

**State of Nebraska**  
**REQUEST FOR PROPOSAL FOR**  
**CONTRACTUAL SERVICES FORM**

RETURN TO:  
 Nebraska Department of  
 Environmental Quality  
 1200 N Street, Suite 400, the Atrium  
 Lincoln, NE 68509  
 Phone: (402) 471-2186  
 Fax: (402) 471-2909

SOLICITATION NUMBER	RELEASE DATE
<b>RFP 3493Z1</b>	<b>December 28, 2010</b>
DUE DATE AND TIME	PROCUREMENT CONTACT
<b>March 11, 2011 2:00 p.m. Central Time</b>	<b>Stephanie Vap-Morrow</b>

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

**PLEASE READ CAREFULLY!**

**SCOPE OF SERVICE**

The State of Nebraska, Department of Environmental Quality (NDEQ) is issuing this Request for Proposal, RFP Number 3493Z1 for the purpose of selecting qualified Contractors to provide environmental remediation services relating to releases of petroleum.

Written questions are due no later than January 10, 2011, and should be submitted via e-mail to stephanie.vap-morrow@nebraska.gov. Written questions may also be sent by facsimile to (402) 471-2909.

A pre-proposal conference will not be held.

Contractor must submit one (1) original and five (5) copies of the entire proposal. In the event of any inconsistencies among the proposals, the language contained in the original proposal shall govern. Proposals must be submitted by the proposal due date and time.

PROPOSALS MUST MEET THE REQUIREMENTS OUTLINED IN THIS REQUEST FOR PROPOSAL TO BE CONSIDERED VALID. PROPOSALS WILL BE REJECTED IF NOT IN COMPLIANCE WITH THESE REQUIREMENTS.

1. Sealed proposals must be received in Nebraska Department of Environmental Quality (NDEQ) Lincoln office by the date and time of proposal due date indicated above. No late proposals will be accepted. No electronic, e-mail, fax, voice, or telephone proposals will be accepted. NDEQ's mailing address is 1200 N St., Suite 400, The Atrium, Lincoln, NE 68509.
2. This form "REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES" MUST be manually signed, in ink, and returned by the proposal due date and time along with Contractor's proposal and any other requirements as specified in the Request for Proposal in order to be considered for an award.
3. It is the responsibility of the Contractor to check the website for all information relevant to this solicitation to include addenda and/or amendments issued prior to the opening date. Website address is as follows: [www.ndeq.state.ne.us](http://www.ndeq.state.ne.us) and <http://www.das.state.ne.us/materiel/purchasing/>
4. It is understood by the parties that in the State of Nebraska's opinion, any limitation on the Contractor's liability is unconstitutional under the Nebraska State Constitution, Article XIII, Section 3, and that any limitation of liability shall not be binding on the State of Nebraska despite inclusion of such language in documents supplied with the Contractor's bid or in the final Contract.

**BIDDER MUST COMPLETE THE FOLLOWING**

By signing this Request for Proposal For Contractual Services form, the bidder guarantees compliance with the provisions stated in this Request for Proposal, agrees to the terms and conditions (see Section III) and certifies that bidder maintains a drug free work place environment.

FIRM: \_\_\_\_\_

COMPLETE ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

TYPED NAME & TITLE OF SIGNER: \_\_\_\_\_

# TABLE OF CONTENTS

REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM.....	i
TABLE OF CONTENTS.....	ii
GLOSSARY OF TERMS.....	v
<b>I. SCOPE OF THE REQUEST FOR PROPOSAL.....</b>	<b>1</b>
A. SCHEDULE OF EVENTS.....	1
<b>II. PROCUREMENT PROCEDURES.....</b>	<b>2</b>
A. PROCURING OFFICE AND CONTACT PERSON.....	2
B. GENERAL INFORMATION.....	2
C. COMMUNICATION WITH STATE STAFF.....	2
D. WRITTEN QUESTIONS AND ANSWERS.....	3
E. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS.....	3
F. SUBMISSION OF PROPOSALS.....	4
G. PROPOSAL OPENING.....	4
H. LATE PROPOSALS.....	4
I. REJECTION OF PROPOSALS.....	5
J. EVALUATION OF PROPOSALS.....	5
K. EVALUATION COMMITTEE.....	5
L. MANDATORY REQUIREMENTS.....	5
M. REFERENCE CHECKS.....	6
N. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS.....	6
O. VIOLATION OF TERMS AND CONDITIONS.....	6
P. EVALUATION PROCEDURE AND CRITERIA.....	6
<b>III. TERMS AND CONDITIONS.....</b>	<b>9</b>
A. GENERAL.....	9
B. AWARD.....	9
C. PERMITS, REGULATIONS, LAWS.....	10
D. OWNERSHIP OF INFORMATION AND DATA.....	10
E. INSURANCE REQUIREMENTS.....	10
F. COOPERATION WITH OTHER CONTRACTORS.....	12
G. INDEPENDENT CONTRACTOR.....	12
H. CONTRACTOR RESPONSIBILITY.....	12
I. CONTRACTOR PERSONNEL.....	12
J. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION.....	13
K. CONFLICT OF INTEREST.....	13
L. PROPOSAL PREPARATION COSTS.....	13
M. ERRORS AND OMISSIONS.....	13
N. BEGINNING OF WORK.....	13
O. ASSIGNMENT BY THE STATE.....	14
P. ASSIGNMENT BY THE CONTRACTOR.....	14
Q. DEVIATIONS FROM THE REQUEST FOR PROPOSAL.....	14

R.	GOVERNING LAW .....	14
S.	ATTORNEY'S FEES .....	14
T.	ADVERTISING.....	14
U.	STATE PROPERTY.....	14
V.	SITE RULES AND REGULATIONS.....	14
W.	NOTIFICATION.....	15
X.	EARLY TERMINATION.....	15
Y.	FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS.....	16
Z.	BREACH BY CONTRACTOR .....	16
AA.	ASSURANCES BEFORE BREACH.....	17
BB.	SOCIOECONOMIC CONSIDERATIONS.....	17
CC.	DEBARMENT CERTIFICATION FORM.....	17
DD.	FORCE MAJEURE .....	18
EE.	PROHIBITION AGAINST ADVANCE PAYMENT .....	18
FF.	PAYMENT .....	18
GG.	INVOICES.....	18
HH.	AUDIT REQUIREMENTS .....	18
II.	TAXES .....	19
JJ.	INSPECTION AND APPROVAL .....	19
KK.	CHANGES IN SCOPE/CHANGE ORDERS.....	19
LL.	SEVERABILITY.....	19
MM.	CONFIDENTIALITY .....	19
NN.	PROPRIETARY INFORMATION .....	20
OO.	CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING .....	20
PP.	ETHICS IN PUBLIC CONTRACTING .....	21
QQ.	INDEMNIFICATION .....	21
RR.	NEBRASKA TECHNOLOGY ACCESS STANDARDS.....	22
SS.	ANTITRUST .....	22
TT.	DISASTER RECOVERY/BACK UP PLAN.....	22
UU.	RECYCLING .....	22
VV.	DRUG POLICY .....	22
WW.	NEW EMPLOYEE WORK ELIGIBILITY STATUS.....	22
<b>IV.</b>	<b>PROJECT DESCRIPTION AND SCOPE OF WORK.....</b>	<b>24</b>
A.	BACKGROUND .....	24
B.	PROJECT MANAGEMENT.....	24
C.	SERVICES .....	25
D.	EMERGENCY SERVICES.....	30
E.	PERFORMANCE SCHEDULE.....	31
<b>V.</b>	<b>PROPOSAL INSTRUCTIONS.....</b>	<b>33</b>
A.	TECHNICAL PROPOSAL .....	33
B.	REQUEST FOR PROPOSAL FORM.....	33
C.	EXPERIENCE AND RELIABILITY OF THE FIRM.....	33
D.	EXPERTISE AND RELIABILITY OF CONTRACTOR'S PERSONNEL.....	34
E.	PROFESSIONAL ENGINEER .....	34
F.	PROFESSIONAL GEOLOGIST .....	34

<b>G.</b>	<b>PROPOSED METHOD OF PERFORMANCE .....</b>	<b>34</b>
<b>H.</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>34</b>
<b>I.</b>	<b>CORPORATE OVERVIEW .....</b>	<b>35</b>
<b>Contractor Form A.....</b>		<b>40</b>
<b>PRO FORMA CONTRACT.....</b>		<b>41</b>

## 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 added or deleted.

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

**Agent:** A person authorized by a superior or organization to act on their behalf.

**Amend:** To alter or change by adding, subtracting, or substituting. A Contract can be amended only by the parties participating in the Contract. A written Contract can only be amended in writing.

**Amendment:** Written correction or alteration.

**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 proposals will be awarded according to the provisions in the Request for Proposal. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple Contractors 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 proposal, and do not improve the Contractor's competitive position. All awards will be made in a manner deemed in the best interest of the State.

**Best and Final Offer (BAFO):** A second-stage bid in a public procurement for services.

**Bid:** The executed document submitted by a Contractor in response to a Request for Proposal.

**Bid Bond:** A bond given by a surety on behalf of the Contractor to ensure that the Contractor will enter into the Contract as bid and is retained by the State from the date of the bid opening to the date of Contract signing.

**Contractor:** Any person or entity submitting a response to a solicitation.

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

**Business Day:** Any weekday, excepting public holidays.

**Calendar Day:** Every day shown on the calendar; Saturdays, Sundays and State/Federal holidays included. Not to be confused with "Work Day".

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

**Competition:** The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

**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 provide.

**Contract:** An agreement between two or more persons to perform a specific act or acts.

**Contract Administration:** The Management of various facets of Contracts to assure that the Contractor’s total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled.

**Contract Management:** Includes reviewing and approving of changes, executing renewals, handling disciplinary actions, adding additional users, and any other form of action that could change the Contract.

**Contractor:** Any person or entity that supplies goods and/or services.

**Conversion Period:** A period of time not to exceed six (6) months, during which the State converts to a new Operating System under “Conversion” as per this RFP.

**Copyright:** A grant to a writer/artist that recognizes sole authorship/creation of a work and protects the creator’s interest(s) therein.

**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.

**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.

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

**Deviation:** Any proposed change(s) or alteration(s) to either the contractual language or deliverables within the scope of this Request for Proposal.

**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.

**Evaluation Committee:** A committee (or committees) appointed by the requesting agency that advises and assists the procuring office in the evaluation of proposals.

**Evaluation of Proposal:** The process of examining a proposal after opening to determine the Contractor’s responsibility, responsiveness to requirements, and to ascertain other characteristics of the proposal that relate to determination of the successful Contractor.

**Extension:** A provision, or exercise of a provision, of a Contract that allows a continuance of the Contract (at the option of the State of Nebraska) for an additional time according to Contract conditions. Not to be confused with “Renewals.”

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

**Foreign Corporation:** A foreign corporation is a corporation that was formed (i.e. incorporated) in another state but transacting business in Nebraska pursuant to a certificate of authority issued by the Nebraska Secretary of State.

**Installation Date:** The date when the procedures described in "Installation by Contractor, and Installation by State", as found in the RFP, are completed.

**Late Proposal:** A proposal received at the place specified in the solicitation after the date and time designated for all proposals to be received.

**Licensed Software:** Any and all software and documentation by which the State acquires or is granted any rights under this Contract.

**May:** Denotes discretion.

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

**Module:** A collection of routines and data structures that perform a specific function of the Licensed Software.

**Must:** Denotes the imperative, required, compulsory or obligatory

**Opening Date:** Specified date and time for the public opening of received, labeled and sealed formal proposals. Not to be confused with "Release Date".

**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:** Acquiring computing or related services from a source outside of the State of Nebraska which may include programming and/or executing the State's Licensed Software on the State's CPU's, programming, and/or executing the State's programs and Licensed Software on the Contractor's CPU's or any mix thereof.

**Outsourcing Company:** A company that provides Outsourcing Services under contract to the State.

**Performance Bond:** A bond given by a surety on behalf of the Contractor to ensure the timely and proper (in sole estimation of the State) performance of a 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-Proposal Conference:** A meeting scheduled for the purpose of providing clarification regarding a Request for Proposal and related expectations.

**Product:** A module, a system, or any other software-related item provided by the Contractor to the State.

**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 this contract for use by the State.

**Project:** The total of all software, documentation, and services to be provided by the Contractor under this contract.

**Proposal:** The executed document submitted by a Contractor in response to a Request for 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:** A complaint about a governmental action or decision related to a Request for Proposal or the resultant contract, brought by a prospective Contractor, or other interested party to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

**Public Proposal Opening:** The process of opening proposals, conducted at the time and place specified in the Request for Proposal, and in the presence of anyone who wishes 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:** Date of release of the Request for Proposal to the public for submission of proposal responses. Not to be confused with “Opening Date”.

**Renewal:** Continuance of a contract for an additional term after a formal signing by the parties.

**Representative:** Includes an agent, an officer of a corporation or association, a trustee, executor or administrator of an estate, or any other person legally empowered to act for another.

**Request for Proposal (RFP):** All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.

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

**Responsive Contractor:** A Contractor who has submitted a bid which conforms in all respects to the solicitation document.

**Shall:** Denotes the imperative, required, compulsory or obligatory.

**Should:** Indicates an expectation.

**Solicitation:** The process of notifying prospective Contractors or offerors that the State of Nebraska wishes to receive proposals for furnishing services. The process may consist of public advertising, posting notices, or mailing Request for Proposals and/or Request for Proposal announcement letter to prospective Contractors, or all of these.

**Solicitation Document:** Request for Proposal.

**Specifications:** The information provided by or on behalf of the Contractor that fully describes the capabilities and functionality of the Licensed Software as set forth in any material provided by the Contractor, including the documentation and User's Manuals described herein.

**System:** 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. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

**Trademark:** A distinguishing sign, symbol, mark, word, or arrangement of words in the form of a label or other indication, that is adopted and used by a manufacturer or distributor to designate its particular goods and which no other person has the legal right to use.

**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, 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)).

**Upgrade:** Any improvement or change in the Software that improves or alters its basic function.

**Vendor:** An actual or potential Contractor; a Contractor

**Will:** Denotes the imperative, required, compulsory or obligatory.

## I. SCOPE OF THE REQUEST FOR PROPOSAL

The State of Nebraska, Department of Environmental Quality (NDEQ), is issuing this Request for Proposal, RFP Number 3493Z1 for the purpose of selecting qualified Contractors to provide environmental remediation services relating to releases of petroleum.

A contract resulting from this Request for Proposal will be issued for a period of three (3) years, with the option to renew for two (2) additional one (1) year periods as mutually agreed upon by all parties.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT: <http://www.das.state.ne.us/materiel/purchasing/rfp.htm> and [www.ndeq.state.ne.us](http://www.ndeq.state.ne.us).

### 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 Request for Proposal	December 28, 2010
2.	Last day to submit written questions	January 10, 2011
3.	State responds to written questions through Request for Proposal "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://www.ndeq.state.ne.us">www.ndeq.state.ne.us</a> and <a href="http://www.das.state.ne.us/materiel/purchasing/rfp.htm">http://www.das.state.ne.us/materiel/purchasing/rfp.htm</a>	January 19, 2011
4.	Proposal due date Location: Department of Environmental Quality 1200 N Street, Suite 400, The Atrium, Lincoln, NE 68509	March 11, 2011 2:00 PM Central Time
5.	Proposal Opening, review for conformance of mandatory requirements	March 14, 2011 10:00 AM Central Time
6.	Evaluation period	March 14-30
7.	"Oral Interviews/Presentations and/or Demonstrations"	April 11-14
8.	Post "Letter of Intent to Contract" to Internet at: <a href="http://www.ndeq.state.ne.us">www.ndeq.state.ne.us</a> and <a href="http://www.das.state.ne.us/materiel/purchasing/rfp.htm">http://www.das.state.ne.us/materiel/purchasing/rfp.htm</a>	May 2011
9.	Contract finalization period	June 2011
10.	Contract award	June 2011
11.	Contractor start date	June 2011

## **II. PROCUREMENT PROCEDURES**

### **A. PROCURING OFFICE AND CONTACT PERSON**

Procurement responsibilities related to this Request for Proposal reside with the NDEQ. The point of contact for the procurement is as follows:

Name: Stephanie Vap-Morrow  
Agency: Nebraska Department of Environmental Quality  
Address: The Atrium, 1200 N Street, Suite 400  
Lincoln, NE 68509

Telephone: (402) 471-2186  
Facsimile: (402) 471-2909  
E-Mail: [stephanie.vap-morrow@nebraska.gov](mailto:stephanie.vap-morrow@nebraska.gov)

### **B. GENERAL INFORMATION**

The Request for Proposal is designed to solicit proposals from qualified vendors who will be responsible for providing environmental remediation services relating to releases of petroleum. Proposals that do not conform to the mandatory items as indicated in the Request for Proposal will not be considered.

Proposals shall conform to all instructions, conditions, and requirements included in the Request for Proposal. Prospective Contractors are expected to carefully examine all documentation, schedules and requirements stipulated in this Request for Proposal, and respond to each requirement in the format prescribed.

A Time and Materials contract will be awarded as a result of this proposal. In addition to the provisions of this Request for Proposal and the awarded proposal, 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.

### **C. COMMUNICATION WITH STATE STAFF**

From the date the Request for Proposal is issued until a determination is announced regarding the selection of the Contractor, 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 Request for Proposal.

Once Contractors are preliminarily selected, as documented in the intent to contract, those Contractors are restricted from communicating with State staff until a contract is signed. Violation of this condition may be considered sufficient cause to reject a Contractor's proposal and/or selection irrespective of any other condition.

The following exceptions to these restrictions are permitted:

1. written communication with the person(s) designated as the point(s) of contact for this Request for Proposal 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.
4. negotiations of the Time and Materials rates with each Contractor.

Violations of these conditions may be considered sufficient cause to reject a Contractor's proposal and/or selection irrespective of any other condition. No individual member of the State, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this Request for Proposal. The Agency's designated representative will issue any clarifications or opinions regarding this Request for Proposal in writing.

**D. WRITTEN QUESTIONS AND ANSWERS**

Any explanation desired by a Contractor regarding the meaning or interpretation of any Request for Proposal provision must be submitted in writing to the NDEQ and clearly marked "RFP Number 3493Z1; Environmental Remediation Services Relating to Releases of Petroleum Questions". It is preferred that questions be sent via e-mail to [stephanie.vap-morrow@nebraska.gov](mailto:stephanie.vap-morrow@nebraska.gov). Questions may also be sent by facsimile to (402) 471-2909, but must include a cover sheet clearly indicating that the transmission is to the attention of Stephanie Vap-Morrow, showing the total number of pages transmitted, and clearly marked "RFP Number 3493Z1; Environmental Remediation Services Relating to Releases of Petroleum Questions".

Written answers will be provided through an addendum to be posted on the Internet at [www.ndeq.state.ne.us](http://www.ndeq.state.ne.us) and/or <http://www.das.state.ne.us/materiel/purchasing/rfp.htm> on or before the date shown in the Schedule of Events.

**E. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS**

After the completion of the Technical Proposal evaluation, oral interviews/presentations and/or demonstrations will be required in order to determine the successful Contractors. All Contractors may not have an opportunity to interview/present and/or give demonstrations; the State reserves the right to select only the top scoring Contractors to present/give oral interviews in its sole discretion. The scores from the oral interviews/presentations and/or demonstrations will be added to the scores from the Technical Proposal. The presentation process will allow the Contractors to demonstrate their proposal offering, explaining and/or clarifying any unusual or significant elements related to their proposals. Contractors' key personnel are requested to participate in a structured interview to determine their understanding of the requirements of this proposal, their authority and reporting relationships within their firm, and their management style and philosophy. Contractors shall not be allowed to alter or amend their proposals. Only representatives of the State and the presenting Contractors will be permitted to attend the oral interviews/presentations and/or demonstrations.

Once the oral interviews/presentations and/or demonstrations have been completed the State reserves the right to make a contract award without any further discussion with the Contractors regarding the proposals received.

Detailed notes of oral interviews/presentations and/or demonstrations may be recorded and supplemental information (such as briefing charts, etc.) may be accepted; however, such supplemental information shall not be considered an amendment to a Contractors' proposal. Additional written information gathered in this manner shall not constitute replacement of proposal contents.

Any cost incidental to the oral interviews/presentations and/or demonstrations shall be borne entirely by the Contractor and will not be compensated by the State.

## **F. SUBMISSION OF PROPOSALS**

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

To facilitate the proposal evaluation process, one (1) original, clearly identified as such, and five (5) copies of the entire proposal must be submitted. The copy marked "original" shall take precedence over any other copies, should there be a discrepancy. Proposals must be submitted by the proposal due date and time. A separate sheet must be provided that clearly states which sections have been submitted as proprietary or have copyrighted materials. All proprietary information the Contractor wishes the State to withhold must be submitted in accordance with the instructions outlined below. Proposal responses must include the completed Form A, Contractor Contact Sheet. In addition, one (1) electronic copy of the proposal must be submitted on a separate CD and packaged as required below under Proprietary Information. Proposals must reference the request for proposal number and be sent to the specified address. Container(s) utilized for original documents must be clearly marked "ORIGINAL DOCUMENTS". Rejected late proposals will be returned to the Contractor unopened. If a recipient phone number is required for delivery purposes, (402) 471-2186 should be used. The request for proposal number must be included in all correspondence.

Emphasis should be concentrated on conformance to the Request for Proposal instructions, responsiveness to requirements, completeness and clarity of content. If the Contractor's proposal is presented in such a fashion that makes evaluation difficult or overly time consuming, it is likely that points will be lost in the evaluation process. Elaborate and lengthy proposals are neither necessary nor desired.

The Proposal should be packaged in loose-leaf binders on standard 8 ½" by 11" paper, except that charts, diagrams and the like may be on fold-outs which, when folded, fit into the 8 ½" by 11" format. Pages may be consecutively numbered for the entire proposal, or may be numbered consecutively within sections. Figures and tables must be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text. The Technical Proposal must not contain any reference to dollar amounts. However, information such as data concerning labor hours and categories, materials, subcontracts and so forth, shall be considered in the Technical Proposal so that the Contractor's understanding of the scope of work may be evaluated. The Technical Proposal shall disclose the Contractor's technical approach in as much detail as possible, including, but not limited to, the information required by the Technical Proposal instructions.

## **G. PROPOSAL OPENING**

The sealed proposals will be publicly opened and the bidding entities announced on the date, time and location shown in the Schedule of Events. Proposals will be available for viewing by those present after the proposal opening. Vendors may also contact the State to schedule an appointment for viewing proposals after the opening date.

## **H. LATE PROPOSALS**

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

**I. REJECTION OF PROPOSALS**

The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple Contractors 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 proposal and do not improve the Contractor's competitive position. All awards will be made in a manner deemed in the best interest of the State.

**J. EVALUATION OF PROPOSALS**

All responses to this Request for Proposal which fulfill all mandatory requirements will be evaluated. Each category will have a maximum possible point potential. The State will conduct a fair, impartial and comprehensive evaluation of all proposals in accordance with the criteria set forth below. Areas that will be addressed and scored during the evaluation include:

1. Executive Summary;
2. Corporate Overview shall include but is not limited to;
  - a. The ability, capacity and skill of the Contractor to deliver and implement the system or project that meets the requirements of the Request for Proposal;
  - b. The character, integrity, reputation, judgment, experience and efficiency of the Contractor;
  - c. The quality of Contractor performance on prior contracts;
  - d. Such other information that may be secured and that has a bearing on the decision to award the contract; and
3. Technical Approach.

Evaluation criteria will become public information at the time of the Request for Proposal opening. Evaluation criteria and a list of respondents will be posted to the Internet at: [www.ndeq.state.ne.us](http://www.ndeq.state.ne.us) and/or <http://www.das.state.ne.us/materiel/purchasing/rfp.htm>. Evaluation criteria will not be released prior to the proposal opening.

**K. EVALUATION COMMITTEE**

Proposals will be independently evaluated by members of the Evaluation Committee(s). The committee(s) will consist of staff with the appropriate expertise to conduct such proposal evaluations. Names of the members of the Evaluation Committee(s) will not become public information.

Prior to award, Contractors are advised that only the point of contact indicated on the front cover of this Request For Proposal For Contractual Services Form can clarify issues or render any opinion regarding this Request for Proposal. No individual member of the State, employee of the State or member of the Evaluation Committee(s) is empowered to make binding statements regarding this Request for Proposal.

**L. MANDATORY REQUIREMENTS**

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

1. The signed Request For Proposal For Contractual Services form;
2. EPA Form 5700-49 (debarment)
3. Corporate Overview;
4. Technical Approach
5. Architect, Engineer Questionnaire Form 254 or 330.

6. Compliance with the Drug-Free Workplace Policy terms and conditions described in Standard Conditions and Terms.

**M. 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 are identified by the company in the proposal, those indicated through the explicitly specified contacts, those that are identified during the review of the proposal, or those that result from communication with other entities involved with similar projects.

Information to be requested and evaluated from references may include, but is not limited to, some or all of the following: project description and background, job performed, functional and technical abilities, communication skills and timeliness, cost and schedule estimates and accuracy, problems (poor quality deliverables, contract disputes, work stoppages, etc.), overall performance, and whether or not the reference would rehire the firm or individual. Only top scoring Contractors may receive reference checks and negative references may eliminate Contractors from consideration for award.

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

All Contractors are expected to comply with any statutory registration requirements. It is the responsibility of the Contractor who is the recipient of an Intent to Award to comply with any statutory registration requirements pertaining to types of business entities (e.g. a foreign or Nebraska corporation, non-resident Contractor, limited partnership, or other type of business entity). The Contractor who is the recipient of Intent to Award will be required to certify that it has so complied and produce a true and exact copy of its registration certificate, or, in the case registration is not required, to provide the reason as to why none is required. This must be accomplished prior to the award of contract.

**O. VIOLATION OF TERMS AND CONDITIONS**

Violation of the terms and conditions contained in this Request for Proposal 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 Contractor's proposal;
2. Suspension of the Contractor 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.

**P. EVALUATION PROCEDURE AND CRITERIA**

**1. GENERAL**

Proposals submitted in response to this RFP will be evaluated in accordance with the evaluation procedure and the evaluation criteria described below.

**2. SELECTION FOR TECHNICAL EVALUATION**

Proposals shall be evaluated by NDEQ personnel. NDEQ reserves the right to use the technical assistance of qualified personnel from within the Government and private consultants for the evaluation process if it so desires. By submission of its proposal, the Contractor hereby consents to the disclosure of the contents of its proposal to such personnel for the purpose of evaluation.

**3. TECHNICAL EVALUATION**

After determining compliance with the requirements in the RFP, the NDEQ Selection Committee shall conduct its evaluation of the technical merit of the proposals. This evaluation will be the scoring of each proposal in accordance with the evaluation criteria included below, to select not less than five firms for interviews.

The worksheet lists the items being scored and maximum possible score. Minor irregularities in proposals that are immaterial or inconsequential in nature may be waived whenever it is determined to be in NDEQ's best interest.

**4. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS**

After the completion of the technical evaluation, the evaluation committee will conduct oral interviews/presentations and/or demonstrations to determine the order of Contractors in which rate negotiations will begin. The scores from the oral interviews/presentations and/or demonstrations will be added to the scores from the technical evaluation. The presentation process will allow the Contractors to demonstrate their proposal offering, explaining and/or clarifying any unusual or significant elements related to their proposals. The Contractor's key personnel will be requested to participate in a structured interview to determine their understanding of the requirements of this proposal, their authority and reporting relationships within their firm, and their management style and philosophy. Contractors shall not be allowed to alter or amend their proposals. Only representatives of the State and the presenting Contractors will be permitted to attend the oral interviews/presentations and/or demonstrations.

Once the oral interviews/presentations and/or demonstrations have been completed, the State reserves the right to make a contract award without any further discussion with the Contractors regarding the proposals received.

Detailed notes of oral interviews/presentations and/or demonstrations may be recorded, and supplemental information (such as briefing charts, etc.) may be accepted. Additional written information gathered in this manner shall not constitute replacement of proposal contents or alter or amend the proposals.

Any cost incidental to the oral interviews/presentations and/or demonstrations shall be borne entirely by the Contractor and will not be compensated by the State.

**5. FINAL RANKING AND SELECTION**

After completion of the technical evaluation and interviews, a final ranking based on the combined scores of the technical proposal and the interview will be made of the interviewed Contractors. NDEQ will then proceed to enter into negotiations starting with the Contractor having the highest score. These negotiations will center around time and material rates. If an agreement between NDEQ and the highest ranked Contractor is not reached, NDEQ will enter into negotiations with the Contractor having the next highest score. Negotiations will continue down the list of Contractors until NDEQ has negotiated a contract with up to four Contractors. NDEQ shall have the right at any time to terminate this procurement activity in its entirety.

**6. CRITERIA FOR TECHNICAL EVALUATION**

The following is a list of factors that will be specifically considered in the technical evaluation of the proposals received.

Rating Criteria		
		Point Range
1.	Corporate experience and capabilities in the hydro geologic assessment and corrective action processes associated with releases of petroleum.	0-20
2.	Experience, competence, and capability of proposed staff to be assigned to the project	0-15
3.	Specificity, clarity, directness of the proposal	0-10
4.	Ownership of equipment, analytical facilities and facilities necessary for the successful accomplishment of the work.	0-10
5.	Past performance	0-25
6.	Quality Assurance/Quality Control	0-15
7.	Quality Assurance/Quality Control procedures.	0-05
Total		100

### III. TERMS AND CONDITIONS

By signing the "Request For Proposal For Contractual Services" form, the Contractor guarantees compliance with the provisions stated in this Request for Proposal, agrees to the terms and conditions and certifies Contractor maintains a drug free work place environment.

Contractors 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 Contractor may indicate any exceptions to the Terms and Conditions by (1) clearly identifying the term or condition by subsection, (2) including an explanation for the Contractor's inability to comply with such term or condition which includes a statement recommending terms and conditions the Contractor would find acceptable. Rejection in whole or in part of the Terms and Conditions may be cause for rejection of a Contractor's proposal.

#### A. GENERAL

Accept  
& Initial

The contract resulting from this Request for Proposal shall incorporate the following documents:

1. The signed Request for Proposal form;
2. The original Request for Proposal document;
3. Any Request for Proposal addenda and/or amendments to include questions and answers;
4. The Contractor's proposal;
5. Any contract amendments, in order of significance; and
6. Contract award.

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) the contract award, 2) contract amendments with the latest dated amendment having the highest priority, 3) Request for Proposal addenda and/or amendments with the latest dated amendment having the highest priority, 4) the original Request for Proposal, 5) the signed Request For Proposal form, 6) the Contractor's proposal.

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.

Rejected proposals will be returned to the Contractor.

#### B. AWARD

Accept  
& Initial

All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Proposal. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple Contractors in whole or in part, and at its discretion, may withdraw or amend the Request for Proposal at any time. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the Contractor's competitive position. All awards will be made in a manner deemed in the best interest of the State. The Request for Proposal does not commit the State to award a contract. If, in the opinion of the State, revisions or amendments will require substantive changes in proposals, the due date may be extended.

By submitting a proposal in response to this Request for Proposal, the Contractor grants to the State the right to contact or arrange a visit in person with any or all of the Contractor's clients.

Once an intent to award decision has been determined, it will be posted to the Internet at: [www.ndeq.state.ne.us](http://www.ndeq.state.ne.us) and/or <http://www.das.state.ne.us/materiel/purchasing/rfp.htm>

Grievance and protest procedure is available on the Internet at: [www.ndeq.state.ne.us](http://www.ndeq.state.ne.us) and/or <http://www.das.state.ne.us/materiel/purchasing/agencycommoditiesprocurementmanual/ProtestGrievanceProcedureForCommodities&Services.doc>

Any protests must be filed by a vendor within ten (10) calendar days after the intent to award decision is posted to the Internet.

**C. PERMITS, REGULATIONS, LAWS**

Accept  
& Initial

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.

**D. OWNERSHIP OF INFORMATION AND DATA**

Accept  
& Initial

The State of Nebraska shall have the unlimited right to publish, duplicate, use and disclose all information and data developed or derived by the Contractor pursuant to this contract.

The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this contract. The contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks and copyrights that are in any way involved in the contract. It shall be the responsibility of the Contractor to pay for all royalties and costs, and the State must be held harmless from any such claims.

**E. INSURANCE REQUIREMENTS**

Accept  
& Initial

The Contractor shall not commence work under this contract until he or she has obtained all the insurance required hereunder and such insurance has been approved by the State. The Contractor shall not allow any subcontractor to commence work on his or her subcontract until all similar insurance required of the subcontractor has been obtained and approved by the Contractor. Approval of the insurance by the State shall not limit, relieve or decrease the liability of the Contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

**1. WORKERS' COMPENSATION INSURANCE**

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. The policy shall include the State, and others as required by the contract documents, as an Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

**3. INSURANCE COVERAGE AMOUNTS REQUIRED**

**a. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY**

Coverage A	Statutory
Coverage B	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

**b. COMMERCIAL GENERAL LIABILITY**

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 any one person
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$5,000 any one person

**c. COMMERCIAL AUTOMOBILE LIABILITY**

Bodily Injury/Property Damage	\$1,000,000 combined single limit
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**d. UMBRELLA/EXCESS LIABILITY**

Over Primary Insurance	\$1,000,000 per occurrence
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**4. EVIDENCE OF COVERAGE**

The Contractor should furnish the State, at the time of negotiating a contract, a certificate of insurance coverage complying with the above requirements, which shall be submitted to the Department of Environmental Quality, at 1200 N Street, Suite 400, The Atrium, Lincoln, NE 68509 (facsimile (402) 471-2909). The certificates shall include the name of the company, policy numbers, effective dates, dates of expiration and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Notice of cancellation of any required insurance policy must be submitted to Administrative Services Risk Management when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

**F. COOPERATION WITH OTHER CONTRACTORS**

Accept  
& Initial

The State may already have in place or choose to award supplemental contracts for work related to this Request for Proposal, 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.

**G. INDEPENDENT CONTRACTOR**

Accept  
& Initial

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under the contract. The Contractor's employees and other persons engaged in work or services required by the Contractor under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the Contractor, its officers or its agents) shall in no way be the responsibility of the State. The Contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

**H. CONTRACTOR RESPONSIBILITY**

Accept  
& Initial

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

If the Contractor intends to utilize any subcontractors' services, the subcontractors' level of effort, tasks and time allocation must be clearly defined in the Contractor's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal, in the performance of the contract, without the prior written authorization of the State. Following execution of the contract, the Contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

**I. CONTRACTOR PERSONNEL**

Accept  
& Initial

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or specified subcontractors, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor. The Contractor shall include a similar provision in any Contract with any subcontractor selected to perform work on the project.

Personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of key personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor employee.

In respect to its employees, the Contractor agrees to be responsible for the following:

1. any and all employment taxes and/or other payroll withholding;
2. any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. damages incurred by Contractor's employees within the scope of their duties under the Contract;
4. maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and
5. determining the hours to be worked and the duties to be performed by the Contractor's employees.

Notice of cancellation of any required insurance policy must be submitted to the State when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

**J. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**

The Contractor shall not, at any time, recruit or employ any State employee or agent who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project.

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Accept  
& Initial

**K. CONFLICT OF INTEREST**

By submitting a proposal, the Contractor certifies that there does not now exist any relationship between the Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this Request for Proposal or project.

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Accept  
& Initial

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

**L. PROPOSAL PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by Contractors in replying to this Request for Proposal, in the demonstrations, or oral presentations, or in any other activity related to bidding on this Request for Proposal.

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Accept  
& Initial

**M. ERRORS AND OMISSIONS**

The Contractor shall not take advantage of any errors and/or omissions in this Request for Proposal or resulting contract. The Contractor must promptly notify the State of any errors and/or omissions that are discovered.

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Accept  
& Initial

**N. BEGINNING OF WORK**

The Contractor shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor.

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Accept  
& Initial

**O. ASSIGNMENT BY THE STATE**

Accept  
& Initial

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.

**P. ASSIGNMENT BY THE CONTRACTOR**

Accept  
& Initial

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.

**Q. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**

Accept  
& Initial

The requirements contained in the Request for Proposal become a part of the terms and conditions of the contract resulting from this Request for Proposal. Any deviations from the Request for Proposal must be clearly defined by the Contractor in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the Request for Proposal or mandatory requirements. "Deviation", for the purposes of this RFP, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this RFP. The State discourages deviations and reserves the right to reject proposed deviations.

**R. GOVERNING LAW**

Accept  
& Initial

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 Request for Proposal 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.

**S. ATTORNEY'S FEES**

Accept  
& Initial

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.

**T. ADVERTISING**

Accept  
& Initial

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.

**U. STATE PROPERTY**

Accept  
& Initial

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property, normal wear and tear is expected.

**V. SITE RULES AND REGULATIONS**

Accept  
& Initial

The Contractor shall use its best efforts to ensure that its employees, agents and subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to between the State and the Contractor.

**W. NOTIFICATION**

Accept  
& Initial

During the bid process, all communication between the State and a Contractor shall be between the Contractor’s representative clearly noted in its proposal and the buyer noted in Section II, A. Procuring Office and Contact Person of this RFP. 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 Request for Proposal, in person, or upon delivery by U.S. Mail, facsimile, or e-mail. Each Contractor should provide in its proposal 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) 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 in writing by the State. Communication about the Contract between Contractor and individuals not designated as points of contact by the State is strictly forbidden.

**X. EARLY TERMINATION**

Accept  
& Initial

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 may terminate this RFP or awarded Contract if funding from the State or Federal Government, it suspended or ended.
3. The State, in its sole discretion, may terminate the Contract for any reason upon 30 days written notice to the Contractor. Such termination shall not relieve the contractor of warranty or other service obligations incurred under the terms of the contract. In the event of cancellation the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

4. 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) 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 of the deliverable;
- i. second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau.
- j. termination for convenience
- k. lack or available funds.

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

Accept  
& Initial

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) 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. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the contractor be paid for a loss of anticipated profit.

**Z. BREACH BY CONTRACTOR**

Accept  
& Initial

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) 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 service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

**AA. ASSURANCES BEFORE BREACH**

Accept  
& Initial

If any document or deliverable required pursuant to the Contract does not fulfill the requirements of the Request for Proposal/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.

**BB. SOCIOECONOMIC CONSIDERATIONS**

Accept  
& Initial

While this procurement is not set aside for offers exclusively from such firms, NDEQ encourages the participation of prospective contractors and subcontractors that qualify as minority-business enterprises (MBEs), women-owned business enterprises (WBEs), small-business enterprises (SBEs), and small-disadvantaged businesses (SDBs).

The Contractor agrees to comply with rules governing "Fair Share" of federal funds in accordance with the affirmative steps outlined in 40 CFR 30.44, or 40 CFR 33.240, or 40 CFR 35.6580, or Section 129 of Public Law 100-590, whichever is applicable. The Contractor agrees to include in its proposal and require all of its subcontractors to include in their proposal for subcontracts, a "Fair Share." "Fair Share" Percentages: Supplies, 5% MBE, 12% WBE; Equipment, 6% MBE, 11% WBE; Services, 5% MBE, 11%WBE; and Construction, 6% MBE, 8% WBE. The Contractor must take affirmative steps to assure that MBEs, WBEs, SBEs, and SDBs are used when possible as sources of services and supplies. Documentation must be included with the proposal detailing efforts to utilize these types of businesses.

Affirmative steps shall include the following:

1. Identifying qualified MBEs, WBEs, SBEs, and SDBs on solicitation lists;
2. Assuring that MBEs, WBEs, SBEs, and SDBs are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of MBEs, WBEs, SBEs and SDBs;
4. Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by MBEs, WBEs, SBEs and SDBs;
5. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and
6. If the Contractor awards sub-agreements, requiring the subcontractor to take the affirmative steps as described above.

**CC. DEBARMENT CERTIFICATION FORM**

Accept  
& Initial

The prospective Contractor must certify by submittal of EPA Form 5700-49 "Certification Regarding Debarment, Suspension and Other Responsibility Matters", that to the best of its knowledge and belief, the firm and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency (see RFP Form B). A separate form is required for each of the firms that belong to the Contractor's team, including designated sub-contractors.

An organization listed on the General Services Administration (GSA) List of Parties Excluded from Federal Procurement or Non-procurement Program shall be prohibited from the competitive procurement process.

If any Contractor, listed on the GSA List of Parties Excluded from Federal Procurement or Non-procurement Program, submits a proposal in response to the requested services, the offerors proposal shall be determined to be non-responsive and shall not be evaluated.

**DD. FORCE MAJEURE**

Accept  
& Initial

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 such 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.

**EE. PROHIBITION AGAINST ADVANCE PAYMENT**

Accept  
& Initial

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

**FF. PAYMENT**

Accept  
& Initial

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 services provided by the Contractor prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such services.

**GG. INVOICES**

Accept  
& Initial

The specific payment process will be negotiated during the Contract negotiations.

Invoices for payments must be submitted by the Contractor to the agency requesting the services 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.

**HH. AUDIT REQUIREMENTS**

Accept  
& Initial

All contractor books, records and documents relating to work performed or monies received under the contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by the State. These records shall be maintained for a period of five (5) full years from the date of final payment, or until all issues related to an audit, litigation or other action are resolved, whichever is longer. All records shall be maintained in accordance with generally accepted accounting principles.

In addition to, and in no way in limitation of any obligation in the contract, the Contractor shall agree that it will be held liable for any State audit exceptions, and shall return to the State all payments made under the contract for which an exception has been taken or which has been disallowed because of such an exception. The Contractor agrees to correct immediately any material weakness or condition reported to the State in the course of an audit.

**II. TAXES**

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Accept  
& Initial

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.

**JJ. INSPECTION AND APPROVAL**

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Accept  
& Initial

Final inspection and approval of all work required under the contract shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

**KK. CHANGES IN SCOPE/CHANGE ORDERS**

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Accept  
& Initial

The State may, at any time with written notice to the Contractor, make changes within the general scope of the contract. Changes in scope shall only be conducted with the written approval of the State's designee as so defined by the State from time to time. (The State retains the right to employ the services of a third party to perform any change order(s)).

The State may, at any time work is in progress, by written order, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the Contractor for any extra work so ordered shall be determined in accordance with the applicable unit prices of the Contractor's proposal.

Corrections of any deliverable services or performance of work required pursuant to the contract shall not be deemed a modification requiring a change order.

**LL. SEVERABILITY**

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Accept  
& Initial

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.

**MM. CONFIDENTIALITY**

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Accept  
& Initial

All materials and information provided by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information. All materials and information provided by the State or acquired by the Contractor on behalf of the State shall be handled in accordance with Federal and State Law, and ethical standards. The Contractor must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a Contractor, Contractor shall notify the State immediately of said breach and take immediate corrective action.

It is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to Contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**NN. PROPRIETARY INFORMATION**

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Accept  
& Initial

Data contained in the proposal and all documentation provided therein, become the property of the State of Nebraska and the data becomes public information upon opening the proposal. If the Contractor 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 Contractor wishes the State to withhold must be submitted in a sealed package, which is separate from the remainder of the proposal. The separate package must be clearly marked PROPRIETARY on the outside of the package. Contractors may not mark their entire Request for Proposal as proprietary. Failure of the Contractor to follow the instructions for submitting proprietary and copyrighted information may result in the information being viewed by other Contractors 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, Contractors 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.

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

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Accept  
& Initial

By submission of this proposal, the Contractor certifies, that he or she is the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Contractor has not directly or indirectly induced or solicited any other Contractor to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Contractor or anyone else to put in a sham proposal, or that anyone shall refrain from responding; that the Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Contractor or any other Contractor, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Contractor, 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 proposal are true; and further that the Contractor has not, directly or indirectly, submitted his or her proposal 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, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

**PP. ETHICS IN PUBLIC CONTRACTING**

Accept  
& Initial

No Contractor 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 or employee based on the understanding that the receiving person's vote, actions or judgment will be influenced thereby. No Contractor shall give any item of value to any employee of the State Purchasing Bureau.

Contractors 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 proposals and award of the contract be completed without external influence. It is not the intent of this section to prohibit Contractors from seeking professional advice, for example consulting legal counsel, regarding terms and conditions of this Request for Proposal or the format or content of their proposal.

If the Contractor is found to be in non-compliance with this section of the Request for Proposal, they may forfeit the contract if awarded to them or be disqualified from the selection process.

**QQ. INDEMNIFICATION**

Accept  
& Initial

**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 RFP.

**3. PERSONNEL**

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the Contractor.

**RR. NEBRASKA TECHNOLOGY ACCESS STANDARDS**

Accept  
& Initial

Contractor shall review the Nebraska Technology Access Standards, found at <http://www.nitc.state.ne.us/standards/accessibility> and ensure that products and/or services provided under the contract 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.

**SS. ANTITRUST**

Accept  
& Initial

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.

**TT. DISASTER RECOVERY/BACK UP PLAN**

Accept  
& Initial

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under these specifications in the event of a disaster.

**UU. RECYCLING**

Accept  
& Initial

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use as per state statute (Neb. Rev. Stat. §81-15, 159).

**VV. DRUG POLICY**

Accept  
& Initial

Contractor certifies that it maintains a drug free work place 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.

**WW. NEW EMPLOYEE WORK ELIGIBILITY STATUS**

Accept  
& Initial

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new 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 a newly hired 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 [www.das.state.ne.us](http://www.das.state.ne.us).
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. PROJECT DESCRIPTION AND SCOPE OF WORK**

##### **A. BACKGROUND**

The Nebraska Department of Environmental Quality (NDEQ) operates a program dealing with the remediation of petroleum releases. The purpose of the program is to clean up petroleum releases from underground storage tank, above ground storage tanks, and other sources. In general the State may use Contractors for the investigation and remediation of petroleum releases where the responsible party is unknown, recalcitrant, or insolvent, or in circumstances where an emergency exists that requires immediate action to protect human health, safety, and the environment. Funds to pay Contractors under this Contract come from the Petroleum Release Remedial Action Cash Fund (State money), the Leaking Underground Storage Tank Grants between the State and the U.S. Environmental Protection Agency (Federal money), and other resources.

Sites that meet the above criteria are prioritized and placed on a list. The priority list currently consists of approximately 538 sites. NDEQ intends to investigate and/or remediate as many of these sites as possible in order of priority, within the financial and staffing constraints of the agency.

This scope of work describes the general type of work the Contractor shall be capable of performing in order to achieve the above stated objective.

##### **B. PROJECT MANAGEMENT**

The Contractor shall designate a Contract Administrator for this contract. The Contract Administrator shall be the single point of contact with NDEQ regarding contractual matters. Specific responsibilities of the Contract Administrator shall include, but not be limited to, the following:

1. Providing all support staff, facilities, administrative capabilities, and all other resources as needed to ensure the successful and efficient accomplishment of Task Assignments issued under this Contract.
2. Receiving, acknowledging, and implementing all Tasks Assignments.
3. Designating a Project Manager for each Task Assignment.
4. Providing overall supervision and administrative support to the Project Manager.
5. Reporting and correcting all problems encountered in performing Task Assignments or in the administration of this Contract whether noted by the Contractor or as noted by NDEQ.
6. Preparing and submitting all reports, data, or other deliverables required in Task Assignments.
7. Implementing of a system to provide NDEQ communications access to the Contractor twenty-four hours per day, seven days per week.

The Project Manager designated by the Contract Administrator shall be fully dedicated to the assignment until its completion. Specific responsibilities of the Project Manager shall include, but not be limited to, the following:

1. Maintaining close communication and coordination with NDEQ and the Contract Administrator regarding performance of a Task Assignment.
2. Conducting on-site reconnaissance to develop detailed proposals.
3. Providing administrative support, supervision, and management of personnel equipment, materials, and subcontractors assigned to the Task Assignment.

Personnel and subcontractors shall remain fully dedicated to the assignment and not be removed until its completion unless authorized or required by NDEQ.

4. Taking immediate corrective action when performance is not acceptable to NDEQ.
5. Ensuring that quality assurance, quality control, site health and safety, and any other performance related controls are adhered to during the performance of the work.

## **C. SERVICES**

The Contractor shall have the capability to provide the following services:

### **1. TIER 1 SITE ASSESSMENT**

The Contractor shall perform initial site assessments to gather information necessary to make a risk-based corrective action evaluation of the petroleum release. The results of the site assessment must be presented in written report format. The report shall contain at a minimum:

#### **a. SITE DIAGRAM (TO SCALE)**

- i. Locations of major surface structures (buildings, streets, etc.)
- ii. Location of contaminant source (tank, piping, dispensers, facility, etc.)
- iii. Location of test borings, wells, probes holes, etc.
- iv. Outline of the lateral extent of the free product plume.
- v. Location and elevation of site Benchmark
- vi. Symbol indicating inferred direction of ground water flow
- vii. Identification and location of points of exposure (wells, basements, etc.)
- viii. Subsurface utilities

#### **b. TEST BORING LOGS**

- i. Soil and/or rock type described using the Unified Soils Classification System
- ii. Depth and thickness of lithologic units
- iii. Depth to water at time of drilling (referenced to surface elevation)
- iv. Depth to water after water level stabilization (referenced to surface elevation)
- v. Surface elevation (referenced to site Benchmark)
- vi. Ground water elevation
- vii. Contaminated soil and water intervals (as determined by analytical results and field measurements).

#### **c. MONITORING WELL CONSTRUCTION DETAILS**

- i. Schematic diagram
- ii. Construction and materials.
- iii. Screened, cased, grouted, gravel packed intervals
- iv. Screened slot size
- v. Screen type
- vi. Filter pack type and gradation
- vii. Top of casing and ground level elevations (referenced to site Benchmark)

#### **d. REQUIRED STATE FORMS**

- i. NPDES Permits including Construction permits (storm water)
- ii. Certificate of well driller
- iii. Well registration
- iv. Contaminated Soils Disposal Form

- v. City Right-of-Way
- vi. DOR Right-of-Way
- vii. Landfill disposal (Part B)

**e. LABORATORY AND FIELD ANALYSES OF GROUND WATER SAMPLING**

- i. Results presented in tabular form in report text
- ii. Specify parameter, test method, equipment, and test or equipment detection limits.
- iii. Chain-of-Custody record

**f. NARRATIVE OF FIELD ACTIVITIES AND DISCUSSION OF RESULTS**

**2. TIER 2 SITE ASSESSMENT**

The Contractor shall perform detailed site assessments that determine surface and subsurface characteristics of the release site, identify the source(s) of the release, and identify potential and actual points of exposure of the released contaminant. The results of the detailed site assessments must be presented in written report format:

**a. SITE DIAGRAM**

- i. Information required for site diagram of initial site characterization
- ii. Locations, depth below ground level, and elevations of subsurface structures (basements, utilities lines, etc.)
- iii. Configuration of the surface of the water table
- iv. Isopach map of free product thickness
- v. Isocon map of dissolved product concentration
- vi. Cross-section diagrams that illustrate subsurface conditions. Cross sections should illustrate the extent of contamination, soil/rock type, lithologic boundaries, water table, free product thickness, and subsurface structures

**b. LARGE SCALE MAP**

- i. Location of all water wells within 2000 feet of the site.
- ii. Topography
- iii. Regional ground water flow

**c. AQUIFER PARAMETERS**

- i. Materials, thickness, hydraulic conductivity, transmissivity, storage coefficient, porosity, secondary permeability structures
- ii. Aquifer test results, test method, data, plots, calculated and estimated test parameters

**d. WATER USAGE**

- i. Water well owner's names and addresses within 2000 feet of the site
- ii. Well usage
- iii. Water quality
- iv. Potential for use

**3. REMEDIAL ACTION ALTERNATIVE**

If requested, the Contractor shall, after NDEQ establishes cleanup levels for a site, investigate remedial action alternatives that will meet the cleanup levels established. Contractor shall prepare a report containing schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate clearly the

considerations involved and the alternative solutions or methods available. Minimum information to be presented on the recommended remedial action shall include discussion of:

- a. Each cleanup methodology to include advantages and disadvantages
- b. Availability of materials
- c. Availability of competent construction Contractors
- d. Necessary permits, fees, bonding requirements and easements
- e. Operation and maintenance requirements
- f. Methods of disposal and/or treatment of recovered fuel, generated wastewater, and waste.
- g. Probable costs including construction costs, contingencies, charges for professionals and consultants, allowances for the cost of land and right-of-ways, and operation and maintenance
- h. Cost-effectiveness to include comparison on a present worth and annual worth basis
- i. Operation time necessary to achieve required results

**4. CLEANUP SYSTEM DESIGN**

The Contractor shall prepare and submit a design report for the cleanup alternative selected by NDEQ. The report shall include the information required for the alternative report and in addition the following:

- a. Final design criteria
- b. Plans
- c. Specifications
- d. Work safety requirements
- e. QA/QC inspection procedures of construction activities
- f. Equivalent substitutions of specified "brand name" materials

**5. SUBCONTRACTING**

The Contractor shall subcontract work elements beyond its own capabilities in order to meet the performance requirements set forth in a Task Assignment. State Contractors must require subcontractors to meet all State and Federal regulatory requirements including but not limited to debarment, DBE, Attestation.

**6. BIDDING AND AWARD OF CONSTRUCTION CONTRACTS**

The Contractor shall solicit and award construction contracts. The Contractor shall prepare contract agreement forms, general and supplementary conditions, bid forms, invitation and instruction to Contractors, and other related proposal documents. The Contractor shall be responsible for evaluating bids or proposals and in assembling and awarding contracts.

**7. OVERSIGHT OF CONSTRUCTION – CONTRACTS**

The Contractor shall inspect construction progress. The Contractor shall determine that construction procedures and products conform with plans and specifications and shall advise NDEQ of observations and noted discrepancies. The Contractor shall monitor the progress of the work and perform tests necessary to determine the quality of the executed work.

**8. SITE HEALTH AND SAFETY (SHS) PLAN**

The Contractor shall prepare and submit to NDEQ a site-specific SHS plan for its workers and subcontractors. The contents of the SHS plan shall be in accordance with Standards of the Occupational Safety and Health Administration 29 CFR (1994 edition), Part 1910. The Contractor shall assume the sole responsibility of ensuring that its workers and subcontractors adhere to the plan. The Contractor shall require all personnel to read and sign an agreement indicating compliance with the plan prior to commencing work. The Contractor shall submit the plan to NDEQ prior to beginning work at the site.

**9. QUALITY ASSURANCE AND QUALITY CONTROL (QA/QC)**

The Contractor shall maintain a QA/QC program to insure that all work is carried out in accordance with established and acceptable standards of practice and that the work executed is fully documented. The Contractor shall collect environmental data pursuant to the Department's most recent QA/QC document, Quality Assurance Project Plan for State-Lead Petroleum Remedial Activities, as approved by designated representatives of both the Department and Contractor. The Contractor shall submit for the Department's review and approval any Standard Operating Procedures (SOPs) not previously provided.

**10. FIELD LOG BOOK**

The Contractor shall document all field activities in a hardbound logbook. Entries into the logbook will, at a minimum, be made on a daily basis when in the field. The Contractor shall modify record keeping procedures as required by NDEQ.

**11. PROGRESS REPORTS**

The Contractor shall prepare progress reports that describe both the technical and financial status of the work. The technical section shall consist of a narrative describing work performed; upcoming work, problems encountered and resolutions made, and suggested changes to the work progress. Reports will be submitted in a format and frequency that is acceptable to NDEQ.

**12. MEETINGS**

The Contractor shall make available its key personnel to NDEQ for meetings as deemed necessary by NDEQ to discuss or coordinate any aspect of the work or proposed work.

**13. RECORDS SEARCH**

As required by NDEQ, the Contractor shall research and review records related to work efforts and prepare a report of findings. Records to be researched include historical and/or government documents related to property and land transactions and technical documents and data.

**14. CONSULTING**

The Contractor shall provide professional consulting services. Consulting services shall include, but not be limited to, providing recommendations regarding engineering design, construction methods, remediation technology, health and safety measures, cost accounting and analyses, and regulatory affairs. When required, the Contractor shall prepare special reports presenting their recommendations and/or associated research.

**15. SAMPLING**

The Contractor shall provide sampling of air, soil, and/or water (surface and ground water) for field and/or laboratory analysis.

**16. ANALYTICAL SERVICES**

The Contractor shall provide field and laboratory analysis for petroleum products.

- a. Field analysis capability shall be sufficient to identify and quantify levels of petroleum products. Analytical instruments could include any one of the following:
  - i. Photoionization detector
  - ii. Organic vapor analyzer
  - iii. Gas chromatograph
  - iv. Flame ionization detector

In addition, the Contractor shall have in its possession a combustible gas indicator calibrated for petroleum product detection during performance of the field work.

- b. Laboratory analytical capability shall be limited to methodologies approved by NDEQ. Laboratories used must be in accredited with NELAC.

**17. UNDERGROUND STORAGE TANK (UST) PRECISION TESTING**

The Contractor shall perform precision testing or other leak detection tests approved by NDEQ on USTs. Precision testing must be capable of detecting a 0.10 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

**18. SOIL GAS SURVEYS**

The Contractor shall perform active soil gas surveys. Equipment shall be capable of obtaining vertical profiles and have a minimum depth capability of 50 feet. The Contractor shall prepare and submit results in a format acceptable to NDEQ.

**19. TEST HOLE DRILLING**

The Contractor shall drill test holes for the purpose of determining site stratigraphy, soil and ground water sampling, and contaminant detection. The Contractor shall be capable of solid and hollow stem augering and mud rotary drilling to a depth of 100 feet. The Contractor shall properly dispose of all drilling fluids, soil cuttings, and other suspected contaminated drilling materials. The Contractor shall abandon test holes and/or monitoring wells in accordance with applicable local and state regulations and laws.

**20. WELL INSTALLATION**

The Contractor shall install monitoring, recovery and vapor extraction wells capable of producing quality, representative formation samples and meeting performance standards of the monitoring and/or remediation system designed wells.

**21. EXCAVATING**

The Contractor shall be capable of digging, trenching, and excavating buried structures and materials. The Contractor shall replace excavated materials and properly dispose of contaminated materials.

**22. PETROLEUM PRODUCT COLLECTION**

The Contractor shall collect, store, transport and dispose of recovered petroleum product. At a minimum, Contractor shall:

- a. Remove product from surface and ground water and from the land surface
- b. Pump, store, and treat contaminated ground water
- c. Contain and/or divert flowing product

**23. SITE RESTORATION**

The Contractor shall repair or replace material damaged during the remediation of a release and restore as near as possible the damaged environment to pre-release conditions. At a minimum, the Contractor shall replace or repair all materials or property removed or damaged during work such as:

- a. Regrade surface configuration
- b. Replace soil
- c. Replace damaged concrete, asphalt or other synthetic surface cover
- d. Reseed or replant vegetation

**24. SITE SECURITY**

The Contractor shall provide security to the release site to protect the public and the work site. The security level shall be sufficient to reasonably protect personal property and persons from damage or harm.

**25. DISPOSE, REUSE, OR RECYCLE**

The Contractor shall be responsible for the proper and legal disposal, reuse, or recycling of all contaminated materials generated through the performance of work under a Task Assignment.

**26. ALTERNATE DRINKING WATER SUPPLY**

The Contractor shall supply temporary drinking water to the affected community and individuals as directed by NDEQ. The Contractor shall supply permanent drinking water by constructing new wells or installing water lines as directed by NDEQ.

**27. TEMPORARY HOUSING**

The Contractor shall provide temporary housing to evacuees, as directed by NDEQ.

**D. EMERGENCY SERVICES**

The Contractor shall meet the following special requirements related to providing services when an urgent need is identified by NDEQ.

**1. NOTIFICATION OF NEEDED SERVICE**

The Contractor shall maintain a 24-hour, seven days per week on-call system to allow NDEQ immediate access to the Contractor's services. The on-call status shall include weekends, holidays, and after hours.

**2. RESPONSE PERSONNEL**

When requested by NDEQ, the Contractor shall have their Project Manager at the release site within 12 hours from receipt of notification by the Contractor for the need of Contractor's services.

**3. RESPONSE TIME – EMERGENCY SERVICES, EQUIPMENT, MATERIALS, SUPPORT STAFF**

When requested by NDEQ, the Contractor shall have the capacity of assembling on site within 12 hours, all equipment, material, and support staff necessary to perform the following services listed in this Scope of Work:

- a. Project management
- b. Consulting
- c. Sampling
- d. Analytical services
- e. Drilling
- f. Well installation
- g. Excavating
- h. Petroleum product collection

**4. RESPONSE TIME – ANALYTICAL**

The Contractor shall provide a minimum of 72-hour emergency analytical turnaround time for analytical services in emergency situations, as determined by NDEQ. Turnaround time shall mean the time from initial sample collection until analytical results are made available.

**E. PERFORMANCE SCHEDULE**

The Contractor shall meet the following time requirements related to performance of work under this contract:

**1. PROPOSALS**

- a. Emergency Services  
The Contractor shall submit a proposal within five working days of receiving verbal authorization to perform emergency services.
- b. Non-emergency Services  
The Contractor shall submit a proposal for services within ten working days of receiving a request for proposal on needed services.

**2. TIER 1 SITE ASSESSMENT**

The Contractor shall submit a report for a Tier 1 within sixty consecutive days of receiving authorization to proceed.

**3. TIER 2 SITE ASSESSMENT**

The Contractor shall submit a Tier 2 report within sixty consecutive days of receipt of authorization to proceed.

**4. REMEDIAL ACTION ALTERNATIVES**

The Contractor shall submit the remedial action alternatives report within thirty consecutive days of receipt of authorization to proceed.

**5. CLEANUP SYSTEM DESIGN**

The Contractor shall submit designs, blueprints and as-builts within 30 days after the remediation system is operational.

**6. PROGRESS REPORTS**

Progress reports shall be submitted as required by NDEQ.

**7. SPECIAL REPORTS**

All other reports or data shall be submitted as determined necessary by NDEQ.

**8. MEETINGS**

Meetings will be scheduled by NDEQ as needed.

The above time requirements represent minimum requirements. In the event circumstances warrant, shorter time requirements for performance may be required by NDEQ.

## **V. PROPOSAL INSTRUCTIONS**

This section documents the mandatory requirements that must be met by the Contractor in preparing the Technical Proposal. The Contractor should identify the subdivisions of "Project Description and Scope of Work" clearly in their proposals. Failure to respond to a specific requirement may be the basis for elimination from consideration during the State's comparative evaluation.

Content requirements for the Technical Proposal are presented separately in the following subdivisions:

### **A. TECHNICAL PROPOSAL**

The Technical Proposal shall consist of five (5) sections:

1. The SIGNED "State of Nebraska Request For Proposal For Contractual Services" form;
2. Corporate Overview;
3. Technical Approach.
4. Architect, Engineer Questionnaire Form 254 or 330.
5. EPA Form 5700-49

### **B. REQUEST FOR PROPOSAL FORM**

By signing the "Request For Proposal For Contractual Services" form, the Contractor guarantees compliance with the provisions stated in this Request for Proposal, agrees to the Terms and Conditions stated in this Request for Proposal and certifies Contractor maintains a drug free work place environment.

The Request For Proposal For Contractual Services form must be signed in ink and returned by the stated date and time in order to be considered for an award.

The technical proposal will primarily determine the capability of the organization to participate in the procurement. It must be specific and complete in every detail. The proposal must be practical and should be prepared simply and economically, providing straightforward, concise delineation of capabilities to perform the contract effort being sought.

The technical proposal must outline the actual work proposed as specifically as possible by the Contractor. The Contractor should review the evaluation criteria in Section P (Evaluation Procedure and Criteria) of this RFP for further guidance regarding information that should be included in the Contractor's proposal.

Mandatory requirements are also labeled or are identified by the terms "must," "required," "shall or "will". Other information requested will be considered in the evaluations.

### **C. EXPERIENCE AND RELIABILITY OF THE FIRM**

The proposal must contain the information on the Contractor as well as on any subcontractors or consultants to be used:

Experience and reliability of the Contractor's organization is considered in the evaluation process. Therefore, the Contractor is advised to submit any information, which documents successful and reliable experience in past performances, especially those performances related to the requirements of the Scope of Work.

The proposal must provide the following information related to not more than five and no less than three recently completed contracts, which are considered identical or similar to the requirements of the RFP:

1. Name, address, and telephone number of contracting organization and a contact person who may be contacted for verification of all data submitted.
2. Dates of contract.
3. A brief, written description of the specific prior services performed and requirements.

**D. EXPERTISE AND RELIABILITY OF CONTRACTOR'S PERSONNEL**

The qualifications of the personnel proposed by the Contractor to perform the requirements of the RFP will be considered in the evaluation. Therefore, the Contractor should submit detailed information related to the experience and qualifications of the staff proposed.

For personnel to be assigned to the project, the Contractor should provide a resume (including references) detailing educational qualifications and previous work assignments as they may relate to the RFP.

**E. PROFESSIONAL ENGINEER**

The Contractor must have a Nebraska licensed professional engineer on staff that shall be assigned to prepare or approve all design documents, plans, and specifications for the project. Reciprocity from another State with Nebraska is acceptable if approved by the Nebraska Board of Engineers. The engineer shall have expertise in hydrogeology and the design of treatment facilities for treating petroleum contaminated soil and ground water.

**F. PROFESSIONAL GEOLOGIST**

A Nebraska licensed professional geologist shall be on staff and assigned to direct Geology related field activities and prepare or approve geological reports. The Geologist must hold a Certified Professional Geologist (CPG) license in the State of Nebraska. Reciprocity from another State with Nebraska is acceptable if approved by the Nebraska Board of Geologists.

**G. PROPOSED METHOD OF PERFORMANCE**

Proposals will be evaluated based on the Contractor's distinctive plan for performing the requirements of the RFP. It is not sufficient for the Contractor to repeat the exact RFP language or to present a paraphrased version, as an original idea for a technical approach. The Contractor shall present a written narrative, which demonstrates the method, or manner in which the Contractor proposes to satisfy the requirements of the scope of work. The language of the narrative must be straightforward and limited to facts, solutions and problems, and plans of proposed action. The statement of work for the contemplated Contract is enclosed with this RFP. NDEQ reserves the right to excerpt all or any portion of the successful technical proposal for use as final contract language in the event conditions so warrant.

The Contractor must provide an organizational chart showing the staffing and lines of authority for the personnel to be used. The relationship of the Project Manager to the management and to support personnel must be clearly illustrated.

**H. EXECUTIVE SUMMARY**

The Executive Summary shall condense and highlight the contents of the solution being proposed by the Contractor in such a way as to provide the Evaluation Committee with a broad understanding of the Contractor's Technical Proposal.

Contractors must present their understanding of the problems being addressed by implementing the objectives and intended results of the project, and the scope of work. Contractors shall summarize how their Technical Proposal meets the requirements of the Request for Proposal, and why they are best qualified to perform the work required herein.

## **I. CORPORATE OVERVIEW**

The Corporate Overview section of the Technical Proposal must consist of the following subdivisions:

### **1. CONTRACTOR IDENTIFICATION AND INFORMATION**

The Contractor must provide the full company or corporate name, address of the company's headquarters, entity organization (corporation, partnership, proprietorship), state in which the Contractor is incorporated or otherwise organized to do business, year in which the Contractor first organized to do business, whether the name and form of organization has changed since first organized, and Federal Employer Identification Number and/or Social Security Number.

### **2. CHANGE OF OWNERSHIP**

If any change in ownership or control of the company is anticipated during the twelve (12) months following the proposal due date, the Contractor must describe the circumstances of such change and indicate when the change will likely occur. Any change of ownership to an awarded Contractor will require notification to the State.

### **3. OFFICE LOCATION**

The Contractor's office location responsible for performance pursuant to an award of a contract with the State of Nebraska must be identified.

### **4. RELATIONSHIPS WITH THE STATE**

The Contractor shall describe any dealings with the State over the previous three (3) years. If the organization, its predecessor, or any party named in the Contractor's proposal response has contracted with the State, the Contractor shall identify the contract number(s) and/or any other information available to identify such contract(s). If no such contracts exist, so declare.

### **5. CONTRACTOR'S EMPLOYEE RELATIONS TO STATE**

If any party named in the Contractor's proposal response is or was an employee of the State of Nebraska within the past twelve (12) months, the Contractor must identify the individual(s) by name, State agency with whom employed, job title or position held with the State, and separation date. If no such relationship exists or has existed, that must be stated.

If any employee of any agency of the State of Nebraska is employed by the Contractor or is a subcontractor to the Contractor, as of the due date for proposal submission, the Contractor must identify all such persons by name, position held with the Contractor, and position held with the State (including job title and agency). The Contractor must describe the responsibilities of such persons within the proposing organization. If, after review of this information by the State, it is determined that a conflict of interest exists or may exist, the Contractor may be disqualified from further consideration in this proposal. If no such relationship exists, so declare.

**6. CONTRACT PERFORMANCE**

If the Contractor or any proposed subcontractor has had a contract terminated for default during the past three (3) years, all such instances must be described as required below. Termination for default is defined as a notice to stop performance delivery due to the Contractor's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the Contractor or litigated and such litigation determined the Contractor to be in default.

It is mandatory that the Contractor submit full details of all termination for default experienced during the past three (3) years, including the other party's name, address and telephone number. The response to this section must present the Contractor's position on the matter. The State will evaluate the facts and will score the Contractor's proposal accordingly. If no such termination for default has been experienced by the Contractor in the past three (3) years, that must be stated.

If at any time during the past three (3) years, the Contractor has had a contract terminated for convenience, non-performance, non-allocation of funds, or any other reason, the Contractor must describe fully all circumstances surrounding such termination, including the name and address of the other contracting party.

**7. SUMMARY OF CONTRACTOR'S CORPORATE EXPERIENCE**

The Contractor shall provide a summary matrix listing the Contractor's previous projects similar to this Request for Proposal in size, scope and complexity. The State will use no more than three (3) narrative project descriptions submitted by the Contractor during its evaluation of the proposal.

The Contractor must address the following:

- a.** Contractor must provide narrative descriptions to highlight the similarities between their experience and this Request for Proposal. These descriptions must include:
  - i.** the time period of the project;
  - ii.** the scheduled and actual completion dates;
  - iii.** the Contractor's responsibilities;
  - iv.** for reference purposes, a customer name (including the name of a contact person, a current telephone number, a facsimile number and e-mail address); and
  - v.** each project description shall identify whether the work was performed as the prime Contractor or as a subcontractor. If a Contractor performed as the prime Contractor, the description must provide the originally scheduled completion date and budget, as well as the actual (or currently planned) completion date and actual (or currently planned) budget.
  
- b.** Contractor and subcontractor(s) experience must be listed separately. Narrative descriptions submitted for subcontractors must be specifically identified as subcontractor projects.

- c. If the work was performed as a subcontractor, the narrative description shall identify the same information as requested for the Contractors above. In addition, subcontractors shall identify what share of contract costs, project responsibilities, and time period were performed as a subcontractor.

**8. SUMMARY OF CONTRACTOR'S PROPOSED PERSONNEL/MANAGEMENT APPROACH**

The Contractor must present a detailed description of its proposed approach to the management of the project.

The Contractor must identify the specific professionals who will work on the State's project if their company is awarded the contract resulting from this Request for Proposal. The names and titles of the team proposed for assignment to the State project shall be identified in full, with a description of the team leadership, interface and support functions, and reporting relationships. The primary work assigned to each person should also be identified.

The Contractor shall provide resumes for all personnel proposed by the Contractor to work on the project. The State will consider the resumes as a key indicator of the Contractor's understanding of the skill mixes required to carry out the requirements of the Request for Proposal in addition to assessing the experience of specific individuals.

Resumes must not be longer than three (3) pages. Resumes shall include, at a minimum, academic background and degrees, professional certifications, understanding of the process, and at least three (3) references (name, address, and telephone number) who can attest to the competence and skill level of the individual. Any changes in proposed personnel shall only be implemented after written approval from the State.

It having been determined that the employees whose names appear in the contract documents, or persons approved by NDEQ as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this Contract, the Contractor agrees to assign such employees or persons to the performance of the work under this Contract and shall not reassign or remove any of them without the consent of NDEQ. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the Contract, the Contractor shall, with the approval of NDEQ, replace such employee with an employee of substantially equal abilities and qualifications.

**9. SUBCONTRACTORS**

If the Contractor intends to subcontract any part of its performance hereunder, the Contractor must provide:

- a. name, address and telephone number of the subcontractor(s);
- b. specific tasks for each subcontractor(s);
- c. percentage of performance hours intended for each subcontract; and
- d. total percentage of subcontractor(s) performance hours.

**10. INSPECTIONS OF WORK**

NDEQ shall at all times have access to the work and to all workshops and places where work is being prepared or from where materials or machinery are being obtained for the work, and the Contractor shall afford every facility for, and every assistance in, obtaining the right to such access.

**11. PERMITS AND RESPONSIBILITIES**

The Contractor shall secure, pay, and sign for all permits, licenses, and governmental fees necessary for the proper execution and completion of the work.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the work.

The Contractor shall be responsible for all damages and shall indemnify and save NDEQ harmless from and against all additional cost, damages, and liability which may arise out of the failure of the Contractor to secure and pay for any such licenses and permits or to comply fully with any and all applicable laws, ordinances, rules, and regulations.

**12. TRAVEL EXPENSES**

The Contractor shall use the same guidelines for travel reimbursement expenses as the State of Nebraska. The Contractor must keep meal receipts, but is not required to provide the state with meal receipts. The Contractor shall keep a daily record of all meal costs and record the amount the employee spent for housing and meals.

**13. DISPOSABLE ITEMS**

The Contractor shall not purchase disposable items for use in the field when non disposable items are available. This type of item would include, but is not limited to, cameras. It is not NDEQ's intent to further add disposable items to Nebraska's landfills. Exceptions to this requirement are items used where QA/QC is of concern such as sampling and personal safety items.

**14. NEWS RELEASES**

News releases pertaining to this procurement or any part of the proposal shall not be made without the prior approval of the NDEQ. Violation of this paragraph may be grounds for disqualification of Contractor's proposal.

**15. COMPETITIVE BIDDING REQUIREMENTS**

The Contractor is required by State law to engage in a process of competitive bidding for single items of equipment or for subcontracted activities that exceed \$10,000 in value. To insure contract payment under this contract, the bids must meet the following minimum criteria:

- a. A minimum of three bids must be obtained.
- b. Bids must be for comparable items.
- c. Bids must be obtained from Contractors who can demonstrate adequate experience, equipment and personnel to accomplish the scope of the bid items.

The Contractor is required to accept the lowest responsible bid. However, in cases in which the lowest Contractor was not selected, a justification of the decision must be provided to the Department's Project Manager. Records documenting the competitive bidding process performed during the term of the Contract must be retained four years after termination of the Contract.

Discussion and understanding of the project requirements (See Project Description and Scope of Work).

# Contractor

## Form A

### Contractor Contact Sheet

#### Request for Proposal Number 3493Z1

The Contractor Contact Sheet should be completed and submitted with each response to this Request for Proposal. This is intended to provide the State with information on the Contractor's name and address, and the specific person(s) who are responsible for preparation of the Contractor's response. Each Contractor shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the Contractor's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Preparation of Response Contact Information	
Contractor Name:	
Contractor Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	

Each Contractor shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the Contractor's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

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

# PRO FORMA CONTRACT

CONTRACT NO. 16589  
BETWEEN  
THE STATE OF NEBRASKA  
AND

---

## INTRODUCTION

This contract is effective upon execution by and between the State of Nebraska, acting through the Nebraska Department of Environmental Quality (hereinafter referred to as "NDEQ"), and -----  
----- (hereinafter referred to as the "Contractor"), whose principal offices are located at  
XXXXXXXXXXXX, Nebraska.

## AGREEMENT

Now, therefore, in order to accomplish the above objectives, the parties hereto agree to the following terms and conditions.

## ARTICLE 1: DEFINITIONS

- A. "NDEQ" shall mean the Nebraska Department of Environmental Quality, its employees, and any duly authorized representatives thereof.
- B. "Contractor" shall include all subcontractors, independent consultants, and all other classes of persons performing any type of work under this Contract.
- C. "Contract Documents" shall mean the contract, contract conditions, request for proposals, proposals, task assignments, general terms and conditions and scope of work.
- D. "Government" shall mean the United States of America and includes the U.S. Environmental Protection Agency.

## ARTICLE 2: WORK TO BE PERFORMED

The Contractor shall furnish all personnel, facilities, equipment, and materials necessary for the performance of all the work generally described in the Technical Proposal, attached to the contract and incorporated fully herein by this reference, and shall perform said work and report thereon pursuant to the individual task assignments issued within the Technical Proposal. Specific deliverables, quantities, and due dates will be as specified in each task assignment.

## ARTICLE 3: PERIOD OF PERFORMANCE

The period of performance under this Contract shall commence on the effective date of this Contract and be completed three years following the effective date. NDEQ shall have the right, at its sole option, to extend the Contract period for two, one-year periods or any portion thereof. In the event NDEQ exercises its options, all terms, conditions, and provisions of this original Contract agreement shall remain the same and apply during the extension period. Option periods shall be effected by formal amendments to this Contract.

#### **ARTICLE 4: TASK ASSIGNMENT PROCESS**

The Contractor shall perform work under this contract only as directed in Task Assignments. The Contractor shall provide services on an "as needed, if needed basis," as determined by NDEQ. Only the NDEQ Project Manager may authorize the Contractor to prepare a proposal for a Task Assignment or issue a Task Assignment. NDEQ shall assume no responsibility and no liability for costs incurred by the Contractor for work performed prior to or without the issuance of a Task Assignment.

The Contractor agrees and understands that this Contract shall not be construed as an exclusive arrangement and that other Contracts for the same types of services may exist. The Contractor further agrees and understands that the issuance of a Task Assignment shall not be construed to mean that the Contractor has exclusive right to any or all other work.

When requested, the Contractor shall prepare a proposal to perform work under a Task Assignment. The Contractor shall submit to the NDEQ Project Manager its proposal that shall describe the manner in which the work will be performed and provide an estimate of the cost of performance. The cost estimates shall be based on the principle set forth in Article 5 of this Contract. Upon receipt the proposal shall become the property of NDEQ. NDEQ shall have the right to use or adopt ideas contained in the proposal. Selection or rejection of the proposal will not affect this right.

NDEQ may accept or reject the Contractor's proposal as submitted or enter into negotiations with the Contractor. Following acceptance of a proposal, the Project Manager will then issue a formal Task Assignment. Upon receipt of a Task Assignment, the Contractor shall commence work as specified therein.

In the event of a need for urgent performance, NDEQ may require the Contractor to begin work immediately prior to finalization of the Task Assignment. Written or oral authorization may be issued by the NDEQ Project Manager or Supervisor of the Petroleum Remediation Section.

Any Task Assignment issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the Task Assignment. The Contract shall continue to govern the rights and obligations of the Contractor and State to the same extent as if the Task Assignment were completed during the effective period of the Contract.

#### **ARTICLE 5: CONSIDERATION AND PAYMENT**

##### **Labor**

The Contractor shall perform the work called for in each Task Assignment issued under this contract on a time and materials basis. The Contractor shall receive compensation, as specified hereunder, for all services and work performed up to the ceiling price established for each Task Assignment. Labor costs shall be computed by multiplying employee's charge rate by the actual direct labor hours worked. The charge rate for each employee performing work under this contract shall be based on a totally burdened multiplier on direct salary. The burdened multiplier shall include profit, wages, overhead, general and administrative expenses, and the cost of bidding, awarding, and administering subcontracts. The Contractor shall not increase the wages of its employees for the purpose of increasing the employee charge rates. The burdened multiplier for the contract is X.XX. The charge rates shall not be varied by virtue of the Contractor having performed work on an overtime basis. Fractional parts of any hour shall be payable on a prorated basis.

**Subcontracts**

The cost of subcontracts, which are authorized pursuant to the "Subcontracts" clause of Section IV/Services/Subcontracting, shall be reimbursable costs hereunder, provided such costs are consistent with the Direct Costs paragraph below. NDEQ shall reimburse Contractor at a rate of XX% of the actual cost paid for subcontracts.

**Direct Costs**

Allowable costs of direct materials, supplies, services, etc., shall be determined by NDEQ. The Contractor shall be reimbursed for direct items and services purchased for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. NDEQ shall reimburse Contractor at a rate of XX% of the actual cost paid for materials or services. Direct items and services are defined as those materials which enter directly into the end product or which are used or consumed directly in connection with the furnishing of such product. The Contractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, the Contractor shall promptly notify NDEQ to that effect and give the reason therefore. Credit shall be given to NDEQ for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have accrued to the benefit of the Contractor, or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of NDEQ, shall not be deducted from gross costs.

**ARTICLE 6: LIMITATION OF NDEQ COST LIABILITY**

It is established that the total cost to NDEQ for the performance of the work issued under this Contract will not exceed the ceiling price set forth in each Task Assignment and the Contractor agrees to perform the work specified in the Task Assignment and all obligations under this Contract within such ceiling prices.

NDEQ shall not be obligated to pay the Contractor any amount incurred in excess of the ceiling price of each Task Assignment. If the Contractor determines that the scope of the work needs to be modified, the Contractor shall immediately submit a written request to NDEQ specifying the needed modification, the reason for such modifications, and any resulting change in the ceiling price. This request shall be approved or disapproved by NDEQ. If written approval is given by NDEQ, the Contractor shall proceed and complete the project as modified. If NDEQ determines that the Task Assignment needs to be modified, NDEQ shall issue a written order to the Contractor specifying the needed modification and the reason for such modification. The Contractor shall then calculate any resulting change in the ceiling price and notify NDEQ in writing of such change within seven working days of receipt of the written order. NDEQ shall then approve or disapprove of such change in the ceiling price. If written approval is given by NDEQ, the Contractor shall proceed and complete the project as modified. Any changes made under the terms of this paragraph shall then be acknowledged by a formal written amendment to the Task Assignment and, if applicable, to this Contract. If written disapproval is given to the Contractor by NDEQ for the changes or ceiling price proposed by the Contractor, no funds shall be expended in excess of the ceiling price set forth in the Task Assignment.

This Contract may be terminated prior to expiration if the Contractor does not satisfactorily perform the services as agreed to in the Contract, or for any other reasons deemed to be within the best interest of the NDEQ. Termination shall be by written notice (certified mail, return receipt requested) to the Contractor and will be effective immediately upon receipt of said notice. In the event work under this Contract is terminated by NDEQ, the Contractor shall immediately, upon receipt of notice:

(1) discontinue all services, and (2) deliver to NDEQ all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in progress. If the termination is for the convenience of NDEQ, the Contractor shall be compensated for all services performed up to the termination date. If the termination is caused by the failure of the Contractor to perform according to the terms of the contract, NDEQ shall have no obligation to make further payments under the Contract, and, NDEQ may complete the work by contract or otherwise.

If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NDEQ.

#### **ARTICLE 7: MANNER OF PAYMENT**

The Contractor shall be paid upon submission of properly certified invoices. Each Task Assignment shall be accounted for separately and be billed under separate invoices. Invoices may be submitted once each month and shall be supported by an itemized statement of costs claimed to have been incurred by the Contractor during the period covered by the invoice and shall include copies of vouchers, invoices, or other evidence of actual payment for other direct charges. Promptly after receipt of each substantiated voucher, NDEQ shall, except as otherwise provided in the Contract, make payment thereon.

The minimum monthly invoice amount for any one site is \$500 unless the invoice is the final invoice for work at a site. If the monthly expenditures are less than \$500, Contractor shall carry that month's bills over to the following month in which total expenditures reach the \$500 amount.

To facilitate processing and payment, each invoice must reference the Contract Number and Task Assignment Number.

The Contractor shall identify the final invoice for each task assignment by affixing in a prominent place the words "FINAL INVOICE."

#### **ARTICLE 8: FINAL PAYMENT REQUIREMENTS**

At any time or times prior to final payment under this Contract, NDEQ may cause to be made such audit of the invoices or vouchers and substantiating material as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts which are found by NDEQ not to have been properly payable and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceding invoices or vouchers. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "Final Invoice" and substantiating material, and upon compliance by the Contractor with all provisions of this Contract, NDEQ shall as promptly as may be practicable pay any balance due and owing the Contractor. The final invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as may be practicable following completion of the work under each Task Assignment, but in no event later than six months from the date of such completion.

The Contractor and each assignee, under a task assignment entered into under this Contract and in effect at the time of final payment under this Contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging NDEQ and the Government, their respective officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

1. Specified claims in stated amounts, or in estimated amounts where the amounts are not susceptible to exact statements by the Contractor.

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this Contract, which are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to NDEQ not more than six months after the date of the release or the date of any notice to the Contractor that NDEQ is prepared to make final payment, whichever is earlier.

Invoices for work accomplished under this contract with supporting documentation shall be submitted in original form plus one copy to:

Stephanie Vap-Morrow  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922

The Contractor is hereby notified that NDEQ may withhold payment on invoices submitted if the Contractor has failed to comply with the reporting/deliverable requirements or is delinquent in the submission of such reporting/deliverable requirements, until such time as the Contractor has performed/submitted such reporting/deliverable requirements.

**ARTICLE 9: GOVERNING LAW**

This Contract shall be governed and construed in accordance with the laws of the State of Nebraska.

**ARTICLE 10: INTEGRATION AND AMENDMENT**

The Contract documents constitute the entire agreement between the NDEQ and the Contractor. This Contract may only be altered, amended, or modified by a written instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Contract, which shall become effective on the latter of the two dates signed.

ACCEPTED: _____	AUTHORIZED: Nebraska Department of Environmental Quality
PRINTED NAME: _____	PRINTED NAME: _____
SIGNATURE: _____	SIGNATURE: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____