# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for a commodity contract, for the purpose of selecting qualified Vendor(s) to provide the following models for the **2021 Vehicle Season:**

- **Sedans**
- **SUVs**
- **Vans**
- **Half Ton Trucks**
- **Three Quarter Ton Trucks**
- **One Ton Trucks**
- **Police Vehicles**

A more detailed description can be found in the corresponding ITB. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

The term of the contract will be one (1) year commencing upon execution of the contract by the State and the Bidder (Parties). The State reserves the right to extend the period of this contract beyond the expiration, for half of the initial Contract term, when mutually agreeable to the Parties.

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

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.02, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the solicitation, and the Awarded Bidder's Bid will be posted to a public website managed by DAS, which can be found at:

https://statecontracts.nebraska.gov

In addition and in furtherance of the State's public records statute (Neb. Rev. Stat. § 84-712 et seq.) all Bids received regarding this solicitation will be posted to the SPB website.

These postings will include the entire Bid. Bidder must request that proprietary information be excluded from the posting. The Bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words **"PROPRIETARY INFORMATION"**. The Vendor must submit a **detailed written document showing** that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) **THE VENDOR MAY NOT ASSERT THAT THE ENTIRE BID IS PROPRIETARY. COST WILL NOT BE CONSIDERED PROPRIETARY AND IS A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Vendor will be notified of the Agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the State determines it is required to release proprietary information, the Vendor will be informed. It will be the Bidder's responsibility to defend the asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State reserves a royalty-free, non-exclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any Contract or Bid for this solicitation for any purpose, and to authorize others to use the documents. Any individual or entity awarded a Contract, or who submits a Bid for this solicitation, specifically waives any copyright or other protection the Contract or Bid for the solicitation may have; and, acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a for this solicitation, and award of a contract. Failure to agree to the reservation and waiver will result in the Bid for the solicitation being found non-responsive and rejected.

**Any entity awarded a contract or submitting a Bid for the solicitation agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials 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, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the Bids for the solicitation, awards, and other documents.**

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS
## GLOSSARY OF TERMS

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

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

**After Receipt of Order:** After Receipt of Order.

**Agency:** Using Agencies shall mean and include all Agencies, boards, bureaus, commissions other than the University of Nebraska, the Nebraska State colleges, councils, courts and institutions receiving legislative appropriations, departments, officers of the State, or any other office or Agency established by the Constitution of Nebraska.

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

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

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

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

**Automated Clearing House:** Electronic network for financial transactions in the United States.

**Award:** All purchases, leases, or contracts, which are based on competitive bids, will be awarded according to the provisions in the solicitation.

**Best and Final Offer**: In a competitive bid, the final offer submitted which contains the bidder's most favorable terms for price.

**Bid:** An offer, bid, or quote submitted by a Vendor in a response to a written solicitation.

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

**Breach:** Violation of a contractual obligation by failing to perform or repudiation of one's own promise.

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

**Business Day:** Monday through Friday excluding Saturdays and Sundays and State/Federal recognized holidays.

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

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

**Catalog:** A printed or electronic list of products a Vendor may provide at a discounted rate or discount off list price to the State. Initial contract award(s) is not based on Catalog items.

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

**Collusion:** An agreement or cooperation between two (2) or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose.

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

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

**Competition:** The effort or action of two (2) or more commercial interests to obtain the same business from third parties.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

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

**Contract:** An agreement between two (2) or more parties creating obligations that are enforceable or otherwise recognizable at law; the writing that sets forth such an agreement.

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

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

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

**Core List:** Items specifically listed in an ITB upon which a bid is evaluated for award.

**Cooperative Purchasing:** The combining of requirements of two (2) or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits.

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

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

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

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

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

**Exception:** See "Deviation".

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

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

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

**Free on Board Destination:** Delivery term that transfers the title of goods from the Vendor to the purchaser when the commodities/goods are physically delivered to the purchaser. Destination also implies that the delivery charges are included in the quoted price and prepaid by the Vendor.

**Free on Board Point of Origin:** The Vendor is responsible for all shipping costs to the point of having the commodities/goods loaded unto the vessel for shipment to its destination. The purchaser, from that point forward, is responsible for all delivery charges, which are not included in the quoted price and further shipping costs to the point of destination, e.g., claims for all associated with damages during delivery of product, insurance, transportation, etc...

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

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

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

**Installation Date:** The date when the procedures described in "Installation by Vendor", and "Installation by State", as found in the ITB, or Contract are completed.

**Interested Party:** A person, acting in their personal capacity, or an entity entering into a contract or other agreement creating a legal interest therein.

**Invalid Bid:** A bid that does not meet the requirements of the solicitation or cannot be evaluated against the other bids including a faxed or emailed bid for a term contract.

**Invitation to Bid:** A written solicitation utilized for obtaining competitive offers for Commodities/Goods.

**ITB Evaluation Committee:** Agency personnel that advises and assists the procuring office in the evaluation of bids (offers made in response to written solicitations).

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

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

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

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

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

**Must:** See "Mandatory".

**National Institute for Governmental Purchasing:** Source used for assignment of universal commodity codes to commodities/goods.

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

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

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

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

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

**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.

**Point of Contact:** The person designated to receive communications and to communicate.

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

**Price List:** A printed or electronic list of item pricing, also known as the Manufacturer's Suggested Retail Price, the Recommended Retail Price, or the Suggested Retail Price.

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

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

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

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

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

**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) advantaged by release of the information and the demonstrated advantage the named competitor(s) would gain by the release of information

**Protest:** See "Grievance".

**Public Bid Opening:** The process of opening correctly submitted offers at the time and place specified in the written solicitation and in the presence of anyone who wished to attend.
**Quote:** A document to provide the current price or bid-offer for a commodity/good.

**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 Vendor.

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

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

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

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

**Shall:** See "Mandatory".

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

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

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

**Statutory:** These clauses are controlled by State law and are not subject to negotiation.

**Subcontractor:** Individual or entity with whom the Vendor enters a contract to perform a portion of the work awarded to the Vendor.

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

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

**Third-Party:** Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and Subcontractors or agents, and their employees. It shall not include any entity or person who is an interested Party to the contract or agreement.

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

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

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

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

**Vendor Performance Report:** A report that documents good and poor performance (See Supplier and Procurement Manual).

**Will:** See "Mandatory".

**Work Day:** See "Business Day".

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## ACRONYM LIST

**ACH:** Automated Clearing House

**ARO:** After Receipt of Order

**BAFO:** Best and Final Offer

**CPU:** Central Processing Unit

**DAS:** Department of Administrative Services

**EPA:** Environmental Protection Agency

**FOB:** Free on Board

**ITB:** Invitation to Bid

**MA:** Master Agreement

**MSRP:** Manufacturer's Suggested Retail Price

**NIGP:** National Institute for Governmental Purchasing

**PA:** Participating Addendum

**POC:** Point of Contact

**PFC:** Payroll & Financial Center

**RFI:** Request for Information

**RRP:** Recommended Retail Price

**SPB:** State Purchasing Bureau

**SRP:** Suggested Retail Price.

**VIN:** Vehicle Information Number

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## I. SCOPE OF THE MA TERMS AND CONDITIONS

**A.** SPB will be issuing ITBs, for the purpose of selecting qualified Bidders to provide **2021 Vehicles.**

SPB will be requesting bids for the following:

- **Sedans**
- **SUVs**
- **Vans**
- **Half Ton Trucks**
- **Three Quarter Ton Trucks**
- **One Ton Trucks**
- **Police Vehicles**

By signing this document, the Bidder agrees to the MA Terms and Conditions contained herein. Upon contract award, these Terms and Conditions will become a part of the contract.

**B. EXPLANATION OF MA TERMS AND CONDITIONS**

The MA Terms and Conditions will apply to all bids submitted for the **2021 Vehicle Season**. Each bidder must complete and submit only **ONE (1)** MA Terms and Conditions prior to/or with their first ITB submitted for the **2021 Vehicle Season**.

**C. REQUIRED INFORMATION AND SIGNATURE OF MA**

*****BIDDER MUST COMPLETE AND SIGN THE FOLLOWING*****

The MA should be signed in an indelible manner (electronic signatures are acceptable), the bidder guarantees compliance with the provisions stated in this MA. Bidder agrees to the Terms and Conditions unless otherwise agreed to which includes certifying that bidder shall maintain a drug free work place environment.

| | |
|---|---|
| **BIDDER NAME:** | Gene Steffy Auto Group |
| **ADDRESS:** | 2545 E 23rd Fremont, NE, 68025 |
| **CONTACT NAME & TITLE:** | Lonnie Dooley Govt. + Comm. Sales Rep |
| **PHONE NUMBER:** | 402-727-8550 |
| **EMAIL:** | lonnie@genesteffy.com |
| **SIGNATURE:** | Lonnie Dooley |
| **PRINT NAME:** | Lonnie Dooley |
| **DATE:** | 9-24-20 |
| **NEBRASKA DEALER LICENSE NUMBER:** | 02298 |

**D. MOTOR VEHICLE INDUSTRIES REGULATION ACT**

All Bidders must comply with the licensing requirements for motor vehicle dealers established under the Motor Vehicle Industries Regulation Act, Nebraska Revised Statutes, Chapter 60, Article 14 at time of bid. Bids will only be accepted from Bidders who are fully compliant with the Motor Vehicle Industries Regulation Act, Chapter 60, Article 14.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

**E. AUTHORIZED DEALER**

The Bidder shall be an authorized dealer and may be required to substantiate such. If substantiation is required by SPB, the bidder must submit proof to SPB within three (3) days of the request and prior to the award of any contract. The terms of the original manufacturer's standard warranty shall apply to all equipment acquired from this solicitation for the entire warranty period.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## II. PROCUREMENT PROCEDURE

### A. GENERAL INFORMATION

The ITB is designed to solicit bids from qualified Bidders who will be responsible for providing **2021 Vehicles** at a competitive and reasonable cost.

Bids shall conform to all instructions, conditions, and requirements included in the ITB. Prospective Bidders are expected to carefully examine all documents, schedules, and requirements in this ITB, and respond to each requirement in the format prescribed. Bids may be found non-responsive if they do not conform to the ITB.

By signing and submitting the original MA Terms and Conditions, the Bidder agrees to the State's general MA Terms and Conditions.

By submitting the "ITB Technical Specifications", the Bidder agrees to each and every one of the State's specifications.

Fixed-price contracts will be awarded as a result of this ITB.

### B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF

Procurement responsibilities related to this ITB reside with the SPB. The POC for the procurement is as follows:

| | |
|---|---|
| POC: | Christie Kelly, Brenda Sensibaugh, Buyers |
| Agency: | State Purchasing Bureau |
| Address: | 1526 K Street, Suite 130 |
| | Lincoln, NE 68508 |
| Telephone: | 402-471-6500 |
| E-Mail: | as.materielpurchasing@nebraska.gov |

From the date the ITB is issued until the Intent to Award is posted, communication from the Bidder is limited to the POC listed above. After the Intent to Award is posted, the Vendor may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government or employee of the State is empowered to make binding statements regarding this solicitation. The POC will issue any answers, clarifications or amendments regarding this solicitation in writing. Only SPB or awarding Agency can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this solicitation.

The following exceptions to these restrictions are permitted:

1. Contact made pursuant to pre-existing contracts or obligations;
2. Contact required by the Schedule of Events or an event scheduled later by POC; and
3. Contact required for negotiation and execution of the final contract.

*The State reserves the right to reject a bidder's ITB, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.*

### C. PRE-BID CONFERENCE (OPTIONAL)

A pre-bid conference may be held per the Schedule of Events. Attendance at the pre-bid conference is optional. Vendors will have an opportunity to ask questions at the conference to assist in the clarification and understanding of the ITB requirements. Questions that have a material impact on the ITB or ITB process, and relevant to all Vendors will be answered in writing and posted at https://das.nebraska.gov/materiel/bidopps.html# . An answer must be posted to be binding on the State. The State will attempt to provide verbal answers to questions that do not impact the ITB or process, and are only of interest to an individual Vendor during the conference. If a Vendor feels it necessary to have a binding answer to a question that was answered verbally, the question should be submitted in writing per the Schedule of Events.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

**D. RECYCLING (§ 81-15,159(d)(2))**

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. Preference will also be given to purchases of corn-based biodegradable plastics and road deicers if available and suitable. No preference shall be given if such preference would result in the purchase of products, materials, or supplies that are of inadequate quality or of substantially higher cost.

**E. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)**

All Bidders must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. Any Bidder who is the recipient of an Intent to Award, upon request from SPB, will be required to certify that it has complied and produce a true and correct copy of its current Certificate or Letter of Good Standing (within 90 calendar days of the intent to award), or in the case of a sole proprietorship, provide written documentation of sole proprietorship and the United States Citizenship Attestation Form, available on the DAS website at http://das.nebraska.gov/materiel/purchasing.html. This must be accomplished prior to execution of the contract.

**F. ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject bids, withdraw an Intent to Award or award, or terminate a contract if a Bidder commits or has committed ethical violations, which include, but are not limited to:

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any State or Federal entity:
4. Submitting a bid on behalf of another party or entity;
5. Collude with any person or entity to influence the bidding process, submit sham bids, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the bid, or prejudice the State,

The Bidder shall include this clause in any Subcontract entered into for the exclusive purpose of performing this contract.

Bidder shall have an affirmative duty to report any violations of this clause by the Bidder throughout the bidding process, and throughout the term of this contract for the successful Bidder and their Subcontractors.

**G. DEVIATIONS FROM THE ITB**

The requirements contained in the ITB technical sections become a part of the Terms and Conditions of the contract resulting from this ITB. Any deviations from the ITB in technical sections must be clearly defined by the Bidder in its bid 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 ITB, mandatory requirements, or applicable State or Federal laws or statutes. "Deviation", for the purposes of this ITB, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this ITB. The State discourages deviations and reserves the right to reject proposed deviations.

**H. SUBMISSION OF MA TERMS AND CONDITIONS**

The State is accepting the electronically submitted MA Terms and Conditions, bids or hard copy, paper responses for 2021 Vehicle Season Bids.

**1. ELECTRONICALLY UPLOADING TO SHAREFILE**

- **a.** Bidders should upload the MA Terms and Conditions via ShareFile Link to: https://nebraska.sharefile.com/r-r85a9e51b2d54a549.
- **b.** Bidders should upload bid(s) via the ShareFile Link in each specific ITB number and Attachment Letter.
- **c.** Not all browsers are compatible with ShareFile. Chrome, Internet Explorer and Firefox are compatible but Microsoft Edge is not.
- **d.** In order for the bidder to receive confirmation from ShareFile that all files submitted have been received, the bidder must enter contact information after clicking on the link provided.

**2. OTHER DOCUMENTS TO UPLOAD TO SHAREFILE**

- **a.** The Technical Specifications, and any Proprietary information (if applicable) should be uploaded as separate and distinct files. If multiple Bids are submitted, the State will retain only the most recently submitted Bid. It is the Bidder's responsibility to submit the Bid by the date and time indicated in the Schedule of Events. The Electronic Bids must be received by SPB by the date and time of the Bid Opening per the Schedule of Events. **No late Bids will be accepted.**

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## 3. ELECTRONIC ITB FILE NAMES

a. The Bidder should clearly identify the uploaded ITB files. **Do not submit bid file(s) more than 30 days prior to the Bid Opening. Once file(s) are uploaded they are only available for 30 days**. To assist in the identification of The MA Terms and Conditions and Bid/Bid file(s) please use the following naming convention(s):
   - 2021 MA Terms and Conditions <<NAME OF BIDDER>>
   - ITB XXXX OF Attachment "?" <<NAME OF BIDDER>> Bid.
   - ITB XXXX OF Attachment "?" <<NAME OF BIDDER>> File 1.
   - ITB XXXX OF Attachment "?" <<NAME OF BIDDER>> File 2.
   - ITB XXXX OF Attachment "?" <<NAME OF BIDDER>> File 3, etc...

b. If multiple bids are submitted for the same ITB number and Attachment, follow the same naming convention as letter "a", for example:
   - 2021 MA Terms and Conditions <<NAME OF BIDDER>>
   - ITB XXXX OF Attachment "?" <<NAME OF BIDDER>> Bid 2.
   - ITB XXXX OF Attachment "?" <<NAME OF BIDDER>> Bid 2 File 1.
   - ITB XXXX OF Attachment "?" <<NAME OF BIDDER>> Bid 2 File 2, etc...

It is the bidder's responsibility to ensure the ITB is electronically received by the date and time indicated in the Schedule of Events. **Hardware, software, internet, user, or electronic issues will not excuse a late bid.**

The ITB document should be manually signed in an indelible manner or by DocuSign and uploaded by the Bid Opening date and time along with the Bid.

It is the responsibility of the bidder to check the website for all information relevant to this ITB to include Addenda and/or Amendments issued prior to the opening date. Website address is as follows: https://das.nebraska.gov/materiel/bidopps.html#.

Emphasis should be concentrated on conformance to the ITB instructions, responsiveness to requirements, completeness, and clarity of content. If the bid is presented in such a fashion that makes evaluation difficult or overly time consuming the State reserves the right to reject the bid as non-conforming.

By signing the ITB document, the bidder guarantees compliance with the provisions stated in this ITB.

The State shall not incur any liability for any costs incurred by bidders in replying to this ITB, in the demonstrations and/or presentations, or in any other activity related to bidding on this ITB.

The MA Terms and Conditions and any Proprietary Information should be submitted as separate electronic files and identified as such.

## I. BIDDERS SUBMITTING PAPER/HARD COPY RESPONSES:

Bidders who are submitting a paper response shall submit one (1) bid marked "ORIGINAL" on the first page of the bid. If multiple copies are submitted, for the same ITB number and Attachment Letter, the State will retain one (1) copy marked "ORIGINAL" and destroy the other copies. The Bidder is solely responsible for any variance between the copies submitted. Bids must reference the ITB number and Attachment Letter on the face of each container or bid packet.

Please send hard copy/paper bids for the MA Terms and Conditions or **XXXX** OF Attachment Letter to:

2021 MA Terms and Conditions **or XXXX** OF Attachment "?"
Christie Kelly/Brenda Sensibaugh, Buyers
1526 K Street, Suite 130
Lincoln, NE 68516
402-471-6500

All hard copy bids MUST be submitted in a sealed envelope or container. The State will not furnish packaging and sealing materials.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

**J. BID PREPARATION COSTS**

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

**K. FAILURE TO COMPLY WITH ITB**

Violation of the Terms and Conditions contained in this ITB or any resultant contract, at any time before or after the award, shall be grounds for action by the State, which may include, but is not limited to, the following:

1. Rejection of a Bidder's bid;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Termination of the resulting contract;
5. Legal action; or,
6. Suspension of the Bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**L. BID CORRECTIONS**

The bidder is responsible for reviewing their bid(s) before submission for accuracy and completeness. A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the State of intent to withdraw the bid for modification or to withdraw the bid completely. Changing a bid after opening may be permitted if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

**M. LATE BIDS**

Bids received after the time and date of the Bid Opening will be considered late bids. Late bids will be returned unopened, if requested by the Bidder and at Bidder's expense. The State is not responsible for bids that are late or lost regardless of cause or fault.

**N. BID OPENING**

Anyone may attend the opening. It is considered a public opening. The Buyer will read the names of the respondents. Depending upon the complexity of the bid, the buyer may read the bids aloud or allow bids be available for viewing by the public during the bid opening. Once the bid opening has concluded, the bids will not be available for viewing until the Intent to Award has been posted. An initial bid tabulation will be posted to the website as soon as feasible. Information identified as proprietary by the submitting Vendor, in accordance with the ITB and State statute, will not be posted. If the State determines submitted information should not be withheld, in accordance with the Public Records Act, or if ordered to release any withheld information, said information may then be released. The submitting bidder will be notified of the release and it shall be the obligation of the submitting bidder to take further action, if it believes the information should not be released.

**O. MA TERMS AND CONDITIONS**

The MA Terms and Conditions will first be examined to determine if all requirements listed below have been addressed and whether further clarification is warranted. MA Terms and Conditions not meeting the requirements may be rejected as nonresponsive. The requirements are:

1. Original completed MA Terms and Conditions must be manually signed in an indelible manner, or by DocuSign, and received by SPB before or with the first vehicle bid submitted.
2. Only one (1) copy of the completed MA Terms and Conditions should be submitted for the 2021 Vehicle Season.
3. Completed all sections of the MA Terms and Conditions requiring a response.

**P. ITB TECHNICAL SPECIFICATIONS**

The ITB Technical Specifications will first be examined to determine if all requirements listed below have been addressed and whether further clarification is warranted. ITB Technical Specifications not meeting the requirements may be rejected as nonresponsive. The requirements are:

1. Original Commodity ITB document must be manually signed in an indelible manner, or by DocuSign;
2. Clarity and responsiveness of the bid;
3. Completed all sections of ITB requiring a response;
4. Completed State's Bid Sheet (if applicable);
5. Any supporting documentation: color charts, warranties, etc.; and,

6. If a separate bid is requested, and separate contract awarded, if the manufacturer is producing fuel-flexible E85 motor vehicles (units capable of operation on a fuel mixture of up to 85% Ethanol/15% Unleaded Gasoline without additional change or conversion).

**Q. PRICES**

All prices, costs, and Terms and Conditions outlined in the bid shall be net and remain fixed and valid commencing on the opening date of the bid through the initial contract award period.

Prices quoted shall include transportation and delivery charges fully prepaid by the Vendor, FOB destination as specified below:

1. Within a 200-mile radius of Lincoln (less than 200 miles on odometer)
2. Outside the 200-mile radius of Lincoln (less than 450 miles on odometer)

No additional charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs.

Vendor may honor pricing and extend the contract to political sub-divisions, cities, and counties. Terms and Conditions of the contract must be met by political sub-divisions, cities and counties.

When an arithmetic error has been made in the extended total, the unit price will govern.

**The State will be given full proportionate benefit of any decreases for the term of the contract.**

**R. MODEL YEAR PAINT CHARTS**

If the vehicle rolls to the next model year during the contract term, the Vendor shall provide a current paint chart for the current model year.

**S. BEST AND FINAL OFFER**

The State reserves the right to request BAFO's. However, a Bidder should provide its best offer in its original bid. Bidders should not expect that the State will request a BAFO.

**T. REFERENCE AND CREDIT CHECKS**

The State reserves the right to conduct and consider reference and credit checks. Reference or credit checks may be grounds to reject a bid, or withdraw an Intent to Award or award of a contract. The State reserves the right to use third parties to conduct reference and credit checks.

**U. AWARD**

The State reserves the right to award contracts in a manner utilizing criteria selected at the State's discretion and in the State's best interest. At any point in the ITB process, the State may take one (1) or more of the following actions:

1. Amend the ITB;
2. Extend the time of or establish a new Bid Opening time;
3. Waive deviations or errors in the State's ITB process and in bidder ITBs that are not material, do not compromise the bid process or a bidder's ITB, and do not improve a bidder's competitive position;
4. Accept or reject a portion of or all of an bid;
5. Accept or reject all bids;
6. Withdraw the bid;
7. Elect to rebid the ITB;
8. Award single lines or multiple lines to one (1) or more bidders; or,
9. Award one (1) or more all-inclusive contracts.

The State may consider, but is not limited to considering, one (1) or more of the following award criteria:

1. Unit of Measure;
2. Price;
3. Location;
4. Quality;
5. Delivery time;
6. Vendor qualifications and capabilities;
7. State contract management requirements and/or costs; and,

8. A separate contract may be awarded if the manufacturer is producing fuel-flexible E85 motor vehicles (units capable of operation on a fuel mixture of up to 85% Ethanol-15% Unleaded Gasoline without additional change or conversion).

The ITB does not commit the State to award a contract. Once an Intent to Award decision has been determined, it will be posted to the Internet at: https://das.nebraska.gov/materiel/bidopps.html#.

Any protests must be filed by the bidder within ten (10) business days after the Intent to Award decision is posted to the Internet. Grievance and protest procedures are available on the Internet at:
http://das.nebraska.gov/materiel/purchasing.html

The State may award to the lowest base price. The State also reserves the right to split the award as follows:

1. A Primary Contract will be awarded to the lowest responsive bidder.
2. A Secondary Contract may be awarded to the second lowest responsive bidder.
3. Lowest base price may be based on engine size, fuel type and/or vehicle life cycle cost (Cost of Vehicle) + (80,000/EPA Estimated Highway MPG) x (EIA Average Price Force*) *EIA Average Price for Midwest Region Regular Grade.

**V. SPECIFICATIONS**

Any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for reference and not intended to limit competition, but will be used as the standard by which equivalent material offered will be judged. The Materiel Administrator will be the sole judge of equivalency. The Bidder may offer any brands, which meets or exceeds the specification. When a specific product is required, the ITB will so State. Any item bid is to be the latest current model under standard production at the time of order. No used or refurbished equipment will be accepted, unless otherwise stated.

Product quality must meet specifications and be consistent for the term of the contract. All materials must be of first quality, under standard production by the manufacturer, be of standard design, complete as regularly advertised and marketed, and be of proven performance.

**W. ALTERNATE/EQUIVALENT BIDS**

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

**X. "LUMP SUM" OR "ALL OR NONE" BIDS**

The State reserves the right to purchase "item-by-item", by groups or as a total when the State may benefit by so doing. Bidders may submit a bid on an "all or none" or "lump sum" basis, but should also submit a bid on an "item-by-item" basis. The term "all or none" means a conditional bid which requires the purchase of all items on which bids are offered and Bidder declines to accept award on individual items; a "lump sum" bid is one in which the Bidder offers a lower price than the sum of the individual bids if all items are purchased, but agrees to deliver individual items at the prices quoted.

The bidder must make SPB fully aware the bid is an "all or none" or "lump sum," bid in writing.

**Y. EMAIL SUBMISSIONS**

SPB will not accept bids by email, voice, or telephone bids except for one-time purchases under $50,000.00.

**Z. BID TABULATIONS**

Bid tabulations are/will be available on the website/Bid Opportunities page at:
https://das.nebraska.gov/materiel/bidopps.html#CommodityContracts.

**AA. REJECTION OF BIDS**

The State reserves the right to reject any or all bids, wholly or in part, in the best interest of the State.

**BB. RESIDENT BIDDER**

Pursuant to Neb. Rev. Stat. §§ 73-101.01 through 73-101.02, a Resident Bidder shall be allowed a preference against a Nonresident Bidder from a State which gives or requires a preference to Bidders from that State. The preference shall be equal to the preference given or required by the State of the Nonresident Bidders. Where the lowest responsible bid from a resident Bidder is equal in all respects to one from a nonresident Bidder from a State, which has no preference law, the resident Bidder shall be awarded the contract. The provision of this preference shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of this preference.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## III. TERMS AND CONDITIONS

**A.** **Bidder should complete all ITB sections requiring a response as part of their bid.** Bidder is expected to read the Terms and Conditions and must initial either accept, reject, or reject and provide alternative language for each clause. The Bidder should also provide an explanation of why the Bidder rejected the clause or rejected the clause and provided alternate language using "Track Changes". Upon request, an electronic copy of the bid with "Track Changes" must be submitted in an editable Word format. By signing the MA Terms and Conditions for the 2021 Vehicle Season, the Bidder is agreeing to be legally bound by all the accepted MA Terms and Conditions, and any proposed alternative Terms and Conditions submitted with the bid. The State reserves the right to negotiate rejected or proposed alternative language. If the State and Bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the bid. The State is soliciting bids in response to the ITB. The State reserves the right to reject bids that attempt to substitute the Bidder's commercial contracts and/or documents for this ITB. Bidders must submit the MA Terms & Conditions completed in its entirety.

The Bidder should submit with their bid, any license, user agreement, service level agreement, or similar documents that the Bidder wants incorporated in the Contract. Upon notice of Intent to Award, the Bidder must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted with the Bidder's bid. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the addendums have been negotiated and agreed to, the addendums shall be interpreted as follows:

1. If only one (1) Party's document has a particular clause then that clause shall control;
2. If both Party's documents have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Party's documents have a similar clause, but the clauses conflict, the State's clause shall control.

**B.** **GENERAL**

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

The contract resulting from the **2021 Vehicle Season** ITBs shall incorporate the following documents:

1. ITB and Addenda/Amendments to the ITB;
2. Completed MA Terms and Conditions;
3. Amendments to the ITB;
4. Questions and Answers;
5. Bidder's submitted ITB and properly submitted documents;
6. The executed Contract signature page(s), which may include contract deliverables and contracted pricing, and Addendum One to Contract, if applicable; and,
7. Addenda/Amendment(s) to the Contract.

The above listed documents constitute the entirety of the contract.

1. Unless otherwise specifically stated in a future 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) ITB and Addenda/Amendment(s) to the ITB to the Contract after the Contract has been executed with the most recent dated Addenda/Amendment(s) having the highest priority, 2) The Completed MA Terms and Conditions; Contract signature page, 3) Addendum One to Contract, 4) Amendments to ITB and any Questions and Answers, 5) MA Terms and Conditions, 6) the original ITB document and any Addenda, and 7) the Bidder's submitted Bid.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, Shall be resolved in accordance with the rules of contract interpretation as established in the State.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## C. NOTIFICATION

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

Vendor and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

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

## D. GOVERNING LAW (Statutory)

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign State and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per State law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all Terms and Conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, State and Federal laws, ordinances, rules, orders, and regulations.

## E. AMENDMENT

This Contract may be amended in writing, within scope, upon the agreement of both parties.

## F. SUBSTITUTIONS

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

The State and the Vendor, upon the written agreement, may make changes to the contract within the general scope of the solicitation. Corrections of any goods or services required pursuant to the contract shall not be deemed a change. The Vendor may not claim forfeiture of the contract by reasons of such changes.

The Vendor shall prepare a written description of the goods or services required due to the change and an itemized bid sheet for the change. Changes in goods or services and the amount of compensation to be paid to the Vendor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase. The Vendor may request to substitute a similar item that meets or exceeds the original specifications, as determined solely by the State. Such similar item must be at the same or a lower price than the original item. The State may accept or reject, in the sole discretion of the State, the requested substitute.

No change shall be implemented by the Vendor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law

*****Vendor will not substitute any item that has been awarded without prior written approval of SPB*****

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## G. VENDOR PERFORMANCE REPORT(S)

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

The State may document any instance(s) of products delivered which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications. SPB may contact the Vendor regarding any such report. Vendor Performance Report(s) will become a part of the permanent record of the Vendor.

## H. BREACH

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

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a 30 calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach, which may occur at a different time.

In case of breach by the Vendor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the Vendor. The State may recover from the Vendor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Vendor's breach OR in case of default of the Vendor, the State may contract the service from other sources and hold the Vendor responsible for any excess cost occasioned thereby.

The State's failure to make payment shall not be a breach, and the Vendor shall retain all available statutory remedies.

## I. NON-WAIVER OF BREACH

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

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## J. SEVERABILITY

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

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 provision held to be invalid or illegal.

## K. INDEMNIFICATION

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

The Vendor agrees to defend, indemnify, and hold 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 for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Vendor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Vendor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

## L. ATTORNEY'S FEES

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

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if order by the court, including attorney's fees and costs, if the other party prevails.

## M. ASSIGNMENT, SALE, OR MERGER

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

Either party may assign the contract upon mutual written agreement of the other party. Such agreement shall not be unreasonably withheld.

The Vendor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Vendor's business. Vendor agrees to cooperate with the State in executing amendments to the contract to allow for the

transaction. If a third party or entity is involved in the transaction, the Vendor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**N. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE**

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

The Vendor may, but shall not be required to, allow Agencies, as defined in Neb. Rev. Stat. § 81-145, to use this contract. The Terms and Conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause.

The Vendor may, but shall not be required to, allow other States, Agencies or divisions of other States, or political subdivisions of other States to use this contract. The Terms and Conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

**O. FORCE MAJEURE**

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

Neither party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other party, and shall have the burden of proof to justify the request. The other Party may granted the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event.

**P. CONFIDENTIALITY**

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

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with Federal and State law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their 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 by 5 U.S.C. 552a (m)(1), provides that any officer or employee, 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 $5,000.00.

**Q. EARLY TERMINATION**

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

The contract may be terminated as follows:

1. The State and the Vendor, by mutual written agreement, may terminate the contract at any time.
2. The State, at its sole discretion, may terminate the contract for any reason upon 30 calendar day's written notice to the Vendor. Such termination shall not relieve the Vendor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Vendor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:

   a. if directed to do so by statute;
   b. Vendor 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 Vendor or of any substantial part of the Vendor'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 Vendor, its employees, officers, directors, or shareholders;
   e. an involuntary proceeding has been commenced by any party against the Vendor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least 60 calendar days; or (ii) the Vendor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Vendor has been decreed or adjudged a debtor;
   f. a voluntary petition has been filed by the Vendor under any of the chapters of Title 11 of the United States Code;
   g. Vendor intentionally discloses confidential information;
   h. Vendor has or announces it will discontinue support of the deliverable; and,
   i. In the event, funding is no longer available.
   j. A request for a substitution is not accepted by the State.

**R. CONTRACT CLOSEOUT**

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

Upon termination of the contract for any reason, the Vendor shall within 30 days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;
3. Return to the State all information and data, unless the Vendor is permitted to keep the information or data by contract or rule of law. Vendor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Vendor's routine back up procedures;
4. Cooperate with any successor contactor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor contactor, person or entity with the transfer of information or data related to this contract;

**6.** Return or vacate any State owned real or personal property;

Nothing in this Section should be construed to require the Vendor to surrender intellectual property, real or person property, or information or data owned by the Vendor for which the State has no legal claim.

**S. ERRORS AND OMISSIONS**

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

The Bidder shall not take advantage of any errors and/or omissions in the **2021 Vehicle Season** ITBs or resulting contracts. The Bidder must promptly notify the State of any errors and/or omissions that are discovered.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## IV. VENDOR DUTIES

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

### A. INDEPENDENT CONTRACTOR / OBLIGATIONS

It is agreed that the Vendor is an independent Vendor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, Agency, or a partnership.

The Vendor is solely responsible for fulfilling the contract. The Vendor or the Vendor's representative shall be the sole point of contact regarding all contractual matters.

The Vendor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Vendor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Vendor's bid shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The Vendor warrants that all persons assigned to the project shall be employees of the Vendor or a Subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Vendor or a Subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Vendor or the Subcontractor respectively.

With respect to its employees, the Vendor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Vendor's employees, including all insurance required by State law;
3. Damages incurred by Vendor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with State and Federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Vendor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Vendor, its officers, agents, or Subcontractors or Subcontractor's employees).

If the Vendor intends to utilize any Subcontractor, the Subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Vendor's bid. The Vendor shall agree that it will not utilize any Subcontractors not specifically included in its bid in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Vendor to reassign or remove from the project any Vendor or Subcontractor employee.

Vendor shall insure that the Terms and Conditions contained in any contract with a Subcontractor does not conflict with the Terms and Conditions of this contract.

The Vendor shall include a similar provision, for the protection of the State, in the contract with any Subcontractor engaged to perform work on this contract.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

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

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

1. The Vendor must complete the United States Citizenship Attestation Form, available on the DAS website at https://das.nebraska.gov/materiel/purchase_bureau/vendor-info.html

The completed United States Attestation Form should be submitted with the ITB response.

2. If the Vendor indicates on such attestation form that he or she is a qualified alien, the Vendor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Vendor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

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

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)**

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

**D. COOPERATION WITH OTHER VENDORS**

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

Vendor may be required to work with or in close proximity to other Vendors or individuals that may be working on the same or different projects. The Vendor shall agree to cooperate with such other Vendors or individuals, and shall not commit or permit any act, which may interfere with the performance of work by any other Vendor or individual. Vendor is not required to compromise Vendor's intellectual property or proprietary information unless expressly required to do so by this contract.

**E. DISCOUNTS**

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than 30 days will not be considered as part of the bid. Cash discount periods will be computed from the date of receipt of a properly executed claim voucher or the date of completion of delivery of all items in a satisfactory condition, whichever is later.

**F. COST CLARIFICATION**

The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any bid where the price bid shows significant and unsupported exceptions from industry standards or in areas where detailed pricing is required.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## G. PERMITS, REGULATIONS, LAWS

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

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Vendor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the performance of the contract. The Vendor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

## H. NOTICE OF POTENTIAL VENDOR BREACH

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

If Vendor breaches the contract or anticipates, breaching the contract the Vendor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, and may include a request for a waiver of the breach if so desired. The State may, at its discretion, temporarily or permanently waive the breach. By granting a temporary waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

## I. ANTITRUST

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

The Vendor 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.

## J. CONFLICT OF INTEREST

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

By submitting a bid, bidder certifies that no relationship exists between the bidder and any person or entity, which either is, or gives the appearance of, a conflict of interest related to the resulting ITB(s) .

Bidder further certifies that bidder will not employ any individual known by bidder to have a conflict of interest nor shall bidder take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its contractual obligations hereunder or which creates an actual or appearance of conflict of interest.

If there is an actual or perceived conflict of interest, bidder shall provide with its bid a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall bid evaluation.

## K. SITE RULES AND REGULATIONS

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

The Vendor 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 Vendor 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 has been arranged. 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 in writing between the State and the Vendor.

## L. ADVERTISING

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

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

## M. DRUG POLICY

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

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

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## N. WARRANTY

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

Products are to be fully guaranteed and may be returned for full credit or replacement (at the State's option) for any reason during the initial warranty period with no additional charges for shipping or restocking.

## V. PAYMENT

### A. PROHIBITION AGAINST ADVANCE PAYMENT

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

Neb. Rev. Stat. § 81-2403 states, "[n]o goods or services shall be deemed to be received by an Agency until all such goods or services are completely delivered and finally accepted by the Agency."

### B. TAXES

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

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Vendor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Vendor's equipment, which may be installed in a State-owned facility, is the responsibility of the Vendor.

### C. INVOICES

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

After the contract(s) is/are awarded, payment shall only be made as indicated unless written notification is made to the DAS Materiel SPB requesting an addendum to the contract. This must be done 30 days prior to the delivery of vehicle.

The Vendor must indicate to whom payment is to be made, stating full name of company or entity, complete address and telephone number. Invoices for payments must be submitted by the Vendor to the Agency requesting the services with sufficient detail to support payment. The Terms and Conditions included in the Vendor's invoice shall be deemed to be solely for the convenience of the parties.

Vehicle invoices or supporting documentation accompanying the invoices should include a hard copy, bar-coded version of the VIN for each vehicle.

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.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

**D. INSPECTION AND APPROVAL**

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

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

If a simple inspection of the goods would reveal nonconformity, notice of nonconformity should be provided to the Vendor as soon as reasonably practical, but not to exceed thirty (30) days from receipt of goods. This includes visual inspection of product to ensure packaging is not damaged, dented or compromised.

**E. PAYMENT (Statutory)**

State will render payment to Vendor when the Terms and Conditions of the contract and specifications have been satisfactorily completed on the part of the Vendor as solely determined by the State. (Neb. Rev. Stat. Section 73-506(1)). The State may require the Vendor 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 Vendor prior to the Effective Date of the contract, and the Vendor hereby waives any claim or cause of action for any such services.

**F. LATE PAYMENT (Statutory)**

The Vendor may charge the responsible Agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).

**G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)**

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Vendor written notice 30 calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Vendor 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 Vendor be paid for a loss of anticipated profit.

**H. RIGHT TO AUDIT (Statutory)**

The State shall have the right to audit the Vendor's performance of this contract upon a thirty (30) day written notice. Vendor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The State may audit and the Vendor shall maintain the information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Vendor shall make the Information available to the State at Vendor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Vendor so elects, the Vendor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. In no circumstances will Vendor be required to create or maintain documents not kept in the ordinary course of Vendor's business operations, nor will Vendor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Vendor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Vendor, the Vendor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within 90 days of written notice of the claim. The Vendor agrees to correct any material weaknesses or condition found as a result of the audit.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

## VI. SCOPE OF WORK

### A. SCOPE

It is the intent of this MA Terms and Conditions and future bid invitations to establish contracts to supply **2021 Vehicles** from date of award for a period of one (1) year. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the Vendor and the State.

Contracts will be established for the following groups:

- **Sedans**
- **SUVs**
- **Vans**
- **Half Ton Trucks**
- **Three Quarter Ton Trucks**
- **One Ton Trucks**
- **Police Vehicles**

All items bid shall be of the latest manufacture in production as of the date of the ITB and be of proven performance and under standard design complete as regularly advertised and marketed. All necessary materials for satisfactory performance of the supplies shall be incorporated into the **2021 Vehicle Season**.

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

Vehicles furnished under the respective specifications shall be:

1. The latest model standard production units;
2. offered to the general trade;
3. equal in every respect to the construction and performance characteristics shown in the manufacturer's specifications and descriptive literature for this type of vehicle as manufactured; and,
4. advertised for delivery in the continental United States and including all equipment normally offered and installed at the factory.

Engine bores, main bearings, connecting rod bearings and wrist pins shall not exceed the manufacturers established size tolerances.

All vehicles offered must meet or exceed the minimum specifications. It is intended the manufacturer will build the vehicle to specifications and the selling or servicing dealer will be required only to perform the normal pre-delivery service and no be required to modify, alter, exchange, assemble, install or paint various components to the specifications.

### B. REVISIONS

In the event any product is discontinued or replaced upon mutual consent during the contract period, the State reserves the right to amend this contract to include the alternate product at the same price.

### C. ACCEPTABLE MODELS

All vehicles that meet or exceed the specifications may be bid at invitation time.

### D. USAGE REPORT

The Vendor shall, upon request by the State at any time as determined by the State, provide a Usage Report of this Contract by State Agencies and Political Subdivisions. The State will determine the reporting period of the Usage report. Examples of requested information may include:

1. Agency or Political Subdivision name;
2. Item description;
3. Item number;
4. Item dollar amount;
5. Number of orders received;
6. Orders processed;
7. Back orders; and,
8. Partially filled orders.

**E. ANNUAL USAGE, ESTIMATED**

Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity. The orders shall be for the actual quantities of each items ordered by or for any Agency during the life of the contracts. Vendors shall not impose minimum or maximum order requirements.

Listed below are the approximate units to be purchased. These amounts are estimates only; and the actual quantity ordered may vary. These estimates are based on last year's contract usage for the State of Nebraska as a whole, including the vehicles purchased by political subdivisions of the State.

The annual, estimated vehicle usage numbers for groups being bid for the **2021 Vehicle Season are as follows**:

1. **Sedans: 153**
2. **SUVs: 32**
3. **Vans: 45**
4. **Half Ton Trucks: 87**
5. **Three Quarter Ton Trucks: 32**
6. **One Ton Trucks: 8**
7. **Police Vehicles: 44**

**F. DELIVERY**

Delivery hours are between 9:00 AM and 3:00 PM, Monday through Friday except Saturdays, Sundays and all State and Federal holidays, after servicing and ready to drive, with no less than ¼ tank of gasoline. Deliveries desired prior to 120 ARO.

Quoted deliveries beyond 120 ARO may be an award consideration. All deliveries shall be scheduled with Agency representative.

Odometer mileage:

1. Within a 200-mile radius of Lincoln (less than 200 miles on odometer)
2. Outside the 200-mile radius of Lincoln (less than 450 miles on odometer)

Vehicles will not be accepted if all paper work is not with the vehicle at time of delivery. Dealer will retain ownership of the vehicles until the purchaser has signed all required paper work.

A guarantee of satisfactory performance by the Vendor and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this bid invitation.

**G. MODEL YEAR ORDER "CUT-OFF" DATES**

Model Year Order "Cut-Off", as defined by (SPB), as the last day on which the Vendor will accept a purchase order for an awarded model due to manufacturer production scheduling.

The bidder is to provide, with their bid, the model year "Cut-off" date(s) (if known).
If the "Cut-Off" date is not available at the time of bidding, the awarded Vendor(s) should contact SPB immediately.

**The <u>Vendor is responsible for providing "Cut-Off" date(s) and the corresponding Contract number(s),</u> for vehicles that have been awarded through the State, to SPB.**

Failure to provide model year "Cut-Off" date information, in the fashion requested, may result in a breach of contract.

# 2021 VEHICLE SEASON
# MASTER AGREEMENT
# TERMS AND CONDITIONS

Send **2021 Vehicle Season Model Year Order "Cut-Off" date(s)** via email to:

DAS State Purchasing Bureau
as.materielpurchasing@nebraska.gov

The **2021 Vehicle Season Model Year Order "Cut-Off" Date Spreadsheet** is available for public viewing on the DAS website, DAS Forms & Documents page at:

https://das.nebraska.gov/forms/index.html#mat

Submitting Model Year Order "Cut-Off" date(s) does not change the awarded contract period and **does not automatically terminate the contract**. The Vendor has the option to offer the next model year vehicle, of the same make, model and specifications as the originally bid vehicle, at or below the contracted price.

In the event the Vendor is not able to offer the Contracted **2021 Vehicle Season** or next model year vehicle, at the contracted price or below, it is the Vendor's responsibility to notify SPB immediately.

After a "Cut off" date is reported by the Vendor to SPB, and approved by the State, the State can place the Contract at an "On Hold" status. The benefit of placing a contract "On-Hold" is, in case the Vendor resumes accepting order(s) for the contracted vehicle after a published **2021 Vehicle Season** "Cut-Off" Date, or the next model year is offered at the contracted price or below it alleviates the need to rebid the Contract. The Contract can also be processed as Expired, if so advised by the Vendor and approved by the State.

**H. ENVIRONMENTAL PROTECTION AGENCY HIGHWAY MILEAGE**

Provided separately, when available, EPA highway mileage (Gas and E85) rates from the Fuel Economy Guide: www.fueleconomy.gov

**I. FACTORY INSTALLATION**

If the ITB requires an item(s) to be standard from the factory, the item shall be installed at the Factory. If factory installation is not available, the item shall be noted as a "Vendor or Manufacturer-installation" as an alternative.

All vehicles shall be guaranteed to include all the latest engineering developments adopted by the company applying to transmissions, fuel systems, engine, and accessories, and to possess the capability of operating of lead-free gasoline and gasohol/ethanol.

All vehicles shall comply with all current provisions of the National Traffic and Motor Vehicles Safety Act, and applicable provisions of the USEPA Emissions Standards.

**J. NON-CONTRACT ITEMS**

Items not listed on the contract, but which are required for the ordering Agency's business needs, may be added to complete the purchase of the vehicle. Please contact the dealer for Non-Contract item pricing.

**K. POTENTIAL RECALL OR MANUFACTURER INITIATED CUSTOMER SERVICE ACTION/NOTIFICATION REQUIREMENTS**

The Vendor shall be responsible for accessing potential recall notices from the National Highway Traffic Safety Administration (NHTSA), as well as any manufacturer initiated customer service actions prior to delivering the vehicles to the State Agency location. If a recall or customer service action is found for the vehicle being delivered to the State Agency, the Vendor should complete the necessary action(s) prior to the delivery. If the Vendor is unable to address the required recall or customer service action(s) prior to delivery, the Vendor must inform the ordering State Agency of the "open" recall or customer service action upon delivery. The Vendor shall then assist the State Agency in getting the recall or customer service action(s) completed as quickly as possible.

**L. CERTIFICATE OF TITLE**

Vendor shall provide a certificate of title for each vehicle purchased that is free and clear of any lien, security interest, or encumbrance of any kind. The Vendor shall indemnify, defend, and hold harmless the State of Nebraska from any claim, litigation or loss to the certificate of title.