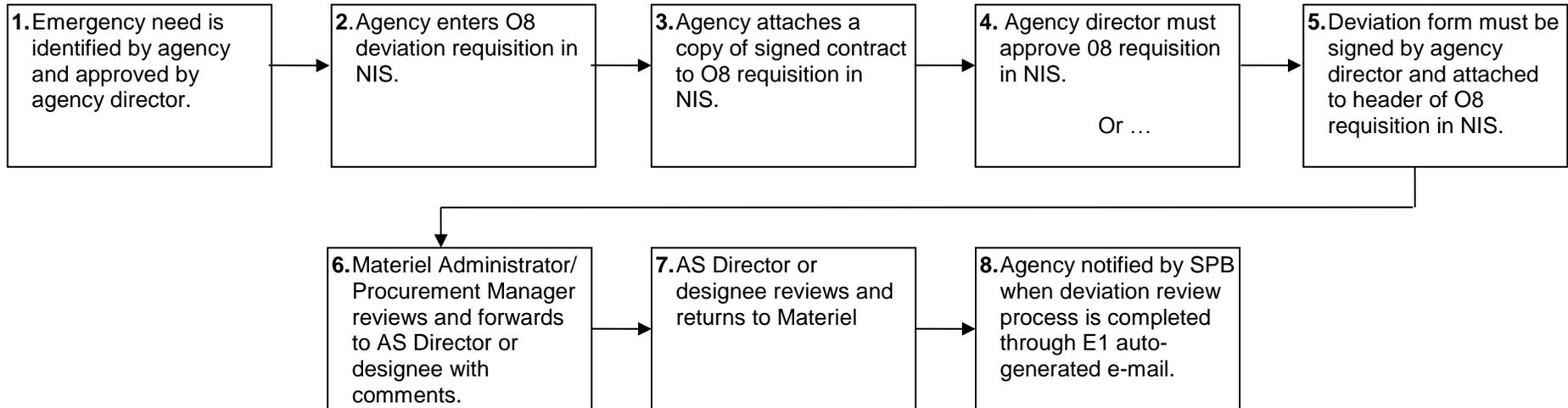
G. Emergency Deviation

Nev. Rev. Stat. § 73-502(2) defines an emergency as “necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk.”

- 1. The agency director is responsible for any and all questions arising out of an emergency service contract.
 - a. In contrast to a sole source deviation, an emergency is declared by the agency director.
 - b. Administrative Services approval is NOT required for an emergency contract to move forward.
- 2. Emergency service contract justification
 - a. A justification for an emergency deviation should be a stand-alone explanation; that is, it should be clear, thorough, and written for an audience who does not know the details of the situation or agency operations. It should not assume prior knowledge on the part of the audience.
 - b. An emergency justification explains the nature of the emergency based on Nev. Rev. Stat. § 73-502(2).

Emergency Deviation Process

H. Flow Chart



I. The Emergency Deviation Process

1. Complete Deviation From Contractual Services Contract Process Form
 - a. Available on SPB website at:
http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html
include explanation of emergency
 - b. Agency director must sign Deviation Form OR be part of the approval route in PFC.
2. Submit Required Materials to State Purchasing
 - a. O8 requisition in PFC – attach the following:
 - i. Deviation from Contractual Services Contract Process Form
 - b. A copy of the signed final contract must be attached to the O8 requisition in PFC within three (3) working days of contract signature by agency and contractor.
3. Prior Administrative Services approval is NOT required for emergency service contracts, but the agency must notify Administrative Services by using the Deviation from Contractual Services Contract Process Form and an O8 requisition.

J. Entering the Requisition in PFC (Emergency Deviations)

1. Agency enters an O8 requisition in PFC
2. Completed Deviation from Contractual Services Contract Process Form is attached to O8
 - a. Agency director MUST sign OR be in approval route in PFC
 - b. Explanation of emergency is included on the Form
3. Signed contract must be attached within three (3) working days of signature by agency and contractor.
4. O8 routes to SPB

K. Frequently Asked Questions – Deviations

1. Can an agency justify a sole source based on past performance of an existing contractor?
Answer: No. The State expects all of its contractors to provide satisfactory performance for all contracts. Sole source is defined as the service is such a unique service that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on the uniqueness of the service or sole availability at the location required.
2. Is a deviation used to renew an existing contract?
Answer: No. Renewal periods should be included in the initial contract.

Exhibit A

SPB-Processed RFP Instructions: Standard Boilerplate

SPB Standard RFP Boilerplate Instructions

SPB has developed a boilerplate for agencies to follow when preparing a Standard RFP. Instructions for completing the boilerplate are found in this Exhibit A, and the boilerplate itself may be found at: http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html Agencies are required to leave “track changes” on when preparing their RFP document.

Cover Page

This page includes basic instructions to the bidder and highlights some important dates, such as the release date, the deadline for questions, vendor responsibility for watching SPB website for any and all updates to the RFP, and the opening date. The second page of the cover page includes a place for bidders to comply with statistical reporting requirements under Neb. Rev. Stat. § 73-603 and to indicate any preference sought under Neb. Rev. Stat. § 73-107 regarding resident disabled veterans and/or businesses located in designated enterprise zones. This preference is applied when all applicable specification requirements are met. This form **MUST BE SIGNED** or the entire proposal will be considered invalid and excluded from further consideration.

Table of Contents

This is formatted to automatically update as the RFP is developed.

Glossary of Terms

SPB provides a basic set of terms. Not every word contained in the boilerplate glossary will be relevant to every RFP; however, SPB does not delete any of the boilerplate lists. If there are project-specific terms that the agency wishes to define, these should be added. If the project includes acronyms, the agency may add a separate acronym list here.

The remainder of the Standard RFP is divided into five (5) sections:

- ✓ **Section I, Scope of the Request for Proposal:** Includes a brief description of the project, indicates the contract period including optional renewals, and provides the Schedule of Events according to which the RFP process will be governed.
- ✓ **Section II, Procurement Procedures:** Indicates SPB contact information and gives an overview of the RFP process and proposal submission for bidders.
- ✓ **Section III, Terms and Conditions:** Contains the standard terms and conditions that form the basis of the contract. Each item requires a response from the bidder; Accept, Reject, or Reject and Provide Alternative within the RFP Response. These clauses have been reviewed by SPB’s General Counsel. Except where invited to do so in green, agencies are not to make alterations to this section.
- ✓ **Section IV, Project Description and Scope of Work:** The core of the RFP; details the specifications of the project which is prepared by the Agency.
- ✓ **Section V, Proposal Instructions:** Provides specific instructions on how to prepare a proposal; lays out specific qualifications and other required information of the bidder.

Form A, Bidder Contact Sheet: Provides the State with information regarding a bidder’s name, address, and specific point of contact regarding the proposal.

Form B, Notification of Intent to Attend Pre-Proposal Conference (optional): This form should be include when a pre-proposal conference is scheduled.

Form C, Notification of Intent to Bid (optional): This form is included when the agency wishes to have some idea of the quantity of potential bidders.

Why so many subsections?

Within each section are numerous subsections. SPB is often asked why there are so many subsections. Agencies must remember that the RFP is the beginning of the contract. For this reason, the RFP is written in a very detailed, point-by-point manner. The RFP and the bidder's response become part of the final contract. The subsections are a way to direct bidders to specific components of the document and eliminate potential points of confusion. It is possible to condense several of the subsections, but it is important to keep in mind that each subsection represents a unique point that may or may not become focal point of the final contract.

SECTION I. SCOPE OF THE REQUEST FOR PROPOSAL

This section provides a brief description of the project, and indicates the desired contract period, including renewal options. Per Neb. Rev. Stat. § 73-506, state agencies may not enter into contracts for services of unspecified or unlimited duration. Renewals cannot be automatic. The State must reserve the right to exercise or not exercise any renewal period.

A. SCHEDULE OF EVENTS

- This subsection provides bidders with a schedule of important dates in one concise table.
- The Schedule should include all pertinent dates possible, such as (as applicable):
 - ✓ Release of RFP
 - ✓ Last day to submit Notification of Intent to Attend Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions
 - ✓ Mandatory Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions after Pre-Proposal Conference (optional)
 - ✓ State responds to written questions
 - ✓ Possible second round of Questions and Answers, if applicable
 - ✓ Last day to submit Letter of Intent to Bid (optional)
 - ✓ Proposal opening
 - ✓ Review for conformance of mandatory requirements
 - ✓ Evaluation period
 - ✓ Oral Interviews/Demonstrations (optional)
 - ✓ Post Letter of Intent to Contract
 - ✓ Contract finalization period
 - ✓ Contract award
 - ✓ Contractor start date

SECTION II. PROCUREMENT PROCEDURES

This section provides some general guidelines for bidders regarding proposal submittal and contact with SPB.

A. PROCURING OFFICE AND CONTACT PERSON

- The purpose of naming the Buyer as the contact person is to:
 - ✓ Ensure that all questions are routed through SPB Buyer;
 - ✓ Further insulates procuring agency, litigation process, and evaluators
 - ✓ Provide the same information to all potential bidders;

- ✓ Eliminate confusion;
- ✓ Inform potential bidders that communication with the agency or members of the evaluation committee directly is prohibited.
- Provides the department street address, telephone and fax numbers, and an email address where questions are to be sent.

B. GENERAL INFORMATION

- Provides a brief description of the project.
- Reminds potential bidders to follow the submission instructions and schedules found in the RFP.
- Indicates the expected outcome of the RFP process, i.e. a fixed-price contract, and advises that the RFP documents become part of the final contract.

C. CUSTOMER SERVICE

- Describes the State's expectation of any and all contractors providing services for the State.

D. COMMUNICATION WITH STAFF AND EVALUATORS

- Prohibits contact with any agency staff and/or evaluators, and directs communication to SPB Buyer.
- Explains a few exceptions to this rule.
- Reminds bidders their proposal may be rejected if the communication limits are not strictly observed.

E. NOTIFICATION OF INTENT TO BID – Optional

- If the agency does not include the requirement for a Notification of Intent to Bid, this subsection is deleted.
- Includes instructions for returning Form C (in some cases Form B, if no pre-proposal conference is scheduled). This form is a "should", i.e. it is not a firm requirement, and failure to return it does not preclude anyone from submitting a proposal.
- Informs potential bidders that anyone who does submit a Notification of Intent to Bid will be named in a list posted to the website after the due date.

F. WRITTEN QUESTIONS AND ANSWERS

- Indicates mechanism by which potential bidders may submit questions or requests for clarification about the RFP before the proposal submission deadline.
- Includes a brief description of the project, the Buyer(s) name(s), an email address and fax number, and a desired format for submitting questions.
- Reminds bidders that the questions are answered all at once and posted as an Addendum on SPB's website.

G. PRE-PROPOSAL CONFERENCE – Optional

- If the agency does not include a pre-proposal conference, this subsection is deleted.
- Indicates if pre-proposal conference is optional or mandatory. If mandatory, a sign-up sheet is required, and the list will be posted to the website after the pre-proposal conference takes place.
- Indicates method of submitting questions and which questions are binding on the State.

- Addresses submission methods and requirements for the Notification of Intent to Attend Pre-Proposal Conference (usually Form B)

H. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS

- Oral interviews/presentations and/or demonstrations are optional at the discretion of the State.
- The State reserves the right to invite only top scoring bidders.
- Bidder's key personnel are expected to participate.
- State bears no responsibility for any part of the costs associated with preparing for and transportation to the oral interviews.

I. SUBMISSION OF PROPOSALS – agency input required

- One (1) original of the proposal is all that is required.
- Proprietary or confidential information must be properly identified.
- Proposal responses must include Form A, Bidder Contact Sheet.
- Address labels must be clear and contain the RFP number clearly marked.
- **IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by law WILL BE POSTED FOR PUBLIC VIEWING. Bidders are required to waive copyrights' from privilege for posting on the public website.
- Agencies must choose if the cost proposal shall be presented as a separate section within the RFP response or as an entirely separate document. One paragraph or the other will need to be deleted according to the option chosen by the agency.

J. PROPOSAL OPENING

- Sealed proposals are publicly opened at the date, time, and location identified in the Schedule of Events.
- Once proposal opening has concluded, proposals will not be available for public viewing until the Intent to Award has been issued.
- Proposals will be available for public viewing at the opening, and then again after the Letter of Intent to Contract has been posted and the evaluation process has been completed.

K. LATE PROPOSALS

- Regardless of cause, proposals not received and date/time stamped by SPB by the opening date and time will not be accepted or evaluated.
- Late proposals may be returned unopened to the bidder at the bidder's expense upon request.

L. REJECTION OF PROPOSALS

- The State reserves the right to reject any proposal in whole or in part.
- The State reserves the right to waive any non-material deviations.
- Award will be made in manner deemed best interest of the State.
- The State reserves the right to reject any or all bids and re-advertise for Bids; and further reserves the right to waive any informality or irregularly.

M. EVALUATION OF PROPOSALS

- Identifies the categories according to which the proposals will be scored.

- Discusses resident disabled veteran and/or business in an enterprise zone preference if all other items are equal according to Neb. Rev. Stat. § 73-107 and the documentation needed to request such preference.
- Evaluation Criteria and Proposal Respondents will be posted on the opening date.
- The State may elect to use a third party to conduct credit checks as part of the evaluation of corporate overview.

N. EVALUATION COMMITTEE

- Names of Evaluation Committee members will not be published.
- No member of the Evaluation Committee is authorized to make binding statements regarding the RFP.
- Any contact or attempted contact with an evaluator or anyone involved with the RFP during the evaluation period by a bidder, potential bidder, or other interested party may result in rejection of bidder's proposal and further Administrative action may be taken.

O. MANDATORY REQUIREMENTS

- Proposal signature page must be signed.
- Proposal must have a Corporate Overview section.
- Proposal must have a Technical Approach section.
- Proposal must have a Cost Proposal.
- Proposals lacking any of the previous sections will not be evaluated.
- Agencies may add additional mandatory requirements.

P. REFERENCE CHECKS

- The State reserves the right to check references regardless of source.
- The State reserves the right to utilize a 3rd party to conduct reference checks.
- Negative references could eliminate bidders from award consideration.

Q. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS

- Bidders should be authorized to do business in the State of Nebraska.
- Bidders are expected to comply with Secretary of State Registration requirements if awarded a contract.
- A valid Letter or Certificate of Good Standing dated within 90 calendar days of Intent to Award must be supplied by the selected contractor before a contract award can be finalized.
- Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration.
- A bank registered with the office of Comptroller of Currency is not required to register with the State. However, if the office of Comptroller of Currency does have a Certificate of Good Standing/Registration, the bank would provide this for verification.

R. VIOLATION OF TERMS AND CONDITIONS

- Violation of the terms and conditions of the RFP and/or of the resulting contract shall be grounds for action by the State, including, but not limited to:
 - ✓ Rejection of a bidder's proposal

- ✓ Suspension of bidder from further bidding for a period of time at State's discretion
- ✓ Legal action

SECTION III. TERMS AND CONDITIONS

By signing the Request for Proposal for Contractual Services form, the bidder guarantees compliance with the following Terms and Conditions unless otherwise agreed to. Each subsection contains a space for the bidder to Accept, Reject, or Reject and Provide Alternative. Any rejections or alternatives indicated by a bidder will be reviewed during contract finalization. Failure to agree to terms and conditions may result with the State rejecting the bid, and proceed awarding to the next highest scoring bid or rejecting all bids. **Bidders must include completed Section III with proposal response.**

A. GENERAL

- Indicates order of precedence for the contract documents.
- Proposals become property of the State and will not be returned.

B. AWARD

- The State reserves the right to reject any or all proposals, in whole or in part, or to award to multiple bidders, or to withdraw or amend the RFP at any time.
- The State reserves the right to waive any non-material deviation.
- Awards will be made in the manner deemed to be the best interest of the State.
- State is not obligated to award a contract.
- Intent to Contract will be posted on SPB's website.
- Protest/grievance procedures are available on SPB's website.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/NONDISCRIMINATION

- Contractor shall comply with all civil rights laws and Equal Opportunity requirements.
- Nebraska Fair Employment Act (Neb. Rev. Stat. § 48-1101 through § 48-1125) prohibits discrimination based on race, color, religion, sex, disability, marital status, or national origin.
- Breach of this provision shall be considered a breach of contract.

D. PERMITS, REGULATIONS, AND LAWS

- Contractor shall pay for all permits, licenses and approvals necessary to execute the contract.
- Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

E. OWNERSHIP OF INFORMATION AND DATA

- All State data, work products and all applicable records must be provided/furnished to the State, in a format determined by the State or agreed upon by the parties, at the expiration or termination of the contract.
- The State has unlimited right to use and/or reproduce the information and/or data developed or derived by the contractor under this contract.
- The contractor guarantees it has full right to all tools necessary to execute the contract, and related costs shall be built into the contract price and not billed separately.

- ✓ Contractor is responsible for paying any related costs and shall hold the State harmless from any related claims.

F. INSURANCE REQUIREMENTS – some agency decisions required

- Work shall not begin under the contract until all required insurance has been obtained by the contractor and approved by the State.
- Required insurance must be maintained for the life of the contract, including renewal periods and/or extension periods.
- Contractor must ensure that a current, compliant certificate of insurance (COI) is on file with SPB at all times during the contract.
- Contractor is responsible for any subcontractor's compliance with the insurance limits, and shall assume liability if at any time a subcontractor is not compliant.
- Contractor is responsible for any mandatory deductible payment in event of a claim.
- Limits and waivers are clearly defined.
 - ✓ Agency decides if any additional insured(s) besides the State
 - ✓ Agency can add any unique coverage required, such as Professional Liability, Builder's Risk, etc.
 - ✓ If Medical Malpractice coverage is required, bidder must also be and remain certified under the Nebraska Hospital-Medical Liability Act. Such qualification will be confirmed with the Nebraska Department of Insurance.
- Evidence of coverage (COI) shall be provided to the State before a contract can be awarded.
- Notice of cancellation of insurance must be provided to the State along with a new coverage binder to ensure no break in coverage.

G. COOPERATION WITH OTHER CONTRACTORS

- The State may already have a contract for the requested service in place.
- The State reserves the right to award to multiple contractors.
- The contractor must cooperate with any such other contractors and not interfere with any other contractor's performance.
- The State does not enter into exclusive contracts.

H. INDEPENDENT CONTRACTOR

- No partnership or employer/employee relationship between the contractor and the State is established by this contract.
- The contractor shall secure, at its own expense, the personnel needed to execute the contract.
- The contractor's employees have no contractual relationship with the State.
- Claims arising against the contractor based on employment shall not be the responsibility of the State, and the contractor shall hold the State harmless from any such claims.
- Employees of the contractor are not entitled to any benefits, compensation, tenure or rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits from the State.

I. CONTRACTOR RESPONSIBILITY

- The contractor is solely responsible for executing the contract and for all promises made in its proposal.
- The contractor is the sole point of contact regarding the contract.

- The contractor must clearly identify any subcontractor and its level of involvement in the fulfillment of the contract in its proposal. Any changes in subcontractor involvement shall be submitted to the State in writing for approval.

J. CONTRACTOR PERSONNEL

- Contractor warrants that all persons utilized by contractor in performing contract requirements provided under the contract are either employees or subcontractors, and are fully qualified to perform the work required.
- Contractor shall not change any personnel commitments made in the proposal without the specific written approval of the State. Replacement of key personnel shall be with personnel of equal or greater ability and qualifications.
- The State reserves the right to require the contractor to reassign or remove any contractor employee, subcontractor, or subcontractor employee.
- Contractor is responsible for its employees, including employment taxes, payroll withholding, vehicles and insurance, damages incurred by employees under the contract, worker's compensation and health insurance, and determining hours to be worked and duties to be performed.

K. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

- Contractor shall not knowingly recruit any State employee or agent who worked on the RFP or project, or who had any influence on decisions affecting the RFP or project.

L. CONFLICT OF INTEREST

- Bidder certifies there is no conflict of interest nor the appearance of conflict of interest between the bidder and any person or entity related to this RFP.
- Bidder shall not take any action or acquire any interest that presents a conflict of interest or the appearance of a conflict of appearance.
- Bidder shall not knowingly employ any individual with a known conflict of interest.

M. PROPOSAL PREPARATION COSTS

- The costs for the preparation and submission of the proposal and any participation in oral interviews/demonstrations are borne by the bidder. The State shall not incur any correlating costs.

N. ERRORS AND OMISSIONS

- Bidder shall not take advantage of any error and/or omission in the RFP or resulting contract.
- Bidder shall inform the State of any error and/or omission that is discovered.

O. BEGINNING OF WORK

- Work shall not commence before the contract is fully executed by both the Contractor and the State.

P. ASSIGNMENT BY THE STATE

- The State reserves the right to assign the contract or any interest in the contract to any agency, board, commission, or political subdivision of the State at no cost to the State.

Q. ASSIGNMENT BY THE CONTRACTOR

- The Contractor may not assign the contract, any interest in the contract, or any rights or obligations under the contract to any third party without the prior written consent of the State.

R. DEVIATIONS FROM THE REQUEST FOR PROPOSAL

- The requirements and conditions of the RFP become part of the contract.
- Any alternative(s) must be clearly identified by the bidder in its proposal. If accepted, such alternative(s) will become part of the contract.
- Alternative(s) must not conflict with the basic nature of the RFP, the mandatory requirements, or applicable State or federal laws or statutes.
- The State reserves the right to reject proposed alternative(s).

S. GOVERNING LAW

- This contract shall be governed by the laws and statutes of the State of Nebraska.
- Any legal proceeding brought against the State of Nebraska as a result of this RFP or contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law.
- Contractor must be in compliance with all Nebraska statutory and regulatory law.

T. ATTORNEY'S FEES

- Any legal action required to enforce the contract shall be at the expense of the Contractor, including reasonable attorney's fees and costs incurred by the State, if the State is the prevailing party.

U. ADVERTISING

- Contractor shall not refer to the contract award in any advertising in such a way that implies an endorsement by or preference on the part of the State.
- News releases require the prior written permission of the State.
- The State of Nebraska is not in a position to endorse or promote products, services or contractors.

V. STATE PROPERTY

- The Contractor is responsible for the care and custody of any State-owned property provided for the execution of the contract.
- The Contractor shall reimburse the State for any loss or damage to such property.
- Normal wear and tear is expected.

W. SITE RULES AND REGULATIONS

- The Contractor and its employees, agents, and subcontractors shall comply with all site rules and regulations while on State premises.
- The Contractor must ensure proper facility access and equipment to execute the contract.
- The State shall not make additional payments based on lack of access unless the State fails to provide access as agreed to between the State and the Contractor.

X. NOTIFICATION

- During the RFP process, all communication shall take place between the Bidder's contact person identified in its proposal and the Contact Person identified by the State in Section II.A of the RFP.
- After the contract is awarded, written notices may be made in person, by mail, by fax, or by email
- Contractor shall immediately notify the State of any delays or hindrances in the execution of the contract.
 - ✓ Notice does not constitute basis of extension or be construed as a waiver by the State of any of its rights or remedies as allowed by law.
 - ✓ Failure to give such notice may result in denial of any related extension.
- Either party may change its address by giving notice in writing and giving an effective date for such change.
- Communication about the contract between the Contractor and individuals not authorized by the State is strictly forbidden.

Y. EARLY TERMINATION

- The State and the Contractor may mutually agree to terminate the contract at any time.
- The State may terminate for any reason with thirty (30) days notice to the Contractor.
- The State may terminate immediately for the following reasons:
 - ✓ Directed by statute
 - ✓ Contractor assigns the contract for benefit of a creditor, is unable to pay its debts, or has ceased operating
 - ✓ A trustee or receiver of assets of the Contractor or any substantial part of the Contractor's assets has been appointed by the court
 - ✓ Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to the contract by the Contractor, its employees, officers, directors, or shareholders
 - ✓ Involuntary Title 11 action
 - ✓ Voluntary Title 11 action
 - ✓ Contractor intentionally discloses confidential information
 - ✓ Contractor discontinues support of the deliverables
 - ✓ Second or subsequent negative Vendor Performance Report
 - ✓ Collusion on the part of or involving the Contractor

Z. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

- The State may terminate the contract in the event the funding is no longer available.
- The State will give the Contractor thirty (30) days notice.

AA. BREACH BY CONTRACTOR

- The State may terminate the contract or any part of the contract if the Contractor fails to perform contractual obligations in a timely manner.
- The State may provide 30 days for the Contractor to cure the breach.
- The State will provide written notice of breach to contractor.
- Time to cure the breach does not waive the State's right to immediately terminate for the same or different breach which may occur at a separate time.

BB. ASSURANCES BEFORE BREACH

- Upon written notice by the State that a contract deliverable does not meet the requirements of the RFP/contract, the Contractor shall, at no additional cost to the State, remedy the situation and ensure compliance with the contract. Contractor may be required to provide additional resources, at no additional cost to the State, to ensure contract compliance.

CC. ADMINISTRATION – CONTRACT TERMINATION

- Bidder must confirm that upon termination of contract, all records shall become property of the State and shall be delivered to the State at no additional cost.
- Bidder must confirm that all records that are property of the State will be returned within thirty (30) days of termination.

DD. PENALTY – agency decision required

- State may withhold all monies due under the contract if the Contractor fails to perform any substantial contractual obligation or meeting identified contracted deliverable. (Recommend to leave this sentence in regardless of other methods of remedy.) Substantial is defined as considerable amount of work, important elements or essential part of the work requested, etc.
- Agencies may choose to assess a specific dollar amount of penalty tied to deliverables and dates.

EE. RETAINAGE – agency decision required

- Agencies may choose to withhold a certain percentage or dollar amount of payment due until a stated date or the end of the contract to guarantee performance.
- If agency does not require retainage, this subsection is deleted.

FF. BID BOND – agency decision required

- Agencies may choose to require a bid bond submitted with the proposal, which would be released back to the bidders upon execution of awarded contract. The bond is a guarantee the bidder will enter into a contract with the State. Failure to enter into a contract with the State results in the State retaining the bond. If bid bond is required, bond should be provided with the bid, but must be received prior to award.
- If agency does not require a bid bond, this subsection is deleted.

GG. PERFORMANCE BOND – agency decision required

- Agencies may choose to require a performance bond for a percentage or dollar amount to guarantee performance under the contract. The bond is held for the life of the contract, including renewals.
- For contracts with a total period of three (3) years or less, including renewals, a cashier's check may be substituted for a performance bond.
- If agency does not require a performance bond, this subsection is deleted.

HH. FORCE MAJEURE

- Neither party shall be responsible for failures to perform due to a natural disaster or other similar event out of the control and not the fault of the affected party.
- A Force Majeure Event does not constitute breach of contract.
- Labor disputes are not considered Force Majeure Events.
- Burden of proof rests upon the Contractor.

- II. PROHIBITION AGAINST ADVANCE PAYMENT – agency decision required**
- Payments shall not be made until deliverables are received and accepted by the State.
- JJ. PAYMENT**
- Payment will be made according to the Nebraska Prompt Payment Act (Neb. Rev. Stat. § 81-2401 through § 81-2408).
 - The State may require the Contractor to accept payment via electronic means, such as ACH.
 - In no event shall the State be responsible for or liable to pay for any services provided by the Contractor prior to the effective date of the fully executed contract. Contractor waives all claims or actions for any such services.
- KK. INVOICES – agency input required**
- The Contractor is required to submit detailed invoices that match deliverables identified on the contract.
 - Agencies may insert specific invoicing requirements here, such as a mailing address.
 - No invoice terms or conditions contained in an invoice, but not contained in the contract itself will be binding upon the State nor alters or amends the contract in any way.
- LL. RIGHT TO AUDIT**
- The Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit the contract.
 - The State shall have the right to audit, examine, and make copies or extracts from the Contractor's documents pertaining to or resulting from the contract.
 - Contractor shall maintain all pertinent records during the contract and for five (5) years after completion of the contract, and shall make them available to the State upon the State's reasonable request at the expense of the Contractor.
 - The cost of any audit conducted under this section shall be borne by the State unless specifically stipulated otherwise, unless certain exemption criteria are met, or unless the findings require compensation to the State from the Contractor.
- MM. TAXES**
- The State is not required to pay taxes of any kind.
 - The Contractor is responsible for any tax due on any of the Contractor's equipment which may be installed in or on State-owned facilities or property.
- NN. INSPECTION AND APPROVAL**
- The State shall conduct a final inspection and approval of all work under the contract.
 - The State has the right to enter any premises where contract work is being performed and to inspect, monitor, and/or evaluate the work being performed.
- OO. CHANGES IN SCOPE/CHANGE ORDERS**
- The State may at any time change the general scope of the contract, upon written notice to the Contractor.
 - The State may, at any time, in writing:
 - ✓ Make alterations in the terms of work as shown in the specifications
 - ✓ Require the performance of extra work

- ✓ Decrease the quantity of work
- ✓ Make other such changes as the State may find necessary or desirable
- Compensation for changes in work shall be determined by the applicable unit price of the Contractor's proposal.

PP. SEVERABILITY

- If any term or condition of the contract is declared invalid or illegal, such finding does not automatically carry to the remaining terms and conditions of the contract.

QQ. CONFIDENTIALITY

- All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
- All confidential information shall be handled in accordance with applicable Federal and State law and ethical standards.
- The Contractor must immediately notify the State of any breach of confidentiality.
- The Contractor must comply with the Privacy Act of 1974.

RR. PROPRIETARY INFORMATION

- Data and documentation contained in a proposal become property of the State of Nebraska and upon opening, become public information.
- Bidder may identify certain information to withhold from the public, provided it falls within the definition of proprietary information in Nebraska's public record statutes.
- All proprietary information must be submitted in a SEPARATE SEALED package clearly identified as proprietary.
- Bidder may not mark its entire proposal proprietary.
- Cost Proposals will **never** be considered proprietary.
- Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.
 IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by Law **WILL BE POSTED FOR PUBLIC VIEWING**.
- Bidders are required to waive copyrights' from privilege for posting on the public website.

SS. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING

- By submitting the proposal, Bidder certifies that it has not participated in any collusive activities and that it has not divulged any of its information for purposes of colluding with regard to bid price or cost.

TT. STATEMENT OF NON-COLLUSION

- Bidder submits the proposal independently and without collusion with, and without any direct or indirect agreement or understanding or planned common course of action with any person, firm, corporation, bidder, contractor of materials, supplies, equipment or services described in the RFP.
- Bidder shall not collude with, or attempt to collude with any state officials, employees or agents or evaluators or any person involved in the RFP.

- Bidder shall not attempt to restrain free competition or limit independent bidding or create unfair advantage.
- If it is determined that collusion occurred, the State has the right to reject a bid or terminate the contract and impose further administrative sanctions.

UU. PRICES – agency input required

- Prices shall remain fixed from date of submission of proposals through date of contract award.
- Agencies may want to include some mechanism for price increase – either asking for a price for each year/renewal, or permitting % of increase with a cap on the amount of the increase.
- Contractor confirms that prices are not higher and/or as low for the State than for any other client, and that price changes shall be applied equally to the State as to all other clients.
- Contractor affirms that it did not participate in price fixing or price discrimination.
- No price increase through the life of the contract unless provided for in the contract terms and conditions.

VV. BEST AND FINAL OFFER

- The State will compile the scores and award to the highest scoring responsive and responsible bidder.
- In some cases, the State may request a best and final cost proposal from the highest scoring bidder(s).
- Best and Final Offer will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each bidder requested to submit a BAFO.
- Bidders should provide their best offer with the original proposal and not expect that the State will request a best and final offer.

WW. ETHICS IN PUBLIC CONTRACTING

- No bidder shall pay or offer gifts to any officer, legislator, State employee or evaluator.
- **Bidders shall not use lobbyists, attorneys, political activists, or consultants to secure the contract or attempt to influence the procurement process.**
- Bidders are not prohibited from seeking expert advice or legal counsel.
- Bidders found in non-compliance with this subsection may be disqualified from the selection process or forfeit the contract award.

XX. INDEMNIFICATION

- General – The Contractor holds the State harmless in general.
- Intellectual Property – The Contractor holds the State harmless in regards to patents, copyrights, trademarks, third party confidential information, Licensed Software, etc.
- Personnel – The Contractor holds the State harmless against claims from its employees.

YY. NEBRASKA TECHNOLOGY ACCESS STANDARDS

- Contractor shall review the Nebraska Technology Access Standards and ensure that it is in compliance or will comply with the applicable standards. Refer to website at: <http://nitc.nebraska.gov/standards/2-201.html>

ZZ. ANTITRUST

- The Contractor assigns to the State any and all claims for overcharges due to antitrust violations.

AAA. DISASTER RECOVERY/BACK UP PLAN

- The Contractor shall have a disaster recovery/back-up plan and shall provide a copy to the State, regarding how to continue providing services in the event of a disaster.

BBB. TIME IS OF THE ESSENCE

- Time is of the essence in this contract.
- The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations under the contract.

CCC. RECYCLING

- Preference is given to recycled/recyclable materials when applicable.

DDD. DRUG POLICY

- Contractor certifies it maintains a drug-free workplace.
- Contractor shall supply a copy of its drug-free workplace policy to the State at any time upon the State's request.

EEE. EMPLOYEE WORK ELIGIBILITY STATUS

- The Contractor must use a federal immigration verification system to determine the work eligibility of employees physically performing services in the State of Nebraska.
- E-Verify or an equivalent program designated by the US Department of Homeland Security shall be used.
- **For individuals or sole proprietorships:**
 - ✓ Contractor must complete the United States Citizenship Attestation Form. This form should be submitted with the proposal response.
 - ✓ If a qualified alien, Contractor shall provide documentation to verify its lawful presence in the US via the Systematic Alien Verification for Entitlements (SAVE) Program.
 - ✓ Contractor understands that lawful presence in the US is required and failure to verify this may result in disqualification or contract termination.

FFF. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY

- By signing the RFP, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency from participating in transactions.
- The Contractor shall immediately notify the State if it becomes disbarred during the course of the contract.
- The Department may immediately terminate the contract if the Contractor becomes debarred by the State providing written notice to the Contractor.
- The Contractor certifies that it has not had a contract with the State terminated early by the State. If it has, it must provide the contract number and a detailed explanation as to why it was terminated early. Prior early termination may be grounds for rejecting the proposal.

GGG. POLITICAL SUB-DIVISIONS

- The Contractor may extend the contract pricing to political sub-divisions provided the Terms and Conditions are the same.
- The State is in no way liable for the purchases of any political sub-divisions or public entities under the contract.

HHH. OFFICE OF PUBLIC COUNSEL

- Under terms of a contract and on behalf of the State health and human service to individuals, service delivery; service coordination or in case management, contracts shall submit to the jurisdiction of the Office of Public Counsel per statute § 81-8240.
- This term survives the termination of the contract.
- Does not apply if contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.

III. LONG-TERM CARE OMBUDSMAN

- If contractor is a long-term care facility, they are subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.
- Contractor shall comply with the act.
- This term survives termination of the contract.

JJJ. LICENSE/SERVICE OR OTHER AGREEMENTS

- If contractor has any other licenses or agreements to be considered, these must be submitted with proposal response.
- State may reject any such license or service agreement if received after proposal opening date and time.
- Any terms and conditions in any such agreement must not conflict with or alter State's Terms and Conditions as contained in the RFP.
- This term does not apply to the third party license or service agreement.

SECTION IV. PROJECT DESCRIPTION AND SCOPE OF WORK

This is a suggested outline to help agencies organize and describe their specific project requirements. This may be retracted or expanded depending on each agency's needs. This section delineates in detail what the agency is seeking from a contractor and the specifications of the project.

A. PROJECT OVERVIEW

- Explain the reason/need for the service and/or give a general overview of the project.
- Give details that pertain specifically to the project; it is not necessary to provide the entire history of the agency. Agency should provide enough detailed information so vendors have a clear understanding of the agency needs and requirements.

B. PROJECT ENVIRONMENT (Agency to describe)

C. PROJECT REQUIREMENTS (Agency to describe)

D. BUSINESS REQUIREMENTS (Agency to describe)

E. SCOPE OF WORK (Agency to describe)

F. TECHNICAL REQUIREMENTS (Agency to describe)

- G. PROJECT PLANNING AND MANAGEMENT (Agency to describe)**
- H. EVALUATE CURRENT PROJECT ENVIRONMENT (Agency to describe)**
- I. PROPOSED RESOLUTION (Agency to describe)**
- J. PERFORM IMPLEMENTATION (Agency to describe)**
- K. PROVIDE POST IMPLEMENTATION SUPPORT (Agency to describe)**
- L. DELIVERABLES (REQUIRED) – These are part of the Cost sheet and become part of the contract.**
 - This subsection may not be deleted. All contracts must have the deliverable section clearly defined. Neb. Rev. Stat. § 73-506 ties payments to deliverables for service contracts.

Tips for Completing Section IV

- Strive for clarity – use plain, simple language.
- Use laymen’s terms – if at all possible, avoid industry-specific jargon.
- Use “will,” “shall,” and “must” to denote required items.
- Do not use words such as “prefer” or “desire.”
- State exactly what is required.
- Include optional items clearly identified as “Optional”, with a separate cost category (that will not be evaluated).
- Include as much detail as possible – this helps avoid a large quantity questions during the question and answer period.
- Don’t make bidders reinvent the wheel – give as much pertinent data as possible.
- Be careful to avoid unnecessarily restrictive specifications that would unfairly eliminate some potential bidders.
- Look ahead to the entire contract period. Anticipate potential pitfalls, technological advancements, and legislative mandates to the extent possible, and try to include consideration for those possibilities.
- Consider exit strategies:
 - ✓ What will happen in the event the contract is terminated early?
 - ✓ How does the natural conclusion of the contract happen?
 - ✓ Is there a transition period that needs to be accounted for?
 - ✓ Is there any transfer of data requirements?
- Clearly define the deliverables and consider how the contract will be paid:
 - ✓ Are there one-time fees?
 - ✓ Are there recurring monthly fees?
 - ✓ Is there a list of deliverables that will each have lump sum costs?
- Address the level of interaction with the contractor and the acceptance of deliverables.
 - ✓ How will the Contractor know that a deliverable has been approved and may be invoiced?
- Address performance standards expected.

SECTION V. PROPOSAL INSTRUCTIONS

This section contains the mandatory requirements that must be met by bidders in preparing the Technical and Cost Proposal.

A. PROPOSAL SUBMISSION

- **Request for Proposal form**
 - ✓ Bidder guarantees compliance with the provisions and agrees to the Terms and Conditions unless otherwise agreed to, and maintains a drug-free workplace.

- ✓ Must be signed and returned by the stated date and time to be considered for award. Any proposal with an unsigned form or a form signed in something other than ink (i.e., pencil) will be declared invalid and will not be evaluated.
- ✓ Section III terms and conditions must be returned with proposal response.
- **Corporate Overview** – shall contain the following sections with responses:
 - ✓ Bidder Identification and Information – full company/corporate name, address, entity organization, state of incorporation/organization, year in which entity began to do business, and whether name and/or form of organization has changed since first organized.
 - ✓ **Financial Statements**
 - If publicly held, bidder must provide most recent audited financial reports and statements, and name, address, and telephone number of the fiscally responsible representative of the bidder's financial or banking organization.
 - If not publicly held, bidder must provide the same information as would be required of a publicly held organization or a description of the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information to formulate determination regarding stability and financial strength of the organization, as well as a banking reference.
 - Bidder must disclose any pending or potential judgments, litigation, financial reversals, etc., or state that none are known to exist.
 - ✓ **Change of Ownership** – bidder must disclose any planned or anticipated change of ownership or control of the company in the coming twelve (12) months.
 - ✓ **Office Location** – bidder must identify the physical location of the office responsible for contract performance.
 - ✓ **Relationships with the State** – bidder shall describe any dealings with the State, present or prior, or state that no such relationship exist/have existed.
 - ✓ **Bidder's Employee Relations to State** – bidder shall disclose if any party named in the proposal was an employee of the State along with pertinent details of any such employment.
 - ✓ **Contract Performance** – bidder shall disclose any contract termination for default by bidder or any named subcontractor, or declare that no such event has taken place. Bidder shall also disclose any early contract termination for any reason (convenience, non-performance, loss of appropriations, etc.).
 - ✓ **Summary of Bidder's Corporate Experience** – bidder shall provide a list of all and a narrative description of not more than three (3) projects that compare in size, scope, and complexity with the project described in the RFP. Contractor and subcontractor experience must be listed separately.
 - ✓ **Summary of Bidder's Proposed Personnel/Management Approach** – bidder shall identify specific professionals who will be assigned to the contract and provide resumes.
 - ✓ Bidder must present detailed description of proposed approach to management of the project.
 - ✓ **Subcontractors** – bidder must identify any subcontractor it intends to utilize during the execution of the contract.
- **Technical Approach** – the Technical Proposal must address the details provided in Section IV and any attachments, and must demonstrate/include the following:
 - ✓ Understanding of the project requirements

- ✓ Proposed development approach
- ✓ Technical considerations
- ✓ Detailed project work plan
- ✓ Deliverables and due dates

B. COST PROPOSAL REQUIREMENTS

- Bidder must submit a cost proposal. Cost proposals may not be marked confidential or proprietary. All costs will be considered a public record.
- Cost proposal must include the total fixed price to perform all the requirements of the project delineated in the RFP.
- The State reserves the right to ask for clarification on any point of the Cost Proposal.
- Prices shall be net, including transportation and delivery charges fully prepaid by the bidder, FOB destination.

C. PAYMENT SCHEDULE – agency input required

- This subsection may be modified to reflect the specific project requirements for payment.
- Payment schedule for the project is tied to specific dates and deliverables.
- Invoices may be submitted by the contractor on specific dates based on the completion and acceptance of related deliverables.
- No invoice will be approved unless the associated deliverables have been approved.

Exhibit B

SPB-Processed RFP Instructions: Cost-Only Boilerplate

SPB Cost-Only RFP Boilerplate Instructions

SPB has developed a boilerplate for agencies to follow when preparing a Cost-Only RFP. Instructions for completing the boilerplate are found in this Exhibit B, and the boilerplate itself may be found at: http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html Agencies are required to leave “track changes” on when preparing their RFP document.

Cover Page

This page includes basic instructions to the bidder and highlights some important dates, such as the release date, the deadline for questions vendor responsibility for watching SPB website for any and all updates to the RFP, and the opening date. The second page of the cover page includes a place for bidders to comply with statistical reporting requirements under Neb. Rev. Stat. § 73-603 and to indicate any preference sought under Neb. Rev. Stat. § 73-107 regarding resident disabled veterans and/or businesses located in designated enterprise zones. This preference will apply if there is a tie among vendors. This form **MUST BE SIGNED** or the entire proposal will be considered invalid and excluded from further consideration.

Table of Contents

This is formatted to automatically update as the RFP is developed.

Glossary of Terms

SPB provides a basic set of terms. Not every word contained in the boilerplate glossary will be relevant to every RFP; however, SPB does not delete any of the boilerplate lists. If there are project-specific terms that the agency wishes to define, these should be added. If the project includes acronyms, the agency may add a separate acronym list here.

The remainder of the Cost-Only RFP is divided into four (4) sections:

- ✓ **Section I, Scope of the Request for Proposal:** Includes a brief description of the project, indicates the contract period including optional renewals, and provides the Schedule of Events according to which the RFP process will be governed.
- ✓ **Section II, Procurement Procedures:** Indicates SPB contact information and gives an overview of the RFP process and proposal submission for bidders.
- ✓ **Section III, Terms and Conditions:** Contains the standard terms and conditions that form the basis of the contract. Each item requires a response from the bidder; Accept, Reject, or Reject and Provide Alternative within the RFP Response. These clauses have been reviewed by SPB’s General Counsel. Except where invited to do so in green, agencies are not to make alterations to this section.
- ✓ **Section IV, Project Description and Scope of Work:** The core of the RFP; details the specifications of the project prepared by the Agency.

Form A, Bidder Contact Sheet: Provides the State with information regarding a bidder’s name, address, and specific point of contact regarding the proposal.

Form B, Notification of Intent to Attend Pre-Proposal Conference (optional): This form should be included when a pre-proposal conference is scheduled.

Form C, Notification of Intent to Bid (optional): This form is included when the agency wishes to have some idea of the quantity of potential bidders.

Why so many subsections?

Within each section are numerous subsections. SPB is often asked why there are so many subsections. Agencies must remember that the RFP is the beginning of the contract. For this reason, the RFP is written in a very detailed, point-by-point manner. The RFP and the bidder's response become part of the final contract. The subsections are a way to direct bidders to specific components of the document and eliminate potential points of confusion. It is possible to condense several of the subsections, but it is important to keep in mind that each subsection represents a unique point that may or may not become focal point of the final contract.

SECTION I. SCOPE OF THE REQUEST FOR PROPOSAL

This section provides a brief description of the project, and indicates the desired contract period, including renewal options. Per Neb. Rev. Stat. § 73-506, state agencies may not enter into contracts for services of unspecified or unlimited duration. Renewals cannot be automatic. The State must reserve the right to exercise or not exercise any renewal period.

A. SCHEDULE OF EVENTS

- This subsection provides bidders with a schedule of important dates in one concise table.
- The Schedule should include all pertinent dates possible, such as (as applicable):
 - ✓ Release of RFP
 - ✓ Last day to submit Notification of Intent to Attend Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions
 - ✓ Mandatory Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions after Pre-Proposal Conference (optional)
 - ✓ State responds to written questions
 - ✓ Possible second round of questions and answers, if needed
 - ✓ Last day to submit Letter of Intent to Bid (optional)
 - ✓ Proposal opening
 - ✓ Review for conformance of mandatory requirements
 - ✓ Evaluation period
 - ✓ Post Letter of Intent to Contract
 - ✓ Contract finalization period
 - ✓ Contract award
 - ✓ Contractor start date

SECTION II. PROCUREMENT PROCEDURES

This section provides some general guidelines for bidders regarding proposal submittal and contact with SPB.

A. PROCURING OFFICE AND CONTACT PERSON

- The purpose of naming the Buyer as the contact person is to:
 - ✓ Ensure that all questions are routed through SPB Buyer;
 - ✓ Further insulates procuring agency, litigation process, and evaluators;
 - ✓ Provide the same information to all potential bidders;
 - ✓ Eliminate confusion;
 - ✓ Inform potential bidders that communication with the agency or members of the evaluation committee directly is prohibited.

- Provides the department street address, mailing address, telephone and fax numbers, and an email address where questions are to be sent.
- B. GENERAL INFORMATION**
- Provides a brief description of the project.
 - Reminds potential bidders to follow the submission instructions and schedules found in the RFP.
 - Indicates the expected outcome of the RFP process, i.e. a fixed-price contract, and advises that the RFP documents become part of the final contract.
- C. CUSTOMER SERVICE**
- Describes the State's expectation of any and all contractors providing services.
- D. COMMUNICATION WITH STAFF AND EVALUATORS**
- Prohibits contact with any agency staff and/or evaluators, and directs communication to SPB Buyer.
 - Explains a few exceptions to this rule.
 - ✓ If no pre-proposal conference will be held, the green-highlighted text will be deleted.
 - Reminds bidders their proposal may be rejected if the communication limits are not strictly observed.
- E. NOTIFICATION OF INTENT TO BID – Optional**
- If the agency does not include the requirement for a Notification of Intent to Bid, this subsection is deleted.
 - Includes instructions for returning Form C (in some cases Form B, if no pre-proposal conference is scheduled). This form is a "should", i.e. it is not a firm requirement, and failure to return it does not preclude anyone from submitting a proposal.
 - Informs potential bidders that anyone who does submit a Notification of Intent to Bid will be named in a list posted to the website after the due date.
- F. WRITTEN QUESTIONS AND ANSWERS**
- Indicates mechanism by which potential bidders may submit questions or requests for clarification about the RFP before the proposal submission deadline.
 - Includes a brief description of the project, the Buyer(s) name(s), an email address and fax number, and a desired format for submitting questions.
 - Reminds bidders that the questions are answered all at once and posted as an Addendum on SPB's website.
- G. PRE-PROPOSAL CONFERENCE – Optional**
- If the agency does not include a pre-proposal conference, this subsection is deleted.
 - Indicates if pre-proposal conference is optional or mandatory. If mandatory, a sign-up sheet is required, and the list will be posted to the website after the pre-proposal conference takes place.
 - Indicates method of submitting questions and which questions are binding on the State.
 - Addresses submission methods and requirements for the Notification of Intent to Attend Pre-Proposal Conference (usually Form B)

H. SUBMISSION OF PROPOSALS

- One (1) original of the proposal is all that is required.
- Proprietary or confidential information must be properly identified.
- Proposal responses must include Form A, Bidder Contact Sheet.
- Address labels must be clear and contain the RFP number clearly marked.
IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by Law **WILL BE POSTED FOR PUBLIC VIEWING.**
- Bidders are required to waive copyrights' from privilege for posting on the public website.

I. PROPOSAL OPENING

- Sealed proposals are publicly opened at the date, time, and location identified in the Schedule of Events.
- Once the proposal opening has concluded, proposals will not be available for public viewing until the Intent to Award has been issued.
- Proposals will be available for public viewing at the opening, and then again after the Letter of Intent to Contract has been posted, and the evaluation process has been completed.

J. LATE PROPOSALS

- Regardless of cause, proposals not received and date/time stamped by the receptionist by the opening date and time will not be accepted or evaluated.
- Late proposals may be returned unopened to the bidder at the bidder's expense upon request.

K. REJECTION OF PROPOSALS

- The State reserves the right to reject any proposal in whole or in part.
- The State reserves the right to waive any non-material deviations.
- Award will be made in manner deemed best interest of the State.
- The State reserves the right to reject any or all bids and re-advertise for bids; and further reserves the right to waive any informality or irregularity.

L. MANDATORY REQUIREMENTS

- Proposal signature page must be signed.
- Proposal must have a Cost Proposal.
- Proposals lacking any of the previous sections will not be evaluated.
- Agencies may add additional mandatory requirements.

M. REFERENCE CHECKS

- The State reserves the right to check references regardless of source.
- Negative references could eliminate bidders from award consideration.

N. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS

- Bidders should be authorized to do business in the State of Nebraska.
- Bidders are expected to comply with Secretary of State Registration requirements.
- A valid Letter or Certificate of Good Standing dated within 90 calendar days must be supplied by the selected contractor before a contract award can be finalized.

- Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration.
- A bank registered with the office of Comptroller of Currency is not required to register with the State. However, if the office of Comptroller of Currency does have a Certificate of Good Standing/Registration, the bank would provide this for verification.

O. VIOLATION OF TERMS AND CONDITIONS

- Violation of the terms and conditions of the RFP and/or of the resulting contract shall be grounds for action by the State, including, but not limited to:
 - ✓ Rejection of a bidder's proposal
 - ✓ Suspension of bidder from further bidding for a period of time at State's discretion
 - ✓ Legal action

SECTION III. TERMS AND CONDITIONS

By signing the Request for Proposal for Contractual Services form, the bidder guarantees compliance with the following Terms and Conditions unless otherwise agreed to. Each subsection contains a space for the bidder to Accept, Reject, or Reject and Provide Alternative. Any rejections or alternatives indicated by a bidder will be reviewed at time of contract award. Failure to agree to terms and conditions may result with the State rejecting the bid, and proceed awarding to the next highest scoring bid or rejecting all bids. **Bidders must include completed Section III with proposal response.**

A. GENERAL

- Indicates order of precedence for the contract documents.
- Proposals become property of the State and will not be returned.

B. AWARD

- The State reserves the right to reject any or all proposals, in whole or in part, or to award to multiple bidders, or to withdraw or amend the RFP at any time.
- The State reserves the right to waive any non-material deviation.
- Awards will be made in the manner deemed to be the best interest of the State.
- State is not obligated to award a contract.
- Intent to Contract will be posted on SPB's website.
- Protest/grievance procedures are available on SPB's website.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/NONDISCRIMINATION

- Contractor shall comply with all civil rights laws and Equal Opportunity requirements.
- Nebraska Fair Employment Act (Neb. Rev. Stat. § 48-1101 through § 48-1125) prohibits discrimination based on race, color, religion, sex, disability, marital status, or national origin.
- Breach of this provision shall be considered a breach of contract.

D. PERMITS, REGULATIONS, AND LAWS

- Contractor shall pay for all permits, licenses and approvals necessary to execute the contract.

- Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

E. OWNERSHIP OF INFORMATION AND DATA

- All State data, work products and all applicable records must be provided/furnished to the State, in a format determined by the State or agreed upon by the parties, at the expiration or termination of the contract.
- The State has unlimited right to use and/or reproduce the information and/or data developed or derived by the contractor under this contract.
- The contractor guarantees it has full right to all tools necessary to execute the contract, and related costs shall be built into the contract price and not billed separately.
 - ✓ Contractor is responsible for paying any related costs and shall hold the State harmless from any related claims.
 - ✓

F. INSURANCE REQUIREMENTS – some agency decisions required

- Work shall not begin under the contract until all required insurance has been obtained by the contractor and approved by the State.
- Required insurance must be maintained for the life of the contract, including renewal periods and/or extension periods.
- Contractor must ensure that a current, compliant certificate of insurance (COI) is on file with SPB at all times during the contract.
- Contractor is responsible for any subcontractor's compliance with the insurance limits, and shall assume liability if at any time a subcontractor is not compliant.
- Contractor is responsible for any mandatory deductible payment in event of a claim.
- Limits and waivers are clearly defined.
 - ✓ Agency decides if there are any additional insured(s) besides the State
 - ✓ Agency can add any unique coverage required, such as Professional Liability, Builder's Risk, etc.
 - ✓ If Medical Malpractice coverage is required, Bidder's must also be and remain certified under the Nebraska Hospital-Medical Liability Act. Such qualification will be confirmed with the Nebraska Department of Insurance.
- Evidence of coverage (COI) shall be provided to the State before a contract can be awarded.
- Notice of cancellation of insurance must be provided to the State along with a new coverage binder to ensure no break in coverage.

G. COOPERATION WITH OTHER CONTRACTORS

- The State may already have a contract for the requested service in place.
- The State reserves the right to award to multiple contractors.
- The contractor must cooperate with any such other contractors and not interfere with any other contractor's performance.
- The State does not enter into exclusive contracts.

H. INDEPENDENT CONTRACTOR

- No partnership or employer/employee relationship between the contractor and the State is established by this contract.
- The contractor shall secure, at its own expense, the personnel needed to execute the contract.
- The contractor's employees have no contractual relationship with the State.

- Claims arising against the contractor based on employment shall not be the responsibility of the State, and the contractor shall hold the State harmless from many such claims.
- Employees of the contractor are not entitled to any benefits, compensation, tenure or rights, medical and hospital care, sick leave and vacation leave, severance pay or retirement benefits from the State.

I. CONTRACTOR RESPONSIBILITY

- The contractor is solely responsible for executing the contract and for all promises made in its proposal.
- The contractor is the sole point of contact regarding the contract.
- The contractor must clearly identify any subcontractor and its level of involvement in the fulfillment of the contract in its proposal. Any changes in subcontractor involvement shall be submitted to the State in writing for approval.

J. CONTRACTOR PERSONNEL

- Contractor warrants that all persons utilized by contractor in performing contract requirements provided under the contract are either employees or subcontractors, and are fully qualified to perform the work required.
- Contractor shall not change any personnel commitments made in the proposal without the specific written approval of the State. Replacement of key personnel shall be with personnel of equal or greater ability and qualifications.
- The State reserves the right to require the contractor to reassign or remove any contractor employee, subcontractor, or subcontractor employee.
- Contractor is responsible for its employees, including employment taxes, payroll withholding, vehicles and insurance, damages incurred by employees under the contract, worker's compensation and health insurance, and determining hours to be worked and duties to be performed.

K. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

- Contractor shall not knowingly recruit any State employee or agent who worked on the RFP or project, or who had any influence on decisions affecting the RFP or project.

L. CONFLICT OF INTEREST

- Bidder certifies there is no conflict of interest nor the appearance of conflict of interest between the bidder and any person or entity related to this RFP.
- Bidder shall not take any action or acquire any interest that presents a conflict of interest or the appearance of a conflict of appearance.
- Bidder shall not knowingly employ any individual with a known conflict of interest.

M. PROPOSAL PREPARATION COSTS

- The costs for the preparation and submission of the proposal and any participation in oral interviews/demonstrations are borne by the bidder. The State shall not incur any costs.

N. ERRORS AND OMISSIONS

- Bidder shall not take advantage of any error and/or omission in the RFP or resulting contract.

- Bidder shall inform the State of any error and/or omission that is discovered.
- O. BEGINNING OF WORK**
- Work shall not commence before the contract is fully executed by both the Contractor and the State.
- P. ASSIGNMENT BY THE STATE**
- The State reserves the right to assign the contract or any interest in the contract to any agency, board, commission, or political subdivision of the State at no cost to the State.
- Q. ASSIGNMENT BY THE CONTRACTOR**
- The Contractor may not assign the contract, any interest in the contract, or any rights or obligations under the contract to any third party without the prior written consent of the State.
- R. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**
- The requirements and conditions of the RFP become part of the contract.
 - Any alternative(s) must be clearly identified by the Bidder in its proposal. If accepted, such alternative(s) will become part of the contract.
 - Alternative(s) must not conflict with the basic nature of the RFP, the mandatory requirements, or applicable State or federal laws or statutes.
 - The State reserves the right to reject proposed alternative(s).
- S. GOVERNING LAW**
- This contract shall be governed by the laws and statutes of the State of Nebraska.
 - Any legal proceeding brought against the State of Nebraska as a result of this RFP or contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law.
 - The Contractor must be in compliance with all Nebraska statutory and regulatory law.
- T. ATTORNEY'S FEES**
- Any legal action required to enforce the contract shall be at the expense of the Contractor, including reasonable attorney's fees and costs incurred by the State, if the State is the prevailing party.
- U. ADVERTISING**
- Contractor shall not refer to the contract award in any advertising in such a way that implies an endorsement by or preference on the part of the State.
 - News releases require the prior written permission of the State.
 - The State of Nebraska is not in a position to endorse, promote products, services or contractors.
- V. STATE PROPERTY**
- The Contractor is responsible for the care and custody of any State-owned property provided for the execution of the contract.
 - The Contractor shall reimburse the State for any loss or damage to such property.
 - Normal wear and tear is expected.

W. SITE RULES AND REGULATIONS

- The Contractor and its employees, agents, and subcontractors shall comply with all site rules and regulations while on State premises.
- The Contractor must ensure proper facility access and equipment to execute the contract.
- The State shall not make additional payments based on lack of access unless the State fails to provide access as agreed to between the State and the Contractor.

X. NOTIFICATION

- During the RFP process, all communication shall take place between the Bidder's contact person identified in its proposal and the Procuring Office and Contact Person identified by the State in Section II.A of the RFP.
- After the contract is awarded, written notices may be made in person, by mail, by fax, or by email.
- Contractor shall immediately notify the State of any delays or hindrances in the execution of the contract.
 - ✓ Notice does not constitute basis of extension or be construed as a waiver by the State of any of its rights or remedies as allowed by law.
 - ✓ Failure to give such notice may result in denial of any related extension.
- Either party may change its address by giving notice in writing and giving an effective date for such change.
- Communication about the contract between the Contractor and individuals not authorized by the State is strictly forbidden.

Y. EARLY TERMINATION

- The State and the Contractor may mutually agree to terminate the contract at any time.
- The State may terminate for any reason with thirty (30) days' notice to the Contractor.
- The State may terminate immediately for the following reasons:
 - ✓ Directed by statute
 - ✓ Contractor assigns the contract for benefit of a creditor, is unable to pay its debts, or has ceased operating
 - ✓ A trustee or receiver of assets of the Contractor or any substantial part of the Contractor's assets has been appointed by the court
 - ✓ Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to the contract by the Contractor, its employees, officers, directors, or shareholders
 - ✓ Involuntary Title 11 action
 - ✓ Voluntary Title 11 action
 - ✓ Contractor intentionally discloses confidential information
 - ✓ Contractor discontinues support of the deliverables
 - ✓ Second or subsequent negative Vendor Performance Report
 - ✓ Collusion on the part of or involving the Contractor

Z. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

- The State may terminate the contract in the event the funding is no longer available.
- The State will give the Contractor thirty (30) days notice.

AA. BREACH BY CONTRACTOR

- The State may terminate the contract or any part of the contract if the Contractor fails to perform contractual obligations in a timely manner.
- The State may provide 30 days for the Contractor to cure the breach.
- The State will provide written notice of breach to contractor.
- Time to cure the breach does not waive the State's right to immediately terminate for the same or different breach which may occur at a separate time.

BB. ASSURANCES BEFORE BREACH

- Upon written notice by the State that a contract deliverable does not meet the requirements of the RFP/contract, the Contractor shall, at no additional cost to the State, remedy the situation and ensure compliance with the contract. Contractor may be required to provide additional resources, at no additional cost to the State, to ensure contract compliance.

CC. ADMINISTRATION – CONTRACT TERMINATION

- Bidder must confirm that upon termination of contract, all records shall become property of the State and shall be delivered to the State at no additional cost.
- Bidder must confirm that all records that are property of the State will be returned within thirty (30) days of termination.

DD. PENALTY – agency decision required

- State may withhold all monies due under the contract if the Contractor fails to perform any substantial contractual obligation or meeting identified contracted deliverable. (Recommend to leave this sentence in regardless of other methods of remedy.) Substantial is defined as considerable amount of work, important elements or essential part of the work requested, etc.
- Agencies may choose to assess a specific dollar amount of penalty tied to deliverables and dates.

EE. RETAINAGE – agency decision required

- Agencies may choose to withhold a certain percentage or dollar amount of payment due until a stated date or the end of the contract to guarantee performance.
- If agency does not require retainage, this subsection is deleted.

FF. BID BOND – agency decision required

- Agencies may choose to require a bid bond be submitted with the proposal, which would be released back to the bidders upon execution of awarded contract. The bond is a guarantee the bidder will enter into a contract with the State. Failure to enter into a contract with the State results in the State retaining the bond.
- If bid bond is required, bond should be provided with the bid, but must be submitted prior to award.
- If agency does not require a bid bond, this subsection is deleted.

GG. PERFORMANCE BOND – agency decision required

- Agencies may choose to require a performance bond for a percentage or dollar amount to guarantee performance under the contract. The bond is held for the life of the contract, including renewals.

- For contracts with a total period of three (3) years or less, including renewals, a cashier's check may be substituted for a performance bond.
- If agency does not require a performance bond, this subsection is deleted.

HH. FORCE MAJEURE

- Neither party shall be responsible for failures to perform due to a natural disaster or other similar event out of the control and not the fault of the affected party.
- A Force Majeure Event does not constitute breach of contract.
- Labor disputes are not considered Force Majeure Events.
- Burden of proof rests upon the Contractor.

II. PROHIBITION AGAINST ADVANCE PAYMENT – agency decision required

- Payments shall not be made until deliverables are received and accepted by the State.

JJ. PAYMENT

- Payment will be made according to the Nebraska Prompt Payment Act (Neb. Rev. Stat. §§ 81-2401 through 81-2408).
- The State may require the Contractor to accept payment via electronic means, such as ACH.
- In no event shall the State be responsible for or liable to pay for any services provided by the Contractor prior to the effective date of the fully executed contract. Contractor waives all claims or actions for any such services.

KK. INVOICES – agency input required

- The Contractor is required to submit detailed invoices.
- Agencies may insert specific invoicing requirements here, such as a mailing address.
- No invoice terms or conditions contained in an invoice, but not contained in the contract itself will be binding upon the State nor alters or amends the contract in any way.

LL. RIGHT TO AUDIT

- The Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit the contract.
- The State shall have the right to audit, examine, and make copies or extracts from the Contractor's documents pertaining to or resulting from the contract.
- Contractor shall maintain all pertinent records during the contract and for five (5) years after completion of the contract, and shall make them available to the State upon the State's reasonable request at the expense of the Contractor.
- The cost of any audit conducted under this section shall be borne by the State unless specifically stipulated otherwise, unless certain exemption criteria are met, or unless the findings require compensation to the State from the Contractor.

MM. TAXES

- The State is not required to pay taxes of any kind.
- The Contractor is responsible for any tax due on any of the Contractor's equipment which may be installed in or on State-owned facilities or property.

NN. INSPECTION AND APPROVAL

- The State shall conduct a final inspection and approval of all work under the contract.
- The State has the right to enter any premises where contract work is being performed and to inspect, monitor, and/or evaluate the work being performed.

OO. CHANGES IN SCOPE/CHANGE ORDERS

- The State may at any time change the general scope of the contract, upon written notice to the Contractor.
- The State may, at any time, in writing:
 - ✓ Make alterations in the terms of work as shown in the specifications
 - ✓ Require the performance of extra work
 - ✓ Decrease the quantity of work
 - ✓ Make other such changes as the State may find necessary or desirable
- Compensation for changes in work shall be determined by the applicable unit price of the Contractor's proposal.

PP. SEVERABILITY

- If any term or condition of the contract is declared invalid or illegal that does not automatically carry to the remaining terms and conditions of the contract.

QQ. CONFIDENTIALITY

- All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
- All confidential information shall be handled in accordance with applicable Federal and State law and ethical standards.
- The Contractor must immediately notify the State of any breach of confidentiality.
- The Contractor must comply with the Privacy Act of 1974.

RR. PROPRIETARY INFORMATION

- Data and documentation contained in a proposal become property of the State of Nebraska and upon opening, become public information.
- The Bidder may identify certain information to withhold from the public, provided it falls within the definition of proprietary information in Nebraska's public record statutes.
- All proprietary information must be submitted in a SEPARATE SEALED package clearly identified as proprietary.
- A Bidder may not mark its entire proposal proprietary.
- Cost Proposals will **never** be considered proprietary.
- A Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by Law **WILL BE POSTED FOR PUBLIC VIEWING**. Bidders are required to waive copyrights' from privilege for posting on the public website.

SS. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING

- By submitting the proposal, Bidder certifies that it has not participated in any collusive activities and that it has not divulged any of its information for purposes of colluding with regard to bid price or cost.

TT. STATEMENT OF NON-COLLUSION

- Bidder submits the proposal independently and without collusion with, and without any direct or indirect agreement or understanding or planned common course of action with any person, firm, corporation, bidder, contractor of materials, supplies, equipment or services described in the RFP.
- Bidder shall not collude with, or attempt to collude with any state officials, employees or agents or evaluators or any person involved in the RFP.
- Bidder shall not attempt to restrain free competition or limit independent bidding or create unfair advantage.
- If it is determined that collusion occurred, the State has the right to reject a bid or terminate the contract and impose further administrative sanctions.

UU. PRICES – agency input required

- Prices shall remain fixed from date of submission of proposals through date of contract award.
- Agencies may want to include some mechanism for price increase – either asking for a price for each year/renewal, or permitting up to a % of increase with a cap on the amount of the increase.
- Contractor confirms that prices are not higher and/or as low for the State than for any other client, and that price changes shall be applied equally to the State as to all other clients.
- Contractor affirms that it did not participate in price fixing or price discrimination.
- No price increase through the life of the contract unless provided for in the contract terms and conditions.

VV. BEST AND FINAL OFFER

- The State will compile the scores and award to the highest scoring responsive and responsible bidder.
- In some cases, the State may request a best and final cost proposal from the highest scoring bidder(s).
- Best and Final Offer will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each bidder requested to submit a BAFO.
- Bidders should provide their best offer with the original proposal and not expect that the State will request a best and final offer.

WW. ETHICS IN PUBLIC CONTRACTING

- No bidder shall pay or offer gifts to any officer, legislator, State employee, or evaluator.
- **Bidders shall not use lobbyists, attorneys, political activists, or consultants to secure the contract or attempt to influence the procurement process.**
- Bidders are not prohibited from seeking expert advice or legal counsel.
- Bidders found in non-compliance with this subsection may be disqualified from the selection process or forfeit the contract award.

XX. INDEMNIFICATION

- General – The Contractor holds the State harmless in general.
- Intellectual Property – The Contractor holds the State harmless in regards to patents, copyrights, trademarks, third party confidential information, Licensed Software, etc.

- Personnel – The Contractor holds the State harmless against claims from its employees.

YY. NEBRASKA TECHNOLOGY ACCESS STANDARDS

- Contractor shall review the Nebraska Technology Access Standards and ensure that it is in compliance or will comply with the applicable standards. Refer to website at: <http://nitc.nebraska.gov/standards/2-201.html>

ZZ. ANTITRUST

- The Contractor assigns to the State any and all claims for overcharges due to antitrust violations.

AAA. DISASTER RECOVERY/BACK UP PLAN

- The Contractor shall have a disaster recovery/back-up plan and shall provide a copy to the State, regarding how to continue providing services in the event of a disaster.

BBB. TIME IS OF THE ESSENCE

- Time is of the essence in this contract.
- The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations under the contract.

CCC. RECYCLING

- Preference is given to recycled/recyclable materials when applicable.

DDD. DRUG POLICY

- Contractor certifies it maintains a drug-free workplace.
- Contractor shall supply a copy of its drug-free workplace policy to the State at any time upon the State's request.

EEE. EMPLOYEE WORK ELIGIBILITY STATUS

- The Contractor must use a federal immigration verification system to determine the work eligibility of employees physically performing services in the State of Nebraska.
- E-Verify or an equivalent program designated by the US Department of Homeland Security shall be used.
- **For individuals or sole proprietorships:**
 - ✓ Contractor must complete the United States Citizenship Attestation Form. This form should be submitted with the proposal response.
 - ✓ If a qualified alien, Contractor shall provide documentation to verify its lawful presence in the US via the Systematic Alien Verification for Entitlements (SAVE) Program.
 - ✓ Contractor understands that lawful presence in the US is required and failure to verify this may result in disqualification or contract termination.

FFF. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY

- By signing the RFP, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency from participating in transactions.

- The Contractor shall immediately notify the State if it becomes disbarred during the course of the contract.
- The Department may immediately terminate the contract if the Contractor becomes debarred by the State providing written notice to the Contractor.
- The Contractor certifies that it has not had a contract with the State terminated early by the State. If it has, it must provide the contract number and a detailed explanation as to why it was terminated early. Prior early termination may be grounds for rejecting the proposal.

GGG. POLITICAL SUB-DIVISIONS

- The Contractor may extend the contract pricing to political sub-divisions provided the Terms and Conditions are the same.
- The State is no way liable for the purchases of any political sub-divisions or public entities under the contract.

HHH. OFFICE OF PUBLIC COUNSEL

- Under terms of a contract and on behalf of the State health and human service to individuals, service delivery; service coordination or in case management, contracts shall submit to the jurisdiction of the Office of Public Counsel per statute § 81-8240.
- This term survives the termination of the contract.
- Does not apply if contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.

III. LONG-TERM CARE OMBUDSMAN

- If contractor is a long-term care facility, they are subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.
- Contractor shall comply with the act.
- This term survives termination of the contract.

JJJ. LICENSE/SERVICE OR OTHER AGREEMENTS

- If contractor has any other licenses or agreements to be considered, these must be submitted with proposal response.
- State may reject any such license or service agreement if received after proposal opening date and time.
- Any terms and conditions in any such agreement must not conflict with or alter State's Terms and Conditions as contained in the RFP.
- This term does not apply to the third party license or service agreement.

SECTION IV. PROJECT DESCRIPTION AND SCOPE OF WORK

This is a suggested outline to help agencies organize and describe their specific project requirements. This may be retracted or expanded depending on each agency's needs. This section delineates in detail what the agency is seeking from a contractor and the specifications of the project.

A. SCOPE OF WORK (Agency to describe)

B. WORK PLAN (Agency to describe)

C. DELIVERABLES (REQUIRED) – These are part of the cost sheet and become part of the final contract.

- This subsection may not be deleted. All contracts must have the deliverable section clearly defined. Neb. Rev. Stat. § 73-506 ties payments to deliverables for service contracts.

D. PAYMENT SCHEDULE – agency input required

- This subsection may be modified to reflect the specific project requirements for payment.
- Payment schedule for the project is tied to specific dates and deliverables.
- Invoices may be submitted by the contractor on specific dates based on the completion and acceptance of related deliverables.
- No invoice will be approved unless the associated deliverables have been approved.

Tips for Completing Section IV

- Strive for clarity – use plain, simple language.
- Use laymen’s terms – if at all possible, avoid industry-specific jargon.
- Use “will,” “shall,” and “must” to denote required items.
- Do not use words such as “prefer” or “desire.”
- State exactly what is required.
- Include optional items clearly identified as “Optional”, with a separate cost category (that will not be evaluated).
- Include as much detail as possible – this helps avoid a large quantity questions during the question and answer period.
- Don’t make bidders reinvent the wheel – give as much pertinent data as possible.
- Be careful to avoid unnecessarily restrictive specifications that would unfairly eliminate some potential bidders.
- Look ahead to the entire contract period. Anticipate potential pitfalls, technological advancements, and legislative mandates to the extent possible, and try to include consideration for those possibilities.
- Consider exit strategies:
 - ✓ What will happen in the event the contract is terminated early?
 - ✓ How does the natural conclusion of the contract happen?
 - ✓ Is there a transition period that needs to be accounted for?
 - ✓ Is there any transfer of data requirements?
- Clearly define the deliverables and consider how the contract will be paid:
 - ✓ Are there one-time fees?
 - ✓ Are there recurring monthly fees?
 - ✓ Is there a list of deliverables that will each have lump sum costs?
- Address the level of interaction with the contractor and the acceptance of deliverables.
 - ✓ How will the Contractor know that a deliverable has been approved and may be invoiced?
- Address performance standards expected.

Exhibit C

SPB-Processed RFP Instructions: Cafeteria/Vending Boilerplate

SPB Cafeteria/Vending RFP Boilerplate Instructions

SPB has developed a boilerplate for agencies to follow when preparing a Cafeteria/Vending RFP. Instructions for completing the boilerplate are found in this Exhibit C, and the boilerplate itself may be found at: http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html

Cover Page

This page includes basic instructions to the bidder and highlights some important dates, such as the release date, the deadline for questions, vendor responsibility for watching SPB website for any and all updates to the RFP, and the opening date. The second page of the cover page includes a place for bidders to comply with statistical reporting requirements under Neb. Rev. Stat. § 73-603 and to indicate any preference sought under Neb. Rev. Stat. § 73-107 regarding resident disabled veterans and/or businesses located in designated enterprise zones. This preference will apply when there is a tie among the vendors. This boilerplate also includes a preference option for blind persons licensed by the Commission for the Blind and Visually Impaired under Neb. Rev. Stat. § 71-8611. Refer to Evaluation and Scoring Manual for Requests for Proposal for Cafeteria and Vending Services for specific details on how preference is applied.

This form **MUST BE SIGNED** or the entire proposal will be considered invalid and excluded from further consideration.

Table of Contents

This is formatted to automatically update as the RFP is developed.

Glossary of Terms

SPB provides a basic set of terms. Not every word contained in the boilerplate glossary will be relevant to every RFP; however, SPB does not delete any of the boilerplate lists. If there are project-specific terms that the agency wishes to define, these should be added. If the project includes acronyms, the agency may add a separate acronym list here.

The remainder of the Cafeteria/Vending RFP is divided into five (5) sections:

- ✓ **Section I, Scope of the Request for Proposal:** Includes a brief description of the project, indicates the contract period including optional renewals, and provides the Schedule of Events according to which the RFP process will be governed.
- ✓ **Section II, Procurement Procedures:** Indicates SPB contact information and gives an overview of the RFP process and proposal submission for bidders.
- ✓ **Section III, Terms and Conditions:** Contains the standard terms and conditions that form the basis of the contract. Each item requires a response from the bidder; Accept, Reject, or Reject and Provide Alternative within the RFP Response. These clauses have been reviewed by SPB's General Counsel. Except where invited to do so in green, agencies are not to make alterations to this section.
- ✓ **Section IV, Project Description and Scope of Work:** The core of the RFP; details the specifications of the project prepared by the Agency.
- ✓ **Section V, Proposal Instructions:** Provides specific instructions on how to prepare a proposal; lays out specific qualifications and other required information of the bidder.

Form A, Bidder Contact Sheet: Provides the State with information regarding a bidder's name, address, and specific point of contact regarding the proposal.

Form B, Notification of Intent to Attend Pre-Proposal Conference (optional): This form should be included when a pre-proposal conference is scheduled.

Form C, Notification of Intent to Bid (optional): This form is included when the agency wishes to have some idea of the quantity of potential bidders.

Why so many subsections?

Within each section are numerous subsections. SPB is often asked why there are so many subsections. Agencies must remember that the RFP is the beginning of the contract. For this reason, the RFP is written in a very detailed, point-by-point manner. The RFP and the bidder's response become part of the final contract. The subsections are a way to direct bidders to specific components of the document and eliminate potential points of confusion. It is possible to condense several of the subsections, but it is important to keep in mind that each subsection represents a unique point that may or not become focal point of the final contract.

SECTION I. SCOPE OF THE REQUEST FOR PROPOSAL

This section provides a brief description of the project, and indicates the desired contract period, including renewal options. Per Neb. Rev. Stat. § 73-506, state agencies may not enter into contracts for services of unspecified or unlimited duration. Renewals cannot be automatic. The State must reserve the right to exercise or not exercise any renewal period.

A. SCHEDULE OF EVENTS

- This subsection provides bidders with a schedule of important dates in one concise table.
- The Schedule should include all pertinent dates possible, such as (as applicable):
 - ✓ Release of RFP
 - ✓ Last day to submit Notification of Intent to Attend Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions
 - ✓ Mandatory Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions after Pre-Proposal Conference (optional)
 - ✓ State responds to written questions
 - ✓ Possible second round of questions and answers, if needed
 - ✓ Last day to submit Letter of Intent to Bid (optional)
 - ✓ Proposal opening
 - ✓ Review for conformance of mandatory requirements
 - ✓ Evaluation period
 - ✓ Oral Interviews/Demonstrations (optional)
 - ✓ Post Letter of Intent to Contract
 - ✓ Contract finalization period
 - ✓ Contract award
 - ✓ Contractor start date

SECTION II. PROCUREMENT PROCEDURES

This section provides some general guidelines for bidders regarding proposal submittal and contact with SPB.

A. PROCURING OFFICE AND CONTACT PERSON

- The purpose of naming the Buyer as the contact person is to:

- ✓ Ensure that all questions are routed through SPB Buyer;
 - ✓ Further insulates procuring agency, litigation process, and evaluators;
 - ✓ Provide the same information to all potential bidders;
 - ✓ Eliminate confusion;
 - ✓ Inform potential bidders communication with the agency or members of the evaluation committee directly is prohibited.
- Provides the department street address, mailing address, telephone and fax numbers, and an email address where questions are to be sent.

B. GENERAL INFORMATION

- Provides a brief description of the project.
- Reminds potential bidders to follow the submission instructions and schedules found in the RFP.
- Indicates the expected outcome of the RFP process, i.e. a fixed-price contract, and advises that the RFP documents become part of the final contract.

C. CUSTOMER SERVICE

- Describes the State's expectation of any and all contractors providing services to the State.

D. COMMUNICATION WITH STATE STAFF AND EVALUATORS

- Prohibits contact with any agency staff and/or evaluators, and directs communication to SPB Buyer.
- Explains a few exceptions to this rule.
- Reminds bidders their proposal may be rejected if the communication limits are not strictly observed.

E. NOTIFICATION OF INTENT TO BID – Optional

- If the agency does not include the requirement for a Notification of Intent to Bid, this subsection is deleted.
- Includes instructions for returning Form C (in some cases Form B, if no pre-proposal conference is scheduled). This form is a "should", i.e. it is not a firm requirement, and failure to return it does not preclude anyone from submitting a proposal.
- Informs potential bidders that anyone who does submit a Notification of Intent to Bid will be named in a list posted to the website after the due date.

F. WRITTEN QUESTIONS AND ANSWERS

- Indicates mechanism by which potential bidders may submit questions or requests for clarification about the RFP before the proposal submission deadline.
- Includes a brief description of the project, the Buyer(s) name(s), an email address and fax number, and a desired format for submitting questions.
- Reminds bidders that the questions are answered all at once and posted as an Addendum on SPB's website.

G. PRE-PROPOSAL CONFERENCE – Optional

- If the agency does not include a pre-proposal conference, this subsection is deleted.
- Indicates if pre-proposal conference is optional or mandatory. If mandatory, a sign-up sheet is required, and the list will be posted to the website after the pre-proposal conference takes place.

- Indicates method of submitting questions and which questions are binding on the State.
 - Addresses submission methods and requirements for the Notification of Intent to Attend Pre-Proposal Conference (usually Form B)
- H. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS**
- Oral interviews/presentations and/or demonstrations are optional at the discretion of the State.
 - The State reserves the right to invite only top scoring bidders.
 - Bidder's key personnel are expected to participate.
 - State bears no responsibility for any part of the costs associated with preparing for and transportation to the oral interviews.
- I. SUBMISSION OF PROPOSALS – agency input required**
- One (1) original of the proposal is all that is required.
 - Proprietary or confidential information must be properly identified.
 - Proposal responses must include Form A, Bidder Contact Sheet.
 - Address labels must be clear and contain the RFP number clearly marked.
IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by Law **WILL BE POSTED FOR PUBLIC VIEWING**. Bidders are required to waive copyrights' from privilege for posting on the public website.
 - Agencies must choose if the payment proposal shall be presented as a separate section within the RFP response or as an entirely separate document. One paragraph or the other will need to be deleted according to the option chosen by the agency.
- J. PROPOSAL OPENING**
- Sealed proposals are publicly opened at the date, time, and location identified in the Schedule of Events.
 - Once the proposal opening concludes proposals are not available for public viewing until the Intent to Award has been issued.
 - Proposals will be available for public viewing at the opening, and then again after the Letter of Intent to Contract has been posted, and the evaluation process has been completed.
- K. LATE PROPOSALS**
- Regardless of cause, proposals not received and date/time stamped by SPB by the opening date and time will not be accepted or evaluated.
 - Late proposals may be returned unopened to the bidder at the bidder's expense upon request.
- L. REJECTION OF PROPOSALS**
- The State reserves the right to reject any proposal in whole or in part.
 - The State reserves the right to waive any non-material deviations.
 - Award will be made in manner deemed best interest of the State.
 - The State reserves the right to reject any or all bids and re-advertise for bids; and further reserves the right to waive any informality or irregularity
- M. EVALUATION OF PROPOSALS**

- Identifies the categories according to which the proposals will be scored.
- Discusses resident disabled veteran and/or business in an enterprise zone preference if all other items are equal according to Neb. Rev. Stat. § 73-107 and the documentation needed to request such preference.
- Discusses preference for blind persons under Neb. Rev. Stat. § 71-8611
 - ✓ Does not apply to Game & Parks or the University of Nebraska
 - ✓ Details steps SPB will need to take to determine if preference applies
- Evaluation Criteria and list of proposal respondents will be posted on the opening date.

N. EVALUATION COMMITTEE

- Names of Evaluation Committee members will not be published.
- No member of the Evaluation Committee is authorized to make binding statements regarding the RFP.
- Any contact or attempted contact with an evaluator involved with the RFP during the evaluation period by a bidder, potential bidder, or other interested party may result in rejection of the bidder's proposal and further Administrative action may be taken.

O. MANDATORY REQUIREMENTS

- Proposal signature page must be signed.
- Proposal must have a Corporate Overview section.
- Proposal must have a Technical Approach section.
- Proposal must have a Payment Proposal.
- Proposals lacking any of the previous sections will not be evaluated.
- Agencies may add additional mandatory requirements, if necessary.

P. REFERENCE CHECKS

- The State reserves the right to check references regardless of source.
- The State reserves the right to utilize a 3rd party to conduct reference checks.
- Negative references could eliminate bidders from award consideration.

Q. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS

- Bidders should be authorized to do business in the State of Nebraska.
- Bidders are expected to comply with Secretary of State Registration requirements if awarded a contract.
- A valid Letter or Certificate of Good Standing dated within 90 calendar days of Intent to Award must be supplied by the selected contractor before a contract award can be finalized.
- Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration.
- A bank registered with the office of Comptroller of Currency is not required to register with the State. However, if the office of Comptroller of Currency does have a Certificate of Good Standing/Registration, the bank would provide this for verification.

R. VIOLATION OF TERMS AND CONDITIONS

- Violation of the terms and conditions of the RFP and/or of the resulting contract shall be grounds for action by the State, including, but not limited to:

- ✓ Rejection of a bidder's proposal
- ✓ Suspension of bidder from further bidding for a period of time at State's discretion
- ✓ Legal action

SECTION III. TERMS AND CONDITIONS

By signing the Request for Proposal for Contractual Services form, the bidder guarantees compliance with the following Terms and Conditions unless otherwise agreed to. Each subsection contains a space for the bidder to Accept, Reject, or Reject and Provide Alternative. Any rejections or alternatives indicated by a bidder will be reviewed during contract finalization. Failure to agree to terms and conditions may result with the State rejecting the bid, and proceed awarding to the next highest scoring bid or rejecting all bids. Bidders must include completed Section III with proposal response.

A. GENERAL

- Indicates order of precedence for the contract documents.
- Proposals become property of the State and will not be returned.

B. AWARD

- The State reserves the right to reject any or all proposals, in whole or in part, or to award to multiple bidders, or to withdraw or amend the RFP at any time.
- The State reserves the right to waive any non-material deviation.
- Awards will be made in the manner deemed to be the best interest of the State.
- State is not obligated to award a contract.
- Intent to Contract will be posted on SPB's website.
- Protest/grievance procedures are available on SPB's website.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/NONDISCRIMINATION

- Contractor shall comply with all civil rights laws and Equal Opportunity requirements.
- Nebraska Fair Employment Act (Neb. Rev. Stat. § 48-1101 through § 48-1125) prohibits discrimination based on race, color, religion, sex, disability, marital status, or national origin.
- Breach of this provision shall be considered a breach of contract.

D. PERMITS, REGULATIONS, AND LAWS

- Contractor shall pay for all permits, licenses and approvals necessary to execute the contract.
- Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

E. OWNERSHIP OF INFORMATION AND DATA

- All State data, work products and all applicable records must be provided/furnished to the State, in a format determined by the State or agreed upon by the parties, at the expiration or termination of the contract.
- The State has unlimited right to use and/or reproduce the information and/or data developed or derived by the contractor under the contract.
- The contractor guarantees it has full right to all tools necessary to execute the contract, and related costs shall be built into the contract price and not billed separately.

- ✓ Contractor is responsible for paying any related costs and shall hold the State harmless from any related claims.

F. INSURANCE REQUIREMENTS – some agency decisions required

- Work shall not begin under the contract until all required insurance has been obtained by the contractor and approved by the State.
- Required insurance must be maintained for the life of the contract, including renewal periods and/or extension periods.
- Contractor must ensure that a current, compliant certificate of insurance (COI) is on file with SPB at all times during the contract.
- Contractor is responsible for any subcontractor's compliance with the insurance limits, and shall assume liability if at any time a subcontractor is not compliant.
- Contractor is responsible for any mandatory deductible payment in event of a claim.
- Limits and waivers are clearly defined.
 - ✓ Agency decides if there are any additional insured(s) besides the State
 - ✓ Agency can add any unique coverage required, such as Professional Liability, Builder's Risk, etc.
 - ✓ If Medical Malpractice coverage is required, Bidder's must also be and remain certified under the Nebraska Hospital-Medical Liability Act. Such qualification will be confirmed with the Nebraska Department of Insurance.
- Evidence of coverage (COI) shall be provided to the State before a contract can be awarded.
- Notice of cancellation of insurance must be provided to the State along with a new coverage binder to ensure no break in coverage.

G. COOPERATION WITH OTHER CONTRACTORS

- The State may already have a contract for the requested service in place.
- The State reserves the right to award to multiple contractors.
- The contractor must cooperate with any such other contractors and not interfere with any other contractor's performance.
- The State does not enter into exclusive contracts.

H. INDEPENDENT CONTRACTOR

- No partnership between the contractor and the State is established by this contract.
- The contractor shall secure, at its own expense, the personnel needed to execute the contract.
- The contractor's employees have no contractual relationship with the State.
- Claims arising against the contractor based on employment shall not be the responsibility of the State, and the contractor shall hold the State harmless from any such claim.
- Employees of the contractor are not entitled to any benefits, compensation, tenure or rights, medical and hospital care, sick leave and vacation leave, severance pay or retirement benefits from the State.

I. CONTRACTOR RESPONSIBILITY

- The contractor is solely responsible for executing the contract and for all promises made in its proposal.
- The contractor is the sole point of contact regarding the contract.

- The contractor must clearly identify any subcontractor and its level of involvement in the fulfillment of the contract in its proposal. Any changes in subcontractor involvement shall be submitted to the State in writing for approval.

J. CONTRACTOR PERSONNEL

- Contractor warrants that all persons utilized by contractor in performing contract requirements provided under the contract are either employees or subcontractors, and are fully qualified to perform the work required.
- Contractor shall not change any personnel commitments made in the proposal without the specific written approval of the State. Replacement of key personnel shall be with personnel of equal or greater ability and qualifications.
- The State reserves the right to require the contractor to reassign or remove any contractor employee, subcontractor, or subcontractor employee.
- Contractor is responsible for its employees, including employment taxes, payroll withholding, vehicles and insurance, damages incurred by employees under the contract, worker's compensation and health insurance, and determining hours to be worked and duties to be performed.

K. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

- Contractor shall not recruit any State employee or agent who worked on the RFP or project, or who had any influence on decisions affecting the RFP or project.

L. CONFLICT OF INTEREST

- Bidder certifies there is no conflict of interest nor the appearance of conflict of interest between the bidder and any person or entity related to this RFP.
- Bidder shall not take any action or acquire any interest that presents a conflict of interest or the appearance of a conflict of appearance.
- Bidder shall not knowingly employ any individual with a known conflict of interest.

M. PROPOSAL PREPARATION COSTS

- The costs for the preparation and submission of the proposal and any participation in oral interviews/demonstrations are borne by the bidder. The State shall not incur any costs.

N. ERRORS AND OMISSIONS

- Bidder shall not take advantage of any error and/or omission in the RFP or resulting contract.
- Bidder shall inform the State of any error and/or omission that is discovered.

O. BEGINNING OF WORK

- Work shall not commence before the contract is fully executed by both the Contractor and the State.

P. ASSIGNMENT BY THE STATE

- The State reserves the right to assign the contract or any interest in the contract to any agency, board, commission, or political subdivision of the State at no cost to the State.

Q. ASSIGNMENT BY THE CONTRACTOR

- The Contractor may not assign the contract, any interest in the contract, or any rights or obligations under the contract to any third party without the prior written consent of the State.

R. DEVIATIONS FROM THE REQUEST FOR PROPOSAL

- The requirements and conditions of the RFP become part of the contract.
- Any alternative(s) must be clearly identified by the Bidder in its proposal. If accepted, such alternative(s) will become part of the contract.
- Alternative(s) must not conflict with the basic nature of the RFP, the mandatory requirements, or applicable State or federal laws or statutes.
- The State reserves the right to reject proposed alternative(s).

S. GOVERNING LAW

- This contract shall be governed by the laws and statutes of the State of Nebraska.
- Any legal proceeding brought against the State of Nebraska as a result of this RFP or contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law.
- The Contractor must be in compliance with all Nebraska statutory and regulatory law.

T. ATTORNEY'S FEES

- Any legal action required to enforce the contract shall be at the expense of the Contractor, including reasonable attorney's fees and costs incurred by the State, if the State is the prevailing party.

U. ADVERTISING

- Contractor shall not refer to the contract award in any advertising in such a way that implies an endorsement by or preference on the part of the State.
- News releases require the prior written permission of the State.
- The State of Nebraska is not in a position to endorse or promote products, services, or contractors.

V. STATE PROPERTY

- The Contractor is responsible for the care and custody of any State-owned property provided for the execution of the contract.
- The Contractor shall reimburse the State for any loss or damage to such property.
- Normal wear and tear is expected.

W. SITE RULES AND REGULATIONS

- The Contractor and its employees, agents, and subcontractors shall comply with all site rules and regulations while on State premises.
- The Contractor must ensure proper facility access and equipment to execute the contract.
- The State shall not make additional payments based on lack of access unless the State fails to provide access as agreed to between the State and the Contractor.

X. NOTIFICATION

- During the RFP process, all communication shall take place between the Bidder's contact person identified in its proposal and the Procuring Office and Contact Person identified by the State in Section II.A of the RFP.
- After the contract is awarded, written notices may be made in person, by mail, by fax, or by email.
- Contractor shall immediately notify the State of any delays or hindrances in the execution of the contract.
 - ✓ Notice does not constitute basis of extension or be construed as a waiver by the State of any of its rights or remedies as allowed by law.
 - ✓ Failure to give such notice may result in denial of any related extension.
- Either party may change its address by giving notice in writing and giving an effective date for such change.
- Communication about the contract between the Contractor and individuals not authorized by the State is strictly forbidden.

Y. EARLY TERMINATION

- The State and the Contractor may mutually agree to terminate the contract at any time.
- The State may terminate for any reason with thirty (30) days notice to the Contractor.
- The State may terminate immediately for the following reasons:
 - ✓ Directed by statute
 - ✓ Contractor assigns the contract for benefit of a creditor, is unable to pay its debts, or has ceased operating
 - ✓ A trustee or receiver of assets of the Contractor or any substantial part of the contractor's assets has been appointed by the courts
 - ✓ Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to the contract by the Contractor, its employees, officers, directors, or shareholders
 - ✓ Involuntary Title 11 action
 - ✓ Voluntary Title 11 action
 - ✓ Contractor intentionally discloses confidential information
 - ✓ Contractor discontinues support of the deliverables
 - ✓ Second or subsequent negative Vendor Performance Report
 - ✓ Collusion on the part of or involving the Contractor

Z. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

- The State may terminate the contract in the event the funding is no longer available.
- The State will give the Contractor thirty (30) days notice.

AA. BREACH BY CONTRACTOR

- The State may terminate the contract or any part of the contract if the Contractor fails to perform contractual obligations in a timely manner.
- The State may provide an opportunity for the Contractor to cure the breach.
- Time to cure the breach does not waive the State's right to immediately terminate for the same or different breach which may occur at a separate time.

BB. ASSURANCES BEFORE BREACH

- Upon written notice by the State that a contract deliverable does not meet the requirements of the RFP/contract, the Contractor shall, at no additional cost to the State, remedy the situation and ensure compliance with the contract. Contractor may be required to provide additional resources, at no additional cost to the State, to ensure contract compliance.

CC. ADMINISTRATION – CONTRACT TERMINATION

- Bidder must confirm that upon termination of contract, all records shall become property of the State and shall be delivered to the State at no additional cost.
- Bidder must confirm that all records that are property of the State will be returned within thirty (30) days of termination.

DD. PENALTY – agency decision required

- State may withhold all monies due under the contract if the Contractor fails to perform any substantial contractual obligation or meeting identified contracted deliverable. (Recommended to leave this sentence in regardless of other methods of remedy.) Substantial is defined as considerable amount of work, important elements or essential part of the work requested, etc.
- Agencies may choose to assess a specific dollar amount of penalty tied to deliverables and due dates.

EE. BID BOND – agency decision required

- Agencies may choose to require a bid bond be submitted with the proposal, which would be released back to the bidders upon execution of awarded contract. The bond is a guarantee the bidder will enter into a contract with the State. Failure to enter into a contract with the State results in the State retaining the bond.
- If bid bond is required, bond should be provided with the bid, but must be submitted prior to award.
- If agency does not require a bid bond, this subsection is deleted.

FF. PERFORMANCE BOND – agency decision required

- Agencies may choose to require a performance bond for a percentage or specific dollar amount to guarantee performance under the contract. The bond is held for the life of the contract, including renewals.
- For contracts with a total period of three (3) years or less, including renewals, a cashier's check may be substituted for a performance bond.

GG. FORCE MAJEURE

- Neither party shall be responsible for failures to perform due to a natural disaster or other similar event out of the control and not the fault of the affected party.
- A Force Majeure Event does not constitute breach of contract.
- Labor disputes are not considered Force Majeure Events.
- Burden of proof rests with the Contractor.

HH. PROHIBITION AGAINST ADVANCE PAYMENT – agency decision required

- Payment shall not be made until deliverables are received and accepted by the State.

II. PAYMENT – agency decision required

- Payment will be made according to the Nebraska Prompt Payment Act (Neb. Rev. Stat. §§ 81-2401 through 81-2408).
- The State may require the Contractor to accept payment via electronic means, such as ACH.
- In no event shall the State be responsible for or liable to pay for any services provided by the Contractor prior to the effective date of the fully executed contract. Contractor waives all claims or actions for any such services.

JJ. INVOICES – agency decision required

- The Contractor is required to submit detailed invoices that match deliverables identified in the contract.
- Agencies may insert specific invoicing requirements here, such as a mailing address.
- No invoice terms or conditions contained in an invoice, but not contained in the contract itself will be binding upon the State nor alters or amends the contract in any way.

KK. RIGHT TO AUDIT

- The Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit the contract.
- The State shall have the right to audit, examine, and make copies or extracts from the Contractor's documents pertaining to or resulting from the contract.
- Contractor shall maintain all pertinent records during the contract and for five (5) years after completion of the contract, and shall make them available to the State upon the State's reasonable request at the expense of the Contractor.
- The cost of any audit conducted under this section shall be borne by the State unless specifically stipulated otherwise, unless certain exemption criteria are met, or unless the findings require compensation to the State from the Contractor.

LL. TAXES

- The State is not required to pay taxes of any kind.
- The Contractor is responsible for any tax due on any of the Contractor's equipment which may be installed in or on State-owned facilities or property.

MM. INSPECTION AND APPROVAL

- The State shall conduct a final inspection and approval of all work under the contract.
- The State has the right to enter any premises where contract work is being performed and to inspect, monitor, and/or evaluate the work being performed.

NN. CHANGES IN SCOPE/CHANGE ORDERS

- The State may at any time change the general scope of the contract, upon written notice to the Contractor.
- The State may, at any time, in writing:
 - ✓ Make alterations in the terms of work as shown in the specifications
 - ✓ Require the performance of extra work
 - ✓ Decrease the quantity of work
 - ✓ Make other such changes as the State may find necessary or desirable
- Compensation for changes in work shall be determined by the applicable unit price of the Contractor's proposal.

OO. SEVERABILITY

- If any term or condition of the contract is declared invalid or illegal that does not automatically carry to the remaining terms and conditions of the contract.

PP. CONFIDENTIALITY

- All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
- All confidential information shall be handled in accordance with applicable Federal and State law and ethical standards.
- The Contractor must immediately notify the State of any breach of confidentiality.
- The Contractor must comply with the Privacy Act of 1974.

QQ. PROPRIETARY INFORMATION

- Data and documentation contained in a proposal become property of the State of Nebraska and upon opening, become public information.
- The Bidder may identify certain information to withhold from the public, provided it falls within the definition of proprietary information in Nebraska's public record statutes.
- All proprietary information must be submitted in a SEPARATE SEALED package clearly identified as proprietary.
- A Bidder may not mark its entire proposal proprietary.
- Cost Proposals are **never** considered proprietary.
- A Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by Law **WILL BE POSTED FOR PUBLIC VIEWING**. Bidders are required to waive copyrights' from privilege for posting on the public website.

RR. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING

- By submitting the proposal, Bidder certifies that it has not participated in any collusive activities and that it has not divulged any of its information for purposes of colluding with regard to bid price or cost.

SS. STATEMENT OF NON-COLLUSION

- Bidder submits the proposal independently and without collusion with, and without any direct or indirect agreement or understanding or planned common course of action with any person, firm, corporation, bidder, contractor of materials, supplies, equipment or services described in the RFP.
- Bidder shall not collude with, or attempt to collude with any state officials, employees or agents or evaluators or any person involved in the RFP.
- Bidder shall not attempt to restrain free competition or limit independent bidding or create unfair advantage.
- If it is determined that collusion occurred, the State has the right to reject a bid or terminate the contract and impose further administrative sanctions.

TT. PRICES – agency input required

- Prices shall remain fixed from date of submission of proposals through date of contract award.
- Agencies may want to include some mechanism for price increase – either asking for a price for each year/renewal, or permitting up to a % of increase with a cap on the amount of the increase.
- Contractor confirms that prices are not higher and/or as low for the State than for any other client, and that price changes shall be applied equally to the State as to all other clients.
- Contractor affirms that it did not participate in price fixing or price discrimination.
- No price increase through the life of the contract unless provided for in the contract terms and conditions.

UU. BEST AND FINAL OFFER

- The State will compile the scores and award to the highest scoring responsive and responsible bidder.
- In some cases, the State may request a best and final cost proposal from the highest scoring bidder(s).
- Best and Final Offer will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each bidder requested to submit a BAFO.
- Bidders should provide their best offer with the original proposal and not expect that the State will request a best and final offer.

VV. ETHICS IN PUBLIC CONTRACTING

- No bidder shall pay or offer gifts to any officer, legislator, State employee, or evaluator.
- **Bidders shall not use lobbyists, attorneys, political activists, or consultants to secure the contract or attempt to influence the procurement process.**
- Bidders are not prohibited from seeking expert advice or legal counsel.
- Bidders found in non-compliance with this subsection may be disqualified from the selection process or forfeit the contract award.

WW. INDEMNIFICATION

- General – The Contractor holds the State harmless in general.
- Intellectual Property – The Contractor holds the State harmless in regards to patents, copyrights, trademarks, third party confidential information, Licensed Software, etc.
- Personnel – The Contractor holds the State harmless against claims from its employees.

XX. NEBRASKA TECHNOLOGY ACCESS STANDARDS

- Contractor shall review the Nebraska Technology Access Standards and ensure that it is in compliance or will comply with the applicable standards. Refer to website at: <http://nitc.nebraska.gov/standards/2-201.html>

YY. ANTITRUST

- The Contractor assigns to the State any and all claims for overcharges due to antitrust violations.

ZZ. DISASTER RECOVERY/BACK UP PLAN

- The Contractor shall have a disaster recovery/back-up plan and shall provide a copy to the State, regarding how to continue providing services in the event of a disaster.

AAA. TIME IS OF THE ESSENCE

- Time is of the essence in this contract.
- The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations under the contract.

BBB. RECYCLING

- Preference is given to recycled/recyclable materials when applicable.

CCC. DRUG POLICY

- Contractor certifies it maintains a drug-free workplace.
- Contractor shall supply a copy of its drug-free workplace policy to the State at any time upon the State's request.

DDD. EMPLOYEE WORK ELIGIBILITY STATUS

- The Contractor must use a federal immigration verification system to determine the work eligibility of employees physically performing services in the State of Nebraska.
- E-Verify or an equivalent program designated by the US Department of Homeland Security shall be used.
- **For individuals or sole proprietorships:**
 - ✓ Contractor must complete the United States Citizenship Attestation Form. This form should be submitted with the proposal response.
 - ✓ If a qualified alien, Contractor shall provide documentation to verify its lawful presence in the US via the Systematic Alien Verification for Entitlements (SAVE) Program.
 - ✓ Contractor understands that lawful presence in the US is required and failure to verify this may result in disqualification or contract termination.

EEE. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY

- By signing the RFP, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency from participating in transactions.
- The Contractor shall immediately notify the State if it becomes debarred during the course of the contract.
- The Department may immediately terminate the contract if the Contractor becomes debarred by the State providing written notice to the Contractor.
- The Contractor certifies that it has not had a contract with the State terminated early by the State. If it has, it must provide the contract number and a detailed explanation as to why it was terminated early. Prior early termination may be grounds for rejecting the proposal.

FFF. POLITICAL SUB-DIVISIONS

- The Contractor may extend the contract pricing to political sub-divisions provided the Terms and Conditions are the same.

- The State is in no way liable for the purchases of any political sub-divisions or public entities under the contract.

GGG. OFFICE OF PUBLIC COUNSEL

- Under terms of a contract and on behalf of the State health and human service to individuals, service delivery; service coordination or in case management, contracts shall submit to the jurisdiction of the Office of Public Counsel per statute § 81-8240.
- This term survives the termination of the contract.
- Does not apply if contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.

HHH. LONG-TERM CARE OMBUDSMAN

- If contractor is a long-term care facility, they are subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.
- Contractor shall comply with the act.
- This term survives termination of the contract.

III. LICENSE/SERVICE OR OTHER AGREEMENTS

- If contractor has any other licenses or agreements to be considered, these must be submitted with proposal response.
- State may reject any such license or service agreement if received after proposal opening date and time.
- Any terms and conditions in any such agreement must not conflict with or alter State's Terms and Conditions as contained in the RFP.
- This term does not apply to the third party license or service agreement.

SECTION IV. PROJECT DESCRIPTION AND SCOPE OF WORK

This is a suggested outline to help agencies organize and describe their specific project requirements. This may be retracted or expanded depending on each agency's needs. This section delineates in detail what the agency is seeking from a contractor and the specifications of the project.

A. PROJECT OVERVIEW

- Explain the reason/need for the service and/or give a general overview of the project.
- Give details that pertain specifically to the project; it is not necessary to provide the entire history of the agency. Agency should provide enough detailed information so vendors have a clear understanding of the agency needs and requirements.

B. UTILITIES & RENT (Agency to describe)

C. OPERATION MANAGEMENT PLAN (Agency to describe)

D. BUSINESS REQUIREMENTS (Agency to describe)

E. CONTRACTOR RESPONSIBILITIES (Agency to describe)

F. ALTERNATIVE PROPOSALS (Agency to describe)

G. SCOPE OF WORK (Agency to describe)

- Bidders must submit proposed menus or products with pricing in order for SPB to conduct a Product Price Comparability Determination to evaluate preference under Neb. Rev. Stat. § 71-8611.
- All bidders must submit this information, not just those claiming preference.

- For vending services, an agency should develop a comprehensive acceptable product list for each type of vending product.

Tips for Completing Section IV

- Strive for clarity – use plain, simple language.
- Use laymen’s terms – if at all possible, avoid industry-specific jargon.
- Use “will,” “shall,” and “must” to denote required items.
- Do not use words such as “prefer” or “desire.”
- State exactly what is required.
- Include optional items clearly identified as “Optional”, with a separate cost category (that will not be evaluated).
- Include as much detail as possible – this helps avoid a large quantity questions during the question and answer period.
- Don’t make bidders reinvent the wheel – give as much pertinent data as possible.
- Be careful to avoid unnecessarily restrictive specifications that would unfairly eliminate some potential bidders.
- Look ahead to the entire contract period. Anticipate potential pitfalls, technological advancements, and legislative mandates to the extent possible, and try to include consideration for those possibilities.
- Consider exit strategies:
 - ✓ What will happen in the event the contract is terminated early?
 - ✓ How does the natural conclusion of the contract happen?
 - ✓ Is there a transition period that needs to be accounted for?
 - ✓ Is there any transfer of data requirements?
- Clearly define the deliverables and consider how the contract will be paid:
 - ✓ Are there one-time fees?
 - ✓ Are there recurring monthly fees?
 - ✓ Is there a list of deliverables that will each have lump sum costs?
- Address the level of interaction with the contractor and the acceptance of deliverables.
 - ✓ How will the Contractor know that a deliverable has been approved and may be invoiced?
- Address performance standards expected.

SECTION V. PROPOSAL INSTRUCTIONS

This section contains the mandatory requirements that must be met by bidders in preparing the Technical and Payment Proposal.

A. PROPOSAL SUBMISSION

- **Request for Proposal form**
 - ✓ Bidder guarantees compliance with the provisions and agrees to the Terms and Conditions unless otherwise agreed to, and maintains a drug-free workplace.
 - ✓ Must be signed and returned by the stated date and time to be considered for award. Any proposal with an unsigned form or a form signed in something other than ink (i.e., pencil) will be declared invalid and will not be evaluated.
- **Corporate Overview** – shall contain the following sections with responses:
 - ✓ Bidder Identification and Information – full company/corporate name, address, entity organization, State of incorporation/organization, year in which entity began to do business, and whether name and/or form of organization has changed since first organized.
 - ✓ **Financial Statements**

- If publicly held, bidder must provide most recent audited financial reports and statements, and name, address, and telephone number of the fiscally responsible representative of the bidder's financial or banking organization.
- If not publicly held, bidder must provide the same information as would be required of a publicly held organization or description of the organization including size, longevity, client base, areas of specialization and expertise, and any other pertinent information to formulate determination regarding stability and financial strength of the organization as well as a banking reference.
- Bidder must disclose any pending or potential judgments, litigation, financial reversals, etc., or state that none are known to exist.
- ✓ **Change of Ownership** – bidder must disclose any planned or anticipated change of ownership or control of the company in the coming twelve (12) months.
- ✓ **Office Location** – bidder must identify the physical location of the office responsible for contract performance.
- ✓ **Relationships with the State** – bidder shall describe any dealings with the State, present or prior, or state that no such relationship exist/have existed.
- ✓ **Bidder's Employee Relations to State** – bidder shall disclose if any party named in the proposal was an employee of the State along with pertinent details of any such employment.
- ✓ **Contract Performance** – bidder shall disclose any contract termination for default by bidder or any named subcontractor, or declare that no such event has taken place. Bidder shall also disclose any early contract termination for any reason (convenience, non-performance, loss of appropriations, etc.).
- ✓ **Summary of Bidder's Corporate Experience** – bidder shall provide a list of all and a narrative description of not more than three (3) projects that compare in size, scope, and complexity with the project described in the RFP. Contractor and subcontractor experience must be listed separately.
- ✓ **Summary of Bidder's Proposed Personnel/Management Approach** – bidder shall identify specific professionals who will be assigned to the contract and provide resumes. Bidder must present detailed description of proposed approach to management of project.
- ✓ **Subcontractors** – bidder must identify any subcontractor it intends to utilize during the execution of the contract.
- **Technical Approach** – the Technical Proposal must address the details provided in Section IV and any attachments, and must demonstrate/include the following:
 - ✓ understanding of the cafeteria/vending service needs;
 - ✓ proposed approach, including a general description of the type of food service proposed;
 - ✓ a detailed plan that includes, among other items, proposed hours, staffing, menu, quality of product, portions, variety, prices, and catering options;
 - ✓ alternatives and unique or innovative ideas to provide quality food service; and
 - ✓ exceptions or exemptions requested from the bid specifications.

B. PAYMENT PROPOSAL REQUIREMENTS

- Bidder must submit a payment proposal. Payment proposals may not be marked confidential or proprietary.

- Payment proposal must include the total rent to be paid to the State.
- The State reserves the right to ask for clarification on any point of the Payment Proposal.

Exhibit D

Agency-Processed RFP Instructions: Standard Boilerplate

Agency-Processed Standard RFP Boilerplate Instructions

SPB has developed a boilerplate for agencies to follow when preparing a Standard RFP. Instructions for completing the boilerplate are found in this Exhibit D, and the boilerplate itself may be found at: http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html Agencies are required to leave “track changes” on when preparing their RFP document.

Cover Page

This page includes basic instructions to the bidder and highlights some important dates, such as the release date, the deadline for questions, vendor responsibility for watching SPB website for any and all updates to the RFP, and the opening date. The agency must fill in:

- RETURN TO information in the top right corner
 - ✓ Also in Section I.A, Schedule of Events, and Section II.A, Procuring Office and Contact Person
- All dates listed on the cover page shall match Section I.A, Schedule of Events
- The Procurement Contact will be the agency contact person responsible for the procurement
 - ✓ Will be the same in the body of the cover page, in Section II.A, Procuring Office and Contact Person, and Section II.E, Written Questions and Answers (this subsection may not be E if subsection D, Notification of Intent to Bid, is deleted).
- The agency name where it asks for “Department”
- The description of the service to be provided on this page should be as concise as possible
 - ✓ Will be repeated exactly in Section I, Scope of the Request for Proposal, Section II.B, General Information, and Section II.E, Written Questions and Answers.
- If the RFP will also be cross-posted on the agency’s website, the agency will need to insert its web address. If it will only be posted on SPB’s website, the agency website part will be deleted. Procurements in excess of \$50,000.00 must be posted on SPB’s website.

The second page of the cover page includes a place for bidders to comply with statistical reporting requirements under Neb. Rev. Stat. § 73-603 and to indicate any preference sought under Neb. Rev. Stat. § 73-107 regarding resident disabled veterans and/or businesses located in designated enterprise zones. This preference will apply when there is a tie among vendors. This form **MUST BE SIGNED** or the entire proposal will be considered invalid and excluded from further consideration.

Table of Contents

This is formatted to automatically update as the RFP is developed.

Glossary of Terms

SPB provides a basic set of terms. It is possible that not all of the standard terms apply to each RFP; however, SPB does not delete any of the boilerplate lists. If there are project-specific terms that the agency wishes to define, these should be added. If the project includes acronyms, the agency may add a separate acronym list here.

The remainder of the Standard RFP is divided into five (5) sections:

- ✓ **Section I, Scope of the Request for Proposal:** Includes a brief description of the project, indicates the contract period including optional renewals, and provides the Schedule of Events according to which the RFP process will be governed.
- ✓ **Section II, Procurement Procedures:** Indicates SPB contact information and gives an overview of the RFP process and proposal submission for bidders.
- ✓ **Section III, Terms and Conditions:** Contains the standard terms and conditions that form the basis of the contract. Each item requires a response from the bidder; Accept, Reject, or Reject and Provide Alternative within the RFP Response. These clauses have been reviewed by SPB's General Counsel. Except where invited to do so in green, agencies are not to make alterations to this section.
- ✓ **Section IV, Project Description and Scope of Work:** The core of the RFP; details the specifications of the project prepared by the Agency.
- ✓ **Section V, Proposal Instructions:** Provides specific instructions on how to prepare a proposal; lays out specific qualifications and other required information of the bidder.

Form A, Bidder Contact Sheet: Provides the State with information regarding a bidder's name, address, and specific point of contact regarding the proposal.

Form B, Notification of Intent to Attend Pre-Proposal Conference (optional): This form should be included when a pre-proposal conference is scheduled.

Form C, Notification of Intent to Bid (optional): This form is included when the agency wishes to have some idea of the quantity of potential bidders.

Why so many subsections?

Within each section are numerous subsections. SPB is often asked why there are so many subsections. Agencies must remember that the RFP is the beginning of the contract. For this reason, the RFP is written in a very detailed, point-by-point manner. The RFP and the bidder's response become part of the final contract. The subsections are a way to direct bidders to specific components of the document and eliminate potential points of confusion. It is possible to condense several of the subsections, but it is important to keep in mind that each subsection represents a unique point that may or may not become focal point of the final contract.

SECTION I. SCOPE OF THE REQUEST FOR PROPOSAL

This section provides a brief description of the project, and indicates the desired contract period, including renewal options. Per Neb. Rev. Stat. § 73-506, state agencies may not enter into contracts for services of unspecified or unlimited duration. Renewals cannot be automatic. The State must reserve the right to exercise or not exercise any renewal period.

A. SCHEDULE OF EVENTS

- This subsection provides bidders with a schedule of important dates in one concise table.
- The Schedule should include all pertinent dates possible, such as (as applicable; delete any that do not pertain to the specific RFP):
 - ✓ Release of RFP
 - ✓ Last day to submit Notification of Intent to Attend Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions
 - ✓ Mandatory Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions after Pre-Proposal Conference (optional)
 - ✓ State responds to written questions

- ✓ Possible second round of question and answer period, if needed
- ✓ Last day to submit Letter of Intent to Bid (optional)
- ✓ Proposal opening
- ✓ Review for conformance of mandatory requirements
- ✓ Evaluation period
- ✓ Oral Interviews/Demonstrations (optional)
- ✓ Post Letter of Intent to Contract
- ✓ Contract finalization period
- ✓ Contract award
- ✓ Contractor start date

SECTION II. PROCUREMENT PROCEDURES

This section provides some general guidelines for bidders regarding proposal submittal and contact with the agency.

A. PROCURING OFFICE AND CONTACT PERSON

- The contact person should be the same as the person listed on the cover page. All contact information for the agency should remain consistent throughout the document.
- The purpose of naming the contact person is to:
 - ✓ Ensure that all questions are routed through one (1) contact person;
 - ✓ Further insulates procuring agency, litigation process, and evaluators
 - ✓ Provide the same information to all potential bidders;
 - ✓ Eliminate confusion;
 - ✓ Inform potential bidders that communication with the agency or members of the evaluation committee directly is prohibited.
- Provides the agency street address, mailing address, telephone and fax numbers, and an email address where questions may be sent.

B. GENERAL INFORMATION

- Provides a brief description of the project.
- Reminds potential bidders to follow the submission instructions and schedules found in the RFP.
- Indicates the expected outcome of the RFP process, i.e. a fixed-price contract, and advises that the RFP documents become part of the final contract.

C. CUSTOMER SERVICE

- Describes the State's expectation of any and all contractors providing services to the State.

D. COMMUNICATION WITH STAFF AND EVALUATORS

- Prohibits contact with any other agency staff and/or evaluators, and directs communication to the named contact person.
- Explains a few exceptions to this rule.
 - ✓ If no pre-proposal conference will be held, delete the green-highlighted text.
- Reminds bidders their proposal may be rejected if the communication limits are not strictly observed.

E. NOTIFICATION OF INTENT TO BID – Optional

- If the agency does not include the requirement for a Notification of Intent to Bid, this subsection is deleted.
- Includes instructions for returning Form C (in some cases Form B, if no pre-proposal conference is scheduled). This form is a “should”, i.e. it is not a firm requirement, and failure to return it does not preclude anyone from submitting a proposal.
- Informs potential bidders that anyone who does submit a Notification of Intent to Bid will be named in a list posted to the website after the due date.

F. WRITTEN QUESTIONS AND ANSWERS

- Indicates mechanism by which potential bidders may submit questions or requests for clarification about the RFP before the proposal submission deadline.
- Includes a brief description of the project, the agency contact, an email address and fax number, and a desired format for submitting questions.
- Reminds bidders that the questions are answered all at once and posted as an Addendum on SPB’s website (and the agency’s website if cross-posted).

G. PRE-PROPOSAL CONFERENCE – Optional

- If the agency does not include a pre-proposal conference, this subsection is deleted.
- Indicates if pre-proposal conference is optional or mandatory. If mandatory, a sign-up sheet is required, and the list will be posted to the website after the pre-proposal conference takes place.
- Indicates method of submitting questions and which questions are binding on the State.
- Addresses submission methods and requirements for the Notification of Intent to Attend Pre-Proposal Conference (usually Form B)

H. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS

- Oral interviews/presentations and/or demonstrations are optional at the discretion of the State.
- The State reserves the right to invite only top scoring bidders.
- Bidder’s key personnel are expected to participate.
- State bears no responsibility for any part of the costs associated with preparing for and transportation to the oral interviews.

I. SUBMISSION OF PROPOSALS – agency decision required

- One (1) original of the proposal is all that is required.
- Proprietary or confidential information must be properly identified.
- Proposal responses must include Form A, Bidder Contact Sheet.
- Address labels must be clear and contain the RFP number clearly marked.
- **IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by law, **WILL BE POSTED FOR PUBLIC VIEWING.** Bidders are required to waive copyrights’ from privilege for posting on the public website.
- Agencies must choose if the cost proposal shall be presented as a separate section within the RFP response or as an entirely separate document. One paragraph or the other will need to be deleted according to the option chosen by the agency.

J. PROPOSAL OPENING

- Sealed proposals are publicly opened at the date, time, and location identified in the Schedule of Events.
- Once the proposal opening has concluded proposals will not be available for public viewing until the Intent to Award has been issued.
- Proposals will be available for public viewing at the opening, and then again after the Letter of Intent to Contract has been posted, and the evaluation process has been completed.

K. LATE PROPOSALS

- Regardless of cause, proposals not received and date/time stamped by the receptionist by the opening date and time will not be accepted or evaluated.
- Late proposals may be returned unopened to the bidder at the bidder's expense upon request.

L. REJECTION OF PROPOSALS

- The State reserves the right to reject any proposal in whole or in part.
- The State reserves the right to waive any non-material deviations.
- Award will be made in manner deemed best interest of the State.
- The State reserves the right to reject any or all bids and re-advertise for bids; and further reserves the right to waive any informality or irregularity.

M. EVALUATION OF PROPOSALS

- Identifies the categories according to which the proposals will be scored.
- Discusses resident disabled veteran and/or business in an enterprise zone preference if all other items are equal according to Neb. Rev. Stat. § 73-107 and the documentation needed to request such preference.
- Evaluation Criteria and list of proposal respondents will be posted on the opening date.

N. EVALUATION COMMITTEE

- Names of Evaluation Committee members will not be published.
- No member of the Evaluation Committee is authorized to make binding statements regarding the RFP.
- Any contact or attempted contact with an evaluator involved with RFP during the evaluation period by a bidder, potential bidder, or other interested party may result in rejection of the bidder's proposal and further Administrative action may be taken.

O. MANDATORY REQUIREMENTS

- Proposal signature page must be signed.
- Proposal must have a Corporate Overview section.
- Proposal must have a Technical Approach section.
- Proposal must have a Cost Proposal.
- Proposals lacking any of the previous sections will not be evaluated.
- Agencies may add additional mandatory requirements (but it is not recommended).

P. REFERENCE CHECKS

- The State reserves the right to check references regardless of source.
- Negative references could eliminate bidders from award consideration.

Q. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS

- Bidders should be authorized to do business in the State of Nebraska.
- Bidders are expected to comply with Secretary of State Registration requirements.
- A valid Letter or Certificate of Good Standing dated within 90 calendar days must be supplied by the selected contractor before a contract award can be finalized.
- Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration.
- A bank registered with the office of Comptroller of Currency is not required to register with the State. However, if the office of Comptroller of Currency does have a Certificate of Good Standing/Registration, the bank would provide this for verification.

R. VIOLATION OF TERMS AND CONDITIONS

- Violation of the terms and conditions of the RFP and/or of the resulting contract shall be grounds for action by the State, including, but not limited to:
 - ✓ Rejection of a bidder's proposal
 - ✓ Suspension of bidder from further bidding for a period of time at State's discretion
 - ✓ Legal action

SECTION III. TERMS AND CONDITIONS

By signing the Request for Proposal for Contractual Services form, the bidder guarantees compliance with the following Terms and Conditions unless otherwise agreed to. Each subsection contains a space for the bidder to Accept, Reject, or Reject and Provide Alternative. Any rejections or alternatives indicated by a bidder will be reviewed during contract finalization. Failure to agree to terms and conditions may result with the State rejecting the bid, and proceed awarding to the next highest scoring bid or rejecting all bids.

A. GENERAL

- Indicates order of precedence for the contract documents.
- Proposals become property of the State and will not be returned.

B. AWARD

- The State reserves the right to reject any or all proposals, in whole or in part, or to award to multiple bidders, or to withdraw or amend the RFP at any time.
- The State reserves the right to waive any non-material deviation.
- Awards will be made in the manner deemed to be the best interest of the State.
- The State is not obligated to award a contract.
- Intent to Contract will be posted on SPB's website (and agency's website if cross-posted).
- Protest/grievance procedures are available on SPB's website.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/NONDISCRIMINATION

- Contractor shall comply with all civil rights laws and Equal Opportunity requirements.

- Nebraska Fair Employment Act (Neb. Rev. Stat. § 48-1101 through § 48-1125) prohibits discrimination based on race, color, religion, sex, disability, marital status, or national origin.
- Breach of this provision shall be considered a breach of contract.

D. PERMITS, REGULATIONS, AND LAWS

- Contractor shall pay for all permits, licenses and approvals necessary to execute the contract.
- Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

E. OWNERSHIP OF INFORMATION AND DATA

- All State data, work products and all applicable records must be provided/furnished to the State, in a format determined by the State or agreed upon by the parties, at the expiration or termination of the contract.
- The State has unlimited right to use and/or reproduce the information and/or data developed or derived by the contractor under this contract.
- The contractor guarantees it has full right to all tools necessary to execute the contract, and related costs shall be built into the contract price and not billed separately.
 - ✓ Contractor is responsible for paying any related costs and shall hold the State harmless from any related claims.

F. INSURANCE REQUIREMENTS – agency decisions required

- Work shall not begin under the contract until all required insurance has been obtained by the contractor and approved by the State.
- Required insurance must be maintained for the life of the contract, including renewal periods and/or extension periods.
- Contractor must ensure that a current, compliant certificate of insurance (COI) is on file with the agency at all times during the contract.
- Contractor is responsible for any subcontractor’s compliance with the insurance limits, and shall assume liability if at any time a subcontractor is not compliant.
- Contractor is responsible for any mandatory deductible payment in event of a claim.
- Limits and waivers are clearly defined.
 - ✓ Agency decides if there are any additional insured(s) besides the State
 - ✓ Agency can add any unique coverage required, such as Professional Liability, Builder’s Risk, etc.
 - ✓ If Medical Malpractice coverage is required, Bidder’s must also be and remain certified under the Nebraska Hospital-Medical Liability Act. Such qualification will be confirmed with the Nebraska Department of Insurance.
- Evidence of coverage (COI) shall be provided to the State before a contract can be awarded.
- Notice of cancellation of insurance must be provided to the State along with a new coverage binder to ensure no break in coverage.

G. COOPERATION WITH OTHER CONTRACTORS

- The State may already have a contract for the requested service in place.
- The State reserves the right to award to multiple contractors.
- The contractor must cooperate with any such other contractors and not interfere with any other contractor’s performance.

- The State does not enter into exclusive contracts.

H. INDEPENDENT CONTRACTOR

- No partnership or employer/employee relationship between the contractor and the State is established by this contract.
- The contractor shall secure, at its own expense, the personnel needed to execute the contract.
- The contractor's employees have no contractual relationship with the State.
- Claims arising against the contractor based on employment shall not be the responsibility of the State, and the contractor shall hold the State harmless from many such claims.
- Employees of the contractor are not entitled to any benefits, compensation, tenure or rights, medical and hospital care, sick leave and vacation leave, severance pay or retirement benefits from the State.

I. CONTRACTOR RESPONSIBILITY

- The contractor is solely responsible for executing the contract and for all promises made in its proposal.
- The contractor is the sole point of contact regarding the contract.
- The contractor must clearly identify any subcontractor and its level of involvement in the fulfillment of the contract in its proposal. Any changes in subcontractor involvement shall be submitted to the State in writing for approval.

J. CONTRACTOR PERSONNEL

- Contractor warrants that all persons utilized by contractor in performing contract requirements provided under the contract are either employees or subcontractors, and are fully qualified to perform the work required.
- Contractor shall not change any personnel commitments made in the proposal without the specific written approval of the State. Replacement of key personnel shall be with personnel of equal or greater ability and qualifications.
- The State reserves the right to require the contractor to reassign or remove any contractor employee, subcontractor, or subcontractor employee.
- Contractor is responsible for its employees, including employment taxes, payroll withholding, vehicles and insurance, damages incurred by employees under the contract, worker's compensation and health insurance, and determining hours to be worked and duties to be performed.

K. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

- Contractor shall not knowingly recruit any State employee or agent who worked on the RFP or project, or who had any influence on decisions affecting the RFP or project.

L. CONFLICT OF INTEREST

- Bidder certifies there is no conflict of interest nor the appearance of conflict of interest between the bidder and any person or entity related to this RFP.
- Bidder shall not take any action or acquire any interest that presents a conflict of interest or the appearance of a conflict of appearance.
- Bidder shall not knowingly employ any individual with a known conflict of interest.

M. PROPOSAL PREPARATION COSTS

- The costs for the preparation and submission of the proposal and any participation in oral interviews/demonstrations are borne by the bidder. The State shall not incur any costs.
- N. **ERRORS AND OMISSIONS**
- Bidder shall not take advantage of any error and/or omission in the RFP or resulting contract.
 - Bidder shall inform the State of any error and/or omission that is discovered.
- O. **BEGINNING OF WORK**
- Work shall not commence before the contract is fully executed by both the Contractor and the State.
- P. **ASSIGNMENT BY THE STATE**
- The State reserves the right to assign the contract or any interest in the contract to any agency, board, commission, or political subdivision of the State at no cost to the State.
- Q. **ASSIGNMENT BY THE CONTRACTOR**
- R. The Contractor may not assign the contract, any interest in the contract, or any rights or obligations under the contract to any third party without the prior written consent of the State.
- S. **DEVIATIONS FROM THE REQUEST FOR PROPOSAL**
- The requirements and conditions of the RFP become part of the contract.
 - Any alternative(s) must be clearly identified by the Bidder in its proposal. If accepted, such alternative(s) will become part of the contract.
 - Alternative(s) must not conflict with the basic nature of the RFP, the mandatory requirements, or applicable State or federal laws or statutes.
 - The State reserves the right to reject proposed alternative(s).
- T. **GOVERNING LAW**
- This contract shall be governed by the laws and statutes of the State of Nebraska.
 - Any legal proceeding brought against the State of Nebraska as a result of this RFP or contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law.
 - The Contractor must be in compliance with all Nebraska statutory and regulatory law.
- U. **ATTORNEY'S FEES**
- Any legal action required to enforce the contract shall be at the expense of the Contractor, including reasonable attorney's fees and costs incurred by the State, if the State is the prevailing party.
- V. **ADVERTISING**
- Contractor shall not refer to the contract award in any advertising in such a way that implies an endorsement by or preference on the part of the State.
 - News releases require the prior written permission of the State.
 - The State of Nebraska is not in a position to endorse or promote products, services, or contractors.

W. **STATE PROPERTY**

- The Contractor is responsible for the care and custody of any State-owned property provided for the execution of the contract.
- The Contractor shall reimburse the State for any loss or damage to such property.
- Normal wear and tear is expected.

X. **SITE RULES AND REGULATIONS**

- The Contractor and its employees, agents, and subcontractors shall comply with all site rules and regulations while on State premises.
- The Contractor must ensure proper facility access and equipment to execute the contract.
- The State shall not make additional payments based on lack of access unless the State fails to provide access as agreed to between the State and the Contractor.

Y. **NOTIFICATION**

- During the RFP process, all communication shall take place between the Bidder's contact person identified in its proposal and the Procuring Office and Contact Person identified by the State in Section II.A of the RFP.
- After the contract is awarded, written notices may be made in person, by mail, by fax, or by email.
- Contractor shall immediately notify the State of any delays or hindrances in the execution of the contract.
 - ✓ Notice does not constitute basis of extension or be construed as a waiver by the State of any of its rights or remedies as allowed by law.
 - ✓ Failure to give such notice may result in denial of any related extension.
- Either party may change its address by giving notice in writing and giving an effective date for such change.
- Communication about the contract between the Contractor and individuals not authorized by the State is strictly forbidden.

Z. **EARLY TERMINATION**

- The State and the Contractor may mutually agree to terminate the contract at any time.
- The State may terminate for any reason with thirty (30) days notice to the Contractor.
- The State may terminate immediately for the following reasons:
 - ✓ Directed by statute
 - ✓ Contractor assigns the contract for benefit of a creditor, is unable to pay its debts, or has ceased operating
 - ✓ A trustee or receiver of assets of the Contractor or any substantial part of the Contractor's assets has been appointed by the court
 - ✓ Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to the contract by the Contractor, its employees, officers, directors, or shareholders
 - ✓ Involuntary Title 11 action
 - ✓ Voluntary Title 11 action
 - ✓ Contractor intentionally discloses confidential information
 - ✓ Contractor discontinues support of the deliverables
 - ✓ Second or subsequent negative Vendor Performance Report

- ✓ Collusion on the part of or involving the Contractor

AA. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

- The State may terminate the contract in the event the funding is no longer available.
- The State will give the Contractor thirty (30) days notice.

BB. BREACH BY CONTRACTOR

- The State may terminate the contract or any part of the contract if the Contractor fails to perform contractual obligations in a timely manner.
- The State may provide 30 days for the Contractor to cure the breach.
- The State will provide written notice of breach to contractor.
- Time to cure the breach does not waive the State's right to immediately terminate for the same or different breach which may occur at a separate time.

CC. ASSURANCES BEFORE BREACH

- Upon written notice by the State that a contract deliverable does not meet the requirements of the RFP/contract, the Contractor shall, at no additional cost to the State, remedy the situation and ensure compliance with the contract. Contractor may be required to provide additional resources, at no additional cost to the State, to ensure contract compliance.

DD. ADMINISTRATION – CONTRACT TERMINATION

- Bidder must confirm that upon termination of contract, all records shall become property of the State and shall be delivered to the State at no additional cost.
- Bidder must confirm that all records that are property of the State will be returned within thirty (30) days of termination.

EE. PENALTY – agency decision required

- State may withhold all monies due under the contract if the Contractor fails to perform any substantial contractual obligation or meeting identified contracted deliverable. (Recommend to leave this sentence in regardless of other methods of remedy.) Substantial is defined as considerable amount of work, important elements or essential part of the work requested, etc.
- Agencies may choose to assess a specific dollar amount of penalty tied to deliverables and dates.

FF. RETAINAGE – agency decision required

- Agencies may choose to withhold a certain percentage or dollar amount of payment due until a stated date or the end of the contract to guarantee performance.
- If agency does not want retainage, this subsection is deleted.

GG. BID BOND – agency decision required

- Agencies may choose to require a bid bond be submitted with the proposal, which would be released back to the bidders upon execution of awarded contract. The bond is a guarantee the bidder will enter into a contract with the State. Failure to enter into a contract with the State results in the State retaining the bond.

- If bid bond is required, bond should be provided with the bid, but must be submitted prior to award.
 - If agency does not require a bid bond, this subsection is deleted.
- HH. PERFORMANCE BOND – agency decision required**
- Agencies may choose to require a performance bond for a percentage or dollar amount to guarantee performance under the contract. The bond is held for the life of the contract, including renewals.
 - For contracts with a total period of three (3) years or less, including renewals, a cashier's check may be substituted for a performance bond.
 - If agency does not require a performance bond, this subsection is deleted.
- II. FORCE MAJEURE**
- Neither party shall be responsible for failures to perform due to a natural disaster or other similar event out of the control and not the fault of the affected party.
 - A Force Majeure Event does not constitute breach of contract.
 - Labor disputes are not considered Force Majeure Events.
 - Burden of proof rests upon the Contractor.
- JJ. PROHIBITION AGAINST ADVANCE PAYMENT – agency decision required**
- Payments shall not be made until deliverables are received and accepted by the State.
- KK. PAYMENT**
- Payment will be made according to the Nebraska Prompt Payment Act (Neb. Rev. Stat. § 81-2401 through § 81-2408).
 - The State may require the Contractor to accept payment via electronic means, such as ACH.
 - In no event shall the State be responsible for or liable to pay for any services provided by the Contractor prior to the effective date of the fully executed contract. Contractor waives all claims or actions for any such services.
- LL. INVOICES – agency input required**
- The Contractor is required to submit detailed invoices that match deliverables identified in the contract.
 - Agencies may insert specific invoicing requirements here, such as a mailing address.
 - No invoice terms or conditions contained in an invoice, but not contained in the contract itself will be binding upon the State nor alters or amends the contract in any way.
- MM. RIGHT TO AUDIT**
- The Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit the contract.
 - The State shall have the right to audit, examine, and make copies or extracts from the Contractor's documents pertaining to or resulting from the contract.
 - Contractor shall maintain all pertinent records during the contract and for five (5) years after completion of the contract, and shall make them available to the State upon the State's reasonable request at the expense of the Contractor.

- The cost of any audit conducted under this section shall be borne by the State unless specifically stipulated otherwise, unless certain exemption criteria are met, or unless the findings require compensation to the State from the Contractor.

NN. TAXES

- The State is not required to pay taxes of any kind.
- The Contractor is responsible for any tax due on any of the Contractor's equipment which may be installed in or on State-owned facilities or property.

OO. INSPECTION AND APPROVAL

- The State shall conduct a final inspection and approval of all work under the contract.
- The State has the right to enter any premises where contract work is being performed and to inspect, monitor, and/or evaluate the work being performed.

PP. CHANGES IN SCOPE/CHANGE ORDERS

- The State may at any time change the general scope of the contract, upon written notice to the Contractor.
- The State may, at any time, in writing:
 - ✓ Make alterations in the terms of work as shown in the specifications
 - ✓ Require the performance of extra work
 - ✓ Decrease the quantity of work
 - ✓ Make other such changes as the State may find necessary or desirable
- Compensation for changes in work shall be determined by the applicable unit price of the Contractor's proposal.

QQ. SEVERABILITY

- If any term or condition of the contract is declared invalid or illegal that does not automatically carry to the remaining terms and conditions of the contract.

RR. CONFIDENTIALITY

- All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
- All confidential information shall be handled in accordance with applicable Federal and State law and ethical standards.
- The Contractor must immediately notify the State of any breach of confidentiality.
- The Contractor must comply with the Privacy Act of 1974.

SS. PROPRIETARY INFORMATION

- Data and documentation contained in a proposal become property of the State of Nebraska and upon opening, become public information.
- The Bidder may identify certain information to withhold from the public, provided it falls within the definition of proprietary information in Nebraska's public record statutes.
- All proprietary information must be submitted in a SEPARATE SEALED package clearly identified as proprietary.
- A Bidder may not mark its entire proposal proprietary.
- Cost Proposals will **never** be considered proprietary.
- A Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.

- **IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by law, WILL BE POSTED FOR PUBLIC VIEWING. Bidders are required to waive copyrights' from privilege for posting on the public website.
- TT. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING**
- By submitting the proposal, Bidder certifies that it has not participated in any collusive activities and that it has not divulged any of its information for purposes of colluding with regard to bid price or cost.
- UU. STATEMENT OF NON-COLLUSION**
- Bidder submits the proposal independently and without collusion with, and without any direct or indirect agreement or understanding or planned common course of action with any person, firm, corporation, bidder, contractor of materials, supplies, equipment or services described in the RFP.
 - Bidder shall not collude with, or attempt to collude with any state officials, employees or agents or evaluators or any person involved in the RFP.
 - Bidder shall not attempt to restrain free competition or limit independent bidding or create unfair advantage.
 - If it is determined that collusion occurred, the State has the right to reject a bid or terminate the contract and impose further administrative sanctions.
- VV. PRICES – agency input required**
- Prices shall remain fixed from date of submission of proposals through date of contract award.
 - Agencies may want to include some mechanism for price increase – either asking for a price for each year/renewal, or permitting up to a % of increase with a cap on the amount of the increase.
 - Contractor confirms that prices are not higher and/or as low for the State than for any other client, and that price changes shall be applied equally to the State as to all other clients.
 - Contractor affirms that it did not participate in price fixing or price discrimination.
 - No price increase through the life of the contract unless provided for in the contract terms and conditions.
- WW. BEST AND FINAL OFFER**
- The State will compile the scores and award to the highest scoring responsive and responsible bidder.
 - In some cases, the State may request a best and final cost proposal from the highest scoring bidder(s).
 - Best and Final Offer will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each bidder requested to submit a BAFO.
 - Bidders should provide their best offer with the original proposal and not expect that the State will request a best and final offer.
- XX. ETHICS IN PUBLIC CONTRACTING**
- No bidder shall pay or offer gifts to any officer, legislator, State employee or evaluator.

- Bidders shall not use lobbyists, attorneys, political activists, or consultants to secure the contract.
- Bidders are not prohibited from seeking expert advice or legal counsel.
- Bidders found in non-compliance with this subsection may be disqualified from the selection process or forfeit the contract award.

YY. INDEMNIFICATION

- General – The Contractor holds the State harmless in general.
- Intellectual Property – The Contractor holds the State harmless in regards to patents, copyrights, trademarks, third party confidential information, Licensed Software, etc.
- Personnel – The Contractor holds the State harmless against claims from its employees.

ZZ. NEBRASKA TECHNOLOGY ACCESS STANDARDS

- Contractor shall review the Nebraska Technology Access Standards and ensure that it is in compliance or will comply with the applicable standards. Refer to website at: <http://nitc.nebraska.gov/standards/2-201.html>

AAA. ANTITRUST

- The Contractor assigns to the State any and all claims for overcharges due to antitrust violations.

BBB. DISASTER RECOVERY/BACK UP PLAN

- The Contractor shall have a disaster recovery/back-up plan and shall provide a copy to the State, regarding how to continue providing services in the event of a disaster.

CCC. TIME IS OF THE ESSENCE

- Time is of the essence in this contract.
- The acceptance of late performance under this contract does not waive the requirement of timely performance on the remainder of the Contractor's obligations.

DDD. RECYCLING

- Preference is given to recycled/recyclable materials when applicable.

EEE. DRUG POLICY

- Contractor certifies it maintains a drug-free workplace.
- Contractor shall supply a copy of its drug-free workplace policy to the State at any time upon the State's request.

FFF. EMPLOYEE WORK ELIGIBILITY STATUS

- The Contractor must use a federal immigration verification system to determine the work eligibility of employees physically performing services in the State of Nebraska.
- E-Verify or an equivalent program designated by the US Department of Homeland Security shall be used.
- **For individuals or sole proprietorships:**
 - ✓ Contractor must complete the United States Citizenship Attestation Form. This form should be submitted with the proposal response.

- ✓ If a qualified alien, Contractor shall provide documentation to verify its lawful presence in the US via the Systematic Alien Verification for Entitlements (SAVE) Program.
- ✓ Contractor understands that lawful presence in the US is required and failure to verify this may result in disqualification or contract termination.

GGG. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY

- By signing the RFP, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency from participating in transactions.
- The Contractor shall immediately notify the State if it becomes disbarred during the course of the contract.
- The Department may immediately terminate the contract if the Contractor becomes debarred by the State providing written notice to the Contractor.
- The Contractor certifies that it has not had a contract with the State terminated early by the State. If it has, it must provide the contract number and a detailed explanation as to why it was terminated early. Prior early termination may be grounds for rejecting the proposal.

HHH. POLITICAL SUB-DIVISIONS

- The Contractor may extend the contract pricing to political sub-divisions provided the Terms and Conditions are the same.
- The State is in no way liable for the purchases of any political sub-divisions or public entities under the contract.

III. OFFICE OF PUBLIC COUNSEL

- Under terms of a contract and on behalf of the State health and human service to individuals, service delivery; service coordination or in case management, contracts shall submit to the jurisdiction of the Office of Public Counsel per statute § 81-8240.
- This term survives the termination of the contract.
- Does not apply if contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.

JJJ. LONG-TERM OMBUDSMAN

- If contractor is a long-term care facility, they are subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.
- Contractor shall comply with the act.
- This term survives termination of the contract.

KKK. LICENSE/SERVICE OR OTHER AGREEMENT

- If contractor has any other licenses or agreements to be considered, these must be submitted with proposal response.
- State may reject any such license or service agreement if received after proposal opening date and time.
- Any terms and conditions in any such agreement must not conflict with or alter State's Terms and Conditions as contained in the RFP.
- This term does not apply to the third party license or service agreement.

SECTION IV. PROJECT DESCRIPTION AND SCOPE OF WORK

This is a suggested outline to help agencies organize and describe their specific project requirements. This may be retracted or expanded depending on each agency's needs. This section delineates in detail what the agency is seeking from a contractor and the specifications of the project.

A. PROJECT OVERVIEW

- Explain the reason/need for the service and/or give a general overview of the project.
- Give details that pertain specifically to the project; it is not necessary to provide the entire history of the agency. Agency should provide enough detailed information so vendors have a clear understanding of the agency needs and requirements.

B. PROJECT ENVIRONMENT (Agency provide details)

C. PROJECT REQUIREMENTS (Agency provide details)

D. BUSINESS REQUIREMENTS (Agency provide details)

E. SCOPE OF WORK (Agency provide details)

F. TECHNICAL REQUIREMENTS (Agency provide details)

G. PROJECT PLANNING AND MANAGEMENT (Agency provide details)

H. EVALUATE CURRENT PROJECT ENVIRONMENT (Agency provide details)

I. PROPOSED RESOLUTION (Agency provide details)

J. PERFORM IMPLEMENTATION (Agency provide details)

K. PROVIDE POST IMPLEMENTATION SUPPORT (Agency provide details)

L. DELIVERABLES (REQUIRED) – These are part of the cost sheet and become part of the final contract.

- This subsection may not be deleted. All contracts must have the deliverable section clearly defined. Neb. Rev. Stat. § 73-506 ties payments to deliverables for service contracts.

Tips for Completing Section IV

- Strive for clarity – use plain, simple language.
- Use laymen’s terms – if at all possible, avoid industry-specific jargon.
- Use “will,” “shall,” and “must” to denote required items.
- Do not use words such as “prefer” or “desire.”
- State exactly what is required.
- Include optional items clearly identified as “Optional”, with a separate cost category (that will not be evaluated).
- Include as much detail as possible – this helps avoid a large quantity questions during the question and answer period.
- Don’t make bidders reinvent the wheel – give as much pertinent data as possible.
- Be careful to avoid unnecessarily restrictive specifications that would unfairly eliminate some potential bidders.
- Look ahead to the entire contract period. Anticipate potential pitfalls, technological advancements, and legislative mandates to the extent possible, and try to include consideration for those possibilities.
- Consider exit strategies:
 - ✓ What will happen in the event the contract is terminated early?
 - ✓ How does the natural conclusion of the contract happen?
 - ✓ Is there a transition period that needs to be accounted for?
 - ✓ Is there any transfer of data requirements?
- Clearly define the deliverables and consider how the contract will be paid:
 - ✓ Are there one-time fees?
 - ✓ Are there recurring monthly fees?
 - ✓ Is there a list of deliverables that will each have lump sum costs?
- Address the level of interaction with the contractor and the acceptance of deliverables.
 - ✓ How will the Contractor know that a deliverable has been approved and may be invoiced?
- Address performance standards expected.

SECTION V. PROPOSAL INSTRUCTIONS

This section contains the mandatory requirements that must be met by bidders in preparing the Technical and Cost Proposals.

A. PROPOSAL SUBMISSION

- **Request for Proposal form**
 - ✓ Bidder guarantees compliance with the provisions and agrees to the Terms and Conditions unless otherwise agreed to, and maintains a drug-free workplace.
 - ✓ Must be signed and returned by the stated date and time to be considered for award. Any proposal with an unsigned form or a form signed in something other than ink (i.e., pencil) will be declared invalid and will not be evaluated.
- **Corporate Overview** – shall contain the following sections with responses:
 - ✓ Bidder Identification and Information – full company/corporate name, address, entity organization, State of incorporation/organization, year in which entity began to do business, and whether name and/or form of organization has changed since first organized.
 - ✓ **Financial Statements**
 - If publicly held, bidder must provide most recent audited financial reports and statements, and name, address, and telephone number of the fiscally

responsible representative of the bidder's financial or banking organization.

- If not publicly held, bidder must provide the same information as would be required of a publicly held organization or description of the organization including size, longevity, client base, areas of specialization and expertise, and any other pertinent information to formulate determination regarding stability and financial strength of the organization, as well as a banking reference.
- Bidder must disclose any pending or potential judgments, litigation, financial reversals, etc., or state that none are known to exist.
- ✓ **Change of Ownership** – bidder must disclose any planned or anticipated change of ownership or control of the company in the coming twelve (12) months.
- ✓ **Office Location** – bidder must identify the physical location of the office responsible for contract performance.
- ✓ **Relationships with the State** – bidder shall describe any dealings with the State, present or prior, or state that no such relationship exist/have existed.
- ✓ **Bidder's Employee Relations to State** – bidder shall disclose if any party named in the proposal was an employee of the State along with pertinent details of any such employment.
- ✓ **Contract Performance** – bidder shall disclose any contract termination for default by bidder or any named subcontractor, or declare that no such event has taken place. Bidder shall also disclose any early contract termination for any reason (convenience, non-performance, loss of appropriations, etc.).
- ✓ **Summary of Bidder's Corporate Experience** – bidder shall provide a list of all and a narrative description of not more than three (3) projects that compare in size, scope, and complexity with the project described in the RFP. Contractor and subcontractor experience must be listed separately.
- ✓ **Summary of Bidder's Proposed Personnel/Management Approach** – bidder shall identify specific professionals who will be assigned to the contract and provide resumes. Bidder must present detailed description of proposed approach to management of project.
- ✓ **Subcontractors** – bidder must identify any subcontractor it intends to utilize during the execution of the contract.
- **Technical Approach** – the Technical Proposal must address the details provided in Section IV and any attachments, and must demonstrate/include the following:
 - ✓ Understanding of the project requirements
 - ✓ Proposed development approach
 - ✓ Technical considerations
 - ✓ Detailed project work plan
 - ✓ Deliverables and due dates

B. COST PROPOSAL REQUIREMENTS

- Bidder must submit a cost proposal. Cost proposals may not be marked confidential or proprietary. All costs will be considered a public record.
- Cost proposal must include the total fixed price to perform all the requirements of the project delineated in the RFP.
- The State reserves the right to ask for clarification on any point of the Cost Proposal.

- Prices shall be net, including transportation and delivery charges fully prepaid by the bidder, FOB destination.

C. PAYMENT SCHEDULE – agency input required

- This subsection may be modified to reflect the specific project requirements for payment.
- Payment schedule for the project is tied to specific dates and deliverables.
- Invoices may be submitted by the contractor on specific dates based on the completion and acceptance of related deliverables.
- No invoice will be approved unless the associated deliverables have been approved.

Exhibit E

Agency-Processed RFP Instructions: Cost-Only Boilerplate

Agency-Processed Cost-Only RFP Boilerplate Instructions

SPB has developed a boilerplate for agencies to follow when preparing a Cost-Only RFP. Instructions for completing the boilerplate are found in this Exhibit E, and the boilerplate itself may be found at: http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html Agencies are required to leave “track changes” on when preparing their RFP document.

Cover Page

This page includes basic instructions to the bidder and highlights some important dates, such as the release date, the deadline for questions, vendor responsibility for watching SPB website for any and all updates to the RFP, and the opening date. The agency must fill in:

- RETURN TO information in the top right corner
 - ✓ Also in Section I.A, Schedule of Events, and Section II.A, Procuring Office and Contact Person
- All dates listed on the cover page shall match Section I.A, Schedule of Events
- The Procurement Contact will be the agency contact person responsible for the procurement
 - ✓ Will be the same in the body of the cover page, in Section II.A, Procuring Office and Contact Person, and Section II.E, Written Questions and Answers (this subsection may not be E if subsection D, Notification of Intent to Bid, is deleted).
- The agency name where it asks for “Department”
- The description of the service to be provided on this page should be as concise as possible
 - ✓ Will be repeated exactly in Section I, Scope of the Request for Proposal, Section II.B, General Information, and Section II.E, Written Questions and Answers.
- If the RFP will also be cross-posted on the agency’s website, the agency will need to insert its web address. If it will only be posted on SPB’s website, the agency website part will be deleted. Procurements in excess of \$50,000.00 must be posted on SPB’s website.

The second page of the cover page includes a place for bidders to comply with statistical reporting requirements under Neb. Rev. Stat. § 73-603 and to indicate any preference sought under Neb. Rev. Stat. § 73-107 regarding resident disabled veterans and/or businesses located in designated enterprise zones. This preference will apply when there is a tie among vendors. This form **MUST BE SIGNED** or the entire proposal will be considered invalid and excluded from further consideration.

Table of Contents

This is formatted to automatically update as the RFP is developed.

Glossary of Terms

SPB provides a basic set of terms. Not every word contained in the boilerplate glossary will be relevant to every RFP; however, SPB does not delete any of the boilerplate lists. If there are project-specific terms that the agency wishes to define, these should be added. If the project includes acronyms, the agency may add a separate acronym list here.

The remainder of the Standard RFP is divided into four (4) sections:

- ✓ **Section I, Scope of the Request for Proposal:** Includes a brief description of the project, indicates the contract period including optional renewals, and provides the Schedule of Events according to which the RFP process will be governed.
- ✓ **Section II, Procurement Procedures:** Indicates SPB contact information and gives an overview of the RFP process and proposal submission for bidders.
- ✓ **Section III, Terms and Conditions:** Contains the standard terms and conditions that form the basis of the contract. Each item requires a response from the bidder; Accept, Reject, or Reject and Provide Alternative within the RFP Response. These clauses have been reviewed by SPB's General Counsel. Except where invited to do so in green, agencies are not to make alterations to this section.
- ✓ **Section IV, Project Description and Scope of Work:** The core of the RFP; details the specifications of the project prepared by the Agency.

Form A, Bidder Contact Sheet: Provides the State with information regarding a bidder's name, address, and specific point of contact regarding the proposal.

Form B, Notification of Intent to Attend Pre-Proposal Conference (optional): This form should be included when a pre-proposal conference is scheduled.

Form C, Notification of Intent to Bid (optional): This form is included when the agency wishes to have some idea of the quantity of potential bidders.

Why so many subsections?

Within each section are numerous subsections. SPB is often asked why there are so many subsections. Agencies must remember that the RFP is the beginning of the contract. For this reason, the RFP is written in a very detailed, point-by-point manner. The RFP and the bidder's response become part of the final contract. The subsections are a way to direct bidders to specific components of the document and eliminate potential points of confusion. It is possible to condense several of the subsections, but it is important to keep in mind that each subsection represents a unique point that may or may not become focal point of the final contract.

SECTION I. SCOPE OF THE REQUEST FOR PROPOSAL

This section provides a brief description of the project, and indicates the desired contract period, including renewal options. Per Neb. Rev. Stat. § 73-506, state agencies may not enter into contracts for services of unspecified or unlimited duration. Renewals cannot be automatic. The State must reserve the right to exercise or not exercise any renewal period.

A. SCHEDULE OF EVENTS

- This subsection provides bidders with a schedule of important dates in one concise table.
- The Schedule should include all pertinent dates possible, such as (as applicable; delete any that do not pertain to the specific RFP):
 - ✓ Release of RFP
 - ✓ Last day to submit Notification of Intent to Attend Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions
 - ✓ Mandatory Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions after Pre-Proposal Conference (optional)
 - ✓ State responds to written questions
 - ✓ Possible second round of question and answer period, if needed
 - ✓ Last day to submit Letter of Intent to Bid (optional)

- ✓ Proposal opening
- ✓ Review for conformance of mandatory requirements
- ✓ Evaluation period
- ✓ Oral Interviews/Demonstrations (optional)
- ✓ Post Letter of Intent to Contract
- ✓ Contract finalization period
- ✓ Contract award
- ✓ Contractor start date

SECTION II. PROCUREMENT PROCEDURES

This section provides some general guidelines for bidders regarding proposal submittal and contact with the agency.

A. PROCURING OFFICE AND CONTACT PERSON

- The contact person should be the same as the person listed on the cover page. All contact information for the agency should remain consistent throughout the document.
- The purpose of naming the contact person is to:
 - ✓ Ensure that all questions are routed through one (1) contact person;
 - ✓ Further insulates procuring agency, litigation process, and evaluators;
 - ✓ Provide the same information to all potential bidders;
 - ✓ Eliminate confusion;
 - ✓ Inform potential bidders that communication with the agency or members of the evaluation committee directly is prohibited.
- Provides the agency street address, mailing address, telephone and fax numbers, and an email address where questions may be sent.

B. GENERAL INFORMATION

- Provides a brief description of the project.
- Reminds potential bidders to follow the submission instructions and schedules found in the RFP.
- Indicates the expected outcome of the RFP process, i.e. a fixed-price contract, and advises that the RFP documents become part of the final contract.

C. CUSTOMER SERVICE

- Describes the State's expectations of any and all contractors providing services to the State.

D. COMMUNICATION WITH STAFF AND EVALUATORS – agency input required

- Prohibits contact with any other agency staff and/or evaluators, and directs communication to the named contact person.
- Explains a few exceptions to this rule.
 - ✓ If no pre-proposal conference will be held, the green-highlighted text will be deleted.
- Reminds bidders their proposal may be rejected if the communication limits are not strictly observed.

E. NOTIFICATION OF INTENT TO BID – Optional

- If the agency does not include the requirement for a Notification of Intent to Bid, this subsection is deleted.

- Includes instructions for returning Form C (in some cases Form B, if no pre-proposal conference is scheduled). This form is a “should”, i.e. it is not a firm requirement, and failure to return it does not preclude anyone from submitting a proposal.
- Informs potential bidders that anyone who does submit a Notification of Intent to Bid will be named in a list posted to the website after the due date.

F. WRITTEN QUESTIONS AND ANSWERS

- Indicates mechanism by which potential bidders may submit questions or requests for clarification about the RFP before the proposal submission deadline.
- Includes a brief description of the project, the agency contact, an email address and fax number, and a desired format for submitting questions.
- Reminds bidders that the questions are answered all at once and posted as an Addendum on SPB’s website (and the agency’s website if cross-posted).

G. PRE-PROPOSAL CONFERENCE – Optional

- If the agency does not include a pre-proposal conference, this subsection is deleted.
- Indicates if pre-proposal conference is optional or mandatory. If mandatory, a sign-up sheet is required, and the list will be posted to the website after the pre-proposal conference takes place.
- Indicates method of submitting questions and which questions are binding on the State.
- Addresses submission methods and requirements for the Notification of Intent to Attend Pre-Proposal Conference (usually Form B)

H. SUBMISSION OF PROPOSALS – agency decision required

- One (1) original of the proposal is all that is required.
- Proprietary or confidential information must be properly identified.
- Proposal responses must include Form A, Bidder Contact Sheet.
- Address labels must be clear and contain the RFP number clearly marked.
- **IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by law, **WILL BE POSTED FOR PUBLIC VIEWING**. Bidders are required to waive copyrights’ from privilege for posting on the public website.

I. PROPOSAL OPENING

- Sealed proposals are publicly opened at the date, time, and location identified in the Schedule of Events.
- Once the proposal opening has concluded proposals will not be available for public viewing until after the Intent to Award has been issued.
- Proposals will be available for public viewing at the opening, and then again after the Letter of Intent to Contract has been posted, and the evaluation procession has been completed.

J. LATE PROPOSALS

- Regardless of cause, proposals not received and date/time stamped by the receptionist by the opening date and time will not be accepted or evaluated.
- Proposals may be returned unopened to the bidder at the bidder’s expense upon request.

K. REJECTION OF PROPOSALS

- The State reserves the right to reject any proposal in whole or in part.
- The State reserves the right to waive any non-material deviations.
- The State reserves the right to reject any or all bids and re-advertise for bids; and further reserves the right to waive any informality or irregularity.
- Award will be made in manner deemed best interest of the State.

L. MANDATORY REQUIREMENTS

- Proposal signature page must be signed.
- Proposal must have a Cost Proposal.
- Proposals lacking any of the previous sections will not be evaluated.
- Agencies may add additional mandatory requirements (but it is not recommended).

M. REFERENCE CHECKS

- The State reserves the right to check references regardless of source.
- The State reserves the right to utilize a 3rd party to conduct reference checks.
- Negative references could eliminate bidders from award consideration.

N. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS

- Bidders should be authorized to do business in the State of Nebraska.
- Bidders are expected to comply with Secretary of State Registration requirements if awarded a contract.
- A valid Letter or Certificate of Good Standing dated within 90 calendar days of Intent to Award must be supplied by the selected contractor before a contract award can be finalized.
- Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration.
- A bank registered with the office of Comptroller of Currency is not required to register with the State. However, if the office of Comptroller of Currency does have a Certificate of Good Standing/Registration, the bank would provide this for verification.

O. VIOLATION OF TERMS AND CONDITIONS

- Violation of the terms and conditions of the RFP and/or of the resulting contract shall be grounds for action by the State, including, but not limited to:
 - ✓ Rejection of a bidder's proposal
 - ✓ Suspension of bidder from further bidding for a period of time at State's discretion
 - ✓ Legal action

SECTION III. TERMS AND CONDITIONS

By signing the Request for Proposal for Contractual Services form, the bidder guarantees compliance with the following Terms and Conditions unless otherwise agreed to. Each subsection contains a space for the bidder to Accept, Reject, or Reject and Provide Alternative. Any rejections or alternatives indicated by a bidder will be reviewed during contract finalization. Failure to agree to terms and conditions may result with the State rejecting the bid, and proceed

awarding to the next highest scoring bid or rejecting all bids. **Bidders must include completed Section III with proposal response.**

A. GENERAL

- Indicates order of precedence for the contract documents.
- Proposals become property of the State and will not be returned.

B. AWARD

- The State reserves the right to reject any or all proposals, in whole or in part, or to award to multiple bidders, or to withdraw or amend the RFP at any time.
- The State reserves the right to waive any non-material deviation.
- Awards will be made in the manner deemed to be the best interest of the State.
- Intent to Contract will be posted on SPB's website (and agency's website if cross-posted).
- Protest/grievance procedures are available on SPB's website.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/NONDISCRIMINATION

- Contractor shall comply with all civil rights laws and Equal Opportunity requirements.
- Nebraska Fair Employment Act (Neb. Rev. Stat. § 48-1101 through § 48-1125) prohibits discrimination based on race, color, religion, sex, disability, marital status, or national origin.
- Breach of this provision shall be considered a breach of contract.

D. PERMITS, REGULATIONS, AND LAWS

- Contractor shall pay for all permits, licenses and approvals necessary to execute the contract.
- Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

E. OWNERSHIP OF INFORMATION AND DATA

- All State data, work products and all applicable records must be provided/furnished to the State, in a format determined by the State or agreed upon by the parties, at the expiration or termination of the contract.
- The State has unlimited right to use and/or reproduce the information and/or data developed or derived by the contractor under this contract.
- The contractor guarantees it has full right to all tools necessary to execute the contract, and related costs shall be built into the contract price and not billed separately.
 - ✓ Contractor is responsible for paying any related costs and shall hold the State harmless from any related claims.

F. INSURANCE REQUIREMENTS – agency decisions required

- Work shall not begin under the contract until all required insurance has been obtained by the contractor and approved by the State.
- Required insurance must be maintained for the life of the contract, including renewal periods and/or extension periods.
- Contractor must ensure that a current, compliant certificate of insurance (COI) is on file with the agency at all times during the contract.

- Contractor is responsible for any subcontractor's compliance with the insurance limits, and shall assume liability if at any time a subcontractor is not compliant.
- Contractor is responsible for any mandatory deductible payment in event of a claim.
- Limits and waivers are clearly defined.
 - ✓ Agency decides if there are any additional insured(s) besides the State
 - ✓ Agency can add any unique coverage required, such as Professional Liability, Builder's Risk, etc.
 - ✓ If Medical Malpractice coverage is required, Bidder's must also be and remain certified under the Nebraska Hospital-Medical Liability Act. Such qualification will be confirmed with the Nebraska Department of Insurance.
- Evidence of coverage (COI) shall be provided to the State before a contract can be awarded.
- Notice of cancellation of insurance must be provided to the State along with a new coverage binder to ensure no break in coverage.

G. COOPERATION WITH OTHER CONTRACTORS

- The State may already have a contract for the requested service in place.
- The State reserves the right to award to multiple contractors.
- The contractor must cooperate with any such other contractors and not interfere with any other contractor's performance.
- The State does not enter into exclusive contracts.

H. INDEPENDENT CONTRACTOR

- No partnership between the contractor and the State is established by this contract.
- The contractor shall secure, at its own expense, the personnel needed to execute the contract.
- The contractor's employees have no contractual relationship with the State.
- Claims arising against the contractor based on employment shall not be the responsibility of the State, and the contractor shall hold the State harmless from many such claims.
- Employees of the contractor are not entitled to any benefits, compensation, tenure or rights, medical and hospital care, sick leave and vacation leave, severance pay or retirement benefits from the State.

I. CONTRACTOR RESPONSIBILITY

- The contractor is solely responsible for executing the contract and for all promises made in its proposal.
- The contractor is the sole point of contact regarding the contract.
- The contractor must clearly identify any subcontractor and its level of involvement in the fulfillment of the contract in its proposal. Any changes in subcontractor involvement shall be submitted to the State in writing for approval.

J. CONTRACTOR PERSONNEL

- Contractor warrants that all persons utilized by contractor in performing contract requirements provided under the contract are either employees or subcontractors, and are fully qualified to perform the work required.
- Contractor shall not change any personnel commitments made in the proposal without the specific written approval of the State. Replacement of key personnel shall be with personnel of equal or greater ability and qualifications.

- The State reserves the right to require the contractor to reassign or remove any contractor employee, subcontractor, or subcontractor employee.
 - Contractor is responsible for its employees, including employment taxes, payroll withholding, vehicles and insurance, damages incurred by employees under the contract, worker's compensation and health insurance, and determining hours to be worked and duties to be performed.
- K. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**
- Contractor shall not recruit any State employee or agent who worked on the RFP or project, or who had any influence on decisions affecting the RFP or project.
- L. CONFLICT OF INTEREST**
- Bidder certifies there is no conflict of interest nor the appearance of conflict of interest between the bidder and any person or entity related to this RFP.
 - Bidder shall not take any action or acquire any interest that presents a conflict of interest or the appearance of a conflict of appearance.
 - Bidder shall not knowingly employ any individual with a known conflict of interest.
- M. PROPOSAL PREPARATION COSTS**
- The costs for the preparation and submission of the proposal and any participation in oral interviews/demonstrations are borne by the bidder. The State shall not incur any costs.
- N. ERRORS AND OMISSIONS**
- Bidder shall not take advantage of any error and/or omission in the RFP or resulting contract.
 - Bidder shall inform the State of any error and/or omission that is discovered.
- O. BEGINNING OF WORK**
- Work shall not commence before the contract is fully executed by both the Contractor and the State.
- P. ASSIGNMENT BY THE STATE**
- The State reserves the right to assign the contract or any interest in the contract to any agency, board, commission, or political subdivision of the State at no cost to the State.
- Q. ASSIGNMENT BY THE CONTRACTOR**
- R. The Contractor may not assign the contract, any interest in the contract, or any rights or obligations under the contract to any third party without the prior written consent of the State.
- S. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**
- The requirements and conditions of the RFP become part of the contract.
 - Any alternative(s) must be clearly identified by the Bidder in its proposal. If accepted, such alternative(s) will become part of the contract.
 - Alternative(s) must not conflict with the basic nature of the RFP, the mandatory requirements, or applicable State or federal laws or statutes.
 - The State reserves the right to reject proposed alternative(s).

T. GOVERNING LAW

- This contract shall be governed by the laws and statutes of the State of Nebraska.
- Any legal proceeding brought against the State of Nebraska as a result of this RFP or contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law.
- The Contractor must be in compliance with all Nebraska statutory and regulatory law.

U. ATTORNEY'S FEES

- Any legal action required to enforce the contract shall be at the expense of the Contractor, including reasonable attorney's fees and costs incurred by the State, if the State is the prevailing party.

V. ADVERTISING

- Contractor shall not refer to the contract award in any advertising in such a way that implies an endorsement by or preference on the part of the State.
- News releases require the prior written permission of the State.
- The State of Nebraska is not in a position to endorse or promote any product, service, or contractor.

W. STATE PROPERTY

- The Contractor is responsible for the care and custody of any State-owned property provided for the execution of the contract.
- The Contractor shall reimburse the State for any loss or damage to such property.
- Normal wear and tear is expected.

X. SITE RULES AND REGULATIONS

- The Contractor and its employees, agents, and subcontractors shall comply with all site rules and regulations while on State premises.
- The Contractor must ensure proper facility access and equipment to execute the contract.
- The State shall not make additional payments based on lack of access unless the State fails to provide access as agreed to between the State and the Contractor.

Y. NOTIFICATION

- During the RFP process, all communication shall take place between the Bidder's contact person identified in its proposal and the Procuring Office and Contact Person identified by the State in Section II.A of the RFP.
- After the contract is awarded, written notices may be made in person, by mail, by fax, or by email.
- Contractor shall immediately notify the State of any delays or hindrances in the execution of the contract.
 - ✓ Notice does not constitute basis of extension or be construed as a waiver by the State of any of its rights or remedies as allowed by law.
 - ✓ Failure to give such notice may result in denial of any related extension.
- Either party may change its address by giving notice in writing and giving an effective date for such change.
- Communication about the contract between the Contractor and individuals not authorized by the State is strictly forbidden.

Z. EARLY TERMINATION

- The State and the Contractor may mutually agree to terminate the contract at any time.
- The State may terminate for any reason with thirty (30) days notice to the Contractor.
- The State may terminate immediately for the following reasons:
 - ✓ Directed by statute
 - ✓ Contractor assigns the contract for benefit of a creditor, is unable to pay its debts, or has ceased operating
 - ✓ A trustee or receiver of assets of the Contractor or any substantial part of the Contractor's assets has been appointed by the court
 - ✓ Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to the contract by the Contractor, its employees, officers, directors, or shareholders
 - ✓ Involuntary Title 11 action
 - ✓ Voluntary Title 11 action
 - ✓ Contractor intentionally discloses confidential information
 - ✓ Contractor discontinues support of the deliverables
 - ✓ Second or subsequent negative Vendor Performance Report
 - ✓ Collusion on the part of or involving the Contractor

AA. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

- The State may terminate the contract in the event the funding is no longer available.
- The State will give the Contractor thirty (30) days' notice.

BB. BREACH BY CONTRACTOR

- The State may terminate the contract or any part of the contract if the Contractor fails to perform contractual obligations in a timely manner.
- The State may provide an opportunity for the Contractor to cure the breach.
- Time to cure the breach does not waive the State's right to immediately terminate for the same or different breach which may occur at a separate time.

CC. ASSURANCES BEFORE BREACH

- Upon written notice by the State that a contract deliverable does not meet the requirements of the RFP/contract, the Contractor shall, at no additional cost to the State, remedy the situation and ensure compliance with the contract. Contractor may be required to provide additional resources, at no additional cost to the State, to ensure contract compliance.

DD. ADMINISTRATION – CONTRACT TERMINATION

- Bidder must confirm that upon termination of contract, all records shall become property of the State and shall be delivered to the State at no additional cost.
- Bidder must confirm that all records that are property of the State will be returned within thirty (30) days of termination.

EE. PENALTY – agency decision required

- State may withhold all monies due under the contract if the Contractor fails to perform any substantial contractual obligation or meeting identified contracted deliverable. (Recommend to leave this sentence in regardless of other methods

of remedy.) Substantial is defined as considerable amount of work, important elements or essential part of the work requested, etc.

- Agencies may choose to assess a specific dollar amount of penalty tied to deliverables and dates.

FF. RETAINAGE – agency decision required

- Agencies may choose to withhold a certain percentage or dollar amount of payment due until a stated date or the end of the contract to guarantee performance.
- If agency does not want retainage, this subsection is deleted.

GG. BID BOND – agency decision required

- Agencies may choose to require a bid bond be submitted with the proposal, which would be released back to the bidders upon execution of awarded contract. The bond is a guarantee the bidder will enter into a contract with the State. Failure to enter into a contract with the State results in the State retaining the bond.
- If bid bond is required, bond should be provided with the bid, but must be submitted prior to award.
- If agency does not require a bid bond, this subsection is deleted.

HH. PERFORMANCE BOND – agency decision required

- Agencies may choose to require a performance bond for a percentage or dollar amount to guarantee performance under the contract. The bond is held for the life of the contract, including renewals.
- For contracts with a total period of three (3) years or less, including renewals, a cashier's check may be substituted for a performance bond.
- If agency does not require a performance bond, this subsection is deleted.

II. FORCE MAJEURE

- Neither party shall be responsible for failures to perform due to a natural disaster or other similar event out of the control and not the fault of the affected party.
- A Force Majeure Event does not constitute breach of contract.
- Labor disputes are not considered Force Majeure Events.
- Burden of proof rests upon the Contractor.

JJ. PROHIBITION AGAINST ADVANCE PAYMENT – agency decision required

- Payments shall not be made until deliverables are received and accepted by the State.

KK. PAYMENT

- Payment will be made according to the Nebraska Prompt Payment Act (Neb. Rev. Stat. § 81-2401 through § 81-2408).
- The State may require the Contractor to accept payment via electronic means, such as ACH.
- In no event shall the State be responsible for or liable to pay for any services provided by the Contractor prior to the effective date of the fully executed contract. Contractor waives all claims or actions for any such services.

LL. INVOICES – agency input required

- The Contractor is required to submit detailed invoices.

- Agencies may insert specific invoicing requirements here, such as a mailing address.
- No invoice terms or conditions contained in an invoice, but not contained in the contract itself will be binding upon the State nor alters or amends the contract in any way.

MM. RIGHT TO AUDIT

- The Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit the contract.
- The State shall have the right to audit, examine, and make copies or extracts from the Contractor's documents pertaining to or resulting from the contract.
- Contractor shall maintain all pertinent records during the contract and for five (5) years after completion of the contract, and shall make them available to the State upon the State's reasonable request at the expense of the Contractor.
- The cost of any audit conducted under this section shall be borne by the State unless specifically stipulated otherwise, unless certain exemption criteria are met, or unless the findings require compensation to the State from the Contractor.

NN. TAXES

- The State is not required to pay taxes of any kind.
- The Contractor is responsible for any tax due on any of the Contractor's equipment which may be installed in or on State-owned facilities or property.

OO. INSPECTION AND APPROVAL

- The State shall conduct a final inspection and approval of all work under the contract.
- The State has the right to enter any premises where contract work is being performed and to inspect, monitor, and/or evaluate the work being performed.

PP. CHANGES IN SCOPE/CHANGE ORDERS

- The State may at any time change the general scope of the contract, upon written notice to the Contractor.
- The State may, at any time, in writing:
 - ✓ Make alterations in the terms of work as shown in the specifications
 - ✓ Require the performance of extra work
 - ✓ Decrease the quantity of work
 - ✓ Make other such changes as the State may find necessary or desirable
- Compensation for changes in work shall be determined by the applicable unit price of the Contractor's proposal.

QQ. SEVERABILITY

- If any term or condition of the contract is declared invalid or illegal that does not automatically carry to the remaining terms and conditions of the contract.

RR. CONFIDENTIALITY

- All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
- All confidential information shall be handled in accordance with applicable Federal and State law and ethical standards.
- The Contractor must immediately notify the State of any breach of confidentiality.
- The Contractor must comply with the Privacy Act of 1974.

SS. PROPRIETARY INFORMATION

- Data and documentation contained in a proposal become property of the State of Nebraska and upon opening, become public information.
- The Bidder may identify certain information to withhold from the public, provided it falls within the definition of proprietary information in Nebraska's public record statutes.
- All proprietary information must be submitted in a SEPARATE SEALED package clearly identified as proprietary.
- A Bidder may not mark its entire proposal proprietary.
- Cost Proposals are **never** considered proprietary.
- A Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.
- **IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by law, **WILL BE POSTED FOR PUBLIC VIEWING**. Bidders are required to waive copyrights' from privilege for posting on the public website.

TT. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING

- By submitting the proposal, Bidder certifies that it has not participated in any collusive activities and that it has not divulged any of its information for purposes of colluding with regard to bid price or cost.

UU. STATEMENT OF NON-COLLUSION

- Bidder submits the proposal independently and without collusion with, and without any direct or indirect agreement or understanding or planned common course of action with any person, firm, corporation, bidder, contractor of materials, supplies, equipment or services described in the RFP.
- Bidder shall not collude with, or attempt to collude with any state officials, employees or agents or evaluators or any person involved in the RFP.
- Bidder shall not attempt to restrain free competition or limit independent bidding or create unfair advantage.
- If it is determined that collusion occurred, the State has the right to reject a bid or terminate the contract and impose further administrative sanctions.

VV. PRICES – agency input required

- Prices shall remain fixed from date of submission of proposals through date of contract award.
- Agencies may want to include some mechanism for price increase – either asking for a price for each year/renewal, or permitting up to a % of increase with a cap on the amount of the increase.
- Contractor confirms that prices are not higher and/or as low for the State than for any other client, and that price changes shall be applied equally to the State as to all other clients.
- Contractor affirms that it did not participate in price fixing or price discrimination.
- No price increase through the life of the contract unless provided for in the contract terms and conditions.

WW. BEST AND FINAL OFFER

- The State will compile the scores and award to the highest scoring responsive and responsible bidder.
- In some cases, the State may request a best and final cost proposal from the highest scoring bidder(s).
- Best and Final Offer will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each bidder requested to submit a BAFO.
- Bidders should provide their best offer with the original proposal and not expect that the State will request a best and final offer.

XX. ETHICS IN PUBLIC CONTRACTING

- No bidder shall pay or offer gifts to any officer, legislator, State employee or evaluator.
- **Bidders shall not use lobbyists, attorneys, political activists, or consultants to secure the contract or attempt to influence the procurement process.**
- Bidders are not prohibited from seeking expert advice or legal counsel.
- Bidders found in non-compliance with this subsection may be disqualified from the selection process or forfeit the contract award.

YY. INDEMNIFICATION

- General – The Contractor holds the State harmless in general.
- Intellectual Property – The Contractor holds the State harmless in regards to patents, copyrights, trademarks, third party confidential information, Licensed Software, etc.
- Personnel – The Contractor holds the State harmless against claims from its employees.

ZZ. NEBRASKA TECHNOLOGY ACCESS STANDARDS

- Contractor shall review the Nebraska Technology Access Standards and ensure that it is in compliance or will comply with the applicable standards. Refer to website at: <http://nitc.nebraska.gov/standards/2-201.html>

AAA. ANTITRUST

- The Contractor assigns to the State any and all and all claims for overcharges due to antitrust violations.

BBB. DISASTER RECOVERY/BACK UP PLAN

- The Contractor shall have a disaster recovery/back-up plan and shall provide a copy to the State, regarding how to continue providing services in the event of a disaster.

CCC. TIME IS OF THE ESSENCE

- Time is of the essence in this contract.
- The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations under the contract.

DDD. RECYCLING

- Preference is given to recycled/recyclable materials when applicable.

EEE. DRUG POLICY

- Contractor certifies it maintains a drug-free workplace.
- Contractor shall supply a copy of its drug-free workplace policy to the State at any time upon the State's request.

FFF. EMPLOYEE WORK ELIGIBILITY STATUS

- The Contractor must use a federal immigration verification system to determine the work eligibility of employees physically performing services in the State of Nebraska.
- E-Verify or an equivalent program designated by the US Department of Homeland Security shall be used.
- **For individuals or sole proprietorships:**
 - ✓ Contractor must complete the United States Citizenship Attestation Form. This form should be submitted with the proposal response.
 - ✓ If a qualified alien, Contractor shall provide documentation to verify its lawful presence in the US via the Systematic Alien Verification for Entitlements (SAVE) Program.
 - ✓ Contractor understands that lawful presence in the US is required and failure to verify this may result in disqualification or contract termination.

GGG. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY

- By signing the RFP, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency from participating in transactions.
- The Contractor shall immediately notify the State if it becomes disbarred during the course of the contract.
- The Department may immediately terminate the contract if the Contractor becomes debarred by the State providing written notice to the Contractor. The Contractor certifies that it has not had a contract with the State terminated early by the State. If it has, it must provide the contract number and a detailed explanation as to why it was terminated early. Prior early termination may be grounds for rejecting the proposal.

HHH. POLITICAL SUB-DIVISIONS

- The Contractor may extend the contract pricing to political sub-divisions provided the Terms and Conditions are the same.
- The State is in no way liable for the purchases of any political sub-divisions or public entities under the contract.

III. OFFICE OF PUBLIC COUNSEL

- Under terms of a contract and on behalf of the State health and human service to individuals, service delivery; service coordination or in case management, contracts shall submit to the jurisdiction of the Office of Public Counsel per statute § 81-8240.
- This term survives the termination of the contract.
- Does not apply if contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.

JJJ. LONG-TERM OMBUDSMAN

- If contractor is a long-term care facility, they are subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.
- Contractor shall comply with the act.
- This term survives termination of the contract.

KKK. LICENSE/SERVICE OR OTHER AGREEMENT

- If contractor has any other licenses or agreements to be considered, these must be submitted with proposal response.
- State may reject any such license or service agreement if received after proposal opening date and time.
- Any terms and conditions in any such agreement must not conflict with or alter State’s Terms and Conditions as contained in the RFP.
- This term does not apply to the third party license or service agreement.

SECTION IV. PROJECT DESCRIPTION AND SCOPE OF WORK

This is a suggested outline to help agencies organize and describe their specific project requirements. This may be retracted or expanded depending on each agency’s needs. This section delineates in detail what the agency is seeking from a contractor and the specifications of the project.

A. SCOPE OF WORK (Agency to describe)

B. WORK PLAN (Agency to describe)

DELIVERABLES (REQUIRED) – These are part of the cost sheet and become part of the final contract.

- This subsection may not be deleted. All contracts must have the deliverable section clearly defined. Neb. Rev. Stat. § 73-506 ties payments to deliverables for service contracts.

C. PAYMENT SCHEDULE – agency input required

- This subsection may be modified to reflect the specific project requirements for payment. Sample language is included here; agency should work with SPB to adjust language.

Tips for Completing Section IV

- Strive for clarity – use plain, simple language.
- Use laymen’s terms – if at all possible, avoid industry-specific jargon.
- Use “will,” “shall,” and “must” to denote required items.
- Do not use words such as “prefer” or “desire.”
- State exactly what is required.
- Include optional items clearly identified as “Optional”, with a separate cost category (that will not be evaluated).
- Include as much detail as possible – this helps avoid a large quantity questions during the question and answer period.
- Don’t make bidders reinvent the wheel – give as much pertinent data as possible.
- Be careful to avoid unnecessarily restrictive specifications that would unfairly eliminate some potential bidders.
- Look ahead to the entire contract period. Anticipate potential pitfalls, technological advancements, and legislative mandates to the extent possible, and try to include consideration for those possibilities.
- Consider exit strategies:
 - ✓ What will happen in the event the contract is terminated early?
 - ✓ How does the natural conclusion of the contract happen?
 - ✓ Is there a transition period that needs to be accounted for?
 - ✓ Is there any transfer of data requirements?
- Clearly define the deliverables and consider how the contract will be paid:
 - ✓ Are there one-time fees?
 - ✓ Are there recurring monthly fees?
 - ✓ Is there a list of deliverables that will each have lump sum costs?
- Address the level of interaction with the contractor and the acceptance of deliverables.
 - ✓ How will the Contractor know that a deliverable has been approved and may be invoiced?
- Address performance standards expected.

Exhibit F

Agency-Processed RFP Instructions: Cafeteria/Vending Boilerplate

Agency-Processed Cafeteria/Vending RFP Boilerplate Instructions

SPB has developed a boilerplate for agencies to follow when preparing a Cafeteria/Vending RFP. Instructions for completing the boilerplate are found in this Exhibit F, and the boilerplate itself may be found at: http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html Agencies are required to leave “track changes” on when preparing their RFP document.

Cover Page

This page includes basic instructions to the bidder and highlights some important dates, such as the release date, the deadline for questions, and the opening date. The agency must fill in:

- RETURN TO information in the top right corner
 - ✓ Also in Section I.A, Schedule of Events, and Section II.A, Procuring Office and Contact Person
- All dates listed on the cover page shall match Section I.A, Schedule of Events
- The Procurement Contact will be the agency contact person responsible for the procurement
 - ✓ Will be the same in the body of the cover page, in Section II.A, Procuring Office and Contact Person, and Section II.E, Written Questions and Answers (this subsection may not be E if subsection D, Notification of Intent to Bid, is deleted).
- The agency name where it asks for “Department”
- The description of the service to be provided on this page should be as concise as possible
 - ✓ Will be repeated exactly in Section I, Scope of the Request for Proposal, Section II.B, General Information, and Section II.E, Written Questions and Answers.
- If the RFP will also be cross-posted on the agency’s website, the agency will need to insert its web address. If it will only be posted on SPB’s website, the agency website part will be deleted. Procurements in excess of \$50,000.00 must be posted on SPB’s website.

The second page of the cover page includes a place for bidders to comply with statistical reporting requirements under Neb. Rev. Stat. § 73-603 and to indicate any preference sought under Neb. Rev. Stat. § 73-107 regarding resident disabled veterans and/or businesses located in designated enterprise zones. This preference will apply when there is a time among vendors. This boilerplate also includes a preference option for blind persons licensed by the Commission for the Blind and Visually Impaired under Neb. Rev. Stat. § 71-8611. Refer to Evaluation and Scoring Manual for Requests for Proposals for Cafeteria and Vending Services for details on how preference is applied. This form **MUST BE SIGNED** or the entire proposal will be considered invalid and excluded from further consideration.

Table of Contents

This is formatted to automatically update as the RFP is developed.

Glossary of Terms

SPB provides a basic set of terms. Not every word contained in the boilerplate glossary will be relevant to every RFP; however, SPB does not delete any of the boilerplate lists. If there are project-specific terms that the agency wishes to define, these should be added. If the project includes acronyms, the agency may add a separate acronym list here.

The remainder of the Cafeteria/Vending RFP is divided into five (5) sections:

- ✓ **Section I, Scope of the Request for Proposal:** Includes a brief description of the project, indicates the contract period including optional renewals, and provides the Schedule of Events according to which the RFP process will be governed.
- ✓ **Section II, Procurement Procedures:** Indicates SPB contact information and gives an overview of the RFP process and proposal submission for bidders.
- ✓ **Section III, Terms and Conditions:** Contains the standard terms and conditions that form the basis of the contract. Each item requires a response from the bidder; Accept, Reject, or Reject and Provide Alternative within the RFP Response. These clauses have been reviewed by SPB's General Counsel. Except where invited to do so in green, agencies are not to make alterations to this section.
- ✓ **Section IV, Project Description and Scope of Work:** The core of the RFP; details the specifications of the project prepared by the Agency.
- ✓ **Section V, Proposal Instructions:** Provides specific instructions on how to prepare a proposal; lays out specific qualifications and other required information of the bidder.

Form A, Bidder Contact Sheet: Provides the State with information regarding a bidder's name, address, and specific point of contact regarding the proposal.

Form B, Notification of Intent to Attend Pre-Proposal Conference (optional): This form should be included when a pre-proposal conference is scheduled.

Form C, Notification of Intent to Bid (optional): This form is included when the agency wishes to have some idea of the quantity of potential bidders.

Why so many subsections?

Within each section are numerous subsections. SPB is often asked why there are so many subsections. Agencies must remember that the RFP is the beginning of the contract. For this reason, the RFP is written in a very detailed, point-by-point manner. The RFP and the bidder's response become part of the final contract. The subsections are a way to direct bidders to specific components of the document and eliminate potential points of confusion. It is possible to condense several of the subsections, but it is important to keep in mind that each subsection represents a unique point that may or may not become focal point of the final contract.

SECTION I. SCOPE OF THE REQUEST FOR PROPOSAL

This section provides a brief description of the project, and indicates the desired contract period, including renewal options. Per Neb. Rev. Stat. § 73-506, state agencies may not enter into contracts for services of unspecified or unlimited duration. Renewals cannot be automatic. The State must reserve the right to exercise or not exercise any renewal period.

A. SCHEDULE OF EVENTS

- This subsection provides bidders with a schedule of important dates in one concise table.
- The Schedule should include all pertinent dates possible, such as (as applicable; delete any that do not pertain to the specific RFP):
 - ✓ Release of RFP
 - ✓ Last day to submit Notification of Intent to Attend Pre-Proposal Conference (optional)
 - ✓ Last day to submit written questions

- ✓ Mandatory Pre-Proposal Conference (optional)
- ✓ Last day to submit written questions after Pre-Proposal Conference (optional)
- ✓ State responds to written questions
- ✓ Possible second round of question and answer period, if needed
- ✓ Last day to submit Letter of Intent to Bid (optional)
- ✓ Proposal opening
- ✓ Review for conformance of mandatory requirements
- ✓ Evaluation period
- ✓ Oral Interviews/Demonstrations (optional)
- ✓ Post Letter of Intent to Contract
- ✓ Contract finalization period
- ✓ Contract award
- ✓ Contractor start date

SECTION II. PROCUREMENT PROCEDURES

This section provides some general guidelines for bidders regarding proposal submittal and contact with the agency.

A. PROCURING OFFICE AND CONTACT PERSON

- The contact person should be the same as the person listed on the cover page. All contact information for the agency should remain consistent throughout the document.
- The purpose of naming the contact person is to:
 - ✓ Ensure that all questions are routed through one (1) contact person;
 - ✓ Further insulates procuring agency, litigation process, and evaluators
 - ✓ Provide the same information to all potential bidders;
 - ✓ Eliminate confusion;
 - ✓ Inform potential bidders that communication with the agency or members of the evaluation committee directly is prohibited.
- Provides the department street address, mailing address, telephone and fax numbers, and an email address where questions may be sent.

B. GENERAL INFORMATION

- Provides a brief description of the project.
- Reminds potential bidders to follow the submission instructions and schedules found in the RFP.
- Indicates the expected outcome of the RFP process, i.e. a fixed-price contract, and advises that the RFP documents become part of the final contract.

C. CUSTOMER SERVICE

- Describes the State's expectations of any and all contractors providing services to the State.

D. COMMUNICATION WITH STATE STAFF AND EVALUATORS

- Prohibits contact with any other agency staff and/or evaluators, and directs communication to the named contact person.
- Explains a few exceptions to this rule.
 - ✓ If no pre-proposal conference will be held, delete the green-highlighted text.
- Reminds bidders their proposal may be rejected if the communication limits are not strictly observed.

- E. NOTIFICATION OF INTENT TO BID – Optional**
- If the agency does not include the requirement for a Notification of Intent to Bid, this subsection is deleted.
 - Includes instructions for returning Form C (in some cases Form B, if no pre-proposal conference is scheduled). This form is a “should”, i.e. it is not a firm requirement, and failure to return it does not preclude anyone from submitting a proposal.
 - Informs potential bidders that anyone who does submit a Notification of Intent to Bid will be named in a list posted to the website after the due date.
- F. WRITTEN QUESTIONS AND ANSWERS**
- Indicates mechanism by which potential bidders may submit questions or requests for clarification about the RFP before the proposal submission deadline.
 - Includes a brief description of the project, the agency contact, an email address and fax number, and a desired format for submitting questions.
 - Reminds bidders that the questions are answered all at once and posted as an Addendum on SPB’s website (and the agency’s website, if cross-posted).
- G. PRE-PROPOSAL CONFERENCE – Optional**
- If the agency does not include a pre-proposal conference, this subsection is deleted.
 - Indicates if pre-proposal conference is optional or mandatory. If mandatory, a sign-up sheet is required, and the list will be posted to the website after the pre-proposal conference takes place.
 - Indicates method of submitting questions and which questions are binding on the State.
 - Addresses submission methods and requirements for the Notification of Intent to Attend Pre-Proposal Conference (usually Form B)
- H. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS**
- Oral interviews/presentations and/or demonstrations are optional at the discretion of the State.
 - The State reserves the right to invite only top scoring bidders.
 - Bidder’s key personnel are expected to participate.
 - State bears no responsibility for any part of the costs associated with preparing for and transportation to the oral interviews.
- I. SUBMISSION OF PROPOSALS – agency input required**
- One (1) original of the proposal is all that is required.
 - Proprietary or confidential information must be properly identified.
 - Proposal responses must include Form A, Bidder Contact Sheet.
 - Address labels must be clear and contain the RFP number clearly marked.
 - **IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by law, **WILL BE POSTED FOR PUBLIC VIEWING**. Bidders are required to waive copyrights’ from privilege for posting on the public website.
 - Agencies must choose if the payment proposal shall be presented as a separate section within the RFP response or as an entirely separate document. One paragraph or the other will need to be deleted according to the option chosen by the agency.

J. PROPOSAL OPENING

- Sealed proposals are publicly opened at the date, time, and location identified in the Schedule of Events.
- Once the proposal opening has concluded proposals will not be available for public viewing until the Intent to Award has been issued.
- Proposals will be available for public viewing at the opening, and then again after the Letter of Intent to Contract has been posted, and the evaluation process has been completed.

K. LATE PROPOSALS

- Regardless of cause, proposals not received and date/time stamped by the receptionist by the opening date and time will not be accepted or evaluated.
- Late proposals may be returned unopened to the bidder at the bidder's expense upon request.

L. REJECTION OF PROPOSALS

- The State reserves the right to reject any proposal in whole or in part.
- The State reserves the right to waive any non-material deviations.
- The State reserves the right to reject any or all bids and re-advertise for bids; and further reserves the right to waive any informality or irregularity.
- Award will be made in manner deemed best interest of the State.

M. EVALUATION OF PROPOSALS

- Identifies the categories according to which the proposals will be scored.
- Discusses resident disabled veteran and/or business in an enterprise zone preference if all other items are equal according to Neb. Rev. Stat. § 73-107 and the documentation needed to request such preference.
- Discusses preference for blind persons under Neb. Rev. Stat. § 71-8611.
 - ✓ Does not apply to Game & Parks or the University of Nebraska
 - ✓ Details steps SPB will need to take to determine if preference applies
- Evaluation Criteria and list of proposal respondents will be posted on the opening date.

N. EVALUATION COMMITTEE

- Names of Evaluation Committee members will not be published.
- No member of the Evaluation Committee is authorized to make binding statements regarding the RFP.
- Any contact or attempted contact with an evaluator involved with the RFP, during the evaluation period by any bidder, potential bidder or other interested party may result in the rejection of the bidder's proposal and further Administrative action may be taken.

O. MANDATORY REQUIREMENTS

- Proposal signature page must be signed.
- Proposal must have a Corporate Overview section.
- Proposal must have a Technical Approach section.
- Proposal must have a Payment Proposal.
- Proposals lacking any of the previous sections will not be evaluated.
- Agencies may add additional mandatory requirements, if necessary

P. REFERENCE CHECKS

- The State reserves the right to check references regardless of source.
- The State reserves the right to utilize a 3rd party contractor to conduct reference checks.
- Negative references could eliminate bidders from award consideration.

Q. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS

- Bidders should be authorized to do business in the State of Nebraska.
- Bidders are expected to comply with Secretary of State Registration requirements if awarded a contract.
- A valid Letter or Certificate of Good Standing dated within 90 calendar days of Intent to Award must be supplied by the selected contractor before a contract award can be finalized.
- Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration.
- A bank registered with the office of Comptroller of Currency is not required to register with the State. However, if the office of Comptroller of Currency does have a Certificate of Good Standing/Registration, the bank would provide this for verification.

R. VIOLATION OF TERMS AND CONDITIONS

- Violation of the terms and conditions of the RFP and/or of the resulting contract shall be grounds for action by the State, including, but not limited to:
 - ✓ Rejection of a bidder's proposal
 - ✓ Suspension of bidder from further bidding for a period of time at State's discretion
 - ✓ Legal action

SECTION III. TERMS AND CONDITIONS

By signing the Request for Proposal for Contractual Services form, the bidder guarantees compliance with the following Terms and Conditions unless otherwise agreed to. Each subsection contains a space for the bidder to Accept, Reject, or Reject and Provide Alternative. Any rejections or alternatives indicated by a bidder will be reviewed during contract finalization. Failure to agree to terms and conditions may result with the State rejecting the bid, and proceed awarding to the next highest scoring bid or rejecting all bids. **Bidders must include completed Section III with proposal response.**

A. GENERAL

- Indicates order of precedence for the contract documents.
- Proposals become property of the State and will not be returned.

B. AWARD

- The State reserves the right to reject any or all proposals, in whole or in part, or to award to multiple bidders, or to withdraw or amend the RFP at any time.
- The State reserves the right to waive any non-material deviation.
- Awards will be made in the manner deemed to be the best interest of the State.
- Intent to Contract will be posted on SPB's website (and agency's website, if cross-posted).
- Protest/grievance procedures are available on SPB's website.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/NONDISCRIMINATION

- Contractor shall comply with all civil rights laws and Equal Opportunity requirements.
- Nebraska Fair Employment Act (Neb. Rev. Stat. § 48-1101 through § 48-1125) prohibits discrimination based on race, color, religion, sex, disability, marital status, or national origin.
- Breach of this provision shall be considered a breach of contract.

D. PERMITS, REGULATIONS, AND LAWS

- Contractor shall pay for all permits, licenses and approvals necessary to execute the contract.
- Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

E. OWNERSHIP OF INFORMATION AND DATA

- All State data, work products and all applicable records must be provided/furnished to the State, in a format determined by the State or agreed upon by the parties, at the expiration or termination of the contract.
- The State has unlimited right to use and/or reproduce the information and/or data developed or derived by the contractor under this contract.
- The contractor guarantees it has full right to all tools necessary to execute the contract, and related costs shall be built into the contract price and not billed separately.
 - ✓ Contractor is responsible for paying any related costs and shall hold the State harmless from any related claims.

F. INSURANCE REQUIREMENTS – some agency decisions required

- Work shall not begin under the contract until all required insurance has been obtained by the contractor and approved by the State.
- Required insurance must be maintained for the life of the contract, including renewal periods and/or extension periods.
- Contractor must ensure that a current, compliant certificate of insurance (COI) is on file with SPB at all times during the contract.
- Contractor is responsible for any subcontractor's compliance with the insurance limits, and shall assume liability if at any time a subcontractor is not compliant.
- Contractor is responsible for any mandatory deductible payment in event of a claim.
- Limits and waivers are clearly defined.
 - ✓ Agency decides if there are any additional insured(s) besides the State
 - ✓ Agency can add any unique coverage required, such as Professional Liability, Builder's Risk, etc.
 - ✓ If Medical Malpractice coverage is required, Bidder's must also be and remain certified under the Nebraska Hospital-Medical Liability Act. Such qualification will be confirmed with the Nebraska Department of Insurance.
- Evidence of coverage (COI) shall be provided to the State before a contract can be awarded.
- Notice of cancellation of insurance must be provided to the State along with a new coverage binder to ensure no break in coverage.

G. COOPERATION WITH OTHER CONTRACTORS

- The State may already have a contract for the requested service in place.
- The State reserves the right to award to multiple contractors.
- The contractor must cooperate with any such other contractors and not interfere with any other contractor's performance.
- The State does not enter into exclusive contracts.

H. INDEPENDENT CONTRACTOR

- No partnership or employer/employee relationship between the contractor and the State is established by this contract.
- The contractor shall secure, at its own expense, the personnel needed to execute the contract.
- The contractor's employees have no contractual relationship with the State.
- Claims arising against the contractor based on employment shall not be the responsibility of the State, and the contractor shall hold the State harmless from any such claim.
- Employees of the contractor are not entitled to any benefits, compensation, tenure or rights, medical and hospital care, sick leave and vacation leave, severance pay or retirement benefits from the State.

I. CONTRACTOR RESPONSIBILITY

- The contractor is solely responsible for executing the contract and for all promises made in its proposal.
- The contractor is the sole point of contact regarding the contract.
- The contractor must clearly identify any subcontractor and its level of involvement in the fulfillment of the contract in its proposal. Any changes in subcontractor involvement shall be submitted to the State in writing for approval.

J. CONTRACTOR PERSONNEL

- Contractor warrants that all persons utilized by contractor in performing contract requirements provided under the contract are either employees or subcontractors, and are fully qualified to perform the work required.
- Contractor shall not change any personnel commitments made in the proposal without the specific written approval of the State. Replacement of key personnel shall be with personnel of equal or greater ability and qualifications.
- The State reserves the right to require the contractor to reassign or remove any contractor employee, subcontractor, or subcontractor employee.
- Contractor is responsible for its employees, including employment taxes, payroll withholding, vehicles and insurance, damages incurred by employees under the contract, worker's compensation and health insurance, and determining hours to be worked and duties to be performed.

K. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

- Contractor shall not knowingly recruit any State employee or agent who worked on the RFP or project, or who had any influence on decisions affecting the RFP or project.

L. CONFLICT OF INTEREST

- Bidder certifies there is no conflict of interest nor the appearance of conflict of interest between the bidder and any person or entity related to this RFP.

- Bidder shall not take any action or acquire any interest that presents a conflict of interest or the appearance of a conflict of appearance.
 - Bidder shall not knowingly employ any individual with a known conflict of interest.
- M. PROPOSAL PREPARATION COSTS**
- The costs for the preparation and submission of the proposal and any participation in oral interviews/demonstrations are borne by the bidder. The State shall not incur any costs.
- N. ERRORS AND OMISSIONS**
- Bidder shall not take advantage of any error and/or omission in the RFP or resulting contract.
 - Bidder shall inform the State of any error and/or omission that is discovered.
- O. BEGINNING OF WORK**
- Work shall not commence before the contract is fully executed by both the Contractor and the State.
- P. ASSIGNMENT BY THE STATE**
- The State reserves the right to assign the contract or any interest in the contract to any agency, board, commission, or political subdivision of the State at no cost to the State.
- Q. ASSIGNMENT BY THE CONTRACTOR**
- R. The Contractor may not assign the contract, any interest in the contract, or any rights or obligations under the contract to any third party without the prior written consent of the State.
- S. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**
- The requirements and conditions of the RFP become part of the contract.
 - Any alternative(s) must be clearly identified by the Bidder in its proposal. If accepted, such alternative(s) will become part of the contract.
 - Alternative(s) must not conflict with the basic nature of the RFP, the mandatory requirements, or applicable State or federal laws or statutes.
 - The State reserves the right to reject proposed alternative(s).
- T. GOVERNING LAW**
- This contract shall be governed by the laws and statutes of the State of Nebraska.
 - Any legal proceeding brought against the State of Nebraska as a result of this RFP or contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law.
 - The Contractor must be in compliance with all Nebraska statutory and regulatory law.
- U. ATTORNEY'S FEES**
- Any legal action required to enforce the contract shall be at the expense of the Contractor, including reasonable attorney's fees and costs incurred by the State, if the State is the prevailing party.

V. ADVERTISING

- Contractor shall not refer to the contract award in any advertising in such a way that implies an endorsement by or preference on the part of the State.
- News releases require the prior written permission of the State.
- The State of Nebraska is not in a position to endorse or promote any products, services, or contractors.

W. STATE PROPERTY

- The Contractor is responsible for the care and custody of any State-owned property provided for the execution of the contract.
- The Contractor shall reimburse the State for any loss or damage to such property.
- Normal wear and tear is expected.

X. SITE RULES AND REGULATIONS

- The Contractor and its employees, agents, and subcontractors shall comply with all site rules and regulations while on State premises.
- The Contractor must ensure proper facility access and equipment to execute the contract.
- The State shall not make additional payments based on lack of access unless the State fails to provide access as agreed to between the State and the Contractor.

Y. NOTIFICATION

- During the RFP process, all communication shall take place between the Bidder's contact person identified in its proposal and the Procuring Office and Contact Person identified by the State in Section II.A of the RFP.
- After the contract is awarded, written notices may be made in person, by mail, by fax, or by email.
- Contractor shall immediately notify the State of any delays or hindrances in the execution of the contract.
 - ✓ Notice does not constitute basis of extension or be construed as a waiver by the State of any of its rights or remedies as allowed by law.
 - ✓ Failure to give such notice may result in denial of any related extension.
- Either party may change its address by giving notice in writing and giving an effective date for such change.
- Communication about the contract between the Contractor and individuals not authorized by the State is strictly forbidden.

Z. EARLY TERMINATION

- The State and the Contractor may mutually agree to terminate the contract at any time.
- The State may terminate for any reason with thirty (30) days notice to the Contractor.
- The State may terminate immediately for the following reasons:
 - ✓ Directed by statute
 - ✓ Contractor assigns the contract for benefit of a creditor, is unable to pay its debts, or has ceased operating
 - ✓ A trustee or receiver of assets of the Contractor or any substantial part of the Contractor's assets has been appointed by the court

- ✓ Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to the contract by the Contractor, its employees, officers, directors, or shareholders
- ✓ Involuntary Title 11 action
- ✓ Voluntary Title 11 action
- ✓ Contractor intentionally discloses confidential information
- ✓ Contractor discontinues support of the deliverables
- ✓ Second or subsequent negative Vendor Performance Report
- ✓ Collusion on the part of or involving the Contractor

AA. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

- The State may terminate the contract in the event the funding is no longer available.
- The State will give the Contractor thirty (30) days notice.

BB. BREACH BY CONTRACTOR

- The State may terminate the contract or any part of the contract if the Contractor fails to perform contractual obligations in a timely manner.
- The State may provide 30 days for the Contractor to cure the breach.
- The State will provide written notice of breach to contractor.
- Time to cure the breach does not waive the State's right to immediately terminate for the same or different breach which may occur at a separate time.

CC. PENALTY – agency decision required

- State may withhold all monies due under the contract if the Contractor fails to perform any substantial contractual obligation or meeting identified contracted deliverable. (Recommend to leave this sentence in regardless of other methods of remedy.) Substantial is defined as considerable amount of work, important elements or essential part of the work requested, etc.
- Agencies may choose to assess a specific dollar amount of penalty tied to deliverables and dates.

DD. ASSURANCES BEFORE BREACH

- Upon written notice by the State that a contract deliverable does not meet the requirements of the RFP/contract, the Contractor shall, at no additional cost to the State, remedy the situation and ensure compliance with the contract. Contractor may be required to provide additional resources, at no additional cost to the State, to ensure contract compliance.

EE. ADMINISTRATION – CONTRACT TERMINATION

- Bidder must confirm that upon termination of contract, all records shall become property of the State and shall be delivered to the State at no additional cost.
- Bidder must confirm that all records that are property of the State will be returned within thirty (30) days of termination.

FF. BID BOND – agency decision required

- Agencies may choose to require a bid bond be submitted with the proposal, which would be released back to the bidders upon execution of awarded contract. The bond is a guarantee the bidder will enter into a contract with the State. Failure to enter into a contract with the State results in the State retaining the bond.

- If bid bond is required, bond should be provided with the bid, but must be submitted prior to award.
- If agency does not require a bid bond, this subsection is deleted

GG. PERFORMANCE BOND – agency decision required

- Agencies may choose to require a performance bond for a percentage or a specific dollar amount to guarantee performance under the contract. The bond is held for the life of the contract, including renewals.
- For contracts with a total period of three (3) years or less, including renewals, a cashier's check may be substituted for a performance bond.

HH. FORCE MAJEURE

- Neither party shall be responsible for failures to perform due to a natural disaster or other similar event out of the control and not the fault of the affected party.
- A Force Majeure Event does not constitute breach of contract.
- Labor disputes are not considered Force Majeure Events.
- Burden of proof rests upon the Contractor.

II. PROHIBITION AGAINST ADVANCE PAYMENT – agency decision required

- Payment shall not be made until deliverables are received and accepted by the State.

JJ. PAYMENT

- Payment will be made according to the Nebraska Prompt Payment Act (Neb. Rev. Stat. § 81-2401 through § 81-2408).
- The State may require the Contractor to accept payment via electronic means, such as ACH.
- In no event shall the State be responsible for or liable to pay for any services provided by the Contractor prior to the effective date of the fully executed contract. Contractor waives all claims or actions for any such services.

KK. INVOICES – agency decision required

- The Contractor is required to submit detailed invoices that match deliverables identified on the contract.
- Agencies may insert specific invoicing requirements here, such as a mailing address.
- No invoice terms or conditions contained in an invoice, but not contained in the contract itself will be binding upon the State nor alters or amends the contract in any way.

LL. RIGHT TO AUDIT

- The Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit the contract.
- The State shall have the right to audit, examine, and make copies or extracts from the Contractor's documents pertaining to or resulting from the contract.
- Contractor shall maintain all pertinent records during the contract and for five (5) years after completion of the contract, and shall make them available to the State upon the State's reasonable request at the expense of the Contractor.
- The cost of any audit conducted under this section shall be borne by the State unless specifically stipulated otherwise, unless certain exemption criteria are met, or unless the findings require compensation to the State from the Contractor.

MM. TAXES

- The State is not required to pay taxes of any kind.
- The Contractor is responsible for any tax due on any of the Contractor's equipment which may be installed in or on State-owned facilities or property.

NN. INSPECTION AND APPROVAL

- The State shall conduct a final inspection and approval of all work under the contract.
- The State has the right to enter any premises where contract work is being performed and to inspect, monitor, and/or evaluate the work being performed.

OO. CHANGES IN SCOPE/CHANGE ORDERS

- The State may at any time change the general scope of the contract, upon written notice to the Contractor.
- The State may, at any time, in writing:
 - ✓ Make alterations in the terms of work as shown in the specifications
 - ✓ Require the performance of extra work
 - ✓ Decrease the quantity of work
 - ✓ Make other such changes as the State may find necessary or desirable
- Compensation for changes in work shall be determined by the applicable unit price of the Contractor's proposal.

PP. SEVERABILITY

- If any term or condition of the contract is declared invalid or illegal that does not automatically carry to the remaining terms and conditions of the contract.

QQ. CONFIDENTIALITY

- All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
- All confidential information shall be handled in accordance with applicable Federal and State law and ethical standards.
- The Contractor must immediately notify the State of any breach of confidentiality.
- The Contractor must comply with the Privacy Act of 1974.

RR. PROPRIETARY INFORMATION

- Data and documentation contained in a proposal become property of the State of Nebraska and upon opening, become public information.
- The Bidder may identify certain information to withhold from the public, provided it falls within the definition of proprietary information in Nebraska's public record statutes.
- All proprietary information must be submitted in a SEPARATE SEALED package clearly identified as proprietary.
- A Bidder may not mark its entire proposal proprietary.
- Cost Proposals will **never** be considered proprietary.
- A Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.
- **IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by law, WILL

BE POSTED FOR PUBLIC VIEWING. Bidders are required to waive copyrights' from privilege for posting on the public website.

SS. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING

- By submitting the proposal, Bidder certifies that it has not participated in any collusive activities and that it has not divulged any of its information for purposes of colluding with regard to bid price or cost.

TT. STATEMENT OF NON-COLLUSION

- Bidder submits the proposal independently and without collusion with, and without any direct or indirect agreement or understanding or planned common course of action with any person, firm, corporation, bidder, contractor of materials, supplies, equipment or services described in the RFP.
- Bidder shall not collude with, or attempt to collude with any state officials, employees or agents or evaluators or any person involved in the RFP.
- Bidder shall not attempt to restrain free competition or limit independent bidding or create unfair advantage.
- If it is determined that collusion occurred, the State has the right to reject a bid or terminate the contract and impose further administrative sanctions.

UU. PRICES – agency input required

- Prices shall remain fixed from date of submission of proposals through date of contract award.
- Agencies may want to include some mechanism for price increase – either asking for a price for each year/renewal, or permitting up to a % of increase with a cap on the amount of the increase.
- Contractor confirms that prices are not higher and/or as low for the State than for any other client, and that price changes shall be applied equally to the State as to all other clients.
- Contractor affirms that it did not participate in price fixing or price discrimination.
- No price increase through the life of the contract provided for in the contract terms and conditions.

VV. BEST AND FINAL OFFER

- The State will compile the scores and award to the highest scoring responsive and responsible bidder.
- In some cases, the State may request a best and final cost proposal from the highest scoring bidder(s).
- Best and Final Offer will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each bidder requested to submit a BAFO.
- Bidders should provide their best offer with the original proposal and not expect that the State will request a best and final offer.

WW. ETHICS IN PUBLIC CONTRACTING

- No bidder shall pay or offer gifts to any officer, legislator, State employee or evaluator.
- **Bidders shall not use lobbyists, attorneys, political activists, or consultants to secure the contract or attempt to influence the procurement process.**

- Bidders are not prohibited from seeking expert advice or legal counsel.
- Bidders found in non-compliance with this subsection may be disqualified from the selection process or forfeit the contract award.

XX. INDEMNIFICATION

- General – The Contractor holds the State harmless in general.
- Intellectual Property – The Contractor holds the State harmless in regards to patents, copyrights, trademarks, third party confidential information, Licensed Software, etc.
- Personnel – The Contractor holds the State harmless against claims from its employees.

YY. NEBRASKA TECHNOLOGY ACCESS STANDARDS

- Contractor shall review the Nebraska Technology Access Standards and ensure that it is in compliance or will comply with the applicable standards. Refer to website at: <http://nitc.nebraska.gov/standards/2-201.html>

ZZ. ANTITRUST

- The Contractor assigns to the State any and all claims for overcharges due to antitrust violations.

AAA. DISASTER RECOVERY/BACK UP PLAN

- The Contractor shall have a disaster recovery/back-up plan and shall provide a copy to the State, regarding how to continue providing services in the event of a disaster.

BBB. TIME IS OF THE ESSENCE

- Time is of the essence in this contract.
- The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations under the contract.

CCC. RECYCLING

- Preference is given to recycled/recyclable materials when applicable.

DDD. DRUG POLICY

- Contractor certifies it maintains a drug-free workplace.
- Contractor shall supply a copy of its drug-free workplace policy to the State at any time upon the State's request.

EEE. EMPLOYEE WORK ELIGIBILITY STATUS

- The Contractor must use a federal immigration verification system to determine the work eligibility of employees physically performing services in the State of Nebraska.
- E-Verify or an equivalent program designated by the US Department of Homeland Security shall be used.
- **For individuals or sole proprietorships:**
 - ✓ Contractor must complete the United States Citizenship Attestation Form. This form should be submitted with the proposal response.

- ✓ If a qualified alien, Contractor shall provide documentation to verify its lawful presence in the US via the Systematic Alien Verification for Entitlements (SAVE) Program.
- ✓ Contractor understands that lawful presence in the US is required and failure to verify this may result in disqualification or contract termination.

FFF. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY

- By signing the RFP, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency from participating in transactions.
- The Contractor shall immediately notify the State if it becomes disbarred during the course of the contract.
- The Department may immediately terminate the contract if the Contractor becomes debarred by the State providing written notice to the Contractor.
- The Contractor certifies that it has not had a contract with the State terminated early by the State. If it has, it must provide the contract number and a detailed explanation as to why it was terminated early. Prior early termination may be grounds for rejecting the proposal.

GGG. POLITICAL SUB-DIVISIONS

- The Contractor may extend the contract pricing to political sub-divisions provided the Terms and Conditions are the same.
- The State is in no way liable for the purchases of any political sub-divisions or public entities under the contract.

III. OFFICE OF PUBLIC COUNSEL

- Under terms of a contract and on behalf of the State health and human service to individuals, service delivery; service coordination or in case management, contracts shall submit to the jurisdiction of the Office of Public Counsel per statute § 81-8240.
- This term survives the termination of the contract.
- Does not apply if contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.

JJJ. LONG-TERM OMBUDSMAN

- If contractor is a long-term care facility, they are subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.
- Contractor shall comply with the act.
- This term survives termination of the contract.

KKK. LICENSE/SERVICE OR OTHER AGREEMENT

- If contractor has any other licenses or agreements to be considered, these must be submitted with proposal response.
- State may reject any such license or service agreement if received after proposal opening date and time.
- Any terms and conditions in any such agreement must not conflict with or alter State's Terms and Conditions as contained in the RFP.
- This term does not apply to the third party license or service agreement.

SECTION IV. PROJECT DESCRIPTION AND SCOPE OF WORK

This is a suggested outline to help agencies organize and describe their specific project requirements. This may be retracted or expanded depending on each agency's needs. This section delineates in detail what the agency is seeking from a contractor and the specifications of the project.

A. PROJECT OVERVIEW

- Explain the reason/need for the service and/or give a general overview of the project.
- Give details that pertain specifically to the project; it is not necessary to provide the entire history of the agency. Agency should provide enough detailed information so vendors have a clear understanding of the agency needs and requirements.

B. UTILITIES & RENT (Agency to describe)

C. OPERATION MANAGEMENT PLAN (Agency to describe)

D. BUSINESS REQUIREMENTS (Agency to describe)

E. CONTRACTOR RESPONSIBILITIES (Agency to describe)

F. ALTERNATIVE PROPOSALS (Agency to describe)

G. SCOPE OF WORK (Agency to describe)

- Bidders must submit proposed menus or products with pricing in order for SPB to conduct a Product Price Comparability Determination to evaluate preference under Neb. Rev. Stat. § 71-8611.
- All bidders must submit this information, not just those claiming preference.
- For vending services, an agency should develop a comprehensive acceptable product list for each type of vending product.

Tips for Completing Section IV

- Strive for clarity – use plain, simple language.
- Use laymen’s terms – if at all possible, avoid industry-specific jargon.
- Use “will,” “shall,” and “must” to denote required items.
- Do not use words such as “prefer” or “desire.”
- State exactly what is required.
- Include optional items clearly identified as “Optional”, with a separate cost category (that will not be evaluated).
- Include as much detail as possible – this helps avoid a large quantity questions during the question and answer period.
- Don’t make bidders reinvent the wheel – give as much pertinent data as possible.
- Be careful to avoid unnecessarily restrictive specifications that would unfairly eliminate some potential bidders.
- Look ahead to the entire contract period. Anticipate potential pitfalls, technological advancements, and legislative mandates to the extent possible, and try to include consideration for those possibilities.
- Consider exit strategies:
 - ✓ What will happen in the event the contract is terminated early?
 - ✓ How does the natural conclusion of the contract happen?
 - ✓ Is there a transition period that needs to be accounted for?
 - ✓ Is there any transfer of data requirements?
- Clearly define the deliverables and consider how the contract will be paid:
 - ✓ Are there one-time fees?
 - ✓ Are there recurring monthly fees?
 - ✓ Is there a list of deliverables that will each have lump sum costs?
- Address the level of interaction with the contractor and the acceptance of deliverables.
 - ✓ How will the Contractor know that a deliverable has been approved and may be invoiced?
- Address performance standards expected.

SECTION V. PROPOSAL INSTRUCTIONS

This section contains the mandatory requirements that must be met by bidders in preparing the Technical and Payment Proposal.

A. PROPOSAL SUBMISSION

- **Request for Proposal form**
 - ✓ Bidder guarantees compliance with the provisions and agrees to the Terms and Conditions unless otherwise agreed to, and maintains a drug-free workplace.
 - ✓ Must be signed and returned by the stated date and time to be considered for award. Any proposal with an unsigned form or a form signed in something other than ink (i.e., pencil) will be declared invalid and will not be evaluated.
- **Corporate Overview** – shall contain the following sections with responses:
 - ✓ **Bidder Identification and Information** – full company/corporate name, address, entity organization, State of incorporation/organization, year in which entity began to do business, and whether name and/or form of organization has changed since first organized.
 - ✓ **Financial Statements**
 - If publicly held, bidder must provide most recent audited financial reports and statements, and name, address, and telephone number of the fiscally responsible representative of the bidder's financial or banking organization.
 - If not publicly held, bidder must provide the same information as would be required of a publicly held organization or a description on the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information to formulate determination regarding stability and financial strength of the organization as well as a banking reference.
 - Bidder must disclose any pending or potential judgments, litigation, financial reversals, etc., or state that none are known to exist.
 - ✓ **Change of Ownership** – bidder must disclose any planned or anticipated change of ownership or control of the company in the coming twelve (12) months.
 - ✓ **Office Location** – bidder must identify the physical location of the office responsible for contract performance.
 - ✓ **Relationships with the State** – bidder shall describe any dealings with the State, present or prior, or state that no such relationship exist/have existed.
 - ✓ **Bidder's Employee Relations to State** – bidder shall disclose if any party named in the proposal was an employee of the State along with pertinent details of any such employment.
 - ✓ **Contract Performance** – bidder shall disclose any contract termination for default by bidder or any named subcontractor, or declare that no such event has taken place. Bidder shall also disclose any early contract termination for any reason (convenience, non-performance, loss of appropriations, etc.).
 - ✓ **Summary of Bidder's Corporate Experience** – bidder shall provide a list of all and a narrative description of not more than three (3) projects that compare in size, scope, and complexity with the project described in the RFP. Contractor and subcontractor experience must be listed separately.
 - ✓ **Summary of Bidder's Proposed Personnel/Management Approach** – bidder shall identify specific professionals who will be assigned to the

- contract and provide resumes. Bidder must present detailed description of proposed approach to management of project.
- ✓ **Subcontractors** – bidder must identify any subcontractor it intends to utilize during the execution of the contract.
 - **Technical Approach** – the Technical Proposal must address the details provided in Section IV and any attachments, and must demonstrate/include the following:
 - ✓ understanding of the cafeteria/vending service needs;
 - ✓ proposed approach, including a general description of the type of food service proposed;
 - ✓ a detailed plan that includes, among other items, proposed hours, staffing, menu, quality of product, portions, variety, prices, and catering options;
 - ✓ alternatives and unique or innovative ideas to provide quality food service; and
 - ✓ exceptions or exemptions requested from the bid specifications.

B. PAYMENT PROPOSAL REQUIREMENTS

- Bidder must submit a payment proposal. Payment proposals may not be marked confidential or proprietary.
- Payment proposal must include the total rent to be paid to the State.
- The State reserves the right to ask for clarification on any point of the Payment Proposal.