

Vendor Manual: How to do Business With the State of Nebraska

State Purchasing Bureau

2015



**This manual was written and prepared by
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Nothing contained herein shall be construed to amend or override any statute, rule, regulation, policy, or procedure of the State of Nebraska. SPB reserves the right to modify this manual without prior notice and without issuance of such modifications to all holders of this manual.

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
PUBLIC PROCUREMENT	1
GENERAL INFORMATION	4
VENDOR REGISTRATION	6
GOODS PROCUREMENT PROCESSES	7
I. AUTHORITY AND RESPONSIBILITY	7
II. PROCUREMENT METHODS	7
A. Competitive Formal Sealed Bids (Invitation to Bid (ITB) for One Time Purchase and ITB for Contract)	7
B. Informal Competitive Bids	8
C. Unrestricted Open Market Purchases (Direct Purchase Authority)	8
D. Federal General Services Administration (GSA) Contracts	8
E. Multi-State Cooperative Purchasing Contracts	9
F. University Of Nebraska Purchase Agreements	9
G. Sole Source Purchases	9
H. Emergency Purchases	9
III. BIDDER INSTRUCTIONS FOR PROVIDING A RESPONSE TO AN ITB	9
A. ITB Documents	9
B. Completion of the ITB Form	9
C. Glossary of Terms	10
D. Section I – Scope of the ITB	10
E. Section II – Procurement Procedures	11
F. Section III – Terms and Conditions	15
G. Section IV. Scope of Work	25
H. Section V. Invitation to Bid – Technical Specifications	25
I. Form A, Vendor Contact Sheet	26
J. Form B, Notification of Intent to Attend Pre-Proposal Conference	26
IV. ITB PROCESS	26
A. Question and Answer Period	26
B. Pre-Bid Conference/Site Visit (Optional)	26
C. Submission of Invitation to Bid Response	26
D. Bid Opening	27
E. Secretary of State/Tax Commissioner Registration Requirements	27
F. Tie Bids and Preference	27
G. Mandatory Requirements	28
H. Bid Tabulations	29
V. AWARD	29
VI. PROTEST/GRIEVANCE	30
VII. VENDOR PERFORMANCE REPORTS	30

SERVICES PROCUREMENT PROCESSES.....	32
I. AUTHORITY AND RESPONSIBILITY	32
II. PROCUREMENT METHODS	32
A. Request for Information (RFI)	32
B. Request for Proposal (RFP)	32
C. Multi-State Cooperative Purchasing Contracts	33
D. Deviation from Contractual Services.....	33
This method of procurement may be utilized under the conditions listed below.....	33
III. BIDDER INSTRUCTIONS FOR PREPARING A RESPONSE TO AN RFI	33
A. RFI Documents	33
B. Completion of the RFI Form	33
C. Section I – Scope of the RFI.....	34
D. Section II – RFI Response Procedures.....	34
E. Section III – Project Description and Scope of Work.....	35
F. Form A, Vendor Contact Sheet.....	35
IV. BIDDER INSTRUCTIONS FOR PROVIDING A RESPONSE TO AN RFP	35
A. RFP Documents	35
B. Completion of the RFP Form	36
C. Glossary of Terms	36
D. Section I – Scope of the RFP	36
E. Section II – Procurement Procedures	37
F. Section III – Terms and Conditions.....	41
G. Section IV – Project Description and Scope of Work	52
H. Section V – Proposal Instructions.....	53
I. Form A, Vendor Contact Sheet.....	56
J. Form B, Notification of Intent to Attend Pre-Proposal Conference	56
K. Form C, Notification of Intent to Bid	56
V. RFP PROCESS	57
VI. RFP AWARD/CONTRACT FINALIZATION PERIOD	59
VII. PROTEST/GRIEVANCE	59
VIII. VENDOR PERFORMANCE REPORTS.....	59
COMMON MISTAKES MADE BY BIDDERS WHEN PREPARING A BID/PROPOSAL RESPONSE.....	61

PUBLIC PROCUREMENT

INTRODUCTION

This manual is intended to familiarize vendors with the State of Nebraska's (the State) procurement processes and encourage vendors to bid on the State of Nebraska's procurements. The State Purchasing Bureau (SPB) developed this manual to provide general guidelines to assist vendors wishing to do business with the State.

Laws and processes for the procurement of goods and services are different. Therefore, the manual has subsections; one for the goods process and one for the services processes.

Vendors are encouraged to contact SPB with any questions regarding the procurement process.

Procurement is a major function of the State. Processes have been developed to ensure maximum competition and to ensure fair and equitable treatment of all participants in the procurement process.

PURPOSE AND POLICIES

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 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:

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

ETHICS

Neb. Rev. Stat. § 81-161.05 prohibits AS Materiel Division employees from accepting gifts or anything of value from vendors. The AS Materiel Division requests vendor's compliance with adhering to this statutory requirement.

NEBRASKA REVISED STATUTES

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 public 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
73-204	Contingent fee contract; executed by constitutional agency; 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
81-145	Materiel division; terms, defined
81-153	Materiel division; powers and duties; enumerated
81-154	Materiel division; standard specifications; establish and maintain; cooperation of using agencies; competitive bids
81-154.01	Materiel division; University of Nebraska; purchase agreements
81-159	Requisitions by using agency; procedures used by materiel division
81-161	Competitive bids; award to lowest responsible bidder; elements considered; energy star certified appliances
81-161.01	Competitive bids; time requirements; waiver
81-161.02	Competitive bids; rejection by materiel division; grounds; new bids
81-161.03	Direct purchases, contracts, or leases; approval required, when; report required; materiel division duties; Department of Correctional Services; purchases authorized
81-161.05	Materiel division or employee; financial or beneficial personal interest forbidden; gifts and rebates prohibited; violations; penalty
81-162	Purchases or leases; form of contract
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-	Prompt Payment Act
2408			
83-144	–	83-152	Correctional Services – use of made goods by agencies
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

GENERAL INFORMATION

MISSION

The mission of the Materiel Division is to provide value added service to all State entities through effective teamwork and communication, and to fulfill needs in a professional, cost effective, responsive, and timely manner and in accordance with State statutes.

SPB is a branch of the Materiel Division.

LOCATION AND ADDRESS

Street Address:

State Purchasing Bureau
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Lincoln NE 68508

Telephone: (402) 471-6500

Fax: (402) 471-2089

Website: <http://das.nebraska.gov/materiel/purchasing.html>

STATE PURCHASING BUREAU WEBSITE

The SPB website contains much useful information and is updated daily. Vendors are encouraged to visit the site often at <http://das.nebraska.gov/materiel/purchasing.html>

If you do not have access to the internet, you may contact our office at the address shown on the cover page of this manual or telephone number (402) 471-6500.

The SPB website includes links to other divisions of Materiel:

- ✓ Mail Center
- ✓ Office Supply Bureau
- ✓ Printing Services
- ✓ Recycling
- ✓ Surplus Property

The SPB website also includes the following:

- Purchasing
 - ✓ Vendor Information
 - ✓ State Agencies
 - ✓ SPB Issued Contracts
- Tools
 - ✓ Purchasing Manual
 - ✓ NASPO
 - ✓ Staff
- Other Links
 - ✓ AS Home
 - ✓ Governor Heineman
- Vendors

- ✓ Information
- ✓ Bid Opportunities
 - Announcements & Notes
 - Commodity Bid Opportunities
 - Invitations to Bid for Commodity One-Time Purchases
 - Invitations to Bid for Commodity Contracts
 - Services Bid Opportunities
 - Requests for Proposals – Current Bid Opportunities
 - Requests for Proposals – Proposals that have Opened
 - Agency Processed Bid Opportunities
 - Requests for Proposals – Current Bid Opportunities
 - Requests for Proposals – Proposals that have Opened
 - Requests for Information
 - Requests for Qualification
 - WSCA-NASPO Cooperative Bid Opportunities
 - NASPO Website – Current Bid Opportunities
- ✓ Bid Tabulation
 - Bid Tabulation Search Database
- ✓ Pre-Solicitation Notices
- ✓ VMS Staff Services Contract
- ✓ Protest/Grievance Process
- State Agencies
 - ✓ Information & Forms
 - EnterpriseOne & Other General Information
 - Procurement for Commodities/Goods
 - Procurement for Services
 - ✓ Unrestricted Open Market Purchase Authority Letter
 - ✓ Vehicle Purchases OK Document Type
- State Purchasing Bureau Issued Contracts
 - ✓ Contract Search
- Office Supplies
 - ✓ Office Supply Bureau
- Public Records Request
- Bio-based Information
- Purchasing Reports

VENDOR REGISTRATION

All individuals/firms interested in bidding on the requirements for goods and services for the State may register for inclusion on the vendors list with SPB. Any firm/individual may request placement on the vendors list with the SPB by submitting a "Vendor Application" form and completion of a W-9. Application and W-9 forms may be obtained from the SPB website. Any firm or individual bidding on State of Nebraska Request for Proposals (RFP) for services and/or Invitation to Bid (ITB) for commodities/goods does not need to be registered as a vendor; however an awarded bidder(s) will be required to complete a Vendor Application and W-9 form prior to issuance of any contract or purchase order award. The awarded bidder must be set up in the State's Payroll and Financial System (PFC) in order for payment to be made.

Vendors are solely responsible for the accuracy of their information and for keeping the information current. Any changes or additions, such as a change of address or an additional NIGP code(s) (see below for definition) to be included, may be made at any time.

Neither the State of Nebraska nor its employees assume any responsibility for the accuracy or completeness of vendor information. Failure to keep company information current can result in removal from the State's vendor List.

COMMODITY/SERVICE CODE

SPB uses the National Institute of Government Purchasing (NIGP) commodity/service codes as the method for registering vendors under different categories. The NIGP list is included as part of the vendor application process. Completion of this portion of the application allows the State to develop a database from which a list of potential bidders may be generated.

INVITATION TO BID/REQUEST FOR PROPOSAL NOTIFICATION

A vendor who has been placed on the bidders list may receive periodic solicitation letters for ITBs and RFPs. However, due to the volume of vendors registered under each code, it is not fiscally feasible to send letters to all vendors. A random selection of vendors is selected to receive these notices.

ITBs valued in excess of \$24,999.99 are advertised on the SPB website. RFPs valued at \$50,000 and over are advertised on the SPB website, and RFPs are advertised in a newspaper with statewide circulation. Vendors are encouraged to view the SPB website on a periodic basis for up-to-date information regarding ITBs and RFPs. SPB will not be responsible to ensure a vendor receives an ITB/RFP solicitation letter.

GOODS PROCUREMENT PROCESSES

I. AUTHORITY AND RESPONSIBILITY

Neb. Rev. Stat. § 81-1118(5) (a-c) gives the State Purchasing Bureau the responsibility for all purchases by all State agencies other than the University of Nebraska. The Materiel Division shall administer the public notice and bidding procedures and any other areas designated by the Director of Administrative Services to carry out the lease or purchase of personal property. All purchases of and contracts for materials, supplies, or equipment, and leases of personal property shall be made in the following manner except in emergencies approved by the Governor.

II. PROCUREMENT METHODS

A. Competitive Formal Sealed Bids (Invitation to Bid (ITB) for One Time Purchase and ITB for Contract)

The formal sealed competitive bid process is required for non-contract purchases in excess of \$24,999.99. A minimum of fifteen (15) days shall elapse between the time formal bids are advertised and the time of the bid opening. In some instances there may be time constraints, and the bid time may be reduced. However, SPB strives to minimize these instances. The bid time requirement may be waived by the AS Materiel Division Administrator upon a showing by the using agency of an emergency, sole or specialized source, or other unique requirement. These are processed through SPB if in excess of \$24,999.99. All competitive formal sealed bid goods purchases are processed through SPB.

1. Specifications are to be written to encourage competition from three or more manufacturers, vendors, or suppliers.
2. When the personal property exceeds \$25,000 and bids cannot be obtained from three bidders, the Materiel Division will review the specifications with the agency.
3. If it is determined by the Materiel Division, because of the special nature of the personal property sought to be purchased or leased or for any other reason, that the specification shall remain as written, bids may be accepted from less than three (3) bidders with the approval of the Governor or his/her designated representative.

The ITB is a solicitation process for procuring goods by reviewing bids against specifications and terms and conditions, and awarding to the lowest responsible bidder who is technically compliant with specifications. In determining the lowest responsible bidder, in addition to price, other elements shall be given consideration. These are provided for in Neb. Rev. Stat. § 81-161.

ITBs for one time purchases are used for individual procurements for a specific State agency. A firm, fixed price is required for a set quantity, usually with a single delivery date. A purchase order will be issued to the successful bidder.

Firm, fixed price(s) are required. Contracts are established for commodities/goods that are used in volume by State agencies. The contracts are awarded for a defined period of time, usually one year, with the option to renew for additional periods of time or

extension of the contract period beyond the termination date when mutually agreeable with the vendor and the State of Nebraska. The State is not obligated to renew a contract. The State is not required to give notice of intent to not renew a contract. The State will only give notice of intent to exercise renewal options. This occurs via written notification to the vendor.

Contracts for purchases or leases may be made for any of the following purposes:

1. For the furnishing of specific personal property at specific prices;
2. For the furnishing of personal property, according to the specifications, at a fixed rate for a minimum quantity, subject to furnishing a greater quantity at the same or a lesser rate; or
3. For the furnishing of personal property, according to the specifications without a stated minimum quantity, at a rate stated (commonly known as a price agreement).

The form of the contract to be used in any case is subject to discretion of SPB.

1. Contracts are used on an “as needed” basis and impose no specific quantity usage obligation on the State.
2. Receipt of the contract by a successful bidder does not authorize delivery of the commodities/goods.
3. Delivery is authorized when a purchase order is issued by a State agency.
4. Nebraska political subdivisions may use State contracts unless specifically prohibited by terms of the contract.

B. Informal Competitive Bids

Informal competitive bids are used for purchases valued equal to or exceeding \$10,000.00 but less than \$25,000.00. All informal non-contract competitive purchases are processed through SPB. Agencies may solicit bids by phone, fax, e-mail, mail, or the internet, and shall submit documentation to SPB for review and approval.

C. Unrestricted Open Market Purchases (Direct Purchase Authority)

Direct purchase authority may, by written order of SPB, be granted for purchases of less than \$10,000.00. SPB may grant additional authority to permit agencies to purchase directly from a vendor whenever it appears to the satisfaction of SPB that, because of the unique nature of the personal property, the price in connection therewith, the quantity to be purchased, the location of the using agency, the time of and use of the personal property, or any other circumstances, the interest of the state will be better served by purchasing directly rather than through SPB. (Refer to Unrestricted Open Market Purchase Authority Letter which may be found on the SPB website at <http://das.nebraska.gov/materiel/purchasing.html>). This letter is updated on an annual basis.

D. Federal General Services Administration (GSA) Contracts

SPB has statutory authority to procure from GSA contracts for the purchase of items without competitive bidding when the price has been established by the GSA and is in the best interest of the State. Any requests for GSA purchases \$10,000.00 and above must be processed through SPB.

E. Multi-State Cooperative Purchasing Contracts

Multi-state cooperative purchasing contracts may be used for the purchase of items without competitive bidding by participation in a contract competitively bid by another state or group of states, a group of states and any political subdivisions of any other state, or a cooperative purchasing organization on behalf of a group of states. Any request for multi-state cooperative contract participation or purchases must be processed through SPB.

F. University Of Nebraska Purchase Agreements

University of Nebraska purchase agreements (contracts) may be used by SPB upon a finding by SPB that the use of such agreement would be in the best interest of the State. Any request for purchasing using University of Nebraska purchasing agreements must be processed through SPB.

G. Sole Source Purchases

Sole source purchases are used for the procurement of commodities/goods available from only one source due to the unique nature of the requirement, its supplier, or market conditions. SPB is responsible for all sole source goods procurements \$10,000 and over.

H. Emergency Purchases

Emergency purchases are used for the procurement of commodities/goods in a situation which endangers lives, property, or the continuation of a vital program and which can be rectified only by immediate on-the-spot purchase or rental of equipment, supplies and materials. All emergency purchases must be pre-approved by SPB prior to making the purchase.

III. BIDDER INSTRUCTIONS FOR PROVIDING A RESPONSE TO AN ITB

The following is intended to assist bidders in preparing and submitting ITB document to SPB.

A. ITB Documents

Thoroughly read and understand the bid documents including all specifications, terms and condition to the ITB. It is the responsibility of the bidder to check the SPB website for all information relevant to the ITB and to include any addenda and/or amendments issued prior to the ITB opening date. The SPB website address is:
<http://das.nebraska.gov/materiel/purchasing.html>

B. Completion of the ITB Form

- a. Bidder must indicate whether it is a Nebraska contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within the State of Nebraska for at least the last six (6) months immediately preceding the posting date of the ITB.
- b. Bidder must certify if it is a resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. § 73-107 and wish to have a preference, if applicable, considered in the award of the ITB. Bidder must indicate on the ITB form whether they are

requesting this preference. Failure to indicate the preference will be cause to disqualify bidder for any preference allowance.

- c. Bidder should ensure that the correct company name and address is listed on the Invitation to Bid form.
- d. Indicate a telephone number in the space provided and a fax number, if applicable.
- e. Bidder should check their ITB response to verify they have submitted all the requested information as required in the ITB.
- f. Submit ITB response in a sealed envelope or any other type of container. The outside of the envelope should indicate the ITB number and opening date. The State is not responsible for providing materials to the bidder to seal their bids for packaging. This is the responsibility of the vendor.
- g. **Bids must be signed in ink** by a person authorized to bind the bidder.
- h. Submit the ITB response by the date, time, and location as identified in the Schedule of Events. Late proposal responses **will not** be accepted for any reason. Bidder should ensure they are allowing enough time for mail delivery services in order for their bid response to be delivered by the date and time indicated in the ITB.

C. Glossary of Terms

1. This section includes terms and definitions that are used in the ITB to assist bidders in understanding State terminology.

D. Section I – Scope of the ITB

1. This section provides a brief description of the commodity being requested.
2. Schedule of Events
 - a. ITB's include a Schedule of Events. The Schedule of Events section provides bidders with a schedule of important dates that occur throughout the procurement process.
 - b. Pertinent Dates may include, but is not limited to:
 - i. Release of ITB
 - ii. Last day to submit "Notification of Intent to Attend Pre-Bid Conference"
 - iii. Last day to submit written questions
 - iv. Mandatory Pre-Bid Conference
 - v. Last day to submit written questions after Pre-Bid Conference
 - vi. State responds to written questions through an addendum and/or amendment to be posted on the SPB website
 - vii. Bid opening date, time and location
 - viii. Review for conformance of mandatory requirements
 - ix. Review period
 - x. Post "Letter of Intent to Award" on SPB website
 - xi. Contract finalization period
 - xii. Contract award
 - xiii. Contract start date
 - c. It is the bidder's responsibility to ensure its bid is delivered at the designated date, time, and place of the bid opening. All bids will be time and date stamped upon receipt by SPB, and this shall be the official time and date of receipt. Bids received after the date and time of the bid

opening will be considered late bids and, therefore invalid, and will be returned to the bidder unopened. SPB is not responsible for late bids or lost requests due to mail service inadequacies, traffic, or any other reason.

E. Section II – Procurement Procedures

1. Office and Contact Person
 - a. Sole point of contact, unless otherwise specified in the ITB
2. General Information – includes brief description of the service
3. Communication with State Staff and Evaluators
 - a. Vendors are cautioned to follow the procedure carefully, so as not to jeopardize the response to the ITB
 - b. Vendors shall not have contact with the agency staff and/or evaluators during the bid process
 - c. Vendor's bid may be rejected if the communication limits are not strictly observed
4. Written Questions and Answers
 - a. This is the way for vendors to communicate any questions the vendor may have regarding the ITB. The State will respond in writing via an addendum to the ITB so that all vendors are provided the same information at the time.
 - b. Any questions regarding the ITB must be directed to SPB, to the attention of the Buyer. It is preferred that questions be sent via email to: as.materielpurchasing@nebraska.gov
Questions may also be sent by facsimile to 402-471-2089. Vendor should utilize the format provided in the ITB to submit questions.
 - c. The State will respond to questions received by the date and time indicated in the Schedule of Events.
 - d. All communication should be directed to SPB, not the using agency. A bidder's ITB response may be rejected if the communication procedure is not strictly followed.
5. Pre-Bid Conference
 - a. The ITB may require mandatory attendance at a pre-bid conference. Read the ITB carefully. If attendance is mandatory at the pre-bid conference, bidder must have a representative in attendance in order to submit an ITB response. Failure to have someone in attendance at a mandatory pre-bid conference will be grounds for rejecting a bidder's bid. A sign-in sheet will be provided at the pre-bid conference for vendors to sign in. At the conclusion of the pre-bid conference, the sign-sheet will be posted to the SPB website at <http://das.nebraska.gov/materiel/purchasing.html>
 - b. Notification of Intent to Attend Mandatory Pre-Bid Conference
 - i. Notification of attendance at the pre-bid conference may be requested. The form should be filled out in its entirety and returned no later than the date provided for in the Schedule of Events. This assists the State in the planning for the pre-bid conference.
6. Submission of Bids

- a. This section provides information on how bidders are to provide the information to the State. Failure to follow the instructions may disqualify the bidder from moving forward in the procurement process.
7. Important Notice Language
- a. 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 must waive copyrights privilege for posting to the public website.
8. Discounts
- a. Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than thirty (30) days will not be considered as part of the bid. Cash discount periods will be computed from the date of receipt of a properly executed claim voucher or the date of completion of delivery of all items in a satisfactory condition, whichever is later.
9. Price Adjustments During Contract Term
- a. Any requests for price adjustments must be submitted in writing to SPB, a minimum of thirty (30) days prior to proposed effective date of increase and must show cause with supporting documentation.
 - b. Further documentation may be required by the State to authenticate the increase. Failure to supply any requested documents may be grounds to cancel the contract.
10. Payment
- a. Payment will be made by the responsible agency in accordance with the State of Nebraska Prompt Payment Act, Neb. Rev. Stat. §§ 81-2401 through 81-2408. The State may request that payment be made electronically instead of by state warrant.
11. Bid Execution
- a. Bids **must be signed in ink** by the bidder on the ITB form
 - b. All bids must be typed or in ink on the ITB form
 - c. Erasures must be initialed by the bidder in ink
12. Bid Opening
- a. Sealed bids are publically opened and bidding entities announce on the date, time, and location as shown in the Schedule of Events. Bids are available for public viewing for those present at the bid opening. After the bid opening has concluded bids are not available for viewing until the Intent to Award has been posted to the SPB website.
13. Evaluation Documents/Facsimile Submissions
- a. SPB will not accept electronic responses to an ITB for a commodity contract at any dollar amount
 - b. SPB will accept electronic responses for a commodity one-time purchase under \$25,000, but the bid cannot exceed ten pages.
14. Valid Bid Time
- a. Bids shall be firm for a minimum of sixty (60) calendar days after the opening date, unless otherwise stipulated by either party in ITB.
15. Late Bids
- a. Regardless of cause, bids not received and date/time stamped by SPB by the opening date and time will not be accepted or evaluated.
 - b. Bids will be returned to the bidder unopened, at the bidder's expense.

16. No Bid
 - a. If not submitting a bid, respond to the ITB form explaining the reasons in the space provided.
 - b. To qualify as a respondent, bidder must submit a “NO BID” and it must be received no later than the stated bid opening and time.
17. Lump Sum or All or None Bids
 - a. The State reserves the right to purchase item-by-item, by groups, or as a total when the State may benefit from so doing. Bidder may submit a bid on an “all or none” or “lump sum” basis, but should also submit a bid on an item-by-item basis.
 - b. The term “all or none” means a conditional bid which requires the purchase of all items on which bids are offered and bidder declines to accept award on individual items.
18. Rejection of Bids
 - a. The State reserves the right to reject any or all bids, wholly or in part, or to award to multiple bidders, wholly or in part.
 - b. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve a bidder’s competitive position.
 - c. All awards will be made in a manner deemed in the best interest of the State.
19. Evaluation of Bids
 - a. All bids that fulfill the mandatory requirements will be evaluated for conformance to the requested specifications. Elements that may also be considered include but are not limited to:
 - i. The ability, capacity and skill of the bidder to deliver and implement the system or project, or provide the requested goods, which meet the requirements of the ITB.
 - ii. The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
 - iii. Whether the bidder can perform the contract within the specified time frame.
 - iv. The quality of bidder performance on prior contracts
 - v. Such other information that may be secured and that has a bearing on the decision to award the contract.
 - b. Neb Rev. Stat. § 73-107 allows for a **preference for a resident disabled veteran or business located in a designated enterprise zone**. The definition of resident disabled veteran is provided for in the Invitation to Bid documents
 - i. Bidder must indicate on the ITB form whether they are seeking this preference. Failure to indicate preference will be cause to disqualify bidder for any preference allowance.
 - ii. Bidder must provide documentation substantiating allowance of preference within 10 business days of request. Failure to do so will disqualify the bidder from consideration of the preference.
20. Mandatory Requirements
 - a. Bid must be signed in Ink;
 - b. Completed Invitation to Bid document
21. Reference Checks

- a. The State reserves the right to check any reference(s) regardless of the source. The State reserves the right to use a third party to conduct reference checks.
 - b. Information to be requested and evaluated may include, but not be limited to, some or all of the following: financial stability of the company, cost and schedule estimates and accuracy, problems (poor quality deliverables, contract disputes, work stoppages, etc.), overall performance, and whether or not the reference would rehire the firm or individual.
 - c. Negative references may eliminate bidders from consideration.
- 22. Recycling**
- a. Preferences will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use.
- 23. Secretary of State/ Tax Commissioner Registration Requirements**
- a. Bidders should be authorized to do business in the State of Nebraska.
 - b. It is the bidder's responsibility to comply with the Secretary of State Registration requirements.
 - c. Any bidder who is issued an Intent to Award will be required to certify that it has so complied and produce a true and exact copy of its current (within 90 calendar days) valid Certificate of Good Standing or Letter of Good Standing, or in the case registration is not required, to provide, in writing the reason as to why none is required.
 - d. Bidders should provide the certification(s) with their bid.
- 24. Resident Bidder**
- 25. Award**
- a. 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 ITB at any time
 - b. The State reserves the right to waive any non-material deviation
 - c. Awards will be made in the manner deemed to be the best interest of the State.
 - d. The State is not obligated to award a contract.
 - e. Intent to Contract will be posted on SPB's website.
 - f. Protest/grievance procedures are available on SPB's website.
- 26. Political Subdivisions**
- a. Contractor may extend the contract pricing to political sub-divisions provided the terms and conditions are the same.
 - b. The State is in no way liable for the purchases of any political sub-divisions or public entities under the contract.
- 27. Violation of Terms and Conditions**
- a. Violations of the terms and conditions in the ITB and any resulting contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:
 - i. Rejection of a bidder's bid
 - ii. Suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

- iii. Legal action.

F. Section III – Terms and Conditions

This section of the ITB contains the terms and conditions with which the bidder, and resulting contractor, must comply. By signing the Invitation to Bid for Contractual Services Form, the bidder guarantees compliance with the provisions state in the ITB, unless otherwise agreed to, and certifies bidder maintains a drug free work place environment.

Bidders are expected to read the terms and conditions closely and provide a binding signature of intent to comply. Each subsection of the ITB contains a space for the bidder to Accept, Reject, or Reject and Provide Alternative language. Any rejections or alternatives indicated by a bidder will be reviewed during contract finalizations. However, a bidder may indicate any exception to the terms and conditions by:

- (1) Clearly identifying the term and condition subsection, and
- (2) Including an explanation of the bidder's inability to comply with such term and condition which includes a statement recommending terms and conditions the bidder would find acceptable.

Rejection in whole or in part of the terms and conditions may be cause for rejection of bidder's bid. Bidder should include completed Section III with their bid response.

1. GENERAL

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

2. DEBARMENT

- a. By signing the ITB, 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.
- b. Contractor shall immediately notify the State if it becomes disbarred during the course of the contract.
- c. The State may immediately terminate the contract if the Contractor becomes debarred by the State providing written notice to the Contractor.
- d. 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 bid.

3. SPECIFICATIONS

- a. Any manufacturer's names, trade names, brand names, information, and/or catalog numbers listed in a specification are for reference and not intended to limit competition, but will be used as the standard by which equivalent material offered will be judged.
- b. SPB will be the sole judge of equivalency. The bidder may offer any brand which meets or exceeds the specifications, excluding sole source or restrictive bid solicitations.
- c. When a specific product is required, the ITB will so state.

- d. Any item bid is to be the latest current model under standard production at the time of the order. No used or refurbished equipment will be accepted unless otherwise stated.
 - e. Bidder should indicate brand name, model, and number when requested in the ITB.
 - f. Bidders may provide more than one brand, model, and price on the same ITB form provided the brand, model, and price are easily identified and easily understood.
- 4. SAMPLES**
- a. When requested, samples shall be furnished at the bidder's expense prior to the opening of the bid, unless otherwise specified. Each sample must be labeled clearly and identify the bidders name, the ITB number, and the item number. Samples submitted must be representative of the commodity or equipment which would be delivered if awarded the bid. The State of Nebraska reserves the right to request samples even though this may not have been set forth in the ITB. Samples not destroyed in testing will be returned at bidder's expense, if requested, or will be donated to a public institution.
- 5. PERFORMANCE AND DEFAULT**
- 6. DRUG POLICY**
- a. Contractor certifies it maintains a drug-free workplace.
 - b. Contractor shall supply a copy of its drug-free workplace policy to the State at any time upon the State's request.
- 7. NE ACCESS TECHNOLOGY STANDARDS**
- a. Bidder agrees to ensure compliance with Nebraska Access Technology Standards. See website: <http://nitc.nebraska.gov/standards/2-201.html>
- 8. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/NON DISCRIMINATION**
- a. Contractor shall comply with all civil rights laws and Equal Opportunity requirements.
 - b. 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.
 - c. Breach of this provision shall be considered a breach of contract.
- 9. PERMITS, REGULATIONS, LAWS**
- 10. OWNERSHIP OF INFORMATION AND DATA**
- a. The State has unlimited right to use and/or reproduce the information and/or data developed or derived by the contractor under this contract.
 - b. 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.

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

11. INSURANCE REQUIREMENTS

- a. Work shall not begin under the contract until all required insurance has been obtained by the contractor and approved by the State.
- b. Insurance must be maintained for the life of the contract, including renewals.
- c. Contractor must ensure that a current, compliant certificate of insurance (COI) is on file with SPB at all times during the contract.
- d. 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.
- e. Contractor is responsible for any mandatory deductible payment in event of a claim.
- f. Limits and waivers are clearly defined.
- g. If Medical Malpractice coverage is required, bidder/contractor must also be and remain certified under the Nebraska Hospital-Medical Liability Act. Such qualification will be confirmed with the Nebraska Department of Insurance.
- h. Evidence of coverage (COI) shall be provided to the State before a contract can be awarded.
- i. Notice of cancellation of insurance must be provided to the State along with a new coverage binder to ensure no break in coverage.

12. COOPERATION WITH OTHER CONTRACTORS

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

13. INDEPENDENT CONTRACTOR

- a. No partnership between the contractor and the State is established by this contract.
- b. Contractor shall secure, at its own expense, the personnel needed to execute the contract.
- c. Contractor's employees have no contractual relationship with the State.
- d. 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.
- e. Employees of the contractor are not entitled to any benefit, compensation, or right from the State.

14. CONTRACTOR RESPONSIBILITY

- a. Contractor is solely responsible for executing the contract and for all promises made in its proposal.
- b. Contractor is the sole point of contact regarding the contract.
- c. 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.

15. CONTRACTOR PERSONNEL

- a. Contractor guarantees that all persons deployed under the contract are either employees or subcontractors, and are fully qualified to perform the work required.
- b. Contractor shall not change any personnel commitments made in the proposal without the specific written consent of the State. Replacement of key personnel shall be with personnel of equal or greater ability and qualifications.
- c. The State reserves the right to require the contractor to reassign or remove any contractor's employee, subcontractor, or subcontractor's employee.
- d. 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.

16. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

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

17. BEGINNING OF WORK

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

18. STATE PROPERTY

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

19. SITE RULES AND REGULATIONS

- a. Contractor and its employees, agents, and subcontractors shall comply with all site rules and regulations while on State premises.
- b. Contractor must ensure proper facility access and equipment to execute the contract.
- c. 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.

20. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

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

- 21. RIGHT TO AUDIT**
- a. Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit the contract.
 - b. The State shall have the right to audit, examine and make copies of or extracts of the contractor's documents pertaining to the contract.
 - c. 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.
 - d. 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.
- 22. DISASTER RECOVERY/BACK UP PLAN**
- a. Contractor shall have a disaster recovery/back-up plan and shall provide a copy to the State, regarding how to continue providing goods in the event of a disaster.
- 23. TIME IS OF THE ESSENCE**
- a. Time is of the essence in this contract.
 - b. 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.
- 24. CONFLICT OF INTEREST**
- a. 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 ITB.
 - b. Bidder shall not take any action or acquire any interest that presents a conflict of interest or the appearance of a conflict of appearance.
 - c. Bidder shall not knowingly employ any individual with a known conflict of interest.
- 25. BID PREPARATION COSTS**
- a. The costs for the preparation and submission of the bid and any participation in oral interviews/demonstrations are borne by the bidder. The State shall not incur any correlating costs.
- 26. ERRORS AND OMISSIONS**
- a. Bidder shall not take advantage of any error and/or omission in the ITB or resulting contract.
 - b. Bidder shall inform the State of any error and/or omission that is discovered.
- 27. ASSIGNMENT BY THE STATE OF NEBRASKA**

- a. The State reserves the right to assign the contract or any interest in the contract to another agency, board, commission, or political subdivision of the State at no cost to the State.
- 28. ASSIGNMENT BY THE CONTRACTOR**
- a. Contractor may not assign the contract or any interest in the contract to any third party without the prior written consent of the State.
- 29. GOVERNING LAW**
- a. This contract shall be governed by the laws and statutes of the State of Nebraska.
 - b. Any legal proceeding brought against the State as a result of this ITB or contract shall be brought in the State of Nebraska administrative or judicial forums as defined by law.
 - c. Contractor must be in compliance with all Nebraska statutory and regulatory law.
- 30. ATTORNEY'S FEES**
- a. Any legal action required to enforce the contract shall be at the expense of the contractor, including attorney's fees and costs, if the State is the prevailing party.
- 31. ADVERTISING**
- a. 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.
 - b. News releases require the prior written permission of the State.
- 32. NOTIFICATION**
- a. During the ITB process, all communication shall take place between the bidder's contact person identified in its bid and the Procuring Office and Contact Person identified by the State in Section II. A. of the ITB.
 - b. After the contract is awarded, notices may be made in person, by mail, by fax or by email.
 - c. Except as indicated, notices should be made in writing.
 - d. Contractor shall immediately notify the State of any delays or hindrances in the execution of the contract.
 - e. This notice does not guarantee an extension.
 - f. Failure to give such notice may result in denial of any related extension.
 - g. Either party may change its address by giving notice in writing and giving an effective date for such change.
 - h. Communication about the contractor between the contractor and individuals not authorized by the State is strictly forbidden.
- 33. EARLY TERMINATION**
- a. The State and the contractor may mutually agree to terminate the contract before the end date.
 - b. The State may terminate for any reason with thirty (30) days' notice to the contractor.

- c. The State may terminate immediately for the following reasons:
 - i. Directed by statute
 - ii. Contractor assigns the contract for benefit of a creditor, is unable to pay its debts, or has ceased operating
 - iii. A trustee or receiver of assets for the contractor is appointed by the courts
 - iv. Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to the contract by the contractor, its employees, officers, directors, or shareholders
 - v. Involuntary Title 11 action
 - vi. Voluntary Title 11 action
 - vii. Contractor intentionally discloses confidential information
 - viii. Contractor discontinues support of the deliverables
 - ix. Second or subsequent unacceptable Vendor Performance Report
 - x. Collusion on the part of the contractor

34. BREACH BY CONTRACTOR

- a. The State may terminate the contract or any part of it if the contractor fails to perform contractual obligations in a timely manner.
- b. The State may provide an opportunity for the contractor to cure the breach.
- c. 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.

35. ASSURANCES BEFORE BREACH

- a. Upon written notice by the State that a deliverable does not meet the requirements of the ITB/Contract, the contractor shall provide extra contractor resources at no additional cost to remedy the situation and to ensure that the project is not adversely affected.

36. ACCEPTANCE AND PAYMENT OF GOODS

- a. In the event the Contractor fails to provide the goods requested by the State, the State will not pay for such products until the same has been received and accepted by the State.

37. BID BOND

- a. State may choose to require a bid bond submitted with the bid, which would be released back to the bidders upon execution of awarded contract.
- b. If State does not require a bid bond, this subsection is deleted.

38. PERFORMANCE BOND

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

- 39. FORCE MAJEURE**
- a. 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.
 - b. A Force Majeure Event does not constitute a breach of contract.
 - c. Labor disputes are not considered Force Majeure Events.
 - d. Burden of proof rests upon the contractor.
- 40. PROHIBITION AGAINST ADVANCE PAYMENT**
- a. Payments shall not be made until deliverables are received and accepted by the State.
- 41. ADMINISTRATIVE FEE/REBATE**
- a. Contractor agrees to quarterly administrative fee in the form of a check.
 - b. Fee will be payable to the State for an amount equal to one percent (1%) of the net sales under the contract for each period.
 - c. Contractor agrees to provide a quarterly utilization report, reflecting new sales to the state during the associate fee period.
 - d. Report shall be in the format developed by the Lead State
- 42. REPORTS**
- a. Contractor shall provide to the State of Nebraska primary contract person quarterly utilization reports containing at least the following information pertaining to State of Nebraska Utilization.
 - i. Purchase order number
 - ii. Description
 - iii. Quantity
 - iv. Price
 - b. Reports will be in Excel format, sent quarterly to as.materielpurchasing@nebraska.gov
- 43. ADMINISTRATIVE FEE/REBATE REMITTANCE LOCATION**
- a. Administrative Fees/Rebated will be sent to the following address:
State Purchasing Bureau
C/o Central Finance, Administrative Services
1526 K Street, Suite 150
Lincoln, NE 68508
- 44. PAYMENT**
- a. Payment will be made by the responsible agency in conjunction with the State of Nebraska Prompt Payment Act (Neb. Rev. Stat. §§ 81-2401 – 81-2408). The State may request payments be made electronically instead of by State warrant.
- 45. INVOICES**
- a. Contractor is required to submit detailed invoices.
 - b. State may insert specific invoiceing requirements here, such as a mailing address.

- c. No invoice term or conditions shall be binding upon the State or change the contract in any way.
46. TAXES
- a. The State is not required to pay taxes of any kind.
 - b. Contractor is responsible for any property tax due on any of the contractor's equipment which may be installed in a State-owned facility.
47. INSPECTION AND APPROVAL
- a. The State shall conduct a final inspection and approval of all work under the contract.
 - b. 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.
48. SEVERABILITY
- a. 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.
49. CONFIDENTIALITY
- a. All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
 - b. All confidential information shall be handled in accordance with federal and State law and ethical standards.
50. PROPRIETARY INFORMATION
- a. Data and documentation contained in a proposal become property of the State of Nebraska and upon opening, become public information.
 - b. 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.
 - c. All proprietary information must be submitted in a SEPARATE, SEALED package clearly identified as proprietary.
 - d. Bidder may not mark its entire proposal proprietary.
 - e. Cost Proposals are never considered proprietary.
 - f. Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.
 - g. **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 must waive copyrights from privilege for posting to the public website.
51. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING
- a. By submitting the bid, bidder certifies that it has not participated in any collusion activities and that it has not divulged any of its information for purposes of collusion.

52. PRICES

- a. Prices shall remain fixed from date of submission of bids through date of contract award.
- b. 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.
- c. Contractor affirms that it did not participate in price fixing or price discrimination.
- d. No price increase through the life of the contract unless permitted in the contract terms.

53. ETHICS IN PUBLIC CONTRACTING

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

54. INDEMNIFICATION

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

55. ANTITRUST

- a. Contractor assigns to the State any claims for overcharges due to antitrust violations.

56. EMPLOYEE WORK ELIGIBILITY STATUS

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

57. OFFICE OF THE PUBLIC COUNSEL

- a. 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.
- b. This term survives the termination of the contract.
- c. Does not apply if contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.

58. LONG-TERM CARE OMBUDSMAN

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

59. LICENSE/SERVICE OR OTHER AGREEMENTS

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

G. Section IV. Scope of Work

This section lists out the specific needs to the Bidders for the project. The Bidder must provide the information specified in this section in the ITB.

- a. Scope
- b. Amendment
- c. Revisions

H. Section V. Invitation to Bid – Technical Specifications

This section documents the mandatory requirements that must be met by bidder in preparing their bid. Bidder must respond to each of the statements. Specifications listed in the ITB are minimum conditions that must be met in order for a bidder to qualify for the award.

- d. Bidder responses:
 - i. "YES" response means the bidder guarantees they can meet this condition.
 - ii. "NO" response means the Bidder cannot meet this condition and will not be considered.
 - iii. "NO & PROVIDE ALTERNATIVE" response should be used only with a narrative response in the NOTES/COMMENTS section explaining in detail any deviation from the bidder's ability to meet the condition, and an explanation of how this would be determined to be an acceptable alternative to meeting the condition. Alternatives must be detailed in such a way that allows such deviations to be fully evaluated. The State of

Nebraska shall determine at its sole discretion whether or not the bidder's alternative is an acceptable alternative.

I. Form A, Vendor Contact Sheet

1. This form should be completed and submitted with the ITB response. This is intended to provide the State with information on the vendor's name and address, and the specific persons who are responsible for preparation of the vendor's response.
2. Each bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

J. Form B, Notification of Intent to Attend Pre-Proposal Conference

1. Only included if a pre-bid conference is scheduled.
2. Submission may be mandatory – read requirements of ITB carefully.

IV. ITB PROCESS

A. Question and Answer Period

1. Any questions regarding the ITB must be directed to SPB, to the attention of the Buyer. It is preferred that questions be sent via e-mail to as.materielpurchasing@nebraska.gov Questions may also be sent by facsimile to 402-471-2089.
2. The State will respond to questions received by the date and time indicated in the Schedule of Events. Answers will be posted to the SPB website at: as.materielpurchasing@nebraska.gov
3. All communication should be directed to SPB, not the using agency. A bidder's ITB response may be rejected if the communication restrictions are not strictly followed.

B. Pre-Bid Conference/Site Visit (Optional)

1. Due to the complexity of some ITBs, it may be necessary to conduct a pre-bid conference or site visit. This may be an optional or mandatory conference. If mandatory, a sign-up sheet is required and those attending the pre-bid conference must sign in. Failure to do so will disqualify a bidder from responding to an ITB. The list will be posted to the SPB website after the pre-bid conference/site visit has been completed.
2. Verbal responses provided to questions during the pre-bid conference shall not be binding on the State of Nebraska.

C. Submission of Invitation to Bid Response

1. Bidder must submit one (1) completed ITB response
2. Proprietary or confidential information must be submitted properly as provided for in the ITB document
3. **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 to the public website.

4. All bids submitted become the property of the State of Nebraska and will not be returned except as provided within section "Withdrawal of Bid."
5. Fax bids will not be accepted in any dollar value for contracts or for formal sealed competitive bids estimated in value of \$25,000 and over.
6. **Withdrawal of Bid**
A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified date and time of the bid opening. If a bidder withdraws a bid, all bid documents shall remain the property of the State, unless return is requested in writing on company letterhead.
7. **No Bids**
It is not necessary to return "no bid" responses. A company will not be removed from the bid list and the bidder status will not be affected.

D. Bid Opening

1. Sealed bids are publicly opened at the date, time, and location identified in the Schedule of Events. It is the bidder's responsibility to ensure the bid is delivered on the designated date and at the designated time and place of the bid opening. Telephone/fax bids are not acceptable. A bid may not be altered after the opening of the bids.
2. Bids will be available for public viewing at the opening, and again after the Letter of Intent to Award has been posted to the SPB website.
3. Bids are not available for public viewing while under review and evaluation by SPB and the using agency.
4. **Late Bids**
All bids will be time and date stamped upon receipt by SPB, and this shall be the official time and date of receipt. Bids received after the time of the bid opening will be considered late bids, and therefore invalid, and will be returned to the bidder unopened. SPB is not responsible for late bids or lost requests due to mail service inadequacies, traffic, or other reasons.

E. Secretary of State/Tax Commissioner Registration Requirements

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

F. Tie Bids and Preference

1. A tie bid exists where two or more responsive bids from responsible bidders are identical in price and meet all the requirements set forth in the ITB document.
2. A resident bidder shall be allowed a preference against a nonresident from a state which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder's. Where the lowest responsible bid from a resident bidder is equal in all respects to one from a nonresident bidder from a state which has no preference law, the resident bidder shall be awarded the contract.

3. Bids which are equal in all respects and tied in price shall be resolved by the drawing of lots. Tie bids involving more than one Nebraska bidder shall be resolved by drawing lots among the Nebraska bidders.

G. Mandatory Requirements

1. The ITB form must be signed in ink by the bidder on the State of Nebraska's ITB form. Failure to comply with these provisions may result in the rejection of the bid.
2. Each specification contains a space for the bidder to respond to each of the specifications by providing a response of Yes, No, or No and Provide Alternative. Alternatives must be detailed in such a way that allows such deviations to be fully evaluated. The State of Nebraska shall determine at its sole discretion whether or not the bidder's alternative is acceptable.
3. There is also a Notes/Comments section for a bidder to explain in detail any deviation from the bidder's ability to meet the condition, and an explanation of how this would be determined to be an acceptable alternative to meeting the condition. Bidder may attach additional documentation to support the deviation, but still must clearly describe the benefits of the alternative.

4. Collusive Bidding

Bidder certifies that it has not participated in any collusion activities and that it has not divulged any of its information for purposes of collusion.

Bidder is submits the bid independently and without collusion and without any direct or indirect agreement or understanding or planned common course of action with another corporation, Contractor, State officials, employees, evaluators or persons involved in the bid.

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 actions.

5. **By Signing the Invitation to Bid**, the bidder agrees to the "Standard Conditions and Terms of Bid Solicitation and Offer," which are included with the ITB, unless otherwise agreed to, and is committed to provide a drug free workplace environment. 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 proceeding with awarding to the next bidder meeting specifications of the bid or rejecting all bids.
6. Violation of the terms and conditions of the invitation to bid and/or resulting contract shall be grounds for action by the State including:
 - a. Rejection of a bidder's bid response
 - b. Suspension of bidder from bidding on the State's needs for a period of time
 - c. Legal action

H. Bid Tabulations

1. Tabulations are available on the SPB website at <http://das.nebraska.gov/materiel/purchasing.html>
2. Bid files may be examined during normal working hours by appointment.
3. Bid tabulations will not be provided by telephone or facsimile.

V. AWARD

All purchases, leases, or contracts which are based on competitive bids will be awarded to the lowest responsible bidder, determined in accordance with the provisions of Neb. Rev. Stat. § 81-161, R.R.S. 1943.

The State reserves the right to reject any or all bids, wholly or in part and to waive any deviations or errors that are not material, do not invalidate the legitimacy of the bid and do not improve the bidder's competitive position.

Awards may be made line by line, for multiple lines, by groups, and/or make multiple awards. All awards will be made in a manner deemed in the best interest of the State.

An Intent to Award will be posted to the SPB website.

Contracts awarded are not exclusive to furnish the equipment or supplies, and do not preclude the State from purchasing similar items from other sources.

VI. PROTEST/GRIEVANCE

Any bidder who does not agree with an award decision may submit a grievance/protest. Grievance/Protest procedures are available on the SPB website at <http://das.nebraska.gov/materiel/purchasing.html>

VII. VENDOR PERFORMANCE REPORTS

Agencies may, at times, experience problems with late deliveries, non-deliveries, inferior product, unauthorized product substitutions, etc. These should be addressed in a timely manner. Agencies are encouraged to address the problem directly with the vendor. If an agency is unable to resolve the problem, they may request assistance from SPB. This is documented through a Vendor Performance Report.

It is recommended that the agency call the vendor to discuss the problem and then follow up in writing with a copy of the Vendor Performance Report to SPB. The agency should follow up with the vendor until the problem is resolved, or contact SPB for assistance.

When Vendor Performance Reports are used correctly, they can result in better vendor performance, improved contracts, and increased customer satisfaction. Agencies need to understand the importance of ongoing documentation, reporting, and not waiting until it is time to award a new contract to decide that the product does not meet their needs or the vendor is not performing as required. It is difficult to disqualify a vendor for non-performance when documentation is lacking or non-existent.

1. Vendor Performance Report Procedures
 - a. When a vendor fails to provide commodities and/or services to meet the specifications of an Invitation to Bid /Request for Proposal, the agency will document this failure to SPB through the use of a Vendor Performance Report.
 - b. The agency will be responsible for indicating on the Vendor Performance Report if it is for informational purposes, in which case no further action will be taken, or if the agency is requesting SPB to contact the vendor for resolution. If the agency has resolved the dispute and is providing a report for informational purposes, the agency should indicate how the dispute was resolved.
 - c. If the agency is requesting that SPB contact the vendor for resolution, SPB will contact the vendor via letter and will provide the basis for the dispute.
 - i. At times, the issue may be complex and require a meeting with the vendor to discuss the dispute(s) in the Vendor Performance Report.
 - d. The vendor will be required to submit a written response, via letter, as to the steps being taken to resolve the dispute regarding vendor performance within the designated time period set forth in the letter from SPB.
 - e. SPB will review the vendor's response with the agency. If the vendor fails to provide a reasonable solution that is acceptable to the State, the State will consider this a failure on the part of the vendor to correct the dispute.
 - f. The vendor will be given a reasonable time period to correct the action.

- g.** Failure to correct the dispute satisfactorily at the sole discretion of the State may be the basis for canceling the contract and suspending the vendor from bidding in the future on the State's needs.
- h.** Two (2) or more submissions of Vendor Performance Reports that require SPB intervention to resolve disputes may result in the vendor being suspended from bidding on the State's needs.
- i.** All documentation regarding the Vendor Performance Report and response from the vendor and agency will be kept on file with SPB.

SERVICES PROCUREMENT PROCESSES

I. AUTHORITY AND RESPONSIBILITY

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 let for competitive bid.

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

- Request for Information (RFI)
- Request for Proposal (RFP) – Standard, Cost Only, Cafeteria/Vending
- Multi-State Cooperative Purchasing Contracts
- Deviation from Contractual Service – Emergency, Sole Source, Exception

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.

II. PROCUREMENT METHODS

A. Request for Information (RFI)

The 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.

B. Request for Proposal (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. There are three (3) types of RFPs:

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.

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.

C. Multi-State Cooperative Purchasing Contracts

Multi-state cooperative purchasing contracts may be used for the purchase of items without competitive bidding by participation in a 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. The State may also utilize contracts established by the General Services Administration. (GSA) Any request for multi-state cooperative contract participation or purchases must be processed through SPB.

D. Deviation from Contractual Services

This method of procurement may be utilized under the conditions listed below.

- 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, either 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
- Exceptions listed in § 73-507(2)(a)-(k) do not require a deviation request because they are excluded from the RFP process.

Agencies are required to provide written justification of the need to deviate from the competitive bidding process. If the deviation from contractual services request is approved, the agency is responsible for finalizing a contract with the vendor.

III. BIDDER INSTRUCTIONS FOR PREPARING A RESPONSE TO AN RFI

The following is intended to assist bidders in preparing and submitting a response to an RFI:

A. RFI Documents

Thoroughly read and understand the RFI documents including all specifications, terms and conditions. It is the responsibility of the bidder to check the SPB website for all information relevant to the RFI, to include any addenda and/or amendments issued prior to the RFI opening date. The website address is:

<http://das.nebraska.gov/materiel/purchasing.html>

B. Completion of the RFI Form

1. Bidder should ensure that the correct company name and address is listed on the RFI form.
2. Indicate a telephone number in the space provided and a FAX number, if available.
3. Bidder should check their RFI response to verify they have submitted all the requested information as requested in the RFI.
4. Submit RFI response in a sealed envelope or any other type of container. The outside of the envelope should indicate the RFI number and opening date. **The**

State is not responsible for providing materials to the bidder to seal their bids or for packaging. This is the responsibility of the bidder.

5. **Responses must be signed in ink** by a person authorized to bind the bidder.
6. Submit the RFI response by the date and time and at the location identified in the Schedule of Events.

C. Section I – Scope of the RFI

1. This section provides a brief description of the purpose of gathering the information being requested. Also included is:
2. Schedule of Events
 - a. RFIs include a Schedule of Events. The Schedule of Events section provides bidders with a schedule of important dates that occur throughout the procurement process.
 - b. Pertinent Dates may include, but is not limited to:
 - i. Release of RFI
 - ii. Last day to submit written questions
 - iii. State responds to written questions through an addendum to be posted on the State Purchasing Bureau website
 - iv. Bid Opening date, time, and location

CI. Section II – RFI Response Procedures

1. This section provides information regarding procedures for the following:
 - a. Office and Contact Person
 - i. Sole point of contact, unless otherwise specified in the RFI
 - b. General Information – Includes brief description of the service
 - c. Communication with State Staff
 - i. Vendors are cautioned to follow the procedure carefully, so as not to jeopardize the response to the RFI
 - d. Written Questions and Answers
 - i. This is a way for vendors to communicate any questions the vendor may have regarding the RFI. The State will respond in writing via an addendum to the RFI so that all vendors are provided the same information at the same time.
 - ii. Any questions regarding the Request for Information must be directed to SPB, to the attention of the Buyer. It is preferred that questions be sent via e-mail to as.materielpurchasing@nebraska.gov Questions may also be sent by facsimile to 402-471-2089
 - iii. The State will respond to questions received by the date and time indicated in the Schedule of Events.
 - iv. All communication should be directed to SPB, not the using agency.
 - e. Oral Interviews/Presentations and/or Demonstrations
 - i. After review of an RFI response, the State may conclude an Oral Interview/Presentation and/or Demonstration is necessary. If determination is made to proceed with Oral Interviews/Presentations and/or Demonstrations, all responders will have an opportunity to interview/present and/or give demonstrations.

- ii. Any and all costs incidental to the oral interview/presentation and/or demonstration is the responsibility of the responder and will not be reimbursed by the State.
- f. Submission of Response
 - i. This section provides information on how bidders are to provide the information to the State. Failure to follow the instructions could disqualify the bidder from moving forward in the process.
- g. Proprietary Information
 - i. This section describes the procedures for submitting proprietary information relative to the RFI response. Bidders should read this section carefully to see the information being submitted by the bidder meets the requirements as outlined in the Attorney General opinions provided.
- h. RFI Opening
 - i. This is the date, time and location of the RFI responses
- i. Late RFI Responses
 - i. RFI responses received after the date and time of the may not be considered and may be rejected.

E. Section III – Project Description and Scope of Work

1. The using agency may utilize the following outline when requesting information from vendors.
 - a. Purpose and Background
 - b. Current Business Practices
 - c. Current Environment
 - d. System Overview
 - e. Scope of Work
2. Bidders should provide as much detail to each section as possible regarding information/services available that may assist the State in looking for a solution. Bidder should not provide a bid, but if requested in the RFI, may provide a budget estimate.
3. This is information will be reviewed by the using agency and may or may not be used in formulating an RFP.
4. The State, at its sole discretion may or may not go forward with an RFP.

F. Form A, Vendor Contact Sheet

This form should be completed and submitted with the RFI response. This is intended to provide the State with information on the responder's name and address, and the specific persons who are responsible for preparation of the response.

IV. BIDDER INSTRUCTIONS FOR PROVIDING A RESPONSE TO AN RFP

The following is intended to assist bidders in preparing and submitting RFP documents to SPB.

A. RFP Documents

Thoroughly read and understand the bid documents including all specifications, terms and conditions to the RFP. It is the responsibility of the bidder to check the SPB website for all information relevant to the RFP to include any addenda and/or amendments

issued prior to the RFP opening date. The SPB website address is: <http://das.nebraska.gov/materiel/purchasing.html>

B. Completion of the RFP Form

1. Bidder must indicate whether it is a Nebraska contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within the State for at least the six (6) months immediately preceding the posting date of the RFP.
2. Bidder must certify if it is a resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. § 73-107 and wish to have a preference, if applicable, considered in the award of the RFP. Bidder must indicate on the RFP form whether they are requesting this preference. Failure to indicate preference will be cause to disqualify bidder for any preference allowance.
3. **For cafeteria/vending RFPs:** Neb Rev. Stat. § 71-8611 allows for a preference for a blind person licensed by the Commission for the Blind and Visually Impaired for Vending and Cafeteria Services in any State-owned building or on any property owned or controlled by the State, except the Game and Parks Commission or the University of Nebraska. Bidder must indicate on the front of the RFP form whether they are requesting this preference. Failure to indicate preference will be cause to disqualify bidder for any preference allowance.
4. Bidder should ensure that the correct company name and address is listed on the Request for Proposal form.
5. Indicate a telephone number in the space provided and a FAX number, if available.
6. Bidder should check their RFP response to verify they have submitted all the requested information as required in the RFP.
7. Submit RFP response in a sealed envelope or any other type of container. The outside of the envelope should indicate the RFP number and opening date. The State is not responsible for providing materials to the bidder to seal their bids or for packaging. This is the responsibility of the bidder.
8. **Proposals must be signed in ink** by a person authorized to bind the bidder.
9. Submit the RFP response by the date, time, and location as identified in the Schedule of Events. Late proposal responses **will not** be accepted for any reason. Bidder should ensure they are allowing enough time for mail delivery services in order for their proposal response to be delivered by the date and time indicated in the RFP.

C. Glossary of Terms

1. This section includes terms and definitions that are used in the RFP to assist bidders in understanding State terminology.

D. Section I – Scope of the RFP

1. This section provides a brief description of the service being requested. Also included is:
2. Schedule of Events

- a. RFPs include a Schedule of Events. The Schedule of Events section provides bidders with a schedule of important dates that occur throughout the procurement process.
- b. Pertinent Dates may include, but is not limited to:
 - i. Release of RFP
 - ii. Last day to submit written questions
 - iii. Mandatory/Optional Pre-Proposal Conference Information, including date, time, and location of the conference, if applicable to the RFP
 - iv. State responds to written questions through an addendum to be posted on the SPB website
 - v. Bid Opening Date, Time, and Location.
 - vi. Last day to submit written questions after Mandatory/Optional Pre-Proposal Conference, if applicable (There may be more than one round of question and answer periods.)
 - vii. Last day to submit "Letter of Intent to Bid," if applicable
 - viii. Proposal Opening Date, Time and location
 - ix. Review for conformance of mandatory requirements
 - x. Evaluation Period
 - xi. Oral Interviews/Presentations and/or Demonstrations," if applicable
 - xii. Post "Letter of Intent to Contract" to the SPB website at <http://das.nebraska.gov/materiel/purchasing.html>
 - xiii. Contract finalization period
 - xiv. Contract Award
 - xv. Contract Start Date

E. Section II – Procurement Procedures

- 1. Office and Contact Person
 - a. Sole point of contact, unless otherwise specified in the RFP
- 2. General Information – includes brief description of the service
- 3. Customer Service
 - a. Contractors and subcontractors are required to meet the State's expectations in providing services to the State.
- 4. Communication with Staff
 - a. Vendors are cautioned to follow the procedure carefully, so as not to jeopardize the response to the RFP
 - b. Vendors shall not have contact with the agency staff and/or evaluators during the bid process.
Vendor's proposal may be rejected if the communication limits are not strictly observed.
- 5. Notification of Intent to Bid
 - a. This may be a requirement in some RFPs. Vendor should read the RFP carefully, and submit the required form no later than the date and time specified in the Schedule of Events.
- 6. Written Questions and Answers
 - a. This is the way for vendors to communicate any questions the vendor may have regarding the RFP. The State will respond in writing via an

- addendum to the RFP so that all vendors are provided the same information at the same time.
- b. Any questions regarding the RFP must be directed to SPB, to the attention of the Buyer. It is preferred that questions be sent via e-mail to the website at <http://das.nebraska.gov/materiel/purchasing.html> Questions may also be sent by facsimile to 402-471-2089. Vendor should utilize the format provided in the RFP to submit questions.
 - c. The State will respond to questions received by the date and time indicated in the Schedule of Events.
 - d. All communication should be directed to SPB, not the using agency. A bidder's RFP response may be rejected if the communication procedure is not strictly followed.
7. Pre-Proposal Conference
- a. The RFP may require mandatory attendance at a pre-proposal conference. Read the RFP carefully. If attendance is mandatory at the pre-proposal conference, bidder must have a representative in attendance in order to submit an RFP response. Failure to have someone in attendance at a mandatory pre-proposal conference will be grounds for rejecting a bidder's proposal. A sign-in sheet will be provided for at the pre-proposal conference for vendors to sign in. At the conclusion of the pre-proposal conference, the sign-sheet will be posted to the SPB website at <http://das.nebraska.gov/materiel/purchasing.html>
 - b. Notification of Intent to attend Mandatory Pre-Proposal Conference
 - i. Notification of attendance at the pre-proposal conference may be requested. The form should be filled out in its entirety and returned no later than the date provided for in the Schedule of Events. This assists the State in the planning for the pre-proposal conference.
8. Oral Interviews/Presentations and/or Demonstrations
- a. After review of RFP responses, the evaluation committee may conclude an Oral Interview/Presentation and/or Demonstration is required in order to determine the successful bidder. All bidders may not have an opportunity to interview/present and/or give demonstrations. This is at the sole discretion of the State.
 - b. Any and all costs incidental to the oral interview/presentation and/or demonstration is the responsibility of the bidder and will not be reimbursed by the State.
9. Submission of Proposals
- a. This section provides information on how bidders are to provide the information to the State. Failure to follow the instructions may disqualify the bidder from moving forward in the procurement process.
 - b. **Important Notice:** 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 must waive copyrights privilege for posting to the public website.
10. Proposal Opening
- a. Sealed proposals are publicly opened and bidding entities announced on the date, time, and location as shown in the Schedule of Events.

Proposals are available for public viewing for those present at the proposal opening. After the proposal opening has concluded proposals are not available for viewing until the Intent to Award has been posted to the SPB website.

11. Late Proposals
 - a. Regardless of cause, proposals not received and date/time stamped by SPB by the opening date and time will not be accepted or evaluated.
 - b. Proposals may be returned unopened to the bidder at the bidder's expense upon request their request.
12. Rejection of Proposals
 - a. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part.
 - b. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve a bidder's competitive position
 - c. All awards will be made in a manner deemed in the best interest of the State.
13. Evaluation of Proposals
 - a. All proposals that fulfill all mandatory requirements will be evaluated based on the evaluation and scoring criteria established prior to the release of the RFP.
 - b. Evaluation criteria will become public information at the time of the RFP opening. Evaluation criteria and list of respondents is posted to the State Purchasing Bureau website. Evaluation Criteria will not be released prior to the RFP opening.
 - c. The State will conduct a fair, impartial, and comprehensive evaluation of all proposals in the following areas:
 - i. Corporate Overview
 - ii. Technical Approach, and
 - iii. Cost
 - d. Neb Rev. Stat. § 73-107 allows for a **preference for a resident disabled veteran or business located in a designated enterprise zone**. The definition of resident disabled veteran is provided for in the Request for Proposal documents.
 - i. Bidder must indicate on the RFP form whether they are seeking this preference. Failure to indicate preference will be cause to disqualify bidder for any preference allowance.
 - ii. Bidder must provide documentation substantiating allowance of preference within 10 business days of request. Failure to do so will disqualify the bidder from consideration of the preference.
 - e. Neb Rev. Stat. § 71-8611 allows for a preference for a blind person licensed by the Commission for the Blind and Visually Impaired for Vending and Cafeteria Services in any State-owned building or on any property owned or controlled by the State, except the Game and Parks Commission or the University of Nebraska.
 - i. Neb. Rev. Stat. § 71-8603 provides definition of Vending Facility
 - ii. Bidder must indicate on the RFP form whether it is requesting this preference. Failure to indicate preference will be cause to disqualify bidder for any preference allowance.

- iii. Preference shall only be given if the product price in the bid submitted is comparable in price to the product price of other bids submitted for similar products sold in similar building or on similar property and all other components of the bid for a contract, except for any rent paid to the State, are found to be reasonably equivalent to other bidders.
 - iv. SPB will complete the following:
 - a) Product Price Comparability Determination
 - b) Reasonably Equivalent Determination on all other components of the bid, except for "Rent Paid to the State."
 - v. Blind persons must be licensed by the Commission for the Blind and Visually Impaired pursuant to its rules and regulations.
 - f. **Cost Only RFPs** are evaluated strictly on meeting the requirements of the RFP and cost. Corporate Overview and Technical Specifications are not required to be submitted as part of the RFP response, and the responses are not evaluated on Corporate Overview and Technical Specifications.
- 14. Evaluation Committee
 - a. Proposals are evaluated independently by members of the evaluation committee. The State reserves the right to use a third party to conduct credit check as part of corporate overview.
 - b. Bidders are advised that the only point of contact can clarify issues. Any contact, or attempted contact with an evaluator that is involved in the RFP may result in rejection of the proposal and further administrative action may be taken.
- 15. Mandatory Requirements
 - a. Proposal must be signed in ink on signature page and completed Section III.
 - b. Proposal must have a Corporate Overview section (not applicable to cost-only RFPs).
 - c. Proposal must have a Technical Approach section (not applicable to cost-only RFPs).
 - d. Proposal must have a Cost Proposal.
 - e. Proposals lacking one or more of the previous sections will not be evaluated.
 - f. Additional mandatory requirements may be added and will be listed in this section.
- 16. Reference Checks
 - a. The State reserves the right to check any reference(s) regardless of the source. The State reserves the right to use a third party to conduct reference checks.
 - b. Information to be requested and evaluated may include, but not be limited to, some or all of the following: financial stability of the company, project description and background, job performed, functional and technical abilities, communication skills and timelines, cost and schedule estimates and accuracy, problems (poor quality deliverables, contract disputes, work stoppages, etc.), overall performance, and whether or not the reference would rehire the firm or individual.
 - c. Only top scoring bidders may receive reference checks

- d. Negative references may eliminate bidders from consideration
- 17. Secretary of State/Tax Commissioner Registration Requirements
 - a. Bidders should be authorized to do business in the State of Nebraska.
 - b. It is the bidder's responsibility to comply with the Secretary of State registration requirements.
 - c. Any bidder who is issued an Intent to Award will be required to certify that it has so complied and produce a true and exact copy of its current (within 90 calendar days) valid Certificate of Good Standing or Letter of Good Standing, or in the case registration is not required, to provide, in writing the reason as to why none is required.
 - d. Bidders should provide the certification(s) with their proposal.
- 18. Violation of Terms and Conditions
 - a. Violation of the terms and conditions in the RFP and any resulting contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:
 - i. Rejection of a bidder's proposal
 - ii. Suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.
 - iii. Legal action.

F. Section III – Terms and Conditions

This section of the RFP contains the terms and conditions with which the bidder, and resulting contractor, must comply. By signing the Request for Proposal for Contractual Services form, the bidder guarantees compliance with the provisions stated in the RFP, unless otherwise agreed to, and certifies bidder maintains a drug free work place environment.

Bidders are expected to read the terms and conditions closely and provide a binding signature of intent to comply. Each subsection of the RFP contains a space for the bidder to Accept, Reject, or Reject and Provide Alternative language. Any rejections or alternatives indicated by a bidder will be reviewed during contract finalization. However, a bidder may indicate any exception to the terms and conditions by:

- (1) Clearly identifying the term and condition subsection, and
- (2) Including an explanation of the bidder's inability to comply with such term and condition which includes a statement recommending terms and conditions the bidder would find acceptable.

Rejection in whole or in part of the terms and conditions may be cause for rejection of bidder's proposal. Bidder should include completed Section III with their proposal response.

- 1. GENERAL
 - a. Indicates order of precedence for the contract documents.
 - b. Proposals become property of the State and will not be returned.
- 2. AWARD

- a. 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.
 - b. The State reserves the right to waive any non-material deviation.
 - c. Awards will be made in the manner deemed to be the best interest of the State.
 - d. The State is not obligated to award a contract.
 - e. Intent to Contract will be posted on SPB's website.
 - f. Protest/grievance procedures are available on SPB's website.
3. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY (EO) EMPLOYMENT/NONDISCRIMINATION
- a. Contractor shall comply with all civil rights laws and Equal Opportunity requirements.
 - b. 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.
 - c. Breach of this provision shall be considered a breach of contract.
4. PERIMTS, REGULATIONS, AND LAWS
- a. Contractor shall pay for all permits, licenses and approvals necessary to execute the contract.
 - b. Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.
5. OWNERSHIP OF INFORMATION AND DATA
- a. The State has unlimited right to use and/or reproduce the information and/or data developed or derived by the contractor under this contract.
 - b. 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.
 - c. Contractor is responsible for paying any related costs and shall hold the State harmless from any related claims.
6. INSURANCE REQUIREMENTS
- a. Work shall not begin under the contract until all required insurance has been obtained by the contractor and approved by the State.
 - b. Insurance must be maintained for the life of the contract, including renewals.
 - c. Contractor must ensure that a current, compliant certificate of insurance (COI) is on file with SPB at all times during the contract.
 - d. 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.
 - e. Contractor is responsible for any mandatory deductible payment in event of a claim.
 - f. Limits and waivers are clearly defined.
 - g. If Medical Malpractice coverage is required, bidder/contractor must also be and remain certified under the Nebraska Hospital-Medical Liability Act.

Such qualification will be confirmed with the Nebraska Department of Insurance.

- h.** Evidence of coverage (COI) shall be provided to the State before a contract can be awarded.
- i.** Notice of cancellation of insurance must be provided to the State along with a new coverage binder to ensure no break in coverage.

7. COOPERATION WITH OTHER CONTRACTORS

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

8. INDEPENDENT CONTRACTOR

- a.** No partnership between the contractor and the State is established by this contract.
- b.** Contractor shall secure, at its own expense, the personnel needed to execute the contract.
- c.** Contractor's employees have no contractual relationship with the State.
- d.** 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.
- e.** Employees of the contractor are not entitled to any benefit, compensation, or right from the State.

9. CONTRACTOR RESPONSIBILITY

- a.** Contractor is solely responsible for executing the contract and for all promises made in its proposal.
- b.** Contractor is the sole point of contact regarding the contract.
- c.** 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.

10. CONTRACTOR PERSONNEL

- a.** Contractor guarantees that all persons deployed under the contract are either employees or subcontractors, and are fully qualified to perform the work required.
- b.** Contractor shall not change any personnel commitments made in the proposal without the specific written consent of the State. Replacement of key personnel shall be with personnel of equal or greater ability and qualifications.
- c.** The State reserves the right to require the contractor to reassign or remove any contractor's employee, subcontractor, or subcontractor's employee.
- d.** 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.

- 11. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**
 - a.** 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.

- 12. CONFLICT OF INTEREST**
 - a.** 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.
 - b.** Bidder shall not take any action or acquire any interest that presents a conflict of interest or the appearance of a conflict of appearance.
 - c.** Bidder shall not knowingly employ any individual with a known conflict of interest.

- 13. PROPOSAL PREPARATION COSTS**
 - a.** 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.

- 14. ERRORS AND OMISSIONS**
 - a.** Bidder shall not take advantage of any error and/or omission in the RFP or resulting contract.
 - b.** Bidder shall inform the State of any error and/or omission that is discovered.

- 15. BEGINNING OF WORK**
 - a.** Work shall not commence before the contract is fully executed by both the contractor and the State.

- 16. ASSIGNMENT BY THE STATE**
 - a.** 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.

- 17. ASSIGNMENT BY THE CONTRACTOR**
 - a.** Contractor may not assign the contract or any interest in the contract to any third party without the prior written consent of the State.

- 18. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**
 - a.** The requirements and conditions of the RFP become part of the contract.
 - b.** Any deviation must be clearly identified by the bidder in its proposal. If accepted, such deviation(s) will become part of the contract.
 - c.** Deviations must not conflict with the basic nature of the RFP, the mandatory requirements, or applicable State or federal laws or statutes.
 - d.** The State discourages deviations and reserves the right to reject proposed deviations.

19. GOVERNING LAW

- a. This contract shall be governed by the laws and statutes of the State of Nebraska.
- b. Any legal proceeding brought against the State 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.
- c. Contractor must be in compliance with all Nebraska statutory and regulatory law.

20. ATTORNEY'S FEES

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

21. ADVERTISING

- a. 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.
- b. News releases require the prior written permission of the State.

22. STATE PROPERTY

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

23. SITE RULES AND REGULATIONS

- a. Contractor and its employees, agents, and subcontractors shall comply with all site rules and regulations while on State premises.
- b. Contractor must ensure proper facility access and equipment to execute the contract.
- c. 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.

24. NOTIFICATION

- a. 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.
- b. After the contract is awarded, notices may be made in person, by mail, by fax, or by email.
- c. Except as indicated, notices should be made in writing.
- d. Contractor shall immediately notify the State of any delays or hindrances in the execution of the contract.
- e. This notice does not guarantee an extension.
- f. Failure to give such notice may result in denial of any related extension.

- g.** Either party may change its address by giving notice in writing and giving an effective date for such change.
- h.** Communication about the contractor between the Contractor and individuals not authorized by the State is strictly forbidden.

25. EARLY TERMINATION

- a.** The State and the contractor may mutually agree to terminate the contract before the end date.
- b.** The State may terminate for any reason with thirty (30) days' notice to the contractor.
- c.** The State may terminate immediately for the following reasons:
 - i.** Directed by statute
 - ii.** Contractor assigns the contract for benefit of a creditor, is unable to pay its debts, or has ceased operating
 - iii.** A trustee or receiver of assets for the contractor is appointed by the courts
 - iv.** Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to the contract by the Contractor, its employees, officers, directors, or shareholders
 - v.** Involuntary Title 11 action
 - vi.** Voluntary Title 11 action
 - vii.** Contractor intentionally discloses confidential information
 - viii.** Contractor discontinues support of the deliverables
 - ix.** Second or subsequent unacceptable Vendor Performance Report
 - x.** Collusion on the part of the contractor

26. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

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

27. BREACH BY CONTRACTOR

- a.** The State may terminate the contract or any part of it if the contractor fails to perform contractual obligations in a timely manner.
- b.** The State may provide an opportunity for the contractor to cure the breach.
- c.** 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.

28. ASSURANCES BEFORE BREACH

- a.** Upon written notice by the State that a deliverable does not meet the requirements of the RFP/contract, the contractor shall provide extra contractor resources at no additional cost to remedy the situation and to ensure that the project is not adversely affected.

29. ADMINISTRATION – CONTRACT TERMINATION

- a. 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.
 - b. Bidder must confirm that all records that are property of the State will be returned within thirty (30) days of termination.
- 30. PENALTY (may be included)**
- a. State may withhold all monies due under the contract if the contractor fails to perform any substantial contractual obligation.
 - b. The State may choose to assess a specific dollar amount of penalty tied to deliverables and dates.
- 31. RETAINAGE (may be included)**
- a. State 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.
 - b. If State does not require retainage, this subsection is deleted.
- 32. BID BOND (may be included)**
- a. State may choose to require a bid bond submitted with the proposal, which would be released back to the bidders upon execution of awarded contract.
 - b. If State does not require a bid bond, this subsection is deleted.
- 33. PERFORMANCE BOND (may be included)**
- a. State may choose to require a performance bond of a percentage or dollar amount to guarantee performance under the contract. The bond is held for the life of the contract, including renewals.
 - b. For contracts with a total period of three (3) years or less, including renewals, a certified check may be substituted for a performance bond.
 - c. If State does not require a performance bond, this subsection is deleted.
- 34. FORCE MAJEURE**
- a. 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.
 - b. A Force Majeure Event does not constitute breach of contract.
 - c. Labor disputes are not considered Force Majeure Events.
 - d. Burden of proof rests upon the Contractor.
- 35. PROHIBITION AGAINST ADVANCE PAYMENT**
- a. Payments shall not be made until deliverables are received and accepted by the State.
- 36. PAYMENT**
- a. Payment will be made according to the Nebraska Prompt Payment Act (Neb. Rev. Stat. § 81-2401 through § 81-2408).
 - b. The State may require the contractor to accept payment via electronic means, such as ACH.

- c. 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.

37. INVOICES

- a. Contractor is required to submit detailed invoices.
- b. State may insert specific invoicing requirements here, such as a mailing address.
- c. No invoice term or condition shall be binding upon the State or change the contract in any way.

38. RIGHT TO AUDIT

- a. Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit the contract.
- b. The State shall have the right to audit, examine and make copies of or extracts of the contractor's documents pertaining to the contract.
- c. 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.
- d. 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.

39. TAXES

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

40. INSPECTION AND APPROVAL

- a. The State shall conduct a final inspection and approval of all work under the contract.
- b. 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.

41. CHANGES IN SCOPE/CHANGE ORDERS

- a. The State may at any time change the general scope of the contract, upon written notice to the contractor.
- b. The State may, at any time, in writing:
 - i. Make alterations in the terms of work as shown in the specifications
 - ii. Require the performance of extra work
 - iii. Decrease the quantity of work
 - iv. Make other such changes as the State may find necessary or desirable

- c. Compensation for changes in work shall be determined by the applicable unit price of the contractor's proposal.
42. SEVERABILITY
- a. 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.
43. CONFIDENTIALITY
- a. All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
 - b. All confidential information shall be handled in accordance with federal and State law and ethical standards.
 - c. Contractor must immediately notify the State of any breach of confidentiality.
 - d. Contractor must comply with the Privacy Act of 1974.
44. PROPRIETARY INFORMATION
- a. Data and documentation contained in a proposal become property of the State of Nebraska and upon opening, become public information.
 - b. 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.
 - c. All proprietary information must be submitted in a SEPARATE, SEALED package clearly identified as proprietary.
 - d. Bidder may not mark its entire proposal proprietary.
 - e. Cost Proposals are never considered proprietary.
 - f. Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.
 - g. **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 must waive copyrights from privilege for posting to the public website.
45. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING
- a. By submitting the proposal, bidder certifies that it has not participated in any collusion activities and that it has not divulged any of its information for purposes of collusion.
46. STATEMENT OF NON-COLLUSION
- a. Bidder submits the proposal independently and without collusion and without any direct or indirect agreement or understanding or planned common course of action with another corporation, State officials, employees, evaluators or persons involved in the RFP or agents.
 - b. Bidder shall not attempt to restrain free competition or limit independent bidding or create unfair advantage.

- c. 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.

- 47. PRICES
 - a. Prices shall remain fixed from date of submission of proposals through date of contract award.
 - b. 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.
 - c. Contractor affirms that it did not participate in price fixing or price discrimination.
 - d. No price increase through the life of the contract unless permitted in the contract terms.

- 48. BEST AND FINAL OFFER
 - a. The State will compile the scores and award to the highest scoring responsive and responsible bidder.
 - b. In some cases, the State may request a best and final cost proposal from the highest scoring bidder(s).
 - c. The 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 Best and Final Offer.
 - d. Bidders should provide their best offer with the original proposal and not expect that the State will request a best and final offer.

- 49. ETHICS IN PUBLIC CONTRACTING
 - a. No bidder shall pay or offer gifts to any State employee.
 - b. Bidders shall not use lobbyists, attorneys, political activists, or consultants to secure the contract.
 - c. Bidders are not prohibited from seeking expert advice or legal counsel.
 - d. Bidders found in non-compliance with this subsection may be disqualified from the selection process or forfeit the contract award.

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

- 51. NEBRASKA TECHNOLOGY ACCESS STANDARDS
 - a. 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>

- 52. ANTITRUST

- a. Contractor assigns to the State any claims for overcharges due to antitrust violations.
- 53. DISASTER RECOVERY/BACK UP PLAN**
- a. 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.
- 54. TIME IS OF THE ESSENCE**
- a. Time is of the essence in this contract.
 - b. 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.
- 55. RECYCLING**
- a. Preference is given to recycled/recyclable materials when applicable.
- 56. DRUG POLICY**
- a. Contractor certifies it maintains a drug-free workplace.
 - b. Contractor shall supply a copy of its drug-free workplace policy to the State at any time upon the State's request.
- 57. EMPLOYEE WORK ELIGIBILITY STATUS**
- a. Contractor must use a federal immigration verification system to determine the work eligibility of employees physically performing services in the State of Nebraska.
 - b. E-Verify or an equivalent program designated by the US Department of Homeland Security shall be used.
 - c. For individuals or sole proprietorships:
 - d. Contractor must complete the United States Citizenship Attestation Form. This form should be submitted with the proposal response.
 - e. If a qualified alien, contractor shall provide documentation to verify its lawful presence in the United States via the Systematic Alien Verification for Entitlements (SAVE) Program.
 - f. Contractor understands that lawful presence in the United States is required, and failure to verify this may result in disqualification or contract termination.
- 58. CERTIFICATION REGARDING DISBARMENT, SUSPENSION, AND INELIGIBILITY**
- a. 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.
 - b. Contractor shall immediately notify the State if it becomes debarred during the course of the contract.
 - c. The State may immediately terminate the contract if the Contractor becomes debarred by the State providing written notice to the Contractor.

- d. 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.

59. POLITICAL SUB-DIVISIONS

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

60. OFFICE OF THE PUBLIC COUNSEL

- a. 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.
- b. This term survives the termination of the contract.
- c. Does not apply if contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Statute § 81-2237.

61. LONG-TERM CARE OMBUDSMAN

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

62. LICENSE/SERVICE OR OTHER AGREEMENTS

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

G. Section IV – Project Description and Scope of Work

An RFP may include, but is not limited to, the following sections:

- 1. Project Overview
- 2. Project Environment
- 3. Project Requirements
- 4. Business Requirements
- 5. Scope of Work
- 6. Technical Requirements
- 7. Project Planning and Management
- 8. Evaluate Current Project Environment
- 9. Proposed Resolution
- 10. Perform Implementation
- 11. Provide Post Implementation Support
- 12. Deliverables (required)

Bidders must provide a response to all components contained in the RFP.

H. Section V – Proposal Instructions

This section documents the mandatory requirements that must be met by bidders in preparing the technical and cost proposal. Bidders are advised they should identify the subdivisions of “Project Description and Scope of Work” clearly in their proposals; failure to do so may result in disqualification.

Bidder should take care in preparing their proposal response to ensure their proposal response is clear, concise and provide all the information requested in the Request for Proposal in order for the evaluation committee to score the bidder’s proposal appropriately. Failure to respond to a specific requirement may be the basis for elimination from consideration during the State’s comparative evaluation.

Proposal content requirements for the Technical and Cost Proposal should be presented separately in the following subdivisions, format, and order:

1. Technical Proposal
 - a. State of Nebraska Request for Proposal for Contractual Services form, signed in ink, and completed Section III.
 - i. Must be signed in ink and returned by the date, and time stated in the Schedule of Events
 - ii. 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
 - iii. Guarantees compliance with the provisions of the RFP, including terms and conditions, unless otherwise agreed to, and certifies bidder maintains a drug free work place environment
 - b. Corporate Overview
 - i. Bidder Identification and Information
 - a) Full company or corporate name, address, entity organization, (corporation partnership, proprietorship), state of incorporation/organization, year in which entity began to do business, and whether the name and/or form of organization has changed since first organized.
 - ii. Financial Statements
 - a) If publicly held, must be the most recent audited financial report and statements, and the name, address, and telephone number of the fiscally responsible representative of the bidder’s financial or banking organization.
 - b) If not publicly held, either provide the reports and statements required of a publicly held corporation, or a description of the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information, must be submitted in such a manner that the evaluators may reasonably formulate a determination about the stability and financial strength of the organization.

- 1). Non-publicly held firms must provide a banking reference.
 - c) Bidder must disclose any and all judgments, pending or expected litigation or other real or potential financial reversals, which might materially affect the viability or stability of the organization, or state that no such condition is known to exist. If none exist, bidder should declare such.
- iii. Change of Ownership
 - a) Bidder must disclose any change in ownership or control of the company planned or anticipated during the twelve (12) months following the proposal due date must be identified
 - b) Bidder must describe the circumstances of such change and when the change likely will occur
 - c) Any change requires notification to the State
- iv. Office Location
 - a) Bidder identifies physical office location responsible for performance of the contract.
- v. Relationships with the State
 - a) Bidder must describe any dealing with the State over the number of years identified in the RFP
 - b) If the organization, its predecessor, or any party named in the bidder's proposal has contracted with the State, the bidder shall identify the contract number(s) and/or any other information available to identify such contract(s).
 - c) If no such contracts exist, so declare
- vi. Bidder's Employee Relations to State
 - a) If any party named in the bidder's proposal is or was an employee for the period requested in the RFP, provide the name of the individual, State agency with whom employed, job title or position held at the State and separation date.
 - b) If no such relationship exists or has existed, so declare.
 - c) If any employee of any agency of the State is employed by the bidder or is a subcontractor to a bidder as of the proposal due date, bidder must identify all persons by name, position held with the bidder, position held with the State (including job title and agency). Describe the responsibilities of such person in the proposing organization.
 - d) The State will review the information, and if it is determined a conflict of interest exists or may exist, the bidder may be disqualified from further consideration in the proposal.
 - e) If no such relationship exists, so declare.
- vii. Contract Performance
 - a) If the bidder or any proposed contractor has had a contract terminated during the period identified in the RFP, all instances must be described
 - 1). Termination for default

- Defined as notice to stop performance delivery due to bidder's non-performance or poor performance, and the issue was either not litigated due to inaction on part of the bidder or litigated and such litigation determined the bidder to be in default
 - Mandatory that bidder submit full details of all terminations for default for the period indicated in the RFP. Must include the other party's name, address, and telephone number. The bidder's response to this section must present the bidder's position on the matter.
- b)** The State will review and score the bidder's proposal accordingly.
- c)** If no such termination, so declare
- d)** If the bidder has had a contract terminated for convenience, non-performance, non-allocation of funds or any other reason during the period identified in the RFP, the bidder must fully describe all circumstances surrounding such termination, including the name and address of the other contracting party.
- viii.** Summary of Bidder's Corporate Experience
- a)** Bidder must submit a summary matrix listing bidder's previous projects similar to the RFP in size, scope, and complexity. The State will use no more than three (3) narratives during the evaluation process.
- b)** Bidder responses must include all information requested in this subsection of the RFP.
- ix.** Summary of Bidder's Proposed Personnel/Management Approach
- a)** Bidder must present detailed descriptions of its proposed approach to the management of the project.
- b)** Bidder must identify specific professionals who will work on the project, including names and titles of the team proposed for assignment to this project in full, with description of the team leadership, interface and support functions, and reporting relationships. The primary work assigned to each person.
- c)** Provide resumes for all personnel proposed. Resumes must not be longer than three (3) pages. They shall include, at a minimum: academic background and degrees, professional certifications, understanding of the process, and at least three (3) references (name, address, and telephone number).
- d)** Any changes in proposed personnel shall be approved by the State prior to implementation.
- x.** Subcontractors – bidder must identify any subcontractor(s) it intends to utilize during the execution of the contract and provide information requested in this subsection.

- c. Technical Approach – Bidder must address the details provided in Section IV and any attachments, and should demonstrate/include the following:
 - i. Understanding of project requirements;
 - ii. Proposed development approach;
 - iii. Technical Considerations
 - iv. Detailed project work plan; and
 - v. Deliverables and due dates
- 2. Cost Proposal Requirements
 - a. Bidder must submit a cost proposal. **Cost proposals may not be marked confidential or proprietary.**
 - b. Cost proposal must include the total fixed price to perform all the requirements of the project delineated in the RFP.
 - c. Many RFPs provide a Cost Sheet to request cost in a specific format. Bidders should utilize the Cost Sheet to ensure equitable evaluation.
 - d. The State reserves the right to ask for clarification on any point of the Cost Proposal.
 - e. Prices shall be net, including transportation and delivery charges fully prepaid by the bidder, FOB destination. No additional charges will be allowed for packing, packages, or partial delivery costs.
 - f. When an arithmetic error has been made in the extended total, the unit price will govern.
- 3. Payment Schedule
 - a. Payment schedule must be tied to specific deliverables and due dates
 - b. Invoices may be submitted by the contractor on specific dates based on completion and acceptance of deliverables
 - c. No invoice will be approved unless the associated deliverable(s) has been approved.

I. Form A, Vendor Contact Sheet

- 1. This form should be completed and submitted with the RFP response. This is intended to provide the State with information on the vendor's name and address, and the specific persons who are responsible for preparation of the vendor's response.
- 2. Each bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

J. Form B, Notification of Intent to Attend Pre-Proposal Conference

- 1. Only included if a pre-proposal conference is scheduled.
- 2. Submission may be mandatory – read requirements of RFP carefully.

K. Form C, Notification of Intent to Bid

- 1. If included, this form should be submitted by the date given in the Schedule of Events.

V. 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. There are many steps that take place behind the scenes. Depending upon who is conducting the bid process for the RFP (SPB or agency) will define who will be responsible for the activities listed below:

1. RFP Release
To make the RFP available to potential bidders by:
 - a. Sending a hardcopy notification to randomly selected vendors as well as the current contract holder (if any).
 - b. Post the RFP and related forms and/or attachments to SPB's website.
 - c. Provide Public Notice in a newspaper of statewide distribution for a minimum of one (1) day.

2. Pre-proposal Conference – OPTIONAL (may include site visit)
 - a. If desired, conduct a face-to-face or conference call pre-proposal conference for potential bidders. This conference may be either *mandatory* or *optional* for potential bidders to attend, and must be identified as one or the other in the RFP.
 - b. Conduct the pre-proposal conference.
 - c. 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 those who attend a mandatory conference are then allowed to submit a proposal.
 - d. Attendees must be aware that any oral responses to questions at a pre-proposal conference are not binding until/unless provided in writing.

3. Question and Answer Period
 - a. Typically, bidders are provided an opportunity to submit written questions concerning the RFP at least once (some RFPs will have two (2) 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.
 - b. Questions are submitted in writing to the Buyer in the manner required by the RFP.
 - c. All questions will be answered simultaneously. An addendum containing all questions submitted by the deadline and all corresponding answers will be posted to SPB's website.

4. Opening Date
 - a. Anyone may attend the opening. It is considered a public meeting.
 - 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 opening has concluded, proposals are not available for viewing by the public until the evaluation process has been completed. No proposals will be available for viewing during the evaluation period.
5. Evaluation Period
- a. The State will evaluate each proposal that meets the mandatory requirements.
 - b. Clarification to an RFP response may be sought in order to score the response.
 - c. Clarification:
 - i. Bidder cannot change substance of response and cannot alter cost to the State.
 - ii. Occurs prior to intent to award.
 - iii. Allows State to remove confusion regarding a bidder's response for purposes of evaluation.
 - iv. Information provided by bidder for the purpose of clarification, if relied upon by the State for the purposes of an award, is binding upon the bidder.
 - d. Scoring will be verified for accuracy.
6. Oral Interviews/Demonstrations – OPTIONAL
- The Evaluation Committee may decide to request highest scoring bidders make an oral presentation and/or demonstration to the Committee.
- a. Letters containing meeting information will be sent to selected bidders.
 - b. 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.
7. References – OPTIONAL
- a. References may be checked on any/all of the bidders.
 - b. The State has the right to disqualify a bidder based on negative reference(s).
8. Best and Final Offer (BAFO) – OPTIONAL
- A BAFO is used to clarify the Cost Proposal section of the RFP only. If a bidder also submits other parts of the RFP response with changes, those changes are not considered.
- a. The BAFO is conducted exactly like a Proposal Opening.
 - b. The BAFO will contain a Question and Answer Period in order to respond to questions that BAFO participants may have regarding the BAFO instructions or content.
 - c. BAFOs must be returned according to the instructions in the letter. This often includes responding on a provided Cost Sheet.
 - d. A BAFO response must be returned by the bidder by the date and time indicated in the BAFO instructions, even if there are no changes to the bidder's proposal response. Failure to do so may cause to reject bidder's proposal and disqualify from further evaluation and consideration.

- e. A BAFO will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each bidder requested to submit a BAFO.
9. 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.

VI. RFP AWARD/CONTRACT FINALIZATION PERIOD

1. The Buyer sends a letter to the selected contractor with instructions concerning the required documentation.
 - a. 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.
 - b. Performance Bond – if a performance bond was required by the RFP, the selected contractor will submit it at this time.
 - c. Certificate of Insurance (COI) – a current, compliant COI must be received before the contract award can be finalized.
2. If the selected contractor took any exception(s) to any of the Terms and Conditions, the Buyer works with the contractor and Legal Counsel to reach a document acceptable to both parties.
3. A contract may not be signed until all required documents have been received and determined compliant.
4. The agency and the contractor may not have any contact, nor may any work begin, until the contract is fully executed.

VII. PROTEST/GRIEVANCE

Any bidder who does not agree with an award decision may submit a grievance/protest. Grievance/Protest procedures are available on the SPB website at <http://das.nebraska.gov/materiel/purchasing.html> if bid process is conducted by SPB. If bid process is conducted by the agency, agency is response for handling any grievance/protest at the agency level.

VIII. VENDOR PERFORMANCE REPORTS

Agencies may, at times, experience problems with late deliveries, non-deliveries, inferior product, unauthorized product substitutions, etc. These should be addressed in a timely manner. Agencies are encouraged to address the problem directly with the vendor. If an agency is unable to resolve the problem, they may request assistance from SPB. This is documented through a Vendor Performance Report.

It is recommended that the agency call the vendor to discuss the problem and then follow up in writing with a copy of the Vendor Performance Report to SPB. The agency should follow up with the vendor until the problem is resolved, or contact SPB for assistance.

When Vendor Performance Reports are used correctly, they can result in better vendor performance, improved contracts, and increased customer satisfaction. Agencies need to

understand the importance of ongoing documentation, reporting, and not waiting until it is time to award a new contract to decide that the product does not meet their needs or the vendor is not performing as required. It is difficult to disqualify a vendor for non-performance when documentation is lacking or non-existent.

5. Vendor Performance Report Procedures

- a.** When a vendor fails to provide commodities and/or services to meet the specifications of an Invitation to Bid /Request for Proposal, the agency will document this failure to SPB through the use of a Vendor Performance Report.
- b.** The agency will be responsible for indicating on the Vendor Performance Report if it is for informational purposes, in which case no further action will be taken, or if the agency is requesting SPB to contact the vendor for resolution. If the agency has resolved the dispute and is providing a report for informational purposes, the agency should indicate how the dispute was resolved.
- c.** If the agency is requesting that SPB contact the vendor for resolution, SPB will contact the vendor via letter and will provide the basis for the dispute.
 - i.** At times, the issue may be complex and require a meeting with the vendor to discuss the dispute(s) in the Vendor Performance Report.
- d.** The vendor will be required to submit a written response, via letter, as to the steps being taken to resolve the dispute regarding vendor performance within the designated time period set forth in the letter from SPB.
- e.** SPB will review the vendor's response with the agency. If the vendor fails to provide a reasonable solution that is acceptable to the State, the State will consider this a failure on the part of the vendor to correct the dispute.
- f.** The vendor will be given a reasonable time period to correct the action.
- g.** Failure to correct the dispute satisfactorily at the sole discretion of the State may be the basis for canceling the contract and suspending the vendor from bidding in the future on the State's needs.
- h.** Two (2) or more submissions of Vendor Performance Reports that require SPB intervention to resolve disputes may result in the vendor being suspended from bidding on the State's needs.
- i.** All documentation regarding the Vendor Performance Report and response from the vendor and agency will be kept on file with SPB.

COMMON MISTAKES MADE BY BIDDERS WHEN PREPARING A BID/PROPOSAL RESPONSE

- Failure to sign the ITB/RFP form in ink
- Failure to mail or submit the bid documents by the date and time of the bid/proposal opening
- Failure to submit samples or other required documents specified in the ITB/RFP
- Failure to respond to mandatory requirements specified in the ITB/RFP document
- Failure to mail or submit the bid documents to SPB rather than the using agency
- Failure to indicate on the bid document when bidding alternative products (for ITBs)
- Taking exceptions to the standard terms and conditions to which the State is not able to agree
- Failure to attend any **mandatory** pre-bid conference/site visit as provided for in the ITB/RFP
- Failure to submit pricing in the format provided in the RFP