# State of Nebraska - INVITATION TO BID
# CONTRACT

**Return to:**
State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: 402-471-6500
Fax: 402-471-2089

| | | | |
|---|---|---|---|
| **Date** | 3/01/16 | **Page** | 1 of 3 |
| **Solicitation Number** | 5218 OF | | |
| **Opening Date and Time** | 03/18/16 | 2:00 pm | |
| **Buyer** | DIANNA GILLILAND (AS) | | |

**DESTINATION OF GOODS**
**MULTIPLE DELIVERY LOCATIONS PLEASE REFER TO DOCUMENTATION FOR DELIVERY ADDRESSES.**

Per Nebraska' s Transparency in Government Procurement Act, DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

_____NEBRASKA CONTRACTOR AFFADAVIT: Bidder hereby attests that bidder 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 this state for at least the six (6) months immediately preceding the posting date of this ITB.

_____ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. §73-107 and wish to have preference, if applicable, considered in the award of this contract.

Contract to supply and deliver INDUSTRIAL FORK LIFT TRUCK, 5,000 POUND CAPACITY to the State of Nebraska as per the attached specifications. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the vendor and the State of Nebraska.

(fc 2/29/16)
**A response to this Solicitation is subject to, but not limited to, the included Standard Conditions and Terms. PLEASE READ CAREFULLY!**

**IT IS THE RESPONSIBILITY OF THE BIDDER TO REFER TO STATE PURCHASING BUREAU'S WEB SITE FOR ALL INFORMATION RELEVANT TO THIS SOLICITATION TO INCLUDE ADDENDA AND/OR AMENDMENTS THAT MAY BE ISSUED PRIOR TO THE OPENING DATE.**
**http://www.das.state.ne.us/materiel/purchasing/purchasing.html**

**Bid Tabulations are available on the internet at http://www.das.state.ne.us/materiel/purchasing/bidtabs.htm**

**This form is part of the specification package and must be signed and returned, along with all documents, by the opening date and time specified.**

**Any questions regarding this solicitation must be directed to State Purchasing Bureau, to the attention of the buyer. It is preferred that questions be sent via e-mail to matpurch.dasmat@nebraska.gov. Questions may also be sent by facsimile to 402-471-2089. Refer to specification for additional information.**

**No facsimile or email solicitation responses will be accepted.**

No Bid Respond: ( ) Remove From Class-Item OR ( ) Keep Active For Class-Item

**BIDDER MUST COMPLETE THE FOLLOWING**

DISCOUNT PAYMENT TERMS:_____% _____ DAYS

By signing this Invitation to Bid, the bidder agrees to the "Standard Conditions and Terms of Bid Solicitation and Offer" and is committed to provide a drug free work place environment. Vendor will furnish the items requested within_____ days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

**Sign Here** _____
**(Authorized Signature MANDATORY - MUST BE SIGNED IN INK)**

Enter Contact Information Below

**VENDOR#** _____
**VENDOR:** _____
**Address:** _____
_____
_____

**Contact** _____
**Telephone** _____
**Facsimile** _____
**Email** _____

# State of Nebraska - INVITATION TO BID
# CONTRACT

**Return to:**
State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: 402-471-6500
Fax: 402-471-2089

| | | | |
|---|---|---|---|
| **Date** | 3/01/16 | **Page** | 2 of 3 |
| **Solicitation Number** | 5218 OF | | |
| **Opening Date and Time** | 03/18/16 | 2:00 pm | |
| **Buyer** | DIANNA GILLILAND (AS) | | |

**DESTINATION OF GOODS**
**MULTIPLE DELIVERY LOCATIONS PLEASE REFER TO DOCUMENTATION FOR DELIVERY ADDRESSES.**

## INVITATION

| Line | Description | Quantity | Unit of Measure | Unit Price | Extended Price |
|---|---|---|---|---|---|
| 1 | **INDUSTRIAL FORK LIFT TRUCK**<br>5,000 POUND CAPACITY<br><br>Make:_____<br><br>Model: _____<br><br>OPTIONS<br>The options shall meet or exceed the following requirements, which are exceptions to specifications. Quotes must be furnished, if available, for below list and not included as standard equipment or required in main part of this specification. | **1.0000** | **EA** | _____ | _____ |
| 2 | **EQUIPMENT PARTS MANUAL**<br>ADDITIONAL COPIES<br><br>Indicate:<br>CD ROM: _____<br><br>On Line: _____<br><br>Printed: _____ | **1.0000** | **EA** | _____ | _____ |
| 3 | **ENGINE PARTS MANUAL**<br>ADDITIONAL COPIES<br><br>Indicate:<br>CD ROM: _____<br><br>On Line: _____<br><br>Printed: _____ | **1.0000** | **EA** | _____ | _____ |
| 4 | **DEDUCT FOR NO ENCLOSED CAB**<br>OPERATORS COMPARTMENT TO<br>HAVE OPEN ROPS OR FOPS WITH OVERHEAD PROTECTION.<br>OVERHEAD PROTECTION NOT TO EXCEED 86 INCHES. | **1.0000** | **EA** | _____ | _____ |

# State of Nebraska - INVITATION TO BID
# CONTRACT

**Return to:**
State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: 402-471-6500
Fax: 402-471-2089

| | | | |
|---|---|---|---|
| **Date** | 3/01/16 | **Page** | 3 of 3 |
| **Solicitation Number** | 5218 OF | | |
| **Opening Date and Time** | 03/18/16 | 2:00 pm | |
| **Buyer** | DIANNA GILLILAND (AS) | | |

**DESTINATION OF GOODS**

**MULTIPLE DELIVERY LOCATIONS PLEASE REFER TO DOCUMENTATION FOR DELIVERY ADDRESSES.**

## INVITATION

| Line | Description | Quantity | Unit of Measure | Unit Price | Extended Price |
|---|---|---|---|---|---|

**TABLE OF CONTENTS**


**I. SCOPE OF THE INVITATION TO BID (ITB) ..... 1**

**A.** SCHEDULE OF EVENTS ..... 1

**II. PROCUREMENT PROCEDURES ..... 2**

**A.** PROCURING OFFICE AND CONTACT PERSON ..... 2
**B.** GENERAL INFORMATION ..... 2
**C.** COMMUNICATION WITH STATE STAFF AND EVALUATORS ..... 2
**D.** WRITTEN QUESTIONS AND ANSWERS ..... 2
**E.** SUBMISSION OF BIDS ..... 3
**F.** IMPORTANT NOTICE LANGUAGE ..... 3
**G.** DISCOUNTS ..... 3
**H.** PRICE ADJUSTMENTS DURING CONTRACT TERM ..... 3
**I.** PAYMENT ..... 3
**J.** BID EXECUTION ..... 3
**K.** BID OPENING ..... 3
**L.** ELECTRONIC DOCUMENTS/FACSMILIE SUBMISSIONS ..... 3
**M.** VALID BID TIME ..... 4
**N.** ALTERNATE/EQUIVALENT BIDS ..... 4
**O.** LATE BIDS ..... 4
**P.** NO BID ..... 4
**Q.** LUMP SUM OR ALL OR NONE BIDS ..... 4
**R.** REJECTION OF BIDS ..... 4
**S.** EVALUATION OF BIDS ..... 4
**T.** BID TABULATIONS ..... 4
**U.** MANDATORY REQUIREMENTS ..... 4
**V.** REFERENCE CHECKS ..... 5
**W.** RECYCLING ..... 5
**X.** SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS ..... 5
**Y.** RESIDENT BIDDER ..... 5
**Z.** EVALUATION CRITERIA AND AWARD ..... 5
**AA.** POLITICAL SUB-DIVISIONS ..... 6
**BB.** VIOLATION OF TERMS AND CONDITIONS ..... 6

**III. INVITATION TO BID - TERMS AND CONDITIONS ..... 7**

**A.** GENERAL ..... 7
**B.** DEBARMENT ..... 7
**C.** SPECIFICATIONS ..... 8
**D.** PERFORMANCE AND DEFAULT ..... 8
**E.** DRUG POLICY ..... 8
**F.** NE ACCESS TECHNOLOGY STANDARDS ..... 8
**G.** COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION 9
**H.** PERMITS, REGULATIONS, LAWS ..... 9
**I.** COOPERATION WITH OTHER CONTRACTORS ..... 9
**J.** CONTRACTOR RESPONSIBILITY ..... 9
**L.** FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS ..... 10
**M.** RIGHT TO AUDIT ..... 10
**N.** CONFLICT OF INTEREST ..... 11
**O.** BID PREPARATION COSTS ..... 11
**P.** ERRORS AND OMISSIONS ..... 11
**Q.** ASSIGNMENT BY THE STATE ..... 12
**R.** ASSIGNMENT BY THE CONTRACTOR ..... 12
**S.** GOVERNING LAW ..... 12
**T.** ATTORNEY'S FEES ..... 12
**U.** ADVERTISING ..... 12
**V.** NOTIFICATION ..... 13
**W.** EARLY TERMINATION ..... 13
**X.** BREACH BY CONTRACTOR ..... 14
**Y.** ASSURANCES BEFORE BREACH ..... 14
**Z.** ACCEPTANCE AND PAYMENT OF GOODS ..... 15

**AA.** FORCE MAJEURE ..... 15
**BB.** PROHIBITION AGAINST ADVANCE PAYMENT ..... 15
**CC.** PAYMENT ..... 15
**DD.** INVOICES ..... 16
**EE.** TAXES ..... 16
**FF.** SEVERABILITY ..... 16
**GG.** PROPRIETARY INFORMATION ..... 16
**HH.** CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING ..... 17
**II.** PRICES ..... 17
**JJ.** ETHICS IN PUBLIC CONTRACTING ..... 18
**KK.** INDEMNIFICATION ..... 18
**LL.** ANTITRUST ..... 19
**MM.** EMPLOYEE WORK ELIGIBILITY STATUS ..... 19

**IV. SCOPE OF WORK ..... 21**

**A.** SCOPE ..... 21
**B.** AMENDMENT ..... 21
**C.** REVISIONS ..... 21

**V. INVITATION TO BID - TECHNICAL SPECIFICATIONS ..... 22**

**A.** NON-COMPLIANCE STATEMENT ..... 22
**B.** DESCRIPTION OF GOODS ..... 22
**C.** ENGINE ..... 23
**D.** BRAKES ..... 23
**E.** TRANSMISSION ..... 24
**F.** HYDRAULIC LIFT AND TILT ..... 24
**G.** STEERING AND TIRES ..... 25
**H.** GENERAL ..... 25
**I.** NOISE LEVEL ..... 26
**J.** MANUALS ..... 26
**K.** MISCELLANEOUS ..... 26
**L.** ANNUAL USAGE, ESTIMATED ..... 27
**M.** USAGE REPORT ..... 27
**N.** DELIVERY AFTER RECEIPT OF ORDER (ARO) ..... 27
**O.** DELIVERY LOCATIONS/INSTRUCTIONS ..... 27
**P.** ORDERS ..... 28
**Q.** QUALITY ..... 28
**R.** PRICES ..... 29
**S.** AUTHORIZED DEALER & WARRANTY ..... 29
**T.** WARRANTY ..... 30
**U.** SUBSTITUTIONS ..... 30
**V.** SECRETARY OF STATE REGISTRATION REQUIREMENTS ..... 30
**W.** BID COMPLIANCE ..... 31

**Form A Bidder Contact Sheet ..... 32**

## GLOSSARY OF TERMS

**Acceptance Test Procedure:** Benchmarks and other performance criteria, developed by the State of Nebraska or other sources of testing standards, for measuring the effectiveness of products or services and the means used for testing such performance.

**Addendum:** Something to be added or deleted to an existing document; a supplement.

**After Receipt of Order (ARO):** After Receipt of Order

**Agency:** Any state agency, board, or commission other than the University of Nebraska, the Nebraska State colleges, the courts, the Legislature, or any other office or agency established by the Constitution of Nebraska.

**Agent/Representative:** A person authorized to act on behalf of another.

**Amend:** To alter or change by adding, subtracting, or substituting.

**Amendment:** A written correction or alteration to a document.

**Appropriation:** Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

**Award:** All purchases, leases, or contracts which are based on competitive bids will be awarded according to the provisions in the Invitation to Bid. The State reserves the right to reject any or all bids, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right 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. All awards will be made in a manner deemed in the best interest of the State.

**Bid/Proposal:** The offer submitted by a vendor in a response to written solicitation.

**Bid Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the vendor will not withdraw the bid.

**Bidder:** A vendor who submits an offer bid in response to a written solicitation.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

**Business Day:** Any weekday, except State-recognized holidays.

**Calendar Day:** Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

**Cancellation:** To call off or revoke a purchase order without expectation of conducting or performing it at a later time.

**Central Processing Unit (CPU):** Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software.

**Change Order**: Document that provides amendments to an executed purchase order.

**Collusion:** An agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose.

**Commodities:** Any equipment, material, supply or goods; anything movable or tangible that is provided or sold.

**Commodities Description:** Detailed descriptions of the items to be purchased; may include information necessary to obtain the desired quality, type, color, size, shape, or special characteristics necessary to perform the work intended to produce the desired results.

**Competition:** The effort or action of two or more commercial interests to obtain the same business from third parties.

**Confidential Information:** Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

**Contract:** An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law; the writing that sets forth such an agreement.

**Contract Administration:** The management of the contract which includes and is not limited to contract signing, contract amendments and any necessary legal actions.

**Contract Management:** The management of day to day activities at the agency which includes and is not limited to ensuring deliverables are received, specifications are met, handling meetings and making payments to the Contractor.

**Contract Period:** The duration of the contract.

**Contractor:** Any individual or entity having a contract or awarded purchase order to furnish commodities or services.

**Cooperative Purchasing:** The combining of requirements of two or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits.

**Copyright:** A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

**Critical Program Error:** Any Program Error, whether or not known to the State, which prohibits or significantly impairs use of the Licensed Software as set forth in the documentation and intended in the contract.

Customer Service: The process of ensuring customer satisfaction by providing assistance and advice on those products or services provided by a Contractor.

**Default:** The omission or failure to perform a contractual duty.

**Deviation:** Any proposed change(s) or alteration(s) to either the terms and conditions or deliverables within the scope of the written solicitation or contract.

Evaluation: The process of examining an offer after opening to determine the vendor's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

**Evaluation Committee:** Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of bids/proposals (offers made in response to written solicitations).

**Extension:** Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period".

**Free on Board (F.O.B.) Destination:** The delivery charges are included in the quoted price and prepaid by the vendor. Vendor is responsible for all claims associated with damages during delivery of product.

**Free on Board (F.O.B.) Point of Origin:** The delivery charges are not included in the quoted price and are the responsibility of the agency. Agency is responsible for all claims associated with damages during delivery of product.

**Foreign Corporation:** A foreign corporation that was organized and chartered under the laws of another state, government, or country.

**Installation Date:** The date when the procedures described in "Installation by Contractor", and "Installation by State", as found in the RFP, ITB (written solicitation) or contract are completed.

**Late Bid/Proposal:** An offer received after the Opening Date and Time.

**Licensed Software Documentation:** The user manuals and any other materials in any form or medium customarily provided by the Contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently.

**Mandatory/Must:** Required, compulsory, or obligatory.

**May:** Discretionary, permitted; used to express possibility.

**Module (see System):** A collection of routines and data structures that perform a specific function of software.

**Must:** See Shall/Will/Must.

**National Institute for Governmental Purchasing (NIGP):** National Institute of Governmental Purchasing – Source used for assignment of universal commodity codes to goods and services.

**NDOR:** Nebraska Department of Roads.

**Open Market Purchase:** Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, State Purchasing Bureau.

**Opening Date and Time:** Specified date and time for the public opening of received, labeled, and sealed formal bids.

**Operating System:** The control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources.

**Outsourcing:** The contracting out of a business process which an organization may have previously performed internally or has a new need for, to an independent organization from which the process is purchased back.

**Payroll & Financial Center (PFC):** Electronic procurement system of record.

**Performance Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Contractor fulfills any and all obligations under the contract.

**Platform:** A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination.

**Pre-Bid/Pre-Proposal Conference:** A meeting scheduled for the purpose of clarifying a written solicitation and related expectations.

**Product:** Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

**Program Error:** Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any Critical Program Error.

**Program Set:** The group of programs and products, including the Licensed Software specified in the RFP, plus any additional programs and products licensed by the State under the contract for use by the State.

**Project:** The total scheme, program, or method worked out for the accomplishment of an objective, including all documentation, commodities, and services to be provided under the contract.

**Proposal:** See Bid/Proposal.

**Proprietary Information:** Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

**Protest/Grievance:** A complaint about a governmental action or decision related to an Invitation to Bid or resultant contract, brought by a vendor who has timely submitted a bid response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

**Public Proposal/Bid Opening:** The process of opening correctly submitted offers at the time and place specified in the written solicitation and in the presence of anyone who wished to attend.

**Recommended Hardware Configuration:** The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent utilized by the State as recommended by the Contractor.

**Release Date:** The date of public release of the written solicitation to seek offers

**Renewal Period:** Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension.

**Request for Information (RFI):** A general invitation to vendors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

**Request for Proposal (RFP):** A written solicitation utilized for obtaining competitive offers.

**Responsible Bidder:** A bidder who has the capability in all respects to perform fully and lawfully all requirements with integrity and reliability to assure good faith performance.

**Responsive Bidder:** A bidder who has submitted a bid which conforms to all requirements of the solicitation document.

**Shall/Will/Must:** An order/command; mandatory.

**Should:** Expected; suggested, but not necessarily mandatory.

**Software License:** Legal instrument with or without printed material that governs the use or redistribution of licensed software.

**Sole Source – Commodity:** When an item is available from only one source due to the unique nature of the requirement, its supplier, or market conditions.

**Sole Source – Services:** A service of such a unique nature that the vendor selected is clearly and justifiably the only practical source to provide the service. Determination that the vendor selected us justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required.

**Specifications:** The detailed statement, especially of the measurements, quality, materials, and functional characteristics, or other items to be provided under a contract.

**System (see Module):** Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Contractor as functioning or being capable of functioning, as an entity.

**Termination:** Occurs when either party, pursuant to a power created by agreement or law, puts an end to the contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

**Trade Secret:** Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. § 87-502(4)).

**Trademark:** A word, phrase, logo, or other graphic symbol used by a manufacturer or vendor to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office.

**Upgrade:** Any change that improves or alters the basic function of a product of service.

**Vendor:** An individual or entity lawfully conducting business in the State of Nebraska, or licensed to do so, who seeks to provide goods or services under the terms of a written solicitation.

**Vendor Performance Report:** A report issued to the Contractor by State Purchasing Bureau when products or services delivered or performed fail to meet the terms of the purchase order, contract, and/or specifications, as reported to State Purchasing Bureau by the agency. The State Purchasing Bureau shall contact the Contractor regarding any such report. The vendor performance report will become a part of the permanent record for the Contractor. The State may require vendor to cure. Two such reports may be cause for immediate termination.

**Will:** See Shall/Will/Must

**Work Day:** See Business Day.

## I. SCOPE OF THE INVITATION TO BID (ITB)

The State of Nebraska, Administrative Services (AS), Materiel Division, State Purchasing Bureau (hereafter known as State Purchasing Bureau or SPB), is issuing this Invitation To Bid, Number 5218 OF for the purpose of selecting a qualified Contractor to provide INDUSTRIAL FORK LIFT TRUCK, 5,000 POUND CAPACITY.

**ALL INFORMATION PERTINENT TO THIS INVITATION TO BID CAN BE FOUND ON THE INTERNET AT:** http://das.nebraska.gov/materiel/purchasing.html

### A. SCHEDULE OF EVENTS

The State expects to adhere to the tentative procurement schedule shown below. It should be noted, however, that some dates are approximate and subject to change.

| | ACTIVITY | DATE/TIME |
|---|---|---|
| **1** | Release Invitation To Bid | March 1, 2016 |
| **2** | Last day to submit written questions | March 9, 2016 |
| **3** | State responds to written questions through Invitation To Bid "Addendum" and/or "Amendment" to be posted to the Internet at: http://das.nebraska.gov/materiel/purchasing.html | March 10, 2016 |
| **4** | Bid opening<br>Location: State Purchasing Bureau<br>1526 K Street, Suite 130<br>Lincoln, NE 68508 | March 18, 2016<br>2:00 PM<br>Central Time |
| **5** | Review for conformance of mandatory requirements | March 18, 2016 |
| **6** | Review period | To Be Determined |
| **7** | Post "Letter of Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html | To Be Determined |
| **8** | Contract finalization period | To Be Determined |
| **9** | Contract award | To Be Determined |
| **10** | Contract start date (if different than Contract Award date) | To Be Determined |

## II. PROCUREMENT PROCEDURES

### A. PROCURING OFFICE AND CONTACT PERSON

Procurement responsibilities related to this Invitation To Bid reside with the State Purchasing Bureau. The point of contact for the procurement is as follows:

Name: Dianna Gilliland
Agency: State Purchasing Bureau
Address: 1526 K Street, Suite 130
Lincoln, NE 68508

### B. GENERAL INFORMATION

The Invitation To Bid (ITB) is designed to solicit bids from qualified vendors who will be responsible for providing INDUSTRIAL FORK LIFT TRUCK, 5,000 POUND CAPACITY at a competitive and reasonable cost. Bids that do not conform to the mandatory items as indicated in the Invitation To Bid will not be considered.

Bids shall conform to all instructions, conditions, and requirements included in the Invitation To Bid. Prospective Bidders are expected to carefully examine all documentation, schedules, and requirements stipulated in this Invitation To Bid, and respond to each requirement in the format prescribed.

In addition to the provisions of this Invitation To Bid and the awarded bid, which shall be incorporated by reference in the contract, any additional clauses or provisions required by the terms and conditions will be included as an amendment to the contract.

A fixed-price contract will be awarded as a result of this Invitation to Bid.

### C. COMMUNICATION WITH STATE STAFF AND EVALUATORS

From the date the Invitation To Bid is issued until a determination is announced regarding the contract award, contact regarding this project between potential Contractors and individuals employed by the State is restricted to only written communication with the staff designated above as the point of contact for this Invitation To Bid. Bidders shall not have any communication with, or attempt to communicate with or influence in any way, any evaluator involved in this ITB.

Once a Contractor is preliminarily selected, as documented in the intent to award, that Contractor is restricted from communicating with State staff until a contract is signed. The following exceptions to these restrictions are permitted:

**1.** Written communication with the person(s) designated as the point(s) of contact for this Invitation To Bid or procurement;
**2.** Contacts made pursuant to any pre-existing contracts or obligations; and
**3.** State-requested presentations, key personnel interviews, clarification sessions or discussions to finalize a contract.

Violations of these conditions may be considered sufficient cause to reject a Bidder's bid and/or selection irrespective of any other condition. No individual member of the State or employee of the State is empowered to make binding statements regarding this Invitation To Bid. The Buyer will issue any clarifications or opinions regarding this Invitation To Bid in writing.

### D. WRITTEN QUESTIONS AND ANSWERS

Any explanation desired by a Bidder regarding the meaning or interpretation of any Invitation To Bid provision must be submitted in writing to the State Purchasing Bureau and clearly marked "ITB Number 5218 OF; INDUSTRIAL FORK LIFT TRUCK, 5,000 POUND CAPACITY Questions". 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, and must include a cover sheet clearly indicating that the transmission is to the attention of Dianna Gilliland, showing the total number of pages transmitted, and clearly marked "ITB Number 5218 OF INDUSTRIAL FORK LIFT TRUCK, 5,000 POUND CAPACITY Questions".

It is recommended that Bidders submit questions sequentially numbered and include the Invitation To Bid reference and page number.

Written answers will be provided through an addendum to be posted on the Internet at http://das.nebraska.gov/materiel/index.html on or before the date shown in the Schedule of Events.

| Question Number | ITB Section References | ITB Page Number | Question |
|---|---|---|---|
| | | | |

**E. SUBMISSION OF BIDS**

The following describes the requirements related to bid submission, bid handling, and review by the State.

To facilitate the evaluation process, one (1) original of the entire bid should be submitted. Bids must be submitted by the bid due date and time. **A separate sheet must be provided that clearly states which sections, if applicable, have been submitted as proprietary or have copyrighted materials**. All proprietary information the Bidder wishes the State to withhold must be submitted in accordance with the instructions outlined in Section III, Proprietary Information. If a recipient phone number is required for delivery purposes, 402-471-6500 should be used. The Invitation To Bid number must be included in all correspondence.

**F. IMPORTANT NOTICE LANGUAGE**

Bid responses should include the completed Form A and Bidder Contact Sheet. Bids must reference the Invitation To Bid number and be sent to the specified address. Please note that the address label should appear as specified in Section II part A on the page of the calendar or bidder's bid response packet. Rejected late bids will return to the bidder unopened.

**G. DISCOUNTS**

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.

**H. PRICE ADJUSTMENTS DURING CONTRACT TERM**

Any request for a price adjustment must be submitted in writing to the State Purchasing Bureau, a minimum of thirty (30) days prior to proposed effective date of increase, and must show cause with supporting documentation (such as notification letter from manufacturer). Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices). Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined to be in the best interest of the State. The State will be given full proportionate benefit of any decrease for the term of the contract. No price increases are to be billed to any State Agencies without prior written approval by the State Purchasing Bureau. Contract supplier or suppliers may honor pricing and extend the contract to political sub-divisions, cities, and counties. Terms and conditions of the contract must be met by political sub-divisions, cities, and counties.

**I. PAYMENT**

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.

**J. BID EXECUTION**

Bids must be signed in ink by the Bidder on the State of Nebraska's Invitation To Bid form. All bids must typewritten or in ink on the State of Nebraska's Invitation To Bid form. Erasures and alternations must be initialed by the Bidder in ink. No telephone or voice bids will be accepted. Failure to comply with these provisions may result in the rejection of the bid.

**K. BID OPENING**

The sealed bids will be publicly opened and the bidding entities announced on the date, time, and location shown in the Schedule of Events. Bids will be available for viewing by those present at the bid opening. Vendors may also contact the State to schedule an appointment for viewing bids after the Intent to Award has been posted to the website.

**L. ELECTRONIC DOCUMENTS/FACSMILIE SUBMISSIONS**

The State Purchasing Bureau will not accept electronic responses to an Invitation To Bid for a commodity contract at any dollar amount. However, an exception applies to one-time purchase bids under $25,000. These one-time purchase bids may be submitted by electronic means, but cannot exceed ten (10) pages.

Sealed responses to an Invitation To Bid that contain a two party bid, may include electronic pages transmitted between the two parties, but these documents cannot be submitted to the State Purchasing Bureau by electronic

means. No direct electronic solicitation responses will be accepted for a commodity contract of any estimated value.

**M. VALID BID TIME**

Bids shall be firm for a minimum of sixty (60) calendar days after the opening date, unless otherwise stipulated by either party in the Invitation To Bid.

**N. ALTERNATE/EQUIVALENT BIDS**

Bidder may offer bids which are at variance from the express specifications of the Invitation To Bid. The State reserves the right to consider and accept such bids if, in the judgment of the State Procurement Manager, the bid will result in goods and/or services equivalent to or better than those which would be supplied in the original bid specifications. Bidders must indicate on the Invitation To Bid the manufacturer's name, number and shall submit with their bid, sketches, descriptive literature and/or complete specifications. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements are subject to rejection. In the absence of any stated deviation or exception, the bid will be accepted as in strict compliance with all terms, conditions and specification, and the Bidder shall be held liable therefore.

**O. LATE BIDS**

Bids received after the time and date of the bid opening will be considered late bids. Rejected late bids will be returned to the Bidder unopened. The State is not responsible for bids that are late or lost due to mail service inadequacies, traffic, or any other reason(s).

**P. NO BID**

If not submitting a bid, respond by returning the Invitation To Bid form explaining the reason in the space provided. NOTE: To qualify as a respondent, Bidder must submit a "NO BID" and it must be received no later than the stated bid opening date and time.

**Q. LUMP SUM OR ALL OR NONE BIDS**

The State reserves the right to purchase item-by-item, by groups or as total when the State may benefit by so doing. Bidders 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. 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; a "lump sum" bid is one in which the Bidder offers a lower price than the sum of the individual bids if all items are purchased but agrees to deliver individual items at the prices quoted.

**R. REJECTION OF BIDS**

The State reserves the right to reject any or all bids, wholly or in part, or to award to multiple Bidders in whole or in part. The State reserves the right 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. All awards will be made in a manner deemed in the best interest of the State. The State reserves the right to reject any or all bids and re-advertise for bids; and further reserves the right to waive any informality or irregularity.

**S. EVALUATION OF BIDS**

All responses to this Invitation To Bid which fulfill all mandatory requirements will be evaluated for conformance to requested specifications. Elements that may also be considered include but are not limited to:

**1.** The ability, capacity, and skill of the Bidder to deliver and implement the system or project, or provide the requested goods, that meet the requirements of the Invitation to Bid;
**2.** The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;
**3.** Whether the Bidder can perform the contract within the specified time frame;
**4.** The quality of Bidder performance on prior contracts; and
**5.** Such other information that may be secured and that has a bearing on the decision to award the contract.

**T. BID TABULATIONS**

Bid tabulations are available on the website at: http://www.das.state.ne.us/materiel/purchasing/bidtabs.htm.
Bid tabulations will not be provided by telephone or facsimile. Bid files may be examined, after the evaluation period is over, during normal business hours by appointment.

**U. MANDATORY REQUIREMENTS**

The bids will first be examined to determine if all mandatory requirements listed below have been addressed to warrant further evaluation. Bids not meeting mandatory requirements will be excluded from further evaluation. The mandatory requirement items are as follows:

**1.** Invitation To Bid for Commodity Contract form, signed in ink; and

**2.** The completed Invitation To Bid document.

**V. REFERENCE CHECKS**

The State reserves the right to check any reference(s), regardless of the source of the reference information, including but not limited to, those that may be identified by the company in the bid, those indicated through the explicitly specified contacts, those that are identified during the review of the bid, or those that result from communication with other entities involved with similar projects. The State may use a third party to conduct reference checks.

**W. RECYCLING**

As outlined in Neb. Rev. Stat. § 81-15,159, a preference shall be given to those Bidders that provide products, materials, or supplies which are manufactured or produced from recycled material or that can be readily reused or recycled after its normal use. Preference will also be given to purchases of corn-based biodegradable plastics and road deicers. No preference shall be given if such preference would result in the purchase of products, materials, or supplies that are of inadequate quality or of substantially higher cost.

**X. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS**

All Bidders should be authorized to transact business in the State of Nebraska. All Bidders are expected to comply with all Nebraska Secretary of State Registration requirements. It is the responsibility of the Bidder to comply with any registration requirements pertaining to types of business entities (e.g. person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation or other type of business entity). The Bidder who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days), valid Certificate of Good Standing or Letter of Good Standing; or in the case of a sole proprietorship, provide written documentation of sole proprietorship. This must be accomplished prior to the award of the contract. Construction Contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certification of registration. Further, all Bidders shall comply with any and all other applicable Nebraska statutes regarding transacting business in the State of Nebraska. Bidders should submit the above certification(s) with their bid.

**Y. RESIDENT BIDDER**

Pursuant to Neb. Rev. Stat. §§ 73-101.01-73-101.02, a Resident Bidder shall be allowed a preference against a Nonresident Bidder 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 Bidders. 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. The provision of this preference shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of this preference.

**Z. EVALUATION CRITERIA AND AWARD**

The State of Nebraska reserves the right to evaluate bids in a manner, and utilizing methods, selected in the State of Nebraska's best interest and discretion. The State of Nebraska may waive informalities or irregularities in bids if the waiver is in the best interest of the State of Nebraska and such waiver does not prejudice other bidders in the State of Nebraska's discretion. After evaluation of the bids, the State of Nebraska may take, in the State's discretion, one or more of the following actions:

Accept or reject a portion of or all of a bid;
Accept or reject all bids;
Withdraw the Invitation to Bid;
Elect to rebid the Invitation to Bid;
Award single lines or multiple lines to one or more bidders; or,
Award one or more complete contracts.

The State of Nebraska reserves the right to make awards that are in the best interest of the State of Nebraska. The State of Nebraska may consider, but is not limited to, one or more of the following award criteria:

Price;
Location;
Quality;
Delivery time; and,
State contract management requirements or costs.

By submitting a bid in response to this Invitation to Bid, the Bidder grants to the State the right to contact or arrange a visit in person with any or all of the Bidder's clients.

Once an Intent to Award decision has been determined, it will be posted to the Internet at: http://das.nebraska.gov/materiel/purchasing.html/

**AA. POLITICAL SUB-DIVISIONS**

The Contractor may extend the contract to political sub-divisions conditioned upon the honoring of the prices charged to the State. Terms and conditions of the Contract must be met by political sub-divisions. Under no circumstances shall the State be contractually obligated or liable for any purchases by political sub-divisions or other public entities not authorized by Neb. Rev. Stat. § 81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

**BB. VIOLATION OF TERMS AND CONDITIONS**

Violation of the terms and conditions contained in this Invitation To Bid or any resultant 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:

**1.** Rejection of a Bidder's bid; and
**2.** 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, and
**3.** Legal Action.

## III. INVITATION TO BID - TERMS AND CONDITIONS

By signing the "Invitation To Bid" form, the Bidder guarantees compliance with the provisions stated in this Invitation To Bid, agrees to the Terms and Conditions unless otherwise agreed to, and certifies Bidder maintains a drug free work place environment.

Bidders are expected to closely read the Terms and Conditions and provide a binding signature of intent to comply with the Terms and Conditions; provided, however, a Bidder may indicate any exceptions to the Terms and Conditions by one (1) clearly identifying the term or condition by subsection, and two (2) including an explanation for the Bidder's inability to comply with such term or 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 a Bidder's bid. Bidders must include completed Section III with their ITB response.

The State of Nebraska is soliciting bids in response to the ITB. The State of Nebraska will not consider bids that propose the substitution of the bidder's contract, agreements, or terms for those of the State of Nebraska's. Any License, Service Agreement, Customer Agreement, User Agreement, Bidder Terms and Conditions, Document, or Clause purported or offered to be included as a part of this ITB must be submitted as individual clauses, as either a counter-offer or additional language, and each clause must be acknowledged and accepted in writing by the State. If the Bidder's clause is later found to be in conflict with the ITB or resulting contract the Bidder's clause shall be subordinate to the ITB or resulting contract.

### A. GENERAL

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The contract resulting from this Invitation To Bid shall incorporate the following documents:

**1.** Amendment to Contract Award with the most recent dated amendment having the highest priority;
**2.** Contract Award and any attached Addenda;
**3.** The Invitation To Bid form and the Contractor's Bid Response signed in ink
**4.** Amendments to ITB and any Questions and Answers; and
**5.** The original ITB document and any Addenda.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to Contract Award with the most recent dated amendment having the highest priority, 2) Contract Award and any attached Addenda, 3) the signed Invitation To Bid form and the Contractor's Bid Response 4) Amendments to ITB and any Questions and Answers, 5) the original ITB document and any Addenda.

Any ambiguity in any provision of this contract which shall be discovered after its execution shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

Once bids are opened they become the property of the State of Nebraska and will not be returned.

### B. DEBARMENT

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The contractor, by signature to the Invitation To Bid, certifies that the contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or

agency from participating in transactions (debarred). The contractor also agrees to include the above requirements in any and all subcontracts into which it enters. The contractor also agrees to include the above requirements in any and all subcontracts into which it enters. The contractor shall immediately notify the Department if, during the term of this contract, contractor becomes debarred. The Department may immediately terminate this contract by providing contractor written notices if contractor becomes debarred during the term of this contract.

**C. SPECIFICATIONS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

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. The State Procurement Manger will be the sole judge of equivalency. The Bidder may offer any brands which meets or exceeds the specification. When a specific product is required, the Invitation to Bid will so state. Any item bid is to be the latest current model under standard production at the time of order. No used or refurbished equipment will be accepted, unless otherwise stated.

**D. PERFORMANCE AND DEFAULT**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The State reserves the right to require a performance bond from the successful Bidder, as provided by law, without expense to the State. Otherwise, in case of default of the Contractor, the State may procure the articles from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

**E. DRUG POLICY**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

Bidder certifies that it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**F. NE ACCESS TECHNOLOGY STANDARDS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

Contractor shall review the Nebraska Technology Access Standards, found at http://nitc.nebraska.gov/standards/2-201.html and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request that contract comply with the changed standard at a cost mutually acceptable to the parties.

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

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Invitation To Bid.

**H. PERMITS, REGULATIONS, LAWS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of the contract. The Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

**I. COOPERATION WITH OTHER CONTRACTORS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The State may already have in place or choose to award supplemental contracts related to this Invitation To Bid or any portion thereof.

**1.** The State reserves the right to award the contract jointly between two or more potential Contractors, if such an arrangement is in the best interest of the State.
**2.** The Contractor shall agree to cooperate with such other Contractors, and shall not commit or permit any act which may interfere with the performance of work by any other Contractor.
**3.** The State reserves the right to award multiple contracts or to award line by line contract.

**J. CONTRACTOR RESPONSIBILITY**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The Contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the Invitation To Bid, the Contractor's bid, and the resulting contract. The Contractor shall be the sole point of contact regarding all contractual matters.

**K. CONTRACT CONFLICTS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFP Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

Contractor shall insure that contracts or agreements with sub-contractors and agents, and the performance of services in relation to this contract by sub-contractors and agents, does not conflict with this contract.

**L. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of any termination, and advise the Contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. In no event shall the Contractor be paid for a loss of anticipated profit.

**M. RIGHT TO AUDIT**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit contract. The State and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and Subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Contractor shall, at all times during the term of this contract and for a period of five (5) years after the completion of this contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the State, whether during or after completion of this contract and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the State. Such records shall be made available to the State during normal business hours at the Contractor's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the State. Contractor shall ensure the State has these rights with Contractor's assigns, successors, and Subcontractors, and the obligations of these rights shall be explicitly included

in any subcontracts or agreements formed between the Contractor and any Subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the State.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the State unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the State in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the State for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Contractor shall reimburse the State for total costs of audit. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the State's findings to Contractor.

**N. CONFLICT OF INTEREST**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

By submitting a bid, Bidder certifies that there does not now exist any relationship between the Bidder and any person or entity which is or gives the appearance of a conflict of interest related to this Invitation To Bid or project.

The Bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

The Bidder certifies that it will not employ any individual known by Bidder to have a conflict of interest.

**O. BID PREPARATION COSTS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The State shall not incur any liability for any costs incurred by Bidders in replying to this Invitation To Bid, including any activity related to bidding on this Invitation To Bid.

**P. ERRORS AND OMISSIONS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The Bidder shall not take advantage of any errors and/or omissions in this Invitation To Bid or resulting contract. The Bidder must promptly notify the State of any errors and/or omissions that are discovered.

**Q. ASSIGNMENT BY THE STATE**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

**R. ASSIGNMENT BY THE CONTRACTOR**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The Contractor may not assign, voluntarily or involuntarily, the contract or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

**S. GOVERNING LAW**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Invitation To Bid or any resultant contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The Contractor must be in compliance with all Nebraska statutory and regulatory law.

**T. ATTORNEY'S FEES**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Contractor agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the State is the prevailing party.

**U. ADVERTISING**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

## V. NOTIFICATION

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

During the bid process, all communication between the State and a Bidder shall be between the Bidder's representative clearly noted in its bid and the buyer noted in Section II.A., Procuring Office and Contact Person, of this ITB. Bidder is at all times to keep its point of contact updated with the most current information. After the award of the contract, all notices under the contract shall be deemed duly given upon delivery to the staff designated as the point of contact for this ITB, in person, or upon delivery by U.S. Mail, facsimile, or e-mail. Each Bidder should provide in its bid the name, title, and complete address of its designee to receive notices.

**1.** Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth above, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.

**2.** Whenever the Contractor encounters any difficulty which is delaying or threatens to delay its timely performance under the contract, the Contractor shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

For the duration of the contract, all communication between Contractor and the State regarding the contract shall take place between the Contractor and individuals specified by the State in writing. Communication about the contract between Contractor and individuals not designated as points of contact by the State is strictly forbidden.

## W. EARLY TERMINATION

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The contract may be terminated as follows:

**1.** The State and the Contractor, by mutual written agreement, may terminate the contract at any time.

**2.** The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar days written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other obligations incurred under the terms of the contract. In the event of cancellation the Contractor shall be entitled to payment, for those products received and accepted by the State.

**3.** The State may terminate the contract immediately for the following reasons:

**a.** if directed to do so by statute;
**b.** Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
**c.** a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
**d.** fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
**e.** an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
**f.** a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
**g.** Contractor intentionally discloses confidential information;
**h.** Contractor has or announces it will discontinue support or provision of the deliverable;
**i.** second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau; or
**j.** Contractor engaged in collusion or ones' actions which could have provided Contractor an unfair advantage in obtaining this contract.

## X. BREACH BY CONTRACTOR

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The State may terminate the contract, in whole or in part, if the Contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the Contractor, allow the Contractor to cure a failure or breach of contract within a period of thirty (30) calendar days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing the Contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the goods from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

## Y. ASSURANCES BEFORE BREACH

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the Intent To Bid/resulting contract, upon written notice from the State, the Contractor shall deliver assurances in the form of additional Contractor resources at no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

**Z. ACCEPTANCE AND PAYMENT OF GOODS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

In the event that 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.

**AA. FORCE MAJEURE**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if the Contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Contractor. To obtain release based on a Force Majeure Event, the Contractor shall file a written request for relief with the State Purchasing Bureau. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

**BB. PROHIBITION AGAINST ADVANCE PAYMENT**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

**CC. PAYMENT**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods provided by the Contractor prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such claims.

**DD. INVOICES**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

Invoices for payments must be submitted by the Contractor to the agency requesting the goods with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**EE. TAXES**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The State is not required to pay taxes of any kind and assumes no such liability as a result of this solicitation. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

**FF. SEVERABILITY**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**GG. PROPRIETARY INFORMATION**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

Data contained in the bid and all documentation provided therein, become the property of the State of Nebraska and the data becomes public information upon opening the bid. If the Bidder wishes to have any information withheld from the public, such information must fall within the definition of proprietary information contained within Nebraska's public record statutes. **All proprietary information the Bidder wishes the State to withhold must be submitted in a sealed package, which is separate from the remainder of the bid, and provide supporting documents showing why such documents should be marked proprietary.** The separate package must be

clearly marked PROPRIETARY on the outside of the package. **Bidders may not mark their entire Invitation To Bid as proprietary.** Pricing submitted in Bidder's ITB may not be marked as proprietary information. Failure of the Bidder to follow the instructions for submitting proprietary and copyrighted information may result in the information being viewed by other Bidders and the public. Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, Bidders submitting information as proprietary may be required to prove specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State's definition of proprietary information, the State is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such information.

**HH. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

By submission of this bid, the bidder certifies, that it is the party making the foregoing bid and that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further that the bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

**II. PRICES**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

All prices, costs, and terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made or the Request for Proposal is cancelled.

Prices quoted on the Cost Proposal form shall remain fixed for the first year of the contract period. Any request for a price increase subsequent to the first year shall not exceed five percent (5%) of the previous Contract period and must be submitted in writing to the State Purchasing Bureau a minimum of 120 days prior to the end of the current contract period, and be accompanied by documentation justifying the price increase. Further documentation may be required by the State to justify the increase. The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.

The State will be given full proportionate benefit of any price decrease during the term of the contract.
Contractor represents and warrants that all prices for services, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices

charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, which the Contractor may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

**JJ. ETHICS IN PUBLIC CONTRACTING**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

No Bidder shall pay or offer to pay, either directly or indirectly, any fee, commission compensation, gift, gratuity, or anything of value to any State officer, legislator, employee or evaluator based on the understanding that the receiving person's vote, actions, or judgment will be influenced thereby. No Bidder shall give any item of value to any employee of the State Purchasing Bureau or any evaluator.

Bidders shall be prohibited from utilizing the services of lobbyists, attorneys, political activists, or consultants to secure the contract. It is the intent of this provision to assure that the prohibition of state contact during the procurement process is not subverted through the use of lobbyists, attorneys, political activists, or consultants. It is the intent of the State that the process of evaluation of bids and award of the contract be completed without external influence. It is not the intent of this section to prohibit Bidders from seeking professional advice, for example consulting legal counsel, regarding terms and conditions of this Invitation To Bid or the format or content of their bid.

If the Bidder is found to be in non-compliance with this section of the Invitation To Bid, they may forfeit the contract if awarded to them or be disqualified from the selection process.

**KK. INDEMNIFICATION**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

**1. GENERAL**

The Contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. INTELLECTUAL PROPERTY**

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the

Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this ITB.

**3. SELF-INSURANCE**

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 *et seq.* and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

**LL. ANTITRUST**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**MM. EMPLOYEE WORK ELIGIBILITY STATUS**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within ITB Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
| | | | |

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

**1.** The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at http://das.nebraska.gov/materiel/purchasing.html

The completed United States Attestation Form should be submitted with the Invitation To Bid response.

**2.** If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's

lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

**3.** The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

## IV. SCOPE OF WORK

The Bidder must provide the following information in response to this Invitation To Bid.

### A. SCOPE

It is the intent of this bid invitation to establish a contract to supply INDUSTRIAL FORK LIFT TRUCK, 5,000 POUND CAPACITY per the attached specifications from date of award for a period of one (1) year with the option to renew for an additional four (4), one (1) year periods when mutually agreeable to the vendor and the State of Nebraska. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the vendor and the State of Nebraska.

All items bid shall be of the latest manufacture in production as of the date of the Invitation To Bid and be of proven performance and under standard design complete as regularly advertised and marketed. All necessary materials for satisfactory performance of the supplies shall be incorporated into the INDUSTRIAL FORK LIFT TRUCK, 5,000 POUND CAPACITY whether or not they may be specifically mentioned below.

Complete specifications, manufacturer's descriptive literature and/or advertising data sheets with cuts or photographs may be required prior to an award and should be included with the bid on the IDENTICAL items proposed. Literature should be complete and the latest published. Any information necessary to show compliance with these specifications not given on the manufacturer's descriptive literature and/or advertising data sheets should be supplied in writing on or attached to the bid document. If manufacturer's specifications sheets, descriptive literature, advertising data sheets or information necessary to show compliance with these specifications is not supplied in writing on or attached to the bid document, the Bidder will be required to submit requested information within three (3) business days of a written request. Failure to submit requested descriptive literature or advertising data sheets may be grounds to reject the bid.

### B. AMENDMENT

This Contract may be amended at any time in writing upon the agreement of both parties.

### C. REVISIONS

In the event any product is discontinued or replaced with a newer version during the contract period, the State of Nebraska reserves the right to amend this contract to include the new product.

## V. INVITATION TO BID - TECHNICAL SPECIFICATIONS

**BIDDER INSTRUCTIONS**
Bidder must respond to each of the following statements. Specifications listed are minimum conditions that must be met in order for a Bidder to qualify for the award.

**"YES"** response means the Bidder guarantees they can meet this condition.

**"NO"** response means the Bidder cannot meet this condition and will not be considered.

**"NO & PROVIDE ALTERNATIVE"** responses 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.

### A. NON-COMPLIANCE STATEMENT

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to quotation request. Any noncompliance may void your quotation. Non-compliance to any single specification can void your bid. |
| | | | 2. It is the responsibility of Bidders to obtain information and clarifications as provided below. The State of Nebraska is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this Invitation to Bid by any Bidder. |
| | | | 3. No interpretation related to the meaning of bid specifications or other pre-bid documents will be made orally to any Bidder by the State of Nebraska. Any Invitation To bid interpretation must be put in writing and faxed by the Bidder to: the State Purchasing Bureau, Fax (402) 471-2089 or e-mailed to AS Materiel Purchasing as.materielpurchasing@nebraska.gov by the last day to submit written questions that is specified in the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed). |
| **NOTES/COMMENTS:** | | | |

### B. DESCRIPTION OF GOODS

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Minimum lift base capacity of 5,000 pounds at 24" Load Center. Note: This specification includes a side shift attachment, state capacity with side shift attachment @ 24" Load Center: _____ |
| | | | 2. Distance from front axle centerline to front, vertical face of forks shall not exceed 24 inches. |
| | | | 3. Total truck weight to be minimum 7,700 pounds. |
| | | | 4. Minimum wheelbase of 63 inches. |
| | | | 5. Overall width with standard tires not to exceed 48.2 inches. |
| | | | 6. Minimum outside turning radius not to exceed 91 inches. |

| NOTES/COMMENTS: |
|---|
| |

**C. ENGINE**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. LP Gas, minimum four cylinders. |
| | | | 2. Minimum 126 cubic inch engine. |
| | | | 3. Minimum 47 horsepower. |
| | | | 4. Meet CARB emission standards. |
| | | | 5. Equipped with mounting to secure 33.5 Lb. LP tank (no tank to be supplied by vendor except for delivery). |
| | | | 6. Spin on full flow throw away oil filter. |
| | | | 7. Heavy duty air cleaner with pre-cleaner. |
| | | | 8. Low level rear exhaust outlet. |
| | | | 9. Extended life antifreeze protection to 34 degrees below zero Fahrenheit required in cooling system. |
| | | | 10. Electrical System to be 12 Volt. |
| | | | 11. Two batteries if required by manufacturer.<br>State cold cranking amps: _____ |
| | | | 12. Heavy-duty alternator.<br>State Amps: _____ |
| | | | 13. Low fuel indicator light, if available. |
| NOTES/COMMENTS: | | | |

**D. BRAKES**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Hydraulic brakes. |
| | | | 2. Mechanical parking brake required. |
| NOTES/COMMENTS: | | | |

**E. TRANSMISSION**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Power shift transmission with hand or foot control. |
| | | | 2. Capable of shifting full forward to full reverse with capacity load. |
| | | | 3. State number of speeds: Forward: _____ Reverse: _____ |
| | | | 4. Travel speed with no load to be minimum 11 mph.<br>State travel speed with no load: _____ |
| **NOTES/COMMENTS**: | | | |

**F. HYDRAULIC LIFT AND TILT**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Mast shall be of nested beam or channel design. |
| | | | 2. Three stage mast construction: |
| | | | 1. Maximum fork height w/o LBR shall be between 185 and 192 inches. |
| | | | 2. Lowered height of mast shall not exceed 86 inches. |
| | | | 3. Free lift shall be minimum 57 inches w/o load backrest. |
| | | | 4. Fork carriage to operate on ball or roller bearing guide rollers. |
| | | | 5. Double acting tilt cylinders for tilting action of minimum five degrees forward and five degrees backward required. |
| | | | 6. A four section hydraulic control valve shall maintain safe lowering speed limits and be provided with a safety feature to prevent dropping load in case of hose failure. |
| | | | 7. Class II carriage t be provided with hang-on side-shift that is hydraulically operated. |
| | | | 8. Hydraulic fork positioner to be provided. |
| | | | 9. High load backrest required. |
| | | | 10. Forks are to be 48 inches long, minimum 3.9 inches wide and minimum 1.5 inches thick. |
| **NOTES/COMMENTS:** | | | |

**G. STEERING AND TIRES**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Manufacturer's recommended power steering will be required. |
| | | | 2. Pneumatic Tires which shall be BF Goodrich, Goodyear, Uniroyal, General, Michelin, Bridgestone, Titan or Firestone and shall carry said company name. Other brands may be acceptable if brand normally supplied by manufacturer is not listed. Brand and other pertinent information must be supplied with proposal. |
| | | | 3. Rear steering tires to be minimum 6.00 x 9-10 ply. |
| | | | 4. Front drive tires to minimum 7.00x12-12 Ply. |
| **NOTES/COMMENTS:** | | | |

**H. GENERAL**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. All weather enclosed steel cab to be provided. |
| | | | 2. Cab to include front standard window wiper and rear standard window wiper. |
| | | | 3. 12,500 BTU heater to be provided. |
| | | | 4. Front window defogger fan required. |
| | | | 5. Headliner dome light to be included. |
| | | | 6. Cab doors to be removable or able to be locked open for summer use. |
| | | | 7. Overhead guard not to exceed 86 inches in height. |
| | | | 8. Manufacturer's standard counterweight with recessed, pin type coupler required. |
| | | | 9. Unit shall be equipped with two front mounted work lights, one rear drive light, two brake/tail lights. |
| | | | 10. Reverse light, if available. |
| | | | 11. Rear view mirrors, if available. |
| | | | 12. Semi or full suspension seat shall be provided with retractable seat belt and operators restraint system for rollover. |
| | | | 13. Unit to be equipped with Back-up Alarm. |
| | | | 14. Unit must meet UL Classification. |
| **NOTES/COMMENTS:** | | | |

## I. NOISE LEVEL

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Bidder shall supply with proposal the following decibel level per SAE or ISO standards. |
| | | | 2. Under full load in operator's position. |
| | | | 3. Under full load in bystander's position at 7.5 meters from rear of unit. |
| **NOTES/COMMENTS:** | | | |

## J. MANUALS

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. One operator's manual must be furnished at time of delivery with each unit. |
| | | | 2. Equipment shop repair manual must accompany each unit delivered. |
| | | | 3. Equipment parts manual must accompany each unit delivered. |
| | | | 4. Engine repair and parts manual must accompany each unit delivered, if not part of equipment repair manual. |
| | | | 5. All manual(s) must be furnished prior to payment and delivered to Fleet Management. Failure to deliver all manuals that are ordered may result in non-payment of ten percent of purchase order total until all manuals are delivered. |
| **NOTES/COMMENTS:** | | | |

## K. MISCELLANEOUS

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Bidders will furnish any special tools needed for routine or preventative maintenance with each unit. |
| | | | 2. Dealer's decals, stickers or other signs shall not be affixed to units; manufacturer's nameplates, stampings and other similar signs are acceptable. |
| | | | 3. Dealer pre-delivery service required. |
| | | | 4. Color: Manufacturer's standard color. Unit will be primed prior to final coat. State manufacturer's standard color. _____ |
| | | | 5. Successful bidder must furnish a factory-trained representative in operation and maintenance for four (4) hours of instruction for each unit at its assigned location within the State of Nebraska. Fleet Management will contact vendor on schedule and location. Training will include operator training and equipment maintenance. |
| **NOTES/COMMENTS:** | | | |

**L. ANNUAL USAGE, ESTIMATED**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity. The orders shall be for the actual quantities of each item ordered by or for any agency during the life of the contract. Vendor shall not impose minimum order requirements. |
| **NOTES/COMMENTS:** | | | |

**M. USAGE REPORT**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. The vendor shall, upon request by the State of Nebraska, provide an annual usage report of this contract by state agencies. Information will include agency name, item, and dollar amount. Information may be requested at any time by the State Purchasing Bureau, but may typically be requested at the end of the contract period or upon renewal of the contract, or at other intervals (monthly, quarterly, etc.) as determined by the State. |
| **NOTES/COMMENTS**: | | | |

**N. DELIVERY AFTER RECEIPT OF ORDER (ARO)**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Delivery desired within 90-120 days after receipt of order(s). |
| **NOTES/COMMENTS:** | | | |

**O. DELIVERY LOCATIONS/INSTRUCTIONS**

| YES | NO | NO & PROVIDE ALTERNATIVE | (BIDDER IS CERTIFYING THAT THEY CAN MEET THE DELIVERY LOCATIONS/INSTRUCTIONS) |
|---|---|---|---|
| | | | 1. After vendor completes pre-delivery service, vendor shall deliver the unit to:<br><br>Nebraska Department of Roads (NDOR)<br>5001 South 14th St.<br>Lincoln NE, 68512<br>Mike Blacksher 402-479-4319<br><br>Deliver between 9:00 AM and 3:00 PM, except on Saturdays, Sundays and State Holidays. Units are to be F.O.B. Destination. |
| | | | 2. Vendor must notify NDOR Fleet Management a minimum of 24 hours prior to delivery of units. Contact number for NDOR Fleet Management are 402-479-4319, 402-479-4323, or 402-479-4304. |

| | | | |
|---|---|---|---|
| | | | 3. Manufacturer's Statement of Origin and other pertinent purchasing documents must accompany invoice at time of delivery. |
| | | | 4. Deliveries must be clearly marked with the purchase order number. |
| | | | 5. If delays in delivery are anticipated, the contractor will immediately notify Mike Blacksher, 402-479-4319, at NDOR of the expected delivery date. The order may be canceled if the delivery date is unsatisfactory, and the State may procure the item(s) from other sources and the contractor may be held responsible for any/all excess cost. |
| **NOTES/COMMENTS:** | | | |

**P. ORDERS**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Orders will be placed either by, phone, fax, e-mail or Internet (if available and not to the exclusion of the other methods). All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice. Invoices are to be sent to the "Invoice to" address on the purchase order. |
| **NOTES/COMMENTS:** | | | |

**Q. QUALITY**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Product quality must meet specifications and be consistent for the term of the contract. A guarantee of satisfactory performance by the supplier and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this bid invitation. All materials must be of first quality, under standard production by the manufacturer and be of standard design, complete as regularly advertised and marketed and be of proven performance. Products are to be fully guaranteed and may be returned for full credit or replacement (at the State's option) for any reason during the initial warranty period with no additional charges for shipping or restocking. |
| **NOTES/COMMENTS:** | | | |

**R. PRICES**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Price quoted shall be unit price and shall be firm for 180 from date of an award and are to be net; including transportation and delivery charges fully prepaid by the Bidder F.O.B. Destination as specified. No additional charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs. Any request for an increase must be submitted in writing to the State Purchasing Bureau a minimum of 30 days prior to proposed effective date of increase, and must show cause and be accompanied by supporting documentation (such as notification letter from manufacturer). Further documentation may be required by the State, to authenticate the increase (such as manufacturer invoices). Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined to be in the best interest of the State. The State will be given full proportionate benefit of any decrease for the term of the contract. No price increases are to be billed to any State Agencies without prior written approval by the State Purchasing Bureau. Contract supplier or suppliers may honor pricing and extend the contract to political sub-divisions, cities, and counties. Terms and conditions of the contract must be met by political sub-divisions, cities, and counties. |
| **NOTES/COMMENTS:** | | | |

**S. AUTHORIZED DEALER & WARRANTY**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. To the extent required by the manufacturer, the Bidder shall be an authorized dealer. Bidder may be required to substantiate that he/she is an authorized dealer. Proof, if required, must be submitted to the State Purchasing Bureau within three (3) days of the request and prior to the award of any contract. The terms of the original manufacturer's standard warranty shall apply to all equipment acquired from this solicitation for the entire warranty period. |
| **NOTES/COMMENTS:** | | | |

**T. WARRANTY**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Contractor must warrant the average life expectancy supplies hereunder to be not less than that stated in the manufacturer's price list and agree to replace, without cost, all supplies failing to meet this requirement, except where the reduced life is due to conditions beyond the control of the Contractor. Defective parts or those damaged in shipment must be replaced by the Contractor at no charge to the State of Nebraska. The manufacturer's standard warranty shall apply and be in effect for at least one year from the date the equipment was placed in service. |
| **NOTES/COMMENTS:** | | | |

**U. SUBSTITUTIONS**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Vendor will not substitute any item that has been awarded without prior written approval of State Purchasing Bureau. |
| **NOTES/COMMENTS:** | | | |

**V. SECRETARY OF STATE REGISTRATION REQUIREMENTS**

| YES | NO | NO & PROVIDE ALTERNATIVE | *Prior to contract award and/or upon request of SPB, potential award recipient(s) will be asked to certify compliance with Nebraska Secretary of State Registration by providing a true and exact copy of current (dated within 90 days) valid Certificate of Good Standing or Letter of Good Standing. |
|---|---|---|---|
| | | | 1. Bidder is a SOLE PROPRIETORSHIP (in which case, no Letter of Good Standing/Certificate of Good Standing is required).<br><br>If the Bidder is an Individual or Sole Proprietorship, the following applies:<br><br>A.. The Bidder must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at http://das.nebraska.gov/materiel/purchasing.html<br><br>The completed United States Attestation Form should be submitted with the Invitation to Bid response.<br><br>B. If the Bidder indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.<br><br>C. The Bidder understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108. |

| | | | |
|---|---|---|---|
| | | | 2. Bidder is a GENERAL PARTNERSHIP (in which case, no Letter of Good Standing/Certificate of Good Standing is required) |
| | | | 3. Bidder is a FOREIGN or DOMESTIC CORPORATION or BUSINESS and a copy of current Letter of Good Standing/Certificate of Good Standing from the Nebraska Secretary of State is provided within bid submission documents. |
| | | | 4. Bidder is a FOREIGN or DOMESTIC CORPORATION or BUSINESS and a copy of current Letter of Good Standing/Certificate of Good Standing from the Nebraska Secretary of State will be provided in a timely manner upon request prior to award. |
| **NOTES/COMMENTS:** | | | |

**W. BID COMPLIANCE**

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|---|---|---|
| | | | 1. Specifications have been read and fully understood. Any exceptions have been written on the bid or attached. Bid is signed and unit price is in compliance with the given unit of measure. |
| **NOTES/COMMENTS:** | | | |

**Form A**
**Bidder Contact Sheet**
**Invitation To Bid Number 5218 OF**

Form A should be completed and submitted with each response to this Invitation to Bid. This is intended to provide the State with information on the Bidder's name and address, and the specific person(s) who are responsible for preparation of the Bidder's response.

| **Preparation of ITB Contact Information** | |
|---|---|
| Bidder Name: | |
| Bidder Address: | |
| Contact Person & Title: | |
| E-mail Address: | |
| Telephone Number (Office): | |
| Telephone Number (Cellular): | |
| Fax Number: | |

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.

| **Communication with the State Contact Information** | |
|---|---|
| Bidder Name: | |
| Bidder Address: | |
| Contact Person & Title: | |
| E-mail Address: | |
| Telephone Number (Office): | |
| Telephone Number (Cellular): | |
| Fax Number: | |