

# Agency Procurement Manual for Commodities/Goods

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State Purchasing Bureau

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

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

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# PUBLIC PROCUREMENT

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

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

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

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

The following is a list of statutes specific to the procurement of commodities/goods:

48-1122	Contracts with state and political subdivisions; requirements
73-101.01	Resident bidder, defined; preference
73-101.02	Resident bidder; preference; exception
73-102 – 73-104	Fair labor standards
73-105	Violations; penalties
73-107	Resident disabled veteran or business located in a designated enterprise zone; preference; contract not in compliance with section; null and void
73-201	Legislative findings
73-202	Terms, defined
73-203	Contingent fee contract; executed by state; void; exception
73-204	Contingent fee contract; executed by constitutional agency; void; exception
73-205	Technology access clause; requirements
73-601 – 73-605	Transparency in Government Procurement Act
81-145	Materiel division; terms, defined
81-153	Materiel division; powers and duties; enumerated
81-154	Materiel division; standard specifications; establish and maintain; cooperation of using agencies; competitive bids
81-154.01	Materiel division; University of Nebraska; purchase agreements
81-159	Requisitions by using agency; procedures used by materiel division
81-161	Competitive bids; award to lowest responsible bidder; elements considered;

	energy star certified appliances
81-161.01	Competitive bids; time requirements; waiver
81-161.02	Competitive bids; rejection by materiel division; grounds; new bids
81-161.03	Direct purchases, contracts, or leases; approval required, when; report required; materiel division duties; Department of Correctional Services; purchases authorized
81-161.05	Materiel division or employee; financial or beneficial personal interest forbidden; gifts and rebates prohibited; violations; penalty
81-162	Purchases or leases; form of contract
81-1118	Materiel division; established; duties; administrator; branches; established
81-1118.04	Materiel division; purposes
81-1118.05	Materiel division; powers and duties
81-1118.06	Materiel division; state purchasing bureau; purposes
81-2401 – 81-2408	Prompt Payment Act
83-144 – 83-152	Correctional Services – use of made goods by agencies
84-602.02	Web site; contents; link to Department of Administrative Services web site; contents; actions by agency, board, commission, or department prohibited; Department of Administrative Services; duties
84-712	Public records; free examination; memorandum and abstracts; copies; fees
84-712.01	Public records; right of citizens; full access; fee authorized
84-712.05	Records which may be withheld from the public; enumerated
84-712.06	Public record; portion provide; when

## GENERAL INFORMATION

### Introduction

This manual is intended to assist agencies with the State of Nebraska's processes for the procurement of commodities/goods. Agencies are encouraged to contact the State Purchasing Bureau (SPB) with any questions regarding procurement processes.

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

### Mission Statement

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

### Ethics

Ethics and ethical practices and behavior are a major concern in the realm of public purchasing. While laws and rules mesh to provide a mechanism for public purchasing, only people can make it work. In purchasing, there are values of pride and worth, there are standards and ideals, and there are specifics of conduct and performances. Impediments to the process must be detected early and safeguards provided at all levels. This applies both to purchasing personnel and the vendor community.

It is imperative, therefore, that all public purchasing personnel be entirely cognizant of the necessity for ethical behavior. It takes only the slightest hint of impropriety to cast doubt on behavior, and can undermine the procurement process. Perception becomes reality in the eyes of vendor and the taxpayer.

Neb. Rev. Stat. § 81-161.05 prohibits AS Materiel Division employees from accepting gifts or anything of value from vendors.

A state agency may not accept a bid or award a contract to a vendor who **may or may not have received** compensation from the agency to participate in the preparation of the specifications or the Invitation to Bid on which the bid or contract is based.

State agency personnel who may have a family member who may participate in bid should remove themselves from the procurement process, so as not to give the perception of any preference being given to the family member.

Fairness and impartiality in all phases of the procurement process is an essential factor in public purchasing. Dealings with vendors and peers must be open, honest, fair, transparent, and objective. The process cannot be both effective and self-serving. In the case of public purchasing, utmost fairness is required in expending public funds. **No matter how strongly a user may prefer a particular vendor over others, all vendors must be given every reasonable consideration.** The State must commit and adhere to fair and open competition.

Integrity is manifested by fairness, openness, impartiality, and transparency and can be tarnished by even the slightest appearance of impropriety.

**Website**

SPB's website contains useful information for agencies and is updated on a regular basis. Agencies should utilize this valuable resource for up-to-date information regarding procurement and contracting processes. SPB's website is:

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



# PROCUREMENT FOR GOODS

## Authority

The State Purchasing Bureau is responsible for all purchases by all state agencies, boards and commissions other than the University of Nebraska per Neb. Rev. Stat. § 81-1118(5)(a-e). This includes administering public notices and bidding procedures to carry out the lease or purchase of personal property.

All purchase of and contracts for materials, supplies, or equipment and all leases of personal property shall be made in the following manner, except emergencies approved by the Governor:

- By unrestricted open market purchases through the Materiel Division in all cases in which purchase are of estimated value of less than \$10,000;
- Competitive informal bidding through the Materiel Division in all cases in which the purchases are of estimated value equal to or exceeding \$10,000 but less than \$25,000; and
- Competitive formal sealed bidding process through the Materiel Division in all cases in which the purchases are of estimated value of \$25,000 or more.
  - ✓ All requisitions submitted to the State Purchasing Bureau shall be in conformance with the approved budget of the requesting agency; and
  - ✓ All contracts for purchases and leases shall be bid as a single whole item. In no case shall contracts be divided or fractioned in order to produce several contracts which are of an estimated value below that required for competitive bidding.

## Certification

### Certification Requirement

Neb. Rev. Stat. § 81-161.03 requires agency personnel conducting procurement activities on behalf of their agency must be trained and certified by SPB including, but not limited to, buyers, program managers, staff assistants, administrative assistants, office clerks, and those with PT30 or higher access to the procurement module within the Payroll and Financial Center (PFC).

For the purposes of SPB's training and certification program, "agency personnel" is defined as all persons who perform any of the following duties for the agency:

Any employee who performs any of the following procurement functions as part of their job:

- Develops specifications for requested goods
- Approves documents in PFC, i.e. requisitions, contracts and purchase orders
- Decides the appropriate procurement process for direct purchases
- Identifies and/or selects potential vendors
- Solicits bids from vendors for goods less than \$10,000.00
- Solicits bids from vendors for goods \$10,000.00 to \$24,999.99 and wants approval of from SPB to complete the procurement process
- Evaluates bid responses
- Administers purchase orders from award to completion
- An employee who is responsible for the purchasing functions of the agency.

- An employee with the responsibility for approving or signing purchase orders.

### **Certification Pre-Requisite**

Any agency personnel who are authorized access to the procurement module within the PFC including, but not limited to, buyers, program managers, those who enter requisitions, generate purchase orders, generate contracts, create or revise approval routes, will be required to attend procurement certification training class conducted by SPB.

- A.** SPB offers classes on an “as needed” basis in order for agency personnel to become certified. This training will be offered a minimum of once per quarter.

Certification training conducted by SPB will include instruction on statute requirements, policies and procedures for the procurement of goods and services, specification writing, use of the procurement module in PFC, and a written examination. The written examination provides documentation of the agency’s personnel competency and understanding of State statutes, policies, and procedures for the procurement of goods and services.

Agency personnel must receive a passing grade of 70% or above to become certified.

Failure to pass the examination will require employee to attend an additional certification training class or receive one-on-one training as determined by SPB. The test will be re-administered and the agency personnel must receive a passing grade of 70% or above to become certified.

Failure to receive a passing grade of 70% or above may result in the agency personnel not obtaining access to the procurement module in PFC. A notification will be sent to agency authorized agent with justification for such action.

New hires or employees whose duties have been changed to include procurement will be required to attend the first available certification training class offered by SPB to become certified.

Agencies will be required to re-certify their staff as determined by SPB.

Agency personnel should attend Procurement User Group (PUG) meetings in order to remain updated with changes in procurement processes, contract management, etc.

# GETTING STARTED: GOODS

The item to be purchased is a **GOOD**.  
Is the item on an existing contract?  
Find contracts at:  
[http://www.nebraska.gov/das/materiel/purchasing/contract\\_search/index.php](http://www.nebraska.gov/das/materiel/purchasing/contract_search/index.php)

**YES**, the item(s) is/are on an existing contract.

Agency generates a purchase order from contract for the item(s) and places the order with the contracted supplier.

**NO**, the item is not on an existing contract.  
Is the item an **RESTRICTED ITEM**?  
Find **RESTRICTED ITEMS** on the current **Unrestricted Open Market Purchase Authority** letter posted on the SPB website:  
<http://das.nebraska.gov/materiel/purchasing.html>

**YES**, the item is a **RESTRICTED ITEM**.  
Agency enters appropriate requisition type and documentation.  
**Requisition routes to SPB for processing.**

**NO**, the item is not a **RESTRICTED ITEM**.  
What is the total **DOLLAR VALUE** of the request?

**If \$10,000 - \$24,999.99**, agency enters requisition for DPA review, including copies of three (3) bids and/or any justification memo, if three bids were not obtainable.

**If \$25,000 or greater**, agency enters requisition and specifications for public competitive bidding for either one-time purchase or to initiate a contract.  
Agency attaches specifications and/or any justification memo, if request is restrictive to brand or sole source.

At any stage in the process, ask a quick question by emailing [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)  
Subject Line: "Procurement Question – Your Agency Name"

## DETERMINING THE BEST COMMODITIES/GOODS PROCUREMENT PROCESS

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

**A. Unrestricted Open Market Purchases**

Each State agency is formally delegated a purchasing authority, in writing, by the Materiel Division Administrator for purchases under \$10,000.00 and exemptions, provided agency personnel are trained and certified to conduct procurement processes per Neb. Rev. Stat. § 81-161.03. (Refer to the Certification section of this manual.) This is also known as “delegated purchasing authority” (refer to Neb. Rev. Stat § 81-1118(5)(c)). Review of this authorization is conducted on a yearly basis. A new letter of delegated purchasing authority is issued on an annual basis. This letter is posted on SPB’s website at: <http://das.nebraska.gov/materiel/purchasing.html> Agencies are responsible for adhering to the requirements outlined in the letter. **Failure to do so may jeopardize an agency’s delegated purchasing authority.**

**B. Competitive Informal Bid Process**

Informal competitive bids are used for purchases valued equal to or exceeding \$10,000.00 but less than \$25,000.00. All informal non-contract competitive purchases are processed through SPB as required by Neb. Rev. Stat. § 81-1118(5)(b).

**C. Formal Sealed Competitive Bid Process (Invitation to Bid for One Time Purchase and Invitation to Bid for Contract)**

A formal sealed competitive bid process is required for non-contract purchases in excess of \$24,999.99 as required by Neb. Rev. Stat. § 81-1118(5)(a). A minimum of fifteen days shall elapse between the time formal bids are advertised and the time of the bid opening per Neb. Rev. Stat. § 81-161.01. In some instances there may be time constraints, and the bid time may be reduced. However, SPB strives to minimize these instances. The bid time requirement may be waived by the AS Materiel Division Administrator upon a showing by the using agency of an emergency, sole or specialized source, or other unique requirement.

Invitations to Bid for Contract are issued at any estimated dollar value, when the goal is to establish a contract for goods. Only State Purchasing Bureau has the statutory authority to process bids and establishes contracts for goods.

**D. Sole Source Purchase**

**This method of procurement must be used minimally.** Procurement processes are intended to maximize competition whenever and wherever possible.

Sole Source purchases are used for the procurement of commodities/goods available from only one source due to the unique nature of the requirement, its supplier, proprietary, or market conditions. The purchase is only available from one source and is not sold through distributors/resellers.

**E. Restrictive Source Purchase**

Restrictive is defined as “a specification or purchase description that limits competition.” This method of procurement is utilized when only one product is suitable for the agency’s needs, but it is sold through multiple distributors/resellers and requires justification from the agencies to establish the agency’s legitimate business need to restrict the proposed purchase.

**F. Federal General Services Administration (GSA) Contracts**

SPB has the authority to make purchases without competitive bidding by using pricing established by the GSA or to allow the purchase of items by participation in a contract competitively bid by another state or group of states and any political subdivision of any other state or a cooperative purchasing organization on behalf of a group of states per Neb. Rev. Stat. § 81-153(7).

For purchases where prices have been adapted from GSA contracts the prices must be identical to those on the GSA schedule. GSA Schedule 70 Multiple Award Schedule contracts allow for quantity discounts, along with additional price reductions based on the size and scope of the project.

SPB may utilize this process for purchases \$10,000 and above. State agencies may utilize GSA pricing for their unrestricted open market purchases when the total purchase is under \$10,000, except as provisions provided for in the annual unrestricted open market purchase letter.

**G. Multi-State Cooperative Purchasing Contracts**

Multi-state cooperative purchasing contracts may be used for the purchase of items without competitive bidding by participation in a contract competitively bid by another state or group of states and any political subdivision of any other state or a cooperative purchasing organization on behalf of a group of states as allowed by Neb. Rev. Stat. § 81-153(7). Statutes do not allow for participating in contracts bid by a city, county, or other municipality. Multi-state cooperative contracts must be processed through SPB.

**H. University of Nebraska Purchase Agreements**

University of Nebraska purchase agreements (contracts) may be used by SPB upon a finding by SPB that the use of such agreement would be in the best interest of the State as allowed by Neb. Rev. Stat. § 81-154.01. Any request for purchasing using University of Nebraska purchasing agreements must be processed through SPB.

**I. Emergency Purchases**

Emergency purchases are used for the procurement of commodities/goods in excess of an agency’s direct purchase authority in a situation which endangers lives, property, public safety, or the continuation of a vital program and which can be rectified only by immediate on-the-spot purchase or rental of equipment, supplies, and materials. All emergency purchases must be pre-approved by the Governor per Neb. Rev. Stat. § 81-1118(5). After approval of the Governor, agency must notify SPB to review procurement process.

**J. Cornhusker State Industries (CSI)**

This method is for the purchase of items available from CSI. All departments, institutions, and agencies which are supported in whole or in part by taxation for State purposes must purchase from the Department of Correctional Services all articles required by them to be produced, printed, or manufactured by offenders confined in facilities of the Department of Correctional Services, or elsewhere, including products of any farms operated by the department unless such articles of equal quality and materials could be purchased from another supplier at a lesser cost. The quality and materials must be certified as being equal by the Materiel Division of Administrative Services as required by Neb. Rev. Stat. § 83-145.

All State agencies, boards, and commissions have the authority to purchase directly from the Department of Correctional Services, Cornhusker State Industries (CSI) at any dollar amount.

**Any commodity/good available from CSI, but not purchased from CSI, must be processed through SPB no matter the dollar amount.** Neb. Rev. Stat. § 83-147 provides that Administrative Services may grant exceptions from provisions of § 83-145 if in the opinion of the director, the article produced or manufactured does not meet the reasonable requirements of the department, institution, or agency of the State. The Director of Correctional Services may create an exception from § 83-145 when the items cannot be completely complied with on account of an insufficient supply of the article or supplies required, or otherwise (for example, delivery timelines). **Agencies must plan their purchases and not wait until such time as CSI would not have adequate time to meet delivery timelines.** Departments, institutions, or agencies of the State are not allowed to evade the intent and meaning of statutes § 83-144 to § 83-152.

**Information regarding products carried, catalog, may be obtained by creating an account.** Go to <https://www.nebraska.gov/apps-csi/>

## I. UNRESTRICTED OPEN MARKET PURCHASES PROCESS

Agencies may process purchases within their delegated authority unless prohibited as outlined in the annual letter. Refer to the SPB website for the most current letter at:

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

Read this letter carefully and have a full understanding of the requirements. Any questions should be directed to the State Purchasing Bureau.

- a. Agencies are cautioned to not exceed their delegated purchase authority. Asking for forgiveness after the fact is not in the best interest of the State and may put the agency's delegated purchase authority in jeopardy. Agencies are still required to obtain any other necessary **internal approvals or approvals of other divisions of Administrative Services.**
- b. Agencies are strongly encouraged to solicit three (3) informal bids from qualified vendors who can provide the product(s).
- c. **Agencies are required to issue purchase order for delegated purchases between \$2,000 and \$9,999.99** in the procurement module of the Payroll and Financial Center. Documentation must be attached, including vendor names and bid prices to show that competition was solicited.

## II. INFORMAL COMPETITIVE BID PROCESS

Used for purchases estimated in value \$10,000 and less than \$25,000, agencies may solicit bids by phone, fax, e-mail, mail, or the internet for review and approval by State Purchasing Bureau.

When soliciting bids, agencies need to ensure all vendors are submitting bids in a consistent format and that bids are being requested to be delivered F.O.B. Destination.

Below is a table showing differences in shipping terminology and the affect the different terms affect the procurement process and outcome:

# Shipping Terminology and Terms of Sales Quick Reference

**SPECIFY THIS ONE**



- **FOB Destination, Freight Prepaid**
- Vendor pays freight charges
- Vendor bears freight charges
- Vendor owns goods while in transit
- Vendor files claims, if any



- **FOB Destination, Freight Collect**
- Agency pays freight charges
- Agency bears freight charges
- Vendor owns goods while in transit
- Vendor files claims, if any



- **FOB Destination, Freight Collect & Allowed**
- Agency pays freight charges
- Vendor bears freight charges
- Vendors owns goods while in transit
- Vendor files claims, if any
- Agency then charges back Vendor by deducting freight from invoice



- **FOB Shipping Point, Freight Collect**
- Agency pays freight charges
- Agency bears freight charges
- Agency owns goods while in transit
- Agency files claims, if any



- **FOB Shipping Point, Freight Allowed**
- Vendor pays freight charges
- Vendor bears freight charges
- Agency owns goods while in transit
- Agency files claims, if any



- **FOB Shipping Point, Freight Prepaid & Charged Back**
- Agency pays freight charges
- Agency bears freight charges
- Agency owns goods while in transit
- Agency files claims, if any
- Vendor then charges freight back to Agency by adding amount to invoice



1. Agency will enter a requisition is to be entered into PFC. See list of document types for agency selection of appropriate document type at: [http://das.nebraska.gov/nis/training\\_manuals/proc/index.html](http://das.nebraska.gov/nis/training_manuals/proc/index.html)
2. Agency is to attach documentation, including specifications, to the requisition showing bids received.
  - a. Specifications need to be clear and concise so all bidders have a clear understanding of what the agency is requesting. (See Specifications section of this manual.)
3. Requisition will route through agency for appropriate internal approvals. If IT related, the requisition will route to OCIO for approval prior to routing to SPB.
4. SPB will review requisition and documentation and make determination on whether direct purchase authority will be granted.
  - a. If there is a trade-in, the trade-in documentation must be generated by the agency from PFC must be generated and attached to the requisition. Documentation from vendor must be attached showing the dollar value of the trade-in.
  - b. SPB will work with Surplus Property to gather the necessary approvals prior to moving forward. Surplus Property reserves the right to deny a request for trade-in when it's determined to be in the best interest of the state.
5. If approval is granted:
  - a. SPB will generate an OO document in PFC and indicate the supplier name.
  - b. Agency will generate a purchase order from the OO document type in PFC.
    - i. The purchase order includes the awarded supplier name, items and pricing and expected delivery date.
6. If approval is not granted, SPB will:
  - a. Obtain bids
  - b. Obtain award recommendation from using agency
  - c. Issue a purchase order in PFC.

### **III. FORMAL SEALED COMPETITIVE BID PROCESS – ONE TIME PURCHASE OR CONTRACT**

All formal sealed competitive bids are processed through SPB if the purchase is in excess of \$24,999.99 and not already on a contract.

1. Agency develops specifications which are written to encourage competition from three or more manufacturers, vendors, or suppliers (See Specifications section of this manual).
  - a. Specifications must be clear and concise so all vendors know what the agency is requesting. (See Specifications section of this manual)
2. Agency enters requisition into PFC and attaches specifications. See list of document types for agency selection of appropriate document type at: [http://das.nebraska.gov/nis/training\\_manuals/proc/index.html](http://das.nebraska.gov/nis/training_manuals/proc/index.html) Agency also to attach a list of potential vendors to whom SPB will send solicitation announcement letters.
3. Requisition routes through agency for appropriate internal approvals. If IT related, the requisition will route to OCIO for approval prior to routing to SPB.
4. A SPB Supervisor reviews requisition and specifications. If the SPB Supervisor has any questions, he/she will contact the agency for further information and/or clarification. However, in the absence of any questions, the supervisor will assign to the appropriate Buyer in SPB.
5. The SPB Buyer may contact the agency with any questions regarding specifications and selects appropriate special terms and conditions prior to the solicitation being released for bid. SPB Buyer prepares the solicitation for release.
  - a. Agency is responsible for providing information being requested by SPB Buyer. Failure to respond in a timely manner may impede the procurement process.
  - b. If there is a trade-in, the trade-in documentation must be generated by the agency in PFC and attached to the requisition. Documentation from vendor must be attached showing the dollar value of the trade-in.
  - c. SPB will review with Surplus Property to make the determination on whether to trade-in, surplus, or destroy the equipment prior to moving forward with the process. (It may be determined by Surplus Property that a trade-in will be made a part of the solicitation and final determination on how to proceed with occur after bids are received.)
6. SPB Buyer develops Schedule of Events. At a minimum, the Schedule of Events includes:
  - a. Release date for Invitation to Bid (ITB)
  - b. Last day for vendors to submit written questions regarding the ITB, the specifications, and/or related documents. This is an opportunity for vendors to ask questions and/or seek clarification on specifications or related documents. These must be submitted in writing to SPB. Phone calls are not acceptable. Vendors are not allowed to have communication with the agency except as provided in the ITB.

- c. Date the State will respond to questions submitted by vendors (agency will have input on a reasonable timetable for the agency to work with SPB to develop responses to vendor questions)
  - d. Bid Opening Date (This is the date and time all bids will open at the SPB office)
    - e. Other items to consider:
      - i. Whether a second round of questions and answers is needed due to the complexity of the bid
      - ii. Whether a pre-bid meeting or site visit is necessary
7. SPB sends out ITB Solicitation Notices to potential vendors and posts the ITB to the SPB website.
  8. Pre-Bid Conference/Site Visit is held, if applicable (See Pre-Bid Conference/Site Visits section of this manual.)
  9. Question/Answer Period is conducted by SPB (See Question/Answer Period section of this manual.)
  10. File is maintained in a designated location until bid opening date and time at SPB. SPB time stamps bids when they are received. SPB logs in all bids in an electronic bid log. Bids remain unopened and are kept in a secure location until the designated bid opening date and time as indicated in the Schedule of Events.
  11. Bids are publicly opened and vendor name announced by SPB staff. Those in attendance are allowed to review bids, exclusive of any information marked proprietary by the vendor.
  12. At the close of the bid opening, SPB tabulates bids. (Typically within 48 hours of bid opening) Bids are no longer available for public viewing until the Intent to Award is posted to the SPB website.
  13. Once bid tabulation has been proofed for accuracy, the bid tabulation is posted to the website, and bids are scanned and e-mailed to the agency along with the bid tabulation for their review for responsiveness to bid requirements and provide recommendation for award(s) to SPB. A signed copy of the Declaration Concerning Conflict of Interest and Confidential Information for Invitations to Bid is required from each agency evaluator.
  14. SPB Buyer reviews award recommendation and reviews bids for responsiveness to bid requirements.
  15. SPB Buyer obtains any required documents prior to finalization of contract/purchase order. This includes, but is not limited to, performance bond, certificate of insurance, Secretary of State Letter of Good Standing current within 90 calendar days of award, etc.

- a. When the personal property exceeds \$25,000 and bids cannot be obtained from three (3) bidders, the Materiel Division will review the specifications with the agency.
  - b. If it is determined by the Materiel Division, because of the special nature of the personal property sought to be purchased or leased or for any other reason, that the specification shall remain as written, bids may be accepted from a fewer number of bidders than three with the approval of the Governor or his/her designated representative. SPB Buyer will complete an Award of Bid document as required by Neb. Rev. Stat. § 81-154 and obtain required signatures.
- 16.** For a One Time Purchase, the purchase order creation and signature process is completed upon receipt of all necessary post-recommendation documentation, including any required Letter of Good Standing, Certificate of Insurance, if applicable, and/or Performance Bond, if applicable, from the prospective awarded vendor.
- For Contract Awards, the contract creation and signature process is completed upon receipt of all necessary post-recommendation documentation, including any required Letter of Good Standing, Certificate of Insurance, if applicable, and/or Performance Bond, if applicable, from the perspective awarded vendor.
- 17.** Purchase Order/Contract is sent to the successful vendor.
- 18.** Once a goods contract has been established, it is posted to the SPB website and agency notification is made. At this point, agencies may generate OG purchase orders directly from the OC contract within PFC.
- 19.** Entire file with copy of purchase order/contract is maintained in a designated location until contract expiration. After that time, records are sent to the State Records Center after completion of necessary paperwork and entry into the State Records Database. Purchase order/contract file is kept in accordance with formal records retention schedule established by the Secretary of State's Records Management Division.
- 20.** Goods are received by the State agency. State agency receipts in PFC and processes payment.
- 21.** State agency personnel are to promptly notify SPB of any issues or complaints that may develop before or after delivery of the goods through the use of the Vendor Performance Report. (See Vendor Performance Report section of this manual.)
- a. SPB Buyer will work with agency to address complaints that develop before or after delivery of goods (See Vendor Performance Report section of this manual.)
- 22.** If change orders/amendments are necessary within scope of the original bid, agency personnel are to notify SPB in writing.

- a. SPB Buyer will process change orders/amendments, if necessary.

#### IV. **SOLE SOURCE PROCESS**

Sole source purchases are used for the procurement of commodities/goods available from only one source due to the unique nature of the requirement, compatibility, its supplier, proprietary product, or market conditions. (This may also apply to the request to procure used equipment, due to the difficulty of evaluating used equipment on an item-by-item basis). If the purchase is only available from one source and is not sold through distributors/resellers:

1. Agency is responsible for entering requisition in PFC using appropriate document type. Listing may be found at:  
[http://das.nebraska.gov/nis/training\\_manuals/proc/index.html](http://das.nebraska.gov/nis/training_manuals/proc/index.html)
  - a. Agency must identify as a sole source on the requisition.
2. Agency must submit a letter, on agency letterhead, stating why no other product is suitable or acceptable for their needs, unique characteristics, and a statement that it is sold by only one known source. Justification is to be provided by agency personnel with product knowledge and expertise, but must be written in such a way that no special knowledge is needed to understand the justification.
3. State Procurement Manager reviews and approves justification letter. If letter doesn't provide adequate information, agency will be contacted by the SPB Supervisor for the necessary information and/or revisions.
4. Agency obtains a statement from the sole source vendor (corporate, not sales representative) on company letterhead declaring that product is sold only by his/her company and is not sold through a distributor/reseller network.
5. SPB Buyer will contact the manufacturer to verify the commodity/good is a sole source to be quoted directly by the manufacturer.
6. SPB Buyer sends an ITB form to the vendor for completion when the estimated value is in excess of \$24,999.99 as a formal Return Mail bid for sole source procurements. When less than \$25,000.00, the ITB response may be mailed, faxed, or e-mailed by the vendor.
7. Upon receipt of the bid, SPB Buyer completes an Award of Bid form if cost is \$25,000.00 or more, for signature by the SPB Buyer, State Procurement Manager, AS Materiel Administrator, and AS Director (or designee) as the Governor's designee.
8. Upon receipt of the signed Award of Bid form, the SPB Buyer obtains any required documents prior to finalization of contract/purchase order. This includes, but is not limited to, performance bond, certificate of insurance, etc.
9. For a One Time Purchase, the Purchase Order creation and signature process is completed upon receipt of all necessary post-recommendation documentation, including any required Letter of Good Standing, Certificate of Insurance, if

applicable, and/or Performance Bond, if applicable, from prospective awarded vendor.

For Contract Awards, the contract creation is completed upon receipt of all necessary post-recommendation documentation, including any required Letter of Good Standing, Certificate of Insurance, if applicable, and/or Performance Bond, if applicable, from prospective awarded vendor.

10. SPB Buyer reviews purchase order/contract, signs, and obtains proper signatures.
11. Purchase order is sent to the successful vendor
12. Entire file with copy of purchase order/contract is maintained in a designated location until contract expiration. After that time, records are sent to the State Records Center after completion of necessary paperwork and entry into the State Records Center Database. Purchase Order/Contract file is kept in accordance with formal records retention schedule established by the Secretary of State's Records Management Division.
13. Goods are received by the State agency. State agency receipts in PFC and processes payment.
14. State agency personnel are to promptly notify SPB of any issues or complaints that may develop before or after delivery of the goods through the use of the Vendor Performance Report. (See Vendor Performance Report section of this manual.)
  - a. SPB Buyer will work with the agency to address complaints that develop before or after delivery of goods (See Vendor Performance Report section of this manual.)
15. If change orders/amendments are necessary within scope of the original bid, agency personnel are to notify SPB in writing.
  - a. SPB Buyer will process change orders/amendments, if necessary

#### **V. RESTRICTIVE PROCESS**

Restrictive is defined as "a specification or purchase description that limits competition." This method of procurement is utilized when only one product is suitable for the agency's needs, but it is sold through distributors/resellers:

1. Agency enters the requisition in PFC for a restrictive purchase along with a justification memo on agency letterhead. The justification memo must clearly explain the legitimate agency business need that requires restriction of the purchase, must contain all pertinent information and be written so that the memo could "stand alone" to the outside viewer.

2. State Procurement Manager reviews and approves justification letter. If letter doesn't provide adequate information, agency will be contacted by the State Purchasing Bureau Supervisor for the necessary information and/or revisions.
3. Depending on the dollar amount, a restrictive procurement proceeds according to the Informal Competitive Bid Process (between \$10,000 and \$24,999) or the Formal Sealed Competitive Bid Process (\$25,000 and over).
4. A restrictive request of \$25,000 and over is formally bid and follows the One-Time Purchase process after justification has been reviewed and approved.
5. Upon receipt of the bid, if value is in excess of \$24,999.99 an Award of Bid form is completed by the State Purchasing Bureau for signature by the State Purchasing Bureau buyer, State Procurement Manager, AS Materiel Administrator and AS Director (or designee), as the Governors designee.
  - a. For a One Time Purchase, the Purchase Order creation and signature process is completed upon receipt of all necessary post-recommendation documentation, including any required Letter of Good Standing, Certificate of Insurance, if applicable, and/or Performance Bond, if applicable, from prospective awarded vendor.

For Contract Awards, the contract creation is completed upon receipt of all necessary post-recommendation documentation, including any required Letter of Good Standing, Certificate of Insurance, if applicable, and/or Performance Bond, if applicable, from prospective awarded vendor.

- b. Entire file with copy of purchase order/contract is maintained in a designated location until contract expiration. After that time, records are sent to the State Records Center after completion of necessary paperwork and entry into the State Records Database. Purchase Order/Contract file is kept in accordance with formal records retention schedule established by the Secretary of State's Records Management Division.
- c. Goods are received by the State agency. State agency receipts in PFC and processes payment.
- d. State agency personnel are to promptly notify SPB of any issues or complaints that may develop before or after delivery of goods through the use of the Vendor Performance Report. (See Vendor Performance Report section of this manual.)
  - i. SPB Buyer will work with the agency to address complaints that develop before or after delivery of goods (See Vendor Performance Report section of this manual.)
- e. If change orders/amendments are necessary within scope of the original bid, agency personnel are to notify SPB in writing.
  - i. SPB Buyer will process change orders/amendments, if necessary.

## VI. FEDERAL GENERAL SERVICES ADMINISTRATION (GSA) CONTRACTS

1. As part of a State agency's unrestricted open market purchase process, it may utilize GSA-like pricing for purchases **under \$10,000.00**. A purchase order must be issued and pricing must match that of the GSA contract. Agency must attach a copy of the cover page of the GSA contract as well as the pricing page(s) to the header of the purchase order in PFC.
2. **For purchases between \$10,000 and under \$25,000**, the agency must submit a requisition, copy of GSA pricing, and copy of GSA contract cover sheet, including the contract period to SPB for review.
  - a. SPB Supervisor reviews the requisition and documentation. If information is missing or additional information is needed, SPB Supervisor contacts the agency for this information prior to buyer assignment.
  - b. Once all necessary information is attached in PFC, SPB Supervisor assigns to a SPB Buyer.
  - c. SPB Buyer reviews documentation for GSA-like pricing and verifies all necessary documentation is attached to the requisition.
    - i. Ensures GSA Price Schedule matches pricing stated on requisition.
    - ii. Ensures GSA item(s) matches items on the requisition.
  - d. SPB Buyer and SPB Supervisor review GSA-like pricing to determine if the GSA-like pricing is in the best interest of the State. Availability of GSA like-pricing does not automatically guarantee approval by SPB.
  - e. If approval is granted, SPB Buyer has two processing options:
    - i. Authorize direct purchase authority to the agency, in which the SPB Buyer will submit DPA-stamped requisition along with their signature and gather other required approvals. An OO document will be generated for DPA in PFC.
    - ii. Complete a purchase order in PFC from the requisition using GSA-like pricing; obtain necessary approvals and sending copy of the purchase order to the vendor and the using agency.
  - f. If approval is not granted, SPB Buyer and SPB Supervisor will contact the using agency to discuss the reason for the decision.
  - g. All documentation is kept on file at SPB.
3. **For purchases \$25,000 and over**, the agency must submit a requisition, copy of GSA pricing, and copy of GSA contract cover sheet which includes the contract period to SPB for review.



- a. SPB Supervisor reviews the requisition and documentation. If information is missing or additional information is needed, the supervisor will contact the agency for this information prior to buyer assignment.
- b. Once all necessary information is attached in PFC, SPB Supervisor assigns to a SPB Buyer.
- c. SPB Buyer reviews documentation for GSA-like pricing and verifies all necessary documentation is attached to the requisition:
  - i. Ensures GSA Price Schedule matches pricing stated on requisition.
  - ii. Ensures GSA item(s) matches items on the requisition.
- d. SPB Buyer and SPB Supervisor review GSA-like pricing to determine if the GSA-like pricing is in the best interest of the State. Availability of GSA like-pricing does not automatically guarantee approval by SPB.
- e. If approval is granted, SPB generates a purchase order in PFC and obtains necessary approvals, then sends purchase order to vendor and a copy to agency.
- f. If approval is not granted, SPB Supervisor and SPB Buyer will contact the using agency to discuss the reason for the decision.
- g. All documentation is kept on file at SPB.

**VII. MULTI-STATE COOPERATIVE PURCHASING CONTRACTS**

Statute Neb. Rev. Stat. § 81-153 gives the Materiel Division the power to purchase items by participation in a contract competitively bid by another state or group of states and any political subdivision of any other state or a cooperative purchasing organization on behalf of a group of states.

National Association of State Procurement Officials (NASPO) and Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) are two of the most notable entities with which the State of Nebraska works to participate in contracting opportunities that include usages of multiple states in order to drive down costs.

The State of Nebraska currently participates in contracts through these purchasing groups. SPB participates by issuing a Participating Addendum to the contract(s) established by the cooperative purchasing unit

- 1. SPB initiates the process to participate in a contract for goods beneficial to the State.
- 2. However, if there is a contract for goods that an agency would like for SPB to participate in, the agency makes a written request to SPB. This can be a simple e-mail to the State Procurement Manager with a copy of the contract attached.

3. SPB Buyer will draft the Participating Addendum. The Participating Addendum will consist of Nebraska's terms and conditions to which the contractor agrees to by signing the Participating Addendum.
  - a. If contractor does not agree to a specific clause, SPB works with General Counsel to negotiate these terms with the contractor.
4. Once all terms and conditions are agreed to, SPB Buyer will send the original Participating Addendum to the contractor for signature.
5. SPB staff will generate contract in PFC and gather all necessary signatures. Once all signatures are obtained copies of the contract are mailed to the vendor and agencies are notified.
6. Contract is posted to SPB's website.
7. All documentation is kept in a file at SPB per established records retention cycle.

#### **VIII. UNIVERSITY OF NEBRASKA PURCHASE AGREEMENTS**

Neb. Rev. Stat. § 81-154.01 allows for the Materiel Division to utilize purchase agreements entered into by the University of Nebraska if it is determined to be in the best interest of the State.

1. Agency notifies SPB of any purchase agreement it believes would be advantageous to utilize. This may be done through a simple e-mail to the State Procurement Manager with a copy of the purchase agreement attached.
2. The State Procurement Manager and SPB Supervisor review to make a determination if it is in the best interest of the State to utilize the University's purchase agreement. Input may be sought from SPB Buyer and the agency.
3. If it is determined this would not be acceptable, SPB Supervisor and SPB Buyer will notify the using agency and discuss reasons for non-participation
4. If it is determined to be in the best interest of the State, SPB Buyer will contact the vendor for regarding usage of the purchase agreement.
5. SPB will generate a contract in PFC and will indicate the State is utilizing the University purchasing agreement.
6. SPB Buyer will obtain necessary signatures. Once all signatures are obtained, a copy of the contract will be sent to the vendor and using agency
7. SPB Buyer will post contract on SPB's website.
8. All documents are maintained in a file as required by the record retention schedule.

## **IX. EMERGENCY PROCUREMENT PROCESS**

The emergency procurement process is used for situations which endanger lives, property, public safety, or the continuation of a vital program which can be rectified only by immediate on-the-spot purchases or rental of equipment, supplies, or materials.

Agencies have direct purchase authority for emergency purchase for commodities/goods under \$10,000.00 (refer to Unrestricted Open Market Purchase Process section of this manual).

**However, when the purchase for commodities/goods is \$10,000.00 and over, it must be processed by SPB. When the purchase for commodities/goods is \$25,000 and over, the purchase must be approved by the Governor.** Upon approval, the agency must notify SPB. All agencies should adhere to the following procedures under \$10,000.00:

1. If time allows, the agency prepares specifications and solicits a minimum of three (3) telephone, fax or e-mail bids.
2. Agency evaluates bid responses and awards to the lowest responsible bidder.
3. Agency enters purchase order in the Payroll and Financial Center.
  - a. Agency attaches justification for emergency need, three (3) bids, if obtained, and all documentation.
4. State Purchasing receives purchase order in the Payroll and Financial Center if \$10,000.00 and over.
  - a. Procurement Manager or designee will review to ensure all required documentation is included and approve the purchase order within the Payroll and Financial Center if the value of the purchase order is under \$25,000.00.
  - b. State Purchasing will send purchase order to vendor.
5. If the purchase is \$25,000.00 or greater, and less than three (3) bids were received, a State Purchasing Bureau buyer will be assigned to complete an Award of Bid form.
6. Once all signature approvals have been received, State Purchasing Bureau buyer will issue a purchase order and gather signatures/approvals.
7. Copy of purchase order will be sent to vendor and agency.
8. All documentation will be kept on file with the purchase order.

# COMMODITIES/GOODS PROCUREMENT PROCESS COMPONENTS

## I. REQUISITION REVIEW

Requisitions should be reviewed by the using agency prior to submitting to SPB for processing. The using agency is responsible for providing accurate and timely information in compliance with all statutory requirements and purchasing processes and procedures pertinent to the purchase.

Requisition should clearly and completely describe the product needed. The following questions should be considered:

✓ **Would it be helpful to establish a contract?**

- Most contracts are established for convenience. For goods contracts, usages are generally estimated. Eliminates the need to bid each time there is a need for commodities/goods that are utilized on a regular basis.

✓ **Will items be purchased frequently or reoccurring?**

- If so, establishing a contract will save the using agency valuable time each time the item(s) is needed.

✓ **Is desired delivery time indicated?**

- Delivery times from vendors may vary depending upon the item(s) being requested.
- Allow enough time when planning for the purchase. There are times when delivery is to be considered in making an award. Any mandatory delivery requirements must be provided for in the ITB specifications.
- Every effort must be made to plan procurement in a timely manner to avoid unnecessary increase in cost related to short delivery requirements which may also result in reduction of competition.

✓ **Agency should specify delivery instructions.**

- When needed, provide exact and specific instructions for delivery location, i.e. phone number and contact person, call prior to delivery, inside delivery, unloading, setting in place, justifiable geographic restrictions or limitations, etc.

✓ **Is the NIGP code correct?**

- SPB utilizes the Institute for Government Procurement (NIGP) for commodity codes for vendor enrollment and product category classification.
- Review of all items on the requisition to confirm the selected commodity code is correct.
- The use of commodity codes allows an agency to review and provide recommended vendors who will be sent an ITB solicitation letter notifying the vendor of a bid opportunity.
- SPB will also randomly select up to 10 additional vendors to receive the ITB solicitation notice letter (unless the procurement is a sole source or restrictive solicitation and adequate justification has been provided, reviewed, and approved by SPB).

✓ **Is the appropriate unit of measure used for the purchase?**

- When the ITB includes maintenance or service, the appropriate unit of measure may be “month” rather than “year.” This will allow for any contract renewal or extension which may be for less than a year.

✓ **Is the quantity clear?**

- If the unit of measure is “package”, “case”, or similar, does the description indicate how many per “case” or “package”? If packaging is not critical, ask the vendor to indicate their “case” or “package” count or consider whether the unit of measure should be “each” to allow for direct one-to-one bid comparison.

✓ **Trade-In**

- If there is a trade-in, the appropriate form from PFC must be included (see Trade-In section of this manual).

✓ **Include estimated quantities?**

- Include language that quantities are estimated, not guaranteed, the State will purchase actual quantities needed.
- Have estimated usage quantities been included in the specifications?
- Are the quantities listed realistic? (Look at past history if possible). The better estimate that can be given will help drive better cost.

## **II. SPECIFICATIONS**

The purpose of the State Purchasing Bureau is to ensure a fair, open, and competitive bid process. In order to allow for competition, agencies need to build specifications which allow for competition. The goal is to obtain quality products and services at the best price and within the parameters of applicable laws, rules, and regulations. To accomplish this goal, adequate specifications are required. Adequate specifications streamline the procurement process, while poor specifications cause unnecessary delays and may result in protests, the acquisition of goods that do not meet the needs of an agency, or may necessitate a total rebid.

The primary purpose of a specification is to provide a basis for securing a product that will satisfy a particular need at an economical cost. Specifications should be written to invite maximum competition. Specifications should not be unduly restrictive. Specifications should be written to encourage, not discourage competition, consistent with seeking overall economy for the purpose intended. Detailed descriptions for commodities/goods requested will expedite the purchasing process. If there are optional items for which a using agency would like pricing for possible purchase in the future, those items can be included, but are not part of the award consideration. Only items included in the original bid can be included in a contract. Contracts cannot be expanded beyond the original scope and pricing provided in the bid.

Agencies must use the standard template format prescribed by SPB. This allows for consistency among all bids for commodities/goods, which in turn, makes it simpler and easier for vendors to understand.

### **A. Types of Specifications**

Agencies should use one of the following specifications to describe the requested commodities/goods:

**1. Brand Name**  
Brand name is a specification that cites the brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others. This type of specification should be used rarely. It may be necessary to utilize this type of specification when the original equipment manufacturer may be the only producer of a part within a larger system. This is the most restrictive type of specification. Competition is among suppliers of the named product. However, using agency must provide written justification for the need. (Refer to Competitive Bid Process section of this manual).

**2. Acceptable Brands (Qualified Products List)**  
Qualified products that have been examined and tested and have satisfied the applicable qualification requirements. During the competitive bid process using Acceptable Brands restricts competition to only those products on the Acceptable Brands list.

It is beneficial to provide language in the specifications on how other vendors can submit products for testing for possible inclusion on the Acceptable Brands list. Testing can take time; some products require testing throughout the different seasons to determine whether the product will work in different types of weather.

**3. Design Specifications**  
Design specifications describe dimensional and other physical requirements of the item to be purchased. In other words, how the product is to be fabricated or constructed. Typically this type of specification is used in public contracting for buildings, highways, and other public works.

**4. Brand Name or Equal**  
Specifications should not be written indicating a brand name(s). It is best practice for the specification to identify those features needed in a product. This type of specification invites competition among several vendors or manufacturers across the marketplace. This is the most commonly used type of specification. Bids are then evaluated for equivalency based on written specifications with the State making the determination on equivalency.

**5. Performance Specification**  
Performance specifications state the function that a using agency is trying to achieve. The specification states what the using agency needs the product to do and asks the vendor to demonstrate that its product qualifies. A performance specification is more is less concerned about how a product is made and more concerned about how well it performances and at what cost.

## **B. Specification Development**

### **1. Characteristics of an effective specification:**

- a. Simple:** Avoid unnecessary detail, but be complete enough to ensure that requirements will satisfy the needs of the using agency.
- b. Clear:** Use standard easily understood terminology, correct spelling and appropriate sentence structure.
- c. Accurate:** Use units of measure compatible with industry standards. All quantities and packing requirements should be clearly identified.
- d. Competitive:** Identify a minimum of three brands, makes, or models (whenever possible) that will satisfy the agency needs. Thought process should always be “how can I get the most competition” rather than “how can I avoid the bid process.” Avoid specifications that could reduce or eliminate competition and increase costs.
- e. Flexible:** Specifications should be generic enough to allow for minimum and maximum product requirements to encourage competition.

### **2. What products are available?**

If the using agency doesn't know what's available in the marketplace, they have a couple of options to find or solicit information:

- a.** Conduct a Request for Information (Refer to Procurement Processes section of this manual.)
- b.** Research the Internet.
- c.** Product information from the industry.
- d.** Information from other federal, state and local governments.
- e.** Contract with a company to write the specifications (If this option is utilized, the company hired to write the specifications cannot participate in the bid process.)

### **3. Tips for specification preparation**

- a.** If using trade industry specifications review all information and select the most important features required for the product needed. Do not use words like “unique” or any trademark symbols.
- b.** Ensure specifications contain enough detail for the vendor to understand using agency's needs.
- c.** Specifications should contain enough detail to differentiate the level of quality or performance required
- d.** Use minimum and maximum specifications (range) requirements.

- e. If an item must fit within a certain space, this must be included in the specifications as a requirement.
- f. If weight is an important factor indicate the acceptable range with minimum and maximum requirements.
- g. Delivery, warranty, or training requirements should be clearly identified in the specifications.
- h. Does the equipment being bid have to be compatible with any existing equipment? If so, provide this information in the specification, including brand and model number to which the equipment must match or with which it must be compatible.
- i. Indicate if instructional or service manuals are needed.
- j. Specifications should clearly state packaging requirements, size, type of finish, etc.
- k. If installation is required, provide details on what is expected of the contractor.
- l. If the bid includes maintenance, define the extent of the service, parts, labor, travel, service hours that are required. Request a reasonable response time rather than indicate how close the vendor must be located physically.
- m. Do not use mandatory requirements if it is not an important function of the equipment being requested.
- n. Is the vendor to submit literature, proof of training, certificate of insurance, etc.? Allow these items to be submitted upon written request after the bid opening, but prior to award, so as not to limit competition.
- o. **Reminder:** An agency cannot review a bid on criteria that was not part of the specification. For example, optional equipment or components will not be considered as a basis for an award.

#### 4. **Specification Checklist**

- a. Life Cycle Cost
  - If considering use of life-cycle costing as an award consideration, this must be written into the agency's bid specifications.
  - Life Cycle Costing considers evidence of expected life, repair and maintenance costs, and energy consumption on a per-year basis.
  - Most commonly specified for vehicles, some types of heavy equipment and/or road/highway equipment.
- b. Equipment



- If the purchase is for equipment, has the agency considered the warranty, programming and installation of the equipment? Has this been included in the specification?
  - If there is installation, agency should include certificate of insurance in the specification.
  - The insurance certificate should be made in the name of the State of Nebraska-State Purchasing Bureau.
- c. Is a site visit or pre-bid conference needed?
- May be necessary if there is installation of equipment, so vendor can view the area where installation will take place, etc.
  - Is site visit mandatory or optional?
  - Need sign in sheet to verify attendance of vendors, especially when the site visit requires mandatory attendance.
  - If site visit is mandatory, vendors must understand they must have representation for their company at the site visit or they will not be considered for an award.
- d. Is training required?
- If so, need to include in the specifications. Include travel policy language in the specifications.
  - Specify type of training (webinar, telephone, on-site, off-site at vendor location, another location) including duration (days, hours).
  - Should be listed as a separate line item(s).
- e. Is agency using master lease for the purchase? (See State Accounting website for specific details on the master lease program).
- Initial work with State Accounting.
  - Indicate on the requisition that equipment will be purchased using master lease
  - Upon award agency should finalize any necessary documentation with State Accounting.
- f. Is this for a contract?
- What is the initial contract period? Are there renewal options? (Example: Initial two (2) year terms with three (3) one year renewal options).

### III. SOLICITATION (INVITATION TO BID (ITB))

After the requisition and specification review and finalization, the solicitation is created in PFC.

- Solicitation number is assigned by PFC.
- If the estimated cost of the solicitation is \$25,000.00 or more, the solicitation will be posted on the SPB website, with the exception of sole source solicitations.
- Bid opening date will be established by SPB Buyer. Solicitations estimated at \$25,000.00 or more must be posted for a minimum of fifteen (15) calendar days prior to bid opening unless otherwise approved. For complex solicitations, more time may be recommended to allow the vendors adequate time to prepare a bid response. SPB Buyers are also advised to take into consideration any holidays when scheduling bid openings to avoid bid openings the day after a holiday.

- If there is a pre-bid conference, adequate time must be allowed for the pre-bid conference as well as follow up from the question/answer period prior to the bid opening.
- Current contract holders will be sent a notice of the solicitation, per SPB protocol, provided the contract holder has not been suspended from bidding.

#### **IV. PRE-BID CONFERENCES/SITE VISITS**

There are two types of pre-bid conferences/site visits: 1) mandatory and 2) optional.

If the pre-bid conference/site visit is mandatory, only the companies represented by the attendees will be considered for an award. A mandatory pre-bid conference/site visit is utilized when the procurement is new, has special circumstances, or may be complex in nature.

The following steps should be followed in preparation for the pre-bid/conference/site visit:

- Arrange place and time for participants.
- Allow enough time for the vendors to review the ITB prior to pre-bid conference/site visit (typically a minimum of two (2) weeks).
- Any verbal questions should be submitted in writing in order for the vendor to receive an official binding response. Verbal responses provided during the pre-bid conference/site visit are not binding upon the State and that statement must be made at the pre-bid conference.
- Any changes or clarifications, which have a material impact, must be published in an addendum which is posted to the SPB website. Reminder that only those companies who were represented by attendees at the pre-bid/site visit will be allowed to submit a bid response (if mandatory).
- If the pre-bid conference/site visit was optional, any vendor will be allowed to submit a bid response.
- Indicate pre-bid information in the ITB. For example:  
A (mandatory/optional) pre-bid conference will be held at the State Purchasing Bureau, 1526 K Street Suite 130, Lincoln, NE, at 10:00 a.m. on Monday, July 26, 2014, to discuss specifications. All interested parties are urged to/must (if mandatory) attend. SPB Buyer/agency should be prepared to present any comment or needed changes to the specifications at the meeting.
- Prepare Attendance Sign-In Record (sign-in sheet) for attendees. The sign-in sheet includes the following: ITB Number, Brief Description, Agency, and Date, with a place for the attendees to indicate name of company or agency and address, names of attendees, their telephone number, fax number, and e-mail address. This is important information for proper file documentation. It also provides useful information for the addendum process.
- Generally, SPB Buyer will facilitate the meeting in cooperation with the using agency. SPB Buyer explains the purpose of the pre-bid conference/site visit and goes over questions that have been received thus far. SPB Buyer will go over any changes to specifications, clarifications, etc. All technical questions will be directed to the agency representative(s). SPB Buyer reminds participants that an addendum will be the official notice of any changes to specifications. If a vendor has questions, they need to be submitted in writing so an official response can be made. Only written

responses through an addendum are binding. SPB Buyer reminds vendors that ITB responses must be signed or they are not considered valid.

**V. QUESTION/ANSWER PERIOD**

ITBs will include a question/answer period prior to the opening of bids to answer bidder questions and clarify specifications as applicable.

Only written questions will be allowed. Only written responses from the State through an Addendum will be considered as valid and binding upon the State.

If the solicitation specifications are complex, it may be to the State’s advantage to utilize two (2) rounds of question/answer periods. This allows the vendors to gather the needed information to provide a competitive bid to the State. A second round of questions allows vendors the opportunity to seek any needed clarifications based on the State’s responses to questions from the first round of question/answer period.

The Schedule of Events will include details of when questions are due as well as when vendors may expect a response from the State. The Schedule of Events details where to submit the questions. All responses to questions are posted to the SPB website.

Any explanation desired by a vendor regarding the meaning or interpretation of any ITB provision must be submitted in writing to SPB Buyer and clearly indicate the ITB number.

Written questions should clearly cross-reference the relevant ITB. It is recommended that questions be submitted in the following format:

<u>Question Number</u>	<u>ITB Section Reference</u>	<u>ITB Page Number</u>	<u>Question</u>

**VI. ADDENDA TO ALTER SOLICITATION/OPENING DATE**

After the release of a solicitation it may be necessary to make clarifications and/or changes to the specifications and/or opening date in order to provide vendors with enough information to allow them to provide a bid. This is done through addenda to the solicitation. The reasons must be valid.

- Bids are not postponed because a vendor did not receive a bid solicitation letter.
- Addenda are posted to the SPB website for all vendors to access.
- Each addendum must be dated and provide a brief description of purpose of the addendum.
- Each addendum should indicate that vendors should acknowledge receipt of said addendum on their bid response
- Each addendum becomes an official part of the solicitation file
- Revisions received from vendors after the bid opening date and time shall not be considered part of their bid.
- When an addendum is made SPB Buyer should ensure there are 7-10 calendar days before the bid opening to allow vendors enough time to make any changes necessary to their bids. This may require extending the bid opening date. If this is the case, this should be included in the addendum.

## **VII. BID RECEIPT AND BID OPENING**

All incoming bids and addenda/modifications shall be date and time stamped upon receipt and kept in a single secure place until the scheduled bid opening. Bids and modifications shall be opened publicly.

At the opening, SPB Buyer will announce the name of the vendors who submitted bids. Anyone in attendance may review the bids and take notes provided the information has not been submitted as proprietary. Once the bid opening has concluded, bids are not available for public viewing until the Intent to Award has been posted on the website.

## **VIII. AWARD PROCESS**

1. In addition to price, the following elements are considering when making a determination of the lowest responsible bidder per Neb. Rev. Stat. § 81-161:
  - The ability, capacity, and skill of the bidder to perform the contract required.
  - The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
  - Whether the bidder can perform the contract within the time specified.
  - The quality of performance of previous contracts.
  - The previous and existing compliance by the bidder with laws relating to the contract.
  - The performance of the personal property, taking into consideration any commonly accepted tests and standards of product usability and user requirements.
  - Life-cycle costs of the personal property in relation to the purchase price and specific use of the item.
  - The information furnished by each bidder concerning life-cycle costs between alternatives for all classes of equipment, evidence of expected life, repair and maintenance costs, and energy consumption on a per-year basis.
  - The results of the United States Environmental Protection Agency tests on fleet performance of motor vehicles. Each bidder shall furnish information relating to such results.
  - Energy efficiency ratio as stated by the bidder for alternative choices of appliances or equipment.
- ✓ Any appliance purchased or leased pursuant to statute 81-161 shall be Energy Star certified, except that the Materiel Division Administrator may exempt the purchase or lease of an appliance if he/she determines that the cost of compliance would exceed the projected energy cost savings.
- ✓ For the purpose of the statute, energy star certified means approval by energy usage by the United States Environmental Protection Agency and the United States Department of Energy. Such approval may be signified by the display of the energy star label.
  - Such other information as may be secured having a bearing on the decision to award the contract.
2. After bids have been opened bid tabulation is created. The bid tabulation must clearly and accurately reflect the awarded bids and rejected bids. Rejected bids must be fully documented on the tabulation or attached.

- ✓ The State Purchasing Bureau buyer will review bids for completion, signature and responsiveness to the solicitation. All pricing must be typewritten or ink. Bids in pencil will not be accepted. In the event of a mathematical error on the part of the vendor, the unit price will govern.
- ✓ The State Purchasing Bureau buyer is responsible for calculating any applicable preferences and cash discounts. These will be noted on the bid tabulation.
  - **Neb. Rev. Stat. § 73-101.01** provides a resident bidder a preference over a nonresident bidder from a state which gives or requires a preference to bidders from the state.
    - ✓ The preference is equal to the preference given or required by the state of the nonresident bidder ( also known as reciprocal).
    - ✓ Resident bidder is defined as any person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation authorized to engage in business in the State of Nebraska and which has met the residency requirement of the state of the nonresident bidder required to benefit of that state's preference law on the date when any bid was first advertised or announced or has a bona fide establishment for doing business with the state of the nonresident business required for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced.
    - ✓ **Application of a reciprocal preference:**  
Reciprocal preferences should be calculated by adding the percentage allowed by the out-of-state bidder in their bid.
    - ✓ SPB protocol requests that awarded vendors submit proof of their registration with the Nebraska Secretary of State's office by providing a current copy of the Letter of Good Standing. Such a submittal establishes the vendor as a resident vendor for the purposes of deciding whether reciprocal preference(s) must be applied.
  - **Neb. Rev. Stat. § 73-107** allows for a preference for a resident disabled veterans or business located in a designated enterprise zone.
    - ✓ When a State contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder, if all other factors are equal.
    - ✓ **Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in**

**subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision(a) of this subsection. Any contract entered into without compliance with this section shall be null and void.**

- ✓ If a resident disabled veteran or business located in a designated enterprise zone submits a bid in accordance with Neb. Rev. Stat. § 73-107 and has so indicated on the ITB cover page under “Bidder must complete the following” requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the vendor within ten (10) business days of request:
    - ❖ Documentation from the United States Armed Forces confirming service;
    - ❖ Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
    - ❖ Disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense; and
    - ❖ Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.
  - ✓ Failure to submit the requested documentation within ten (10) business days of notice will disqualify the bidder from consideration of the preference.
- **Cash Discounts**  
Cash discounts are calculated by subtracting the discount offered from the vendor’s price. This means the vendor is offering a cash discount if payment is made within a specified number of days. For example: 1%-30 days. Cash discounts of less than 30 days will be accepted, but will not be considered in making an award determination.
- **Other considerations for responsiveness**
- ✓ Did the vendor bid FOB Destination? (Refer to Section IV-Procurement Processes)
  - ✓ Is the bid manually signed in ink? The cover page must have a valid signature. The signature binds the vendor to what was bid as well as the terms and conditions.
  - ✓ Did the vendor submit a bid bond, if applicable? Is the vendor agreeing to a performance bond, if required?
  - ✓ If pre-bid conference/site visit was mandatory, did the vendor attend? If not, the vendor is eliminated from further consideration.
- **Standard Terms and Conditions**
- ✓ Is the bid response on the State’s forms?

- ✓ Did the vendor agree to terms and conditions? If not, the State will need to work with legal counsel to finalize acceptable terms and conditions.
  - ✓ Are freight charges included in bid price or defined in the bid so that the delivered price can be calculated for each item? Copy of freight bill must accompany invoice if the terms are to Prepay and Add Freight to Invoice.
  - ✓ If delivery was a consideration, is the delivery longer than had been desired? State Purchasing Bureau will discuss with the using agency.
  - ✓ Did the vendor include their company's own terms and conditions? If so, there may be conflicts between the vendor and the State. Vendor should be given the opportunity to withdraw their terms and conditions.
  - ✓ Did the vendor indicate any unacceptable minimum order requirements on an open-ended estimated usage contract?
- **Review of Product/Service Specification**
- ✓ Did the vendor include or provide descriptive literature in order to evaluate the bid response? If not, request after the bid opening date, if this was not a mandatory requirement.
  - ✓ Was a sample required for evaluation? Usually one sample is sufficient to evaluate against specifications. However, two samples may be necessary in order to keep one as a control sample to refer to in case of any problems related to the product at a later date. Vendor should submit samples properly labeled with Invitation to Bid number, brand and model number. State Purchasing Bureau will contact the vendor to request samples and provide a deadline to the vendor for submission of the requested samples.
  - ✓ Is product literature (technical specifications) for the product needed to verify compliance with specifications? If so, State Purchasing will request this information.
- **Notification**
- ✓ Bids cannot be awarded to vendors who do not meet the specifications.
  - ✓ The State has the right to reject any or all bids. The State may revise specifications and rebid.
  - ✓ There will be no writing on the vendor's bid response. SPB buyer may make a copy of the response, if necessary, for working purposes.
  - ✓ Do not sign a vendor's preprinted document. You may be committing to another state's laws or unacceptable terms and conditions.
- **Final Review**
- The buyer's final review should include:
- ✓ Was solicitation advertised and posted to the State Purchasing Bureau website?
  - ✓ Is file well documented for all actions taken?
  - ✓ Did the successful vendor include all documents requested in the solicitation, including acknowledgement of any addenda that may have been issued?
  - ✓ If IT or IT related, was requisition approved OCIO approve?
  - ✓ Obtained Secretary of State Letter of Good Standing, Certificate of Insurance, Bonds, if necessary?
  - ✓ Upon receipt of agency recommendation for award, agency evaluator(s) must provide a signed copy of the Declaration Concerning Conflict of Interest and Confidential Information for Invitations to Bid.

- ✓ Award of Bid documentation will be prepared by SPB if the ITB was \$25,000 and over and did not garner three (3) valid bid responses. This includes Sole Source solicitations.

➤ **File**

- ✓ It is the buyer's responsibility to make sure the procurement file is in proper order and all actions are well documented.
- ✓ Any concerns regarding an award should be discussed with supervisor prior to proceeding with an award.
- ✓ Is the bid tabulation clear and accurately reflect award decision?

**IX. TIE BIDS**

Bids which are equal in all respects and tied in price shall be resolved by drawing lots. Nebraska vendors shall be given preference. Tie bids involving more than one Nebraska vendor shall be resolved by drawing lots among the Nebraska vendors.

**X. CANCELLATION OF SOLICITATION/REJECTION OF BIDS**

1. The State of Nebraska shall reserve the right to reject any or all bids, wholly or in part as provided for in Neb. Rev. Stat. § 81-161.02. If the proposed purchase is not abandoned, new solicitations may be issued.
2. The State further reserves the right to cancel a bid solicitation at any time. Due diligence should be exercised after bid prices are exposed before canceling a solicitation.
  - a. If the solicitation is canceled prior to the bid opening date and time a cancellation notice is placed on the SPB website. The reason for the cancellation may be provided, but is not required.
  - b. If the solicitation is canceled after the bid opening date and time a cancellation notice is placed on the SPB website.
  - c. The cancellation should be signed/approved in accordance with SPB's standard operating procedures.
  - d. If it is known that the solicitation will be reissued this should be included in the cancellation notice.

**OTHER IMPORTANT INFORMATION/CONSIDERATIONS**

**I. BID SECURITY AND PERFORMANCE BONDS**

Agencies should consider their risk when making the determination on whether a bid bond or a performance bond is necessary. Bid bond and performance bonds are used primarily with service procurements, but may be used in the procurement of commodities/good also.

Use of bid bonds and performance bonds may restrict the number of available vendors who can bid on the State's needs. Again, however, agencies need to determine their



risk when making the determination on whether a bid bond or a performance bond is necessary.

## **II. BID BONDS**

If a bid bond is requested, the amount of the bid bond must be stated in the solicitation as a set amount or a percentage of the total bid amount. Bid bonds must accompany the bid. A bid bond, cashier's check or certified check is acceptable and is to be made payable to the State of Nebraska, State Purchasing Bureau. The bond must be executed by a corporation authorized to contract surety in the State of Nebraska.

A bid bond is an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

## **III. PERFORMANCE BONDS**

If a performance bond is requested, the amount of the performance bond must be stated in the solicitation as equal to or a percentage of the contract sum. The successful vendor will be notified by a letter to secure a performance bond or certified check executed by a corporation authorized to contract surety in the State of Nebraska, payable to the State of Nebraska, State Purchasing Bureau, which shall be valid for the life of the contract to include any renewal and/or extension periods.

The check or bond, if required, will guarantee that the selected contractor will faithfully perform all requirements, terms and conditions of the contract. If the selected contractor chooses to provide a certified check, the check must show an expiration date on the check.

Certified checks will only be allowed for contracts for three (3) years or less, including all renewal options.

Failure to comply shall be grounds for forfeiture of the check or bond as liquidated damages. Amount of forfeiture will be determined by the agency based on the loss to the State of Nebraska.

The bond or certified check will be returned when the service has been satisfactorily completed as solely determined by the State, after termination or expiration of the contract.

The bond or certified check is to be provided within ten (10) working days from request.

## **IV. PROTESTS**

Neb. Rev. Stat. § 81-1118.05 allows for Materiel Division to establish protest procedures. Protest procedures are posted on the SPB website at: <http://das.nebraska.gov/materiel/purchasing.html> . The submission of a protest does not stop the procurement process.

If a respondent (bidder) to the bid informs the SPB Buyer they intend to protest, SPB Buyer is to direct the respondent (bidder) to the website for specific instructions on when

and how to submit a protest. Protests are only accepted from vendors who bid on the solicitation in question.

Many protests occur as a result of unduly restrictive specifications. Unduly restrictive specifications limit the number of vendor(s) who can comply with all of the specifications as written, thereby unnecessarily eliminating or restricting competition on items that would be capable of satisfying the intended need.

Other protests that occur are those in which another bidder does not agree with an award decision. A bidder may consider the intended awardees bid as non-compliant.

It is important that the buyer not discuss any protest with the bidders. No opinions are to be given to anyone concerning the protest while it is under review.

## V. PURCHASE ORDERS/CONTRACT AWARDS

Once an award decision has been made the file needs to be prepared for issuance of a purchase order or contract.

**Note: Only SPB has the authority to enter into contracts for commodities/goods.**

- No one will write or mark on the original bid. This could be interpreted to have been done by the vendor. Make a copy of the document for working purposes, if you need to write instructions for processing the purchase order/contract.
- SPB Buyers are to follow written standard operating procedures.
- Any special instructions to the vendor are put on the purchase order. (For example, delivery will be only accepted after August 1 \_\_\_\_.)
- Purchase orders/contract awards **must be signed** by an authorized agent. The purchase order isn't considered valid, unless signed.
- Purchase orders/contracts are reviewed, signed and sent to vendors as well as being posted to the website, if applicable. SPB Buyer is responsible for gathering all required approvals prior to releasing to the vendor.
- Purchase orders/contracts are filed in a central location.
- If purchase order/contract award is issued by SPB, only SPB may issue change orders or contract amendments.

## VI. CHANGE ORDERS/CONTRACT AMENDMENTS

### a. Change Orders

Occasionally it may become necessary after a purchase order has been issued to the successful vendor. (For example, need to change the exterior color of from red to blue.) If the purchase order was issued by the agency, the agency is responsible for processing the required change order. If the purchase order was issued by SPB, SPB Buyer will issue any required change order. Reasons for the change order should be clear and concise. The buyer will review and determine whether the change being requested is within the scope of the original bid.

- If purchase order is issued by SPB, agency/vendor is responsible for requesting a change in writing to SPB.
- Any change from the original scope of the purchase order, quantity changes, contact person, assignments, cancellation, etc., must be documented through a change order.
- Protects the State of Nebraska.

- Protects the vendor. The State can't pay for anything that hasn't been authorized.
- Change orders must be reviewed, signed and sent to the vendor. Obtain the required approvals. The change order isn't considered valid unless signed.
- All documentation and a copy of the change order are to be maintained in the file.
- A change order cannot be made if final payment against the purchase order has been made.

#### **b. Contract Amendments**

Occasionally it may be necessary after a contract has been issued to issue a contract amendment. (For example, vendor contact person has changed.) SPB is responsible for issuing all contract amendments for commodities/goods. Reasons for the contract amendment should be clear and concise. SPB Buyer will review and determine whether the contract amendment being requested is within the scope of the original bid.

- Agency/vendor is responsible for requesting any necessary change to the contract. Must be in writing to SPB.
- Any change from the original scope of the contract must be documented through a contract amendment. Amendments that change the original scope of the solicitation are not allowed.
- Protects the State of Nebraska.
- Protects the vendor. Provides the vendor authorization to make a change
- Contract amendments must be reviewed, signed and sent to the vendor. Obtain required approvals. The contract amendment isn't considered valid unless signed by both the contractor and AS Materiel Administrator.
- All documentation and a copy of the contract amendment are to be maintained in the contract file.

### **VII. DECLARATION CONCERNING CONFLICT OF INTEREST AND CONFIDENTIAL INFORMATION**

Any person from the agency involved in the procurement process, which includes but is not limited to, researching, writing specifications, reviewing bid responses, making award recommendation, etc., must sign a "Declaration Concerning Conflict of Interest and Confidential Information" form for each Invitation to Bid. Blanket submittals are **not** acceptable. Forms must be signed and submitted to SPB along with the recommendation for award. Forms are available on the SPB website at: [http://das.nebraska.gov/materiel/purchase\\_bureau/agency-info.html](http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html)

### **VIII. ASSIGNMENT OF CONTRACT/PROCEEDS**

During the life of contract/purchase order, it may be necessary for a vendor to request assignment of a contract/purchase order. As part of everyday business, companies go through mergers, acquisitions, corporate name changes or an assignment of proceeds. As such, these must be documented and a change order/contract amendment must be issued. (Refer to Change Orders/Contract Amendments section of this manual.) An assignment is a legal transfer of a claim, right, interest or property.

- All requests for assignments must be on company letterhead from an authorized person. If the request was submitted to the using agency, the agency should forward the information to SPB.

- When purchase orders are assigned, any outstanding balance must be paid to the newly assigned vendor. SPB will request the necessary changes in PFC.
- Agency/vendor is responsible for requesting any necessary change to the contract. Must be in writing to SPB.
- All documentation is kept with the purchase order/contract file.

## **IX. VENDOR PERFORMANCE REPORTS**

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

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

When Vendor Performance Reports are used correctly, they can result in better vendor performance, improved contracts, and increased customer satisfaction. Agencies need to understand the importance of ongoing documentation, reporting, and not waiting until it is time to award a new contract to decide that the product does not meet their needs or the vendor is not performing as required. It is difficult to disqualify a vendor for non-performance when documentation is lacking or non-existent. The receipt of two (2) Vendor Performance Reports is considered a serious factor and may be used to suspend a vendor from bidding on future solicitations for a set period of time.

## **X. VENDOR PERFORMANCE REPORT PROCEDURES**

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

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

## **XI. TRADE-IN OF STATE-OWNED EQUIPMENT**

At any dollar level, an agency requesting trade-in of state-owned equipment while acquiring replacement or new equipment must process the request through SPB using the OW requisition.

### **If the total dollar value of the request, including the trade-in amount, is under \$25,000:**

This process is completed during the review process of the informal bid process being used, Direct Purchase Authority (DPA) or one of the exception processes.

- ✓ The Buyer reviews the requisition for trade-in requests
  - Trade-in(s) are notated as a separate procurement line(s) on the requisition.
    - a. Commonly notated as "Trade-In Option"
  - Agency has signed and attached SPN Surplus Trade-In form (Original not required)
    - a. Printed from PFC if a fixed asset or completed Non-NIS Trade-In form from Surplus Property website
    - b. It is the Agency's responsibility to submit and upload the SPN form into the ECM system
  - SPB will request additional information if necessary from Agency contact.
  
- ✓ Via e-mail, the Buyer will notify the Materiel Business Process Specialist of the pending requisition and trade-in request with the SPN number for Review by the State Surplus Property Supervisor/Materiel Administrator.

The following steps are completed when review process is complete.

- Buyer sends a hard copy of supplier's quote, identified on the requisition, and SPN form to the State Surplus Property Supervisor through interoffice mail.
- The Agency uploads the request in ECM and the workflow process of operations, including review by the Surplus Property Supervisor and the final authorization of the trade-in request approval or denial by the AS Materiel Administrator occurs within ECM.

- SPB Buyer does not have to provide physical copies of documents to State Surplus Property, unless requested.
- Notification of the trade-in approval or denial is made to the SPB Buyer by the Materiel Business Process Specialists by e-mail.
- The SPB Buyer includes that e-mail within the classification file as documentation of the approval.
- Buyer will complete informal bid and/or purchase order process as applicable.

**If the total dollar value of the request is \$25,000 or over:**

Review Process for Trade-In Request – Formal Bid Process

This process is completed during the review process of the formal bid process being used and is not continued until an award recommendation is made by the agency.

In addition to the review of the Formal Bid Process, the Buyer reviews the requisition for trade-in requests:

- A. Trade-in(s) are notated as a separate line, procurement line(s) on the requisition.
  - i. Commonly notated as “Trade-In Option”
- B. Agency has signed and attached SPN Surplus Trade-In form (Original not required)
  - i. Printed from PFC if a fixed asset or completed Non-NIS Trade-In form from Surplus Property website
  - ii. It is the Agency’s responsibility to upload the SPN form into the ECM system
- C. Review specifications related to trade-in item(s), if applicable
- D. Request additional information, if necessary, from Agency contact

Agency provides award recommendation to the Buyer after the bid process has been completed. Complete agency award recommendation procedure according to the formal process being used, but be aware that the options below may apply to an award recommendation involving trade-ins and need to be notated on the award recommendation. The Buyer will need to communicate with the Agency to explain the items listed below are notated on the agency recommendation.

- A. Agency indicates they submitted award recommendation based on total price, including trade-in value
- B. Agency indicates they submitted award recommendation based on total price, excluding trade-in value
- C. Agency states they would like to proceed with the trade-in request or proceed without trade-in request
  - i. If no, proceed with the formal bid process and the trade-in procedure is complete
  - ii. If yes, proceed with the trade-in procedure

Review of award recommendation then occurs by the State Surplus Property Manager and AS Materiel Administrator.

- A. Buyer sends a hard copy of suppliers bid, identified in the agency award recommendation, and SPN form to the State Surplus Property Manager through interoffice mail
- B. Buyer notifies Materiel Business Process Specialist of the Agency recommendation
- C. State Surplus Property Manager, if approved, signs SPN form and forwards to AS Materiel Administrator for review and signature, working through the ECM process and with the Materiel business Process Specialist as needed
- D. Materiel Business Process Specialist notifies SPB Buyer of approval or denial of the trade-in option request
- E. Buyer will complete formal bid and/or purchase order process

## **XII. RENTAL OF EQUIPMENT**

Rentals are treated the same as other commodity/goods purchases. Depending on the estimated dollar value for the contract period will determine the procurement method to be used. (Refer to Procurement Methods section of this manual.)

Rentals are typically for short-term monthly needs. Generally rentals are considered when an agency does not want to acquire ownership of equipment for justifiable reasons such as equipment with rapidly changing technology, budget constraints, etc. Rentals should clearly define the period of coverage – beginning and ending dates. Title does not pass to the State but remains with the vendor.

## **XIII. MASTER LEASE**

If an agency is going to utilize the Master Lease program for the purchase of the commodity/good, this should be noted on the requisition being submitted to the State Purchasing Bureau. Further, the agency is required to utilize specific object codes as established by State Accounting which will indicate the item is being purchased using Master Lease funds.

Agencies should contact State Accounting prior to submitting requisition to SPB to determine if the equipment meets established guidelines for financing and if funds are available. If approved, the agency may submit the requisition to SPB.

At completion of the bid process a purchase order will be issued. Appropriate approvals and signatures will be obtained and a copy of the purchase order sent to the vendor and agency. The purchase order will then be cancelled in PFC.

(Refer to the State Accounting Manual for specific requirements on the use of Master Lease)

## **XIV. FAX BIDS/FACSIMILE DOCUMENTS**

**The State Purchasing Bureau will only accept facsimile responses to Invitations to Bid on bids under \$25,000 and up to ten (10) pages.**

**However, two party sealed bids containing facsimile pages are acceptable.** No direct facsimile solicitation responses will be accepted for Invitations to Bid for a commodity contract, no matter the dollar value.

## **XV. REQUEST FOR PROPOSALS (RFP)**

The RFP process is used for the procurement of services, which at times may include commodities/goods as well. This method may be utilized when cost is not the only evaluation criteria or as a cost only process where specifications are clearly defined and the vendor submits a fixed cost price. The cost only method is much like that of goods. For further information regarding the Request for Proposal refer to the Procurement Services Manual.

## **XVI. STATEWIDE CONTRACTS**

SPB is responsible for processing all contracts for commodities/goods.

- Statewide contracts are developed to group the needs of one or more agencies, to standardize, to combine usage for lower prices, and to make it easier for agencies to purchase items which are commonly used.
- Contracts are generally for a one (1) year period with four (4) one year periods. However, there may be instances for which longer term contracts or differing initial contract periods. For example, furniture used throughout a building. In order to match existing equipment for a number of years, it may be necessary to contract for a longer period of time.
- Contracts for purchases or leases may be made in any of the following forms:
  - ✓ For the furnishing of specific personal property at specific prices;
  - ✓ For the furnishing of personal property, according to the specifications, at a fixed rate for a minimum quantity, subject to furnishing a greater quantity at the same or lesser rate; or
  - ✓ For the furnishing of personal property, according to the specifications without a stated minimum at a rate stated, commonly known as a price agreement.
- The most common type of contract is contracts without any minimum or maximum quantity with price at a fixed rate
- When bidding contracts, SPB issues a solicitation for all items requested (core) as well as additional items (catalog) which may be needed throughout the life of the contract. This is known as Core and Catalog.
- Once a contract has been issued, agencies may purchase directly from the contracts without going through SPB by utilizing the correct document type. Document types may be found at: [http://das.nebraska.gov/nis/training\\_manuals/proc/index.html](http://das.nebraska.gov/nis/training_manuals/proc/index.html) with some exceptions. (Refer to the Unrestricted Open Market Purchase Authority Letter posted on the SPB website)
- SPB reserves the right to award contracts on an item-by-item, groups of items, or all or none, and to award to one or more vendors, whichever is in the best interest of the State of Nebraska.

### **All Contracts**

- **Changes** – If a vendor requests changes to an existing contract, it must be on the company letterhead under the authorized signature indicated in the contract bid document or on file in vendor record.
- Items cannot be added to any contract which was not part of the original bid solicitation.
- **Renewals/Extensions** – Any renewal/extension of any contract must be mutually agreeable to both parties, the State and the vendor(s).



- ✓ Contract renewals/extensions should be processed timely in order to prevent any lapse in contract availability.
- ✓ Contracts must be renewed/extended prior to contract expiration date.
- ✓ DAS Material Division must approve all requests for contract extensions.
- ✓ Consideration should be given to any performance issues, market conditions and any price change requests from the vendor.
- ✓ Vendor cannot pick and choose which items to renew/extend. Vendor must agree to renew/extend entire contract.
- ✓ Contracts may not be renewed beyond their availability of renewals as specified in the contract.
- ✓ Contract may be extended for up to six months beyond expiration of the contract to allow time for a rebid. Valid justification must be provided and have the State Procurement Manager/Materiel Division Administrator approval.
- ✓ SPB will send a letter to the contracted vendor(s) requesting the renewal/extension of the contract.
- ✓ SPB is required to give notice of any requested renewal or extension, but is not required to give notice to the contracted vendor in the event of the contract being allowed to expire.
- ✓ If vendor requests a price change, supporting documentation must be provided by the vendor to support the requested change. Such documentation may include supplier invoices or other documentation necessary to established that the requested price increase is in line with the contracted vendor's increase.
- ✓ SPB Buyer will verify information and should check Producer Price Index as a way of verifying industry or market-wide pricing trends.
- ✓ SPB Buyer will e-mail the requested price change request as well as supporting documentation to the agency (if agency specific) to check if the agency wants to proceed with the contract renewal/extension based upon the change in cost.
- ✓ If the State agrees to the requested price change, SPB will generate the renewal/extension document.
- ✓ All necessary signatures and approvals will be obtained by SPB.
- ✓ Copies of the contract renewal/extension will be sent to the vendor as well as the agency and posted to the SPB website.

➤ **Quantity Increase Requests**

Occasionally the estimated quantities on a contract will be depleted. This occurs because usage is typically estimated on goods/commodity contracts. If this happens, agencies must submit a "Quantity Increase" form to SPB. This form may be found on the SPB website at: [http://das.nebraska.gov/materiel/purchase\\_bureau/agency-info.html](http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html)

Agencies should submit the Quantity Increase Request based on their expected usage over the remaining months of the contract, not simply to complete a single purchase order.

➤ **Contract Performance**

SPB makes every effort to improve statewide contracts to meet the needs of state agencies. This is accomplished through contract monitoring. Agency feedback is needed regarding customer service, delivery, product quality, billing,

overall effectiveness of the contract, and any needed changes. This is accomplished by agencies submitting Vendor Performance Reports (See Vendor Performance Reports section of this manual).

## **XVII. COMMUNICATION**

Effective communication plays a significant role in accomplishing our goal to simplify and improve procurement processes. Quick and accurate responses are encouraged to keep the process flowing. Our mission is to develop and implement sound procurement practices in accordance with state statutes, rules and regulations, and policies and procedures, and to provide quality and timely services to state agencies and our vendor community.

SPB hopes you will find this manual to be a useful tool as you proceed through the different procurement processes. Your comments or suggestions are welcome and should be submitted via e-mail to [Brenda.Pape@nebraska.gov](mailto:Brenda.Pape@nebraska.gov)

# **Exhibit A**

## **ITB Contract Boilerplate**

# SPB ITB Commodity Contract Boilerplate Instructions

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

## Cover Page

This page includes basic instructions to the bidder and highlights some important dates, such as the release date and the deadline for questions. It is the vendor’s responsibility for watching SPB website for any and all updates to the ITB and the opening date. This form **MUST BE SIGNED** or the entire bid will be considered invalid and excluded from further consideration.

## Table of Contents

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

## Glossary of Terms

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

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

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

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

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

### Why so many subsections?

Within each section are numerous subsections. SPB is often asked why there are so many subsections. Agencies must remember that the ITB is the beginning of the contract. For this reason, the ITB is written in a very detailed, point-by-point manner. The ITB and the bidder’s response become part of the final contract. The subsections are a way to direct bidders to specific components of the document and eliminate potential points of confusion. It is possible to condense several of the subsections, but it is

important to keep in mind that each subsection represents a unique point that may or may not become focal point of the final contract.

## **SECTION I. SCOPE OF THE INVITATION TO BID**

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

### **A. SCHEDULE OF EVENTS**

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

## **SECTION II. PROCUREMENT PROCEDURES**

This section provides some general guidelines for bidders regarding bid submission and contact with SPB.

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

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

### **B. GENERAL INFORMATION**

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

**C. COMMUNICATION WITH STAFF AND EVALUATORS**

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

**D. WRITTEN QUESTIONS AND ANSWERS**

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

**E. PRE-BID CONFERENCE – optional**

- If the agency does not include a pre-bid conference this subsection is deleted.
- Indicates if pre-bid conference is optional or mandatory.
- If mandatory, a sign-up sheet is required, and the list will be posted to the website after the pre-bid conference takes place.
- Indicates methods of submitting questions and which questions are binding on the state.
- Addresses submission methods and requirements for the notification of intent to attend pre-bid conference (usually Form B)

**F. IMPORTANT NOTICE LANGUAGE**

- Pursuant to Neb. Rev. Stat. § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by law WILL BE POSTED FOR PUBLIC VIEWING. Bidders are required to waive copyrights' from privilege for posting on the public website.

**G. SUBMISSION OF BIDS – agency input required**

- One original of the entire bid shall be submitted.
- Proprietary or confidential information must be properly identified.
- Bid responses must include Form A, Bidder Contact Sheet.
- Address labels must be clear and contain the ITB number clearly marked.

**H. DISCOUNTS**

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

**I. PRICE ADJUSTMENTS DURING CONTRACT TERM**

- Any request for a price adjustment must be submitted in writing to the State Purchasing Bureau, a minimum of thirty (30) days prior to proposed effective date of increase, and must show cause with supporting documentation (such as notification letter from manufacturer)

- Further documentation may be required by the State, failure to supply any requested supporting documentation may be grounds to cancel the contract.
- State reserves the right to reject any proposed price increase, cancel the contract and re-bid if determined to be in the best interest of the State.
- No price increases are to be billed to any State Agencies without prior written approval by SPB.

**J. PAYMENT**

- Payment will be made according to Nebraska Prompt Payment Act (Neb. Rev. Stat. §§ 81-2401 – 81.2408)
- The State may require the Contractor to accept payment via electronic means such as ACH.
- In no event shall the State be responsible for or liable to pay for any goods provided by the Contractor prior to the contract start date.
- Contractor waives all claims or actions for any such services?

**K. BID EXECUTION**

- Bids must be signed in ink on the State of Nebraska's Invitation To Bid Form
- Erasures or alterations must be initialed in ink by the Bidder.
- No telephone or voice bids will be accepted.
- Failure to comply to the above provisions could result in rejection of bid.

**L. BID OPENING**

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

**M. ELECTRONIC DOCUMENTS/FACSIMILIE SUBMISSIONS**

- SPB does not accept electronic bids for commodity contracts over \$25,000, however, there is an exception for One-Time Commodity purchases of under \$25,000 where electronic bids are accepted if under 10 pages
- No direct electronic solicitation responses will be accepted by SPB for any commodity contract of any dollar amount.

**N. VALID BID TIME**

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

**O. ALTERNATE/EQUIVALENT BIDS**

- Bidder may offer bids which are at variance from the express specification of the Invitation To Bid.
- State reserves the right to consider and accept such bids, if in the judgment of the State Procurement Manager, the bid will result in goods equivalent to, or better than, those which would be supplied in original bid specifications.

**P. LATE BIDS**

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

**Q. NO BID**

- To qualify as a "NO BID" Respondent, ITB must be received no later than the bid opening date and time.

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

- State reserves the right to purchase item-by-item, by groups, or as total when the State may benefit by doing so.
- 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.
- "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.
- "Lump sum" 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

**S. REJECTION OF BIDS**

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

**T. EVALUATION OF BIDS**

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

**U. BID TABULATIONS**

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

**V. MANDATORY REQUIREMENTS**

- Bid signature page must be signed.
- Agencies may add additional mandatory requirements.

**W. REFERENCE CHECKS**

- The State reserves the right to check references regardless of source.
- The State reserves the right to utilize a 3<sup>rd</sup> party to conduct reference checks.



- Negative references could eliminate bidders from award consideration.

**X. RECYCLING**

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

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

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

**Z. RESIDENT BIDDER**

- Pursuant to Neb. Rev. Stat. §§ 73-101.01-73-101.02, a Resident Bidder shall be allowed a preference against a Nonresident Bidder from a state which gives or requires a preference to Bidders from that state
- The preference shall be equal to the preference given or required by the state of the Nonresident Bidders
- 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.

**AA. AWARD**

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

**BB. POLITICAL SUBDIVISIONS**

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

**CC. VIOLATION OF TERMS AND CONDITIONS**

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

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

### **SECTION III. TERMS AND CONDITIONS**

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

#### **A. GENERAL**

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

#### **B. DEBARMENT**

- By signature of the ITB, the Contractor certifies that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal debarment or agency from participating in transactions.
- Agrees to include all requirements in any and all subcontracts into which it enters.
- Contractor shall immediately notify the Department if, during the term of this contract, contractor becomes debarred.
- Department may immediately terminate this contract by providing contractor written notices if contractor becomes debarred.

#### **C. SPECIFICATIONS**

- 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.
- Bidder may offer any brand that meets or exceeds expectations.
- ITB will state if a specific product is desired.

#### **D. SAMPLES**

- Samples will be furnished by Contractor before opening of the bid, or otherwise specified.
- Each sample must be labeled clearly with the Identity of the Bidder and the item number.
- Samples must represent the commodity or equipment that would be delivered if awarded the bid
- The State of Nebraska reserves the right to ask for samples even if it was not stated in the Invitation To Bid.

#### **E. PERFORMANCE AND DEFAULT**

- State reserves the right to require a performance bond from the successful Bidder, as provided by law, with no expense to the State.

- In case of default by the Contractor, the State may procure the articles from other sources and hold the Contractor responsible for any excel cost occasioned thereby.
- F. DRUG POLICY**
- Contractor certifies it maintains a drug-free workplace.
  - Contractor shall supply a copy of its drug-free workplace policy to the State at any time upon the State's request.
- G. NE ACCESS TECHNOLOGY STANDARDS**
- Contractor shall review the Nebraska Technology Access Standards and ensure that it is in compliance or will comply with the applicable standards. Refer to website at: <http://nitc.nebraska.gov/standards/2-201.html>
- H. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/NONDISCRIMINATION**
- Contractor shall comply with all civil rights laws and Equal Opportunity requirements.
  - Nebraska Fair Employment Act (Neb. Rev. Stat. § 48-1101 through § 48-1125) prohibits discrimination based on race, color, religion, sex, disability, marital status, or national origin.
  - Breach of this provision shall be considered a breach of contract.
- I. PERMITS, REGULATIONS, AND LAWS**
- Contractor shall pay for all permits, licenses and approvals necessary to execute the contract.
  - Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.
- J. OWNERSHIP OF INFORMATION AND DATA**
- All State data, work products and all applicable records must be provided/furnished to the State, in a format determined by the State or agreed upon by the parties, at the expiration or termination of the contract.
  - The State has unlimited right to use and/or reproduce the information and/or data developed or derived by the contractor under this contract.
  - The contractor guarantees it has full right to all tools necessary to execute the contract, and related costs shall be built into the contract price and not billed separately.
    - ✓ Contractor is responsible for paying any related costs and shall hold the State harmless from any related claims.
- K. INSURANCE REQUIREMENTS – some agency decisions required**
- Work shall not begin under the contract until all required insurance has been obtained by the contractor and approved by the State.
  - Required insurance must be maintained for the life of the contract, including renewal periods and/or extension periods.
  - Contractor must ensure that a current, compliant certificate of insurance (COI) is on file with SPB at all times during the contract.
  - Contractor is responsible for any subcontractor's compliance with the insurance limits, and shall assume liability if at any time a subcontractor is not compliant.

- Contractor is responsible for any mandatory deductible payment in event of a claim.
- Limits and waivers are clearly defined.
  - ✓ Agency decides if any additional insured(s) besides the State
  - ✓ Agency can add any unique coverage required, such as Professional Liability, Builder's Risk, etc.
  - ✓ If Medical Malpractice coverage is required, bidder must also be and remain certified under the Nebraska Hospital-Medical Liability Act. Such qualification will be confirmed with the Nebraska Department of Insurance.
- Evidence of coverage (COI) shall be provided to the State before a contract can be awarded.
- Notice of cancellation of insurance must be provided to the State along with a new coverage binder to ensure no break in coverage.

**L. COOPERATION WITH OTHER CONTRACTORS**

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

**M. INDEPENDENT CONTRACTOR**

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

**N. CONTRACTOR RESPONSIBILITY**

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

**O. CONTRACTOR PERSONNEL**

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

- Contractor is responsible for its employees, including employment taxes, payroll withholding, vehicles and insurance, damages incurred by employees under the contract, worker's compensation and health insurance, and determining hours to be worked and duties to be performed.
- P. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**
- Contractor shall not knowingly recruit any State employee or agent who worked on the ITB or project, or who had any influence on decisions affecting the ITB or project.
- Q. BEGINNING OF WORK**
- Work shall not commence before the contract is fully executed by both the Contractor and the State.
- R. STATE PROPERTY**
- The Contractor is responsible for the care and custody of any State-owned property provided for the execution of the contract.
  - The Contractor shall reimburse the State for any loss or damage to such property.
  - Normal wear and tear is expected.
- S. SITE RULES AND REGULATIONS**
- The Contractor and its employees, agents, and subcontractors shall comply with all site rules and regulations while on State premises.
  - The Contractor must ensure proper facility access and equipment to execute the contract.
  - The State shall not make additional payments based on lack of access unless the State fails to provide access as agreed to between the State and the Contractor.
- T. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**
- The State may terminate the contract in the event the funding is no longer available.
  - The State will give the Contractor thirty (30) day notice.
- U. RIGHT TO AUDIT**
- The Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit the contract.
  - The State shall have the right to audit, examine, make copies or extracts from the Contractor's documents pertaining to or resulting from the contract.
  - Contractor shall maintain all pertinent records during the contract and for five (5) years after completion of the contract, and shall make them available to the State upon the State's reasonable request at the expense of the Contractor.
  - The cost of any audit conducted under this section shall be borne by the State unless specifically stipulated otherwise, unless certain exemption criteria are met, or unless the findings require compensation to the State from the Contractor.
- V. DISASTER RECOVERY/BACK UP PLAN**
- The Contractor shall have a disaster recovery/back-up plan and shall provide a copy to the State, regarding how to continue providing services in the event of a disaster.

**W. TIME IS OF THE ESSENCE**

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

**X. CONFLICT OF INTEREST**

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

**Y. BID PREPARATION COSTS**

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

**Z. ERRORS AND OMISSIONS**

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

**AA. ASSIGNMENT BY THE STATE**

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

**BB. ASSIGNMENT BY THE CONTRACTOR**

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

**CC. GOVERNING LAW**

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

**DD. ATTORNEY'S FEES**

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

**EE. ADVERTISING**

- Contractor shall not refer to the contract award in any advertising in such a way that implies an endorsement by or preference on the part of the State.
- News releases require the prior written permission of the State.

## **FF. NOTIFICATION**

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

## **GG. EARLY TERMINATION**

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

## **HH. BREACH BY CONTRACTOR**

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

## **II. ASSURANCES BEFORE BREACH**

- Upon written notice by the State that a contract deliverable does not meet the requirements of the RFP/contract, the Contractor shall, at no additional cost to

the State, remedy the situation and ensure compliance with the contract. Contractor may be required to provide additional resources, at no additional cost to the State, to ensure contract compliance.

**JJ. ACCEPTANCE AND PAYMENT OF GOODS**

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

**KK. BID BOND – agency decision required**

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

**LL. PERFORMANCE BOND – agency decision required**

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

**MM. FORCE MAJEURE**

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

**NN. PROHIBITION AGAINST ADVANCE PAYMENT – agency decision required**

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

**OO. ADMINISTRATIVE FEE/REBATE**

- Contractor agrees to quarterly administrative fee in the form of a check.
- Fee will be payable to the State for an amount equal to one percent (1%) of the net sales under the contract for each period.
- Contractor agrees to provide a quarterly utilization report, reflecting new sales to the state during the associate fee period.
- Report shall be in the format developed by the Lead State

**PP. REPORTS**

- Contractor shall provide to the State of Nebraska primary contract person quarterly utilization reports containing at least the following information pertaining to State of Nebraska Utilization.
  - ✓ Purchase order number
  - ✓ Description



- ✓ Quantity
- ✓ Price
- Reports will be in Excel format, sent quarterly to [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)

**QQ. ADMISTRATVIE FEE/REBATE REMITTANCE LOCATIONS**

- Administrative Fees/Rebated will be sent to the following address:  
State Purchasing Bureau  
C/o Central Finance, Administrative Services  
1526 K Street, Suite 150  
Lincoln, NE 68508

**RR. PAYMENT**

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

**SS. INVOICES – agency input required**

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

**TT. TAXES**

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

**UU. INSPECTION AND APPROVAL**

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

**VV. SEVERABILITY**

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

**WW. CONFIDENTIALITY**

- All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
- All confidential information shall be handled in accordance with applicable Federal and State law and ethical standards.

- The Contractor must immediately notify the State of any breach of confidentiality.
- The Contractor must comply with the Privacy Act of 1974.

**XX. PROPRIETARY INFORMATION**

- Data and documentation contained in a bid become property of the State of Nebraska and upon opening, become public information.
- Bidder may identify certain information to withhold from the public, provided it falls within the definition of proprietary information in Nebraska’s public record statutes.
- All proprietary information must be submitted in a SEPARATE SEALED package clearly identified as proprietary.
- Bidder may not mark its entire bid proprietary.
- Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.  
 IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by Law **WILL BE POSTED FOR PUBLIC VIEWING.**
- Bidders are required to waive copyrights’ from privilege for posting on the public website.

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

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

**ZZ. PRICES – agency input required**

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

**AAA. ETHICS IN PUBLIC CONTRACTING**

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

**BBB. INDEMNIFICATION**

- General – The Contractor holds the State harmless in general.

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

**CCC. ANTITRUST**

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

**DDD. EMPLOYEE WORK ELIGIBILITY STATUS**

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

**EEE. OFFICE OF PUBLIC COUNSEL**

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

**FFF. LONG-TERM CARE OMBUDSMAN**

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

**GGG. LICENSE/SERVICE OR OTHER AGREEMENTS**

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

## SECTION IV. SCOPE OF WORK

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

- A. SCOPE
- B. AMENDMENT
- C. REVISIONS

### Tips for Completing Section V

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

## SECTION V. INVITATION TO BID - TECHNICAL SPECIFICATIONS

This section contains the mandatory requirements that must be met by bidders in order to receive an award. Bidder must respond to each of the statements. Specifications are listed as minimum conditions that must be met in order for a Bidder to qualify for award.

## **Exhibit B**

# **ITB One-Time Purchase Boilerplate**

## SPB ITB Commodity One-Time Purchase Boilerplate Instructions

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

### Cover Page

This page includes basic instructions to the bidder and highlights some important dates, such as the release date and the deadline for questions. It is the vendor’s responsibility for watching SPB website for any and all updates to the ITB and the opening date. This form **MUST BE SIGNED** or the entire bid will be considered invalid and excluded from further consideration.

### Table of Contents

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

### Glossary of Terms

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

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

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

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

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

#### Why so many subsections?

Within each section are numerous subsections. SPB is often asked why there are so many subsections. Agencies must remember that the ITB is the beginning of the contract. For this reason, the ITB is written in a very detailed, point-by-point manner. The ITB and the bidder’s response become part of the final

contract. The subsections are a way to direct bidders to specific components of the document and eliminate potential points of confusion. It is possible to condense several of the subsections, but it is important to keep in mind that each subsection represents a unique point that may or may not become focal point of the final contract.

## **SECTION I. SCOPE OF THE INVITATION TO BID**

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

### **A. SCHEDULE OF EVENTS**

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

## **SECTION II. PROCUREMENT PROCEDURES**

This section provides some general guidelines for bidders regarding bid submission and contact with SPB.

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

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

### **B. GENERAL INFORMATION**

- Provides a brief description of the project.
- Reminds potential bidders to follow the submission instructions and schedules found in the ITB.

- Indicates the expected outcome of the ITB process, i.e. a fixed-price contract, and advises that the ITB documents become part of the final contract.

### **C. COMMUNICATION WITH STAFF AND EVALUATORS**

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

### **D. WRITTEN QUESTIONS AND ANSWERS**

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

### **E. PRE-BID CONFERENCE – optional**

- If the agency does not include a pre-bid conference this subsection is deleted.
- Indicates if pre-bid conference is optional or mandatory.
- If mandatory, a sign-up sheet is required, and the list will be posted to the website after the pre-bid conference takes place.
- Indicates methods of submitting questions and which questions are binding on the state.
- Addresses submission methods and requirements for the notification of intent to attend pre-bid conference (usually Form B)

### **F. SUBMISSION OF BIDS – agency input required**

- One original of the entire bid shall be submitted.
- Proprietary or confidential information must be properly identified.
- Bid responses must include Form A, Bidder Contact Sheet.
- Address labels must be clear and contain the ITB number clearly marked.

### **G. IMPORTANT NOTICE LANGUAGE**

- Pursuant to Neb. Rev. Stat. § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by law WILL BE POSTED FOR PUBLIC VIEWING. Bidders are required to waive copyrights' from privilege for posting on the public website.

### **H. DISCOUNTS**

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



#### **I. PAYMENT**

- Payment will be made according to Nebraska Prompt Payment Act (Neb. Rev. Stat. §§ 81-2401 – 81.2408)
- The State may require the Contractor to accept payment via electronic means such as ACH.
- In no event shall the State be responsible for or liable to pay for any goods provided by the Contractor prior to the contract start date.
- Contractor waives all claims or actions for any such services?

#### **J. BID EXECUTION**

- Bids must be signed in ink on the State of Nebraska's Invitation To Bid Form
- Erasures or alterations must be initialed in ink by the Bidder.
- No telephone or voice bids will be accepted.
- Failure to comply to the above provisions could result in rejection of bid.

#### **K. BID OPENING**

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

#### **L. ELECTRONIC DOCUMENTS/FACSIMILIE SUBMISSIONS**

- SPB does not accept electronic bids for commodity contracts over \$25,000, however, there is an exception for One-Time Commodity purchases of under \$25,000 where electronic bids are accepted if under 10 pages
- No direct electronic solicitation responses will be accepted by SPB for any commodity contract of any dollar amount.

#### **M. VALID BID TIME**

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

#### **N. ALTERNATE/EQUIVALENT BIDS**

- Bidder may offer bids which are at variance from the express specification of the Invitation To Bid.
- State reserves the right to consider and accept such bids, if in the judgment of the State Procurement Manager, the bid will result in goods equivalent to, or better than, those which would be supplied in original bid specifications.

#### **O. LATE BIDS**

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

#### **P. NO BID**

- To qualify as a "NO BID" Respondent, ITB must be received no later than the bid opening date and time.

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

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

#### **R. REJECTION OF BIDS**

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

#### **S. EVALUATION OF BIDS**

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

#### **T. BID TABULATIONS**

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

#### **U. MANDATORY REQUIREMENTS**

- Bid signature page must be signed.
- Agencies may add additional mandatory requirements.

#### **V. REFERENCE CHECKS**

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

#### **W. RECYCLING**

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

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

- Bidders should be authorized to do business in the State of Nebraska.
- Bidders are expected to comply with Secretary of State Registration requirements if awarded a contract.

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

#### **Y. RESIDENT BIDDER**

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

#### **Z. AWARD**

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

### **SECTION III. TERMS AND CONDITIONS**

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

#### **A. GENERAL**

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

#### **B. DEBARMENT**

- By signature of the ITB, the Contractor certifies that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal debarment or agency from participating in transactions.
- Agrees to include all requirements in any and all subcontracts into which it enters.
- Contractor shall immediately notify the Department if, during the term of this contract, contractor becomes debarred.

- Department may immediately terminate this contract by providing contractor written notices if contractor becomes debarred.

**C. SPECIFICATIONS**

- 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.
- Bidder may offer any brand that meets or exceeds expectations.
- ITB will state if a specific product is desired.

**D. SAMPLES**

- Samples will be furnished by Contractor before opening of the bid, or otherwise specified.
- Each sample must be labeled clearly with the Identity of the Bidder and the item number.
- Samples must represent the commodity or equipment that would be delivered if awarded the bid
- The State of Nebraska reserves the right to ask for samples even if it was not stated in the Invitation To Bid.

**E. PERFORMANCE AND DEFAULT**

- State reserves the right to require a performance bond from the successful Bidder, as provided by law, with no expense to the State.
- In case of default by the Contractor, the State may procure the articles from other sources and hold the Contractor responsible for any excel cost occasioned thereby.

**F. DRUG POLICY**

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

**G. NE ACCESS TECHNOLOGY STANDARDS**

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

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

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

**I. PERMITS, REGULATIONS, AND LAWS**

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

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

**J. OWNERSHIP OF INFORMATION AND DATA**

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

**K. INSURANCE REQUIREMENTS – some agency decisions required**

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

**L. COOPERATION WITH OTHER CONTRACTORS**

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

**M. INDEPENDENT CONTRACTOR**

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

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

**N. CONTRACTOR RESPONSIBILITY**

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

**O. CONTRACTOR PERSONNEL**

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

**P. BEGINNING OF WORK**

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

**Q. STATE PROPERTY**

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

**R. SITE RULES AND REGULATIONS**

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

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

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

**T. RIGHT TO AUDIT**

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

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

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

**V. TIME IS OF THE ESSENCE**

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

**W. CONFLICT OF INTEREST**

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

**X. BID PREPARATION COSTS**

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

**Y. ERRORS AND OMISSIONS**

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

**Z. ASSIGNMENT BY THE STATE**

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

**AA. ASSIGNMENT BY THE CONTRACTOR**

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

**BB. GOVERNING LAW**

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

**CC. ATTORNEY'S FEES**

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

**DD. ADVERTISING**

- Contractor shall not refer to the contract award in any advertising in such a way that implies an endorsement by or preference on the part of the State.
- News releases require the prior written permission of the State.

**EE. NOTIFICATION**

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

**FF. EARLY TERMINATION**

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



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

**GG. BREACH BY CONTRACTOR**

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

**HH. ASSURANCES BEFORE BREACH**

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

**II. ACCEPTANCE AND PAYMENT OF GOODS**

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

**JJ. BID BOND – agency decision required**

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

**KK. PERFORMANCE BOND – agency decision required**

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

**LL. FORCE MAJEURE**

- Neither party shall be responsible for failures to perform due to a natural disaster or other similar event out of the control and not the fault of the affected party.
- A Force Majeure Event does not constitute breach of contract.

- Labor disputes are not considered Force Majeure Events.
  - Burden of proof rests upon the Contractor.
- MM. PROHIBITION AGAINST ADVANCE PAYMENT – agency decision required**
- Payments shall not be made until deliverables are received and accepted by the State.
- NN. PAYMENT**
- Payment will be made according to the Nebraska Prompt Payment Act (Neb. Rev. Stat. §§ 81-2401-81-2408).
  - The State may require the Contractor to accept payment via electronic means, such as ACH.
  - In no event shall the State be responsible for or liable to pay for any services provided by the Contractor prior to the effective date of the fully executed contract. Contractor waives all claims or actions for any such services.
- OO. INVOICES – agency input required**
- The Contractor is required to submit detailed invoices that match deliverables identified on the contract.
  - Agencies may insert specific invoicing requirements here, such as a mailing address.
  - No invoice terms or conditions contained in an invoice, but not contained in the contract itself will be binding upon the State nor alters or amends the contract in any way.
- PP. TAXES**
- The State is not required to pay taxes of any kind.
  - The Contractor is responsible for any tax due on any of the Contractor's equipment which may be installed in or on State-owned facilities or property.
- QQ. INSPECTION AND APPROVAL**
- The State shall conduct a final inspection and approval of all work under the contract.
  - The State has the right to enter any premises where contract work is being performed and to inspect, monitor, and/or evaluate the work being performed.
- RR. SEVERABILITY**
- If any term or condition of the contract is declared invalid or illegal, such finding does not automatically carry to the remaining terms and conditions of the contract.
- SS. CONFIDENTIALITY**
- All materials provided by the State or acquired by the contractor on behalf of the State shall be considered confidential.
  - All confidential information shall be handled in accordance with applicable Federal and State law and ethical standards.
  - The Contractor must immediately notify the State of any breach of confidentiality.
  - The Contractor must comply with the Privacy Act of 1974.
- TT. PROPRIETARY INFORMATION**

- Data and documentation contained in a bid become property of the State of Nebraska and upon opening, become public information.
  - Bidder may identify certain information to withhold from the public, provided it falls within the definition of proprietary information in Nebraska's public record statutes.
  - All proprietary information must be submitted in a SEPARATE SEALED package clearly identified as proprietary.
  - Bidder may not mark its entire bid proprietary.
  - Bidder must prove that a competitor would directly benefit from the information marked proprietary in order to have it treated as such.
- IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by Law **WILL BE POSTED FOR PUBLIC VIEWING.**
- Bidders are required to waive copyrights' from privilege for posting on the public website.

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

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

**VV. PRICES – agency input required**

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

**WW. ETHICS IN PUBLIC CONTRACTING**

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

**XX. INDEMNIFICATION**

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

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

**YY. ANTITRUST**

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

**ZZ. EMPLOYEE WORK ELIGIBILITY STATUS**

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

**AAA. OFFICE OF PUBLIC COUNSEL**

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

**BBB. LONG-TERM CARE OMBUDSMAN**

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

**CCC. LICENSE/SERVICE OR OTHER AGREEMENTS**

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

## SECTION IV. SCOPE OF WORK

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

- A. SCOPE
- B. AMENDMENT
- C. REVISIONS

### Tips for Completing Section V

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

## SECTION V. INVITATION TO BID - TECHNICAL SPECIFICATIONS

This section contains the mandatory requirements that must be met by bidders in order to qualify for the award. Bidder must respond to each of the statements. The specifications are listed as minimum conditions that must be met in order for a Bidder to qualify for an award.