

**State of Nebraska Department of Health and Human Services  
REQUEST FOR QUALIFICATION FOR CONTRACTUAL  
SERVICES**

**RETURN TO:**  
DHHS: Central Procurement Services  
PO BOX 94926  
Lincoln, NE 68509  
E-mail: [dhhs.rfpquestions@nebraska.gov](mailto:dhhs.rfpquestions@nebraska.gov)

<b>SOLICITATION NUMBER</b>	<b>RELEASE DATE</b>
RFQ 109205 O3	September 29, 2021
<b>OPENING DATE AND TIME</b>	<b>PROCUREMENT CONTACT</b>
Continuous	Jennifer Crouse/Rene Botts

**PLEASE READ CAREFULLY!  
SCOPE OF SERVICE**

The State of Nebraska (State), Department of Health and Human Services (DHHS), is issuing this Request for Qualification (RFQ) Number 109205 O3 for the purpose of selecting qualified Bidders to provide Trauma or General Surgeons and Trauma Coordinator or Manager Registered Nurses.

The term of the contract will be five (5) years commencing upon execution of the contract. The Contract includes the option to renew for two (2) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR QUALIFICATION CAN BE FOUND ON THE INTERNET AT:  
[http://das.nebraska.gov/materiel/purchase\\_bureau/vendor/agency-rfp.html#Agency\\_Info](http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html#Agency_Info)

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the RFQ, and the successful bidder's proposal or response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov>.

In addition and in furtherance of the State's public records Statute (Neb. Rev. Stat. § 84-712 et seq.), all proposals or responses received regarding this RFQ will be posted to the State Purchasing Bureau public website.

These postings will include the entire proposal or response. Bidders must request that proprietary information be excluded from the posting. The bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously in black ink with the words "PROPRIETARY INFORMATION". The bidder must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) **THE BIDDER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. COST PROPOSALS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will determine, in its sole discretion, if the disclosure of the information designated by the Bidder as proprietary would 1) give advantage to business competitors and 2) serve no public purpose. The Bidder will be notified of the State's decision. Absent a determination by the State that the information may be withheld pursuant to Neb. Rev. Stat. § 84-712.05, the State will consider all information a public record subject to disclosure.

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

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

Any entity awarded a contract or submitting a proposal or response to the RFQ agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the RFQ, awards, and other documents.

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## I. PROJECT DESCRIPTION AND SCOPE OF WORK

### A. PURPOSE OF THE REQUEST FOR QUALIFICATIONS

The State of Nebraska is requesting qualified Trauma or General Surgeons and Trauma Coordinator or Manager Registered Nurses to evaluate the capacity of basic or general hospital applicant to provide quality trauma services and its ability to meet the equipment and performance standards at the level of designation sought in accordance with the "Nebraska Statewide Trauma Regulations (Title 185)." Department of Health and Human Services (DHHS) will provide standard designation evaluation forms to the evaluators.

DHHS requires that individuals or firms submit a response to this RFQ for DHHS approval in order to become a qualified Contractor. Individuals or firms may submit a response to this RFQ during the entire Contract period for qualification approval.

### B. NEBRASKA STATEWIDE TRAUMA SYSTEM DESCRIBED

There are currently 51 trauma designated hospitals in the State of Nebraska. Five are designated as general level trauma centers and 40 designated basic level trauma centers. Additional information included trauma center location may be found at the following link: <http://dhhs.ne.gov/Pages/EHS-Statewide-Trauma-System-of-Care.aspx>

The Nebraska Statewide Trauma System is a network of facilities that provide a continuum of care for injured patients. The goal of the Network is to create a comprehensive trauma care system. This system has been established to address all components of a trauma system to include: access to care, EMS services, initial resuscitation, acute care, rehabilitation, prevention and education.

One of the most important aspects of the system is the identification of each facility's capabilities to care for the trauma patient. Once each facility's resources have been identified, DHHS has the authority to make a formal designation, based on recommendations of the trauma system reviewers, regarding that facility based upon its capabilities. This enables decision-makers to better match each trauma patient's needs to the facility that has the resources necessary to meet those needs, improving outcomes and lowering the rate of unnecessary death and disability. System activities include providing consultation, reviewing hospital seeking designation, providing education and training, reviewing trauma registry data for systematic and patient injury, morbidity and mortality trends, make recommendations for system and trauma patient care improvement and other essential duties.

The current Nebraska Statewide Trauma System developed as a result of the legislative mandate of the Statewide Trauma System Act, Neb.Rev.Stat. 7-8201-71-8253 (1997). The current Nebraska State Trauma System is governed by the Nebraska Statewide Trauma System Act and Title 185 NAC 1 through 11, NE Statewide Trauma System Regulations.

### C. REGIONAL TRAUMA SYSTEM DEFINED

The State of Nebraska is divided into four regions. These trauma regions are based on patient referral patterns. The regions are defined in Title 185 NAC 1 through 11, NE Statewide Trauma System Regulations.

### D. REGIONAL BREAKDOWN BY COUNTY

The State of Nebraska is divided by Trauma Region as follows:

**Region 1:** Nance, Boone, Platte, Colfax, Dodge, Saunders, Douglas, Sarpy, Cass, Washington, Antelope, Madison, Stanton, Cuming, Burt, Thurston, Wayne, Pierce, Dakota, Dixon, Cedar, Knox, Boyd, Holt, and Keya Paha.

**Region 2:** Clay, Merrick, Polk, Butler, Hamilton, York, Seward, Lancaster, Adams, Saline, Otoe, Gage, Johnson, Nemaha, Webster, Nuckolls, Thayer, Jefferson, Pawnee, Fillmore, and Richardson.

**Region 3:** Franklin, Kearney, Hall, Howard, Greeley, Wheeler, Garfield, Valley, Sherman, Buffalo, Phelps, Harlan, Furnas, Gosper, Dawson, Custer, Loup, Blaine, McPherson, Logan, Lincoln, Hayes, Frontier, Hitchcock, Red Willow, Dundy, Hooker, Rock, Cherry, Brown, Chase and Thomas.

**Region 4:** Chase, Perkins, Keith, Arthur, Grant, Sheridan, Garden, Deuel, Cheyenne, Morrill, Box Butte, Dawes, Sioux, Scottsbluff, Banner and Kimball.

### E. TRAUMA CENTER LEVEL OF DESIGNATION

#### 1. Basic Trauma Center

The role of the basic trauma center is to stabilize, prepare and transfer all patients with potentially life threatening injuries. The facilities designated as basic trauma centers are hospitals or medical clinics based in rural areas. They should have trauma-trained physicians, physician assistants, or nurse practitioners available within 30-minutes, and basic equipment for resuscitation and stabilization. The hospitals involved

at the basic trauma level may also provide some limited surgical intervention based upon expertise or available on-site staff.

2. **General Trauma Center**  
The role of the general trauma center is to provide initial evaluation and stabilization (surgical, if appropriate) within 30-minutes and to provide general medical and surgical inpatient service to those patients who can be maintained in a stable or improving condition without specialized care. They also need to prepare and transfer patients meeting predetermined criteria to Comprehensive or Advanced Centers.
3. **Advanced Trauma Center**  
The role of the Advanced Trauma Center is to provide initial evaluation and stabilization (surgical, if appropriate) within 15-minutes and to provide general medical and surgical inpatient service to those patients who can be maintained in a stable or improving condition without specialized care. They also need to prepare and transfer patients meeting predetermined criteria to Comprehensive Centers.

#### **F. TRAUMA REVIEWER AND CONSULTANT QUALIFICATIONS**

See Attachment 2 Trauma Reviewer and Consultant Qualifications – Individual and Attachment 3 Trauma Reviewer and Consultant Qualifications – Firm.

#### **G. TRAUMA REVIEWER AND CONSULTANT (CONTRACTOR) SCOPE OF SERVICES**

The Contractor shall do the following:

1. The time span allotted for services will be determined by DHHS at the time of the request for service. It is anticipated that basic, general or advanced redesignation, designation, or consultation will take 4-5 hours. Focus orientation reviews will take approximately two hours. This is not inclusive of travel time, preparation or report writing but will be included in the time determined by DHHS at the time of the request for service.
2. The Contractor agrees to perform the following services as a reviewer either onsite or virtual visit as determined by the DHHS. The number of visits will vary from year to year based on the number of focused reviews and orientation visits:
  - a. Focused Reviews evaluates a hospital's compliance with the Nebraska Statewide Trauma Regulations and provides opportunities to educate hospital staff on how to be compliant with Nebraska Trauma Statutes and Regulations.
  - b. Orientation visits provide training to the trauma medical director or the trauma nurse coordinator or manager on their respective roles and compliance with the Nebraska Trauma Statutes and Regulations.
  - c. Prepare a written report within 15-calendar days after the visit in a standard format provided by DHHS. Report shall be typed and sent to DHHS electronically. Refer to attachment 4 for examples of the report.
  - d. At the request of DHHS, respond to questions pertaining to the content of the written report within five (5) working days.
  - e. Communicate with DHHS Staff as often as reasonably necessary to answer questions related to the report for the purpose of clarification or technical content and prepare revised reports at the request of the DHHS Staff within five (5) working days.
  - f. Upon approval of a final written report by DHHS, submit a DHHS invoice for services, provided by DHHS, within 30 calendar days.
  - g. This Contract involves the sharing of or access to Protected Health Information (PHI) and includes a Business Associate Agreement (BAA) for compliance with the Health Insurance Portability and Accountability Act (HIPAA).
3. The Contractor agrees to perform the following services as a reviewer either onsite or virtual visit as determined by DHHS. The number of visits will vary from year to year due to initial designation review, re-designation review, investigative complaint review and initial designation consultation visits:
  - a. Review trauma center application in preparation for trauma center review.
  - b. Evaluate the capacity of the applicant to provide quality trauma services and the ability to meet the equipment and performance standards at the level of designation sought in accordance with the "Nebraska Statewide Trauma Regulations."
  - c. Travel or perform virtual review as required to perform the duties identified herein.
  - d. Tour and inspect the physical facility.
  - e. Check equipment and supplies for appropriateness and not expired.

- f. Examine facility records to include but not limited to; patient care records, qualifications for required professionals, on call schedules and minutes related to trauma.
  - g. Interview appropriate individuals.
  - h. Review records of morbidity and mortality related to trauma.
  - i. Conduct exit interview with the applicant staff and management to report the findings of the team before leaving the facility.
  - j. Prepare a written report within 15-calendar days after the visit in a standard format provided by DHHS, which identifies trauma center criterion deficiencies and weaknesses, strengths, and write recommendations for correction of each deficiency and weakness identified. Report shall be typed and sent to DHHS electronically.
  - k. If a 90-day plan of corrective action plan is issued by DHHS based on the report deficiencies identified, review the corrective action plan documentation received by DHHS, within five (5) working days in a standard format provided by DHHS and make a recommendation as to whether the deficiencies identified have been corrected.
  - l. At the request of DHHS, respond to questions pertaining to the content of the written report within five (5) working days.
  - m. Communicate with DHHS Staff as often as reasonably necessary to answer questions related to the report for clarification or technical content questions and prepare revised reports at the request of DHHS Staff within five (5) working days.
  - n. Upon approval of a final written report by DHHS, submit a written invoice for services provided to DHHS within 30 days.
  - o. This Contract involves the sharing of or access to Protected Health Information (PHI) and includes a Business Associate Agreement (BAA) for compliance with the Health Insurance Portability and Accountability Act (HIPAA). See Attachment 5.
4. The Contractor agrees to perform the following services as a Trauma System Consultant for technical assistance as requested by DHHS:
- a. Provide DHHS with an estimate on the number of hours it will take to complete the technical assistance request for approval.
  - b. Assist DHHS to answer technical questions pertaining to the trauma system of care, trauma center application, designation process and assist with preparation and review of written educational materials.
  - c. Assist DHHS in identifying educational needs at area hospitals and report findings to DHHS.
  - d. Prepare a written report within 15-calendar days after the visit in a standard format provided by DHHS. Report shall be typed and sent to DHHS electronically.
  - e. At the request of DHHS, respond to questions pertaining to the content of the written report within five (5) working days.
  - f. Communicate with the DHHS Staff as often as reasonably necessary to answer questions related to the report for clarification or technical content questions and prepare revised reports at the request of the DHHS Staff within five (5) working days.
  - g. Upon approval of a final written report and any other documents requested in the technical assistance request by DHHS, submit a written invoice for services provided to DHHS within 30 calendar days.
  - h. This Contract involves the sharing of or access to PHI and includes a BAA for compliance with the Health Insurance Portability and Accountability Act (HIPAA). See Attachment 5.

**H. SURGEON/PHYSICIAN AND REGISTERED NURSE FEE FOR SERVICES**

- 1. DHHS shall pay the Contractor:
  - a. \$1,000.00 (one thousand and no cents) per initial designation review, re-designation review, investigative complaint review or initial consultation review at the Basic or General Level
  - b. \$1,400 (one thousand four hundred and no cents) per initial designation review, redesignation review, investigative complaint review or initial consultation review at the Advanced Level.
  - c. \$750.00 (seven hundred fifty and no cents) per focused review and orientation review.
  - d. \$150.00 (one hundred fifty and no cents) per technical assistance request.
  - e. \$150.00 (one hundred fifty and no cents) per hour for comprehensive technical assistance request as determined by DHHS.
- 2. Contractor's payment will not be initiated until DHHS receives a written report, invoice.

## II. TRAUMA REVIEWER SELECTION PROCESS

### A. PROCESS

1. DHHS will determine the need for a:
  - a. Trauma Hospital Designation Visit
  - b. Trauma Hospital Re-Designation Visit
  - c. Trauma Hospital Orientation Visit
  - d. Trauma Hospital Focused Review Visit
  - e. Investigative Complaint Review
  - f. Initial Designation Consultation Visit
  - g. Technical Assistance
2. DHHS will send an email out qualified reviewers requesting availability for a specific date and time and outlining the needs for each type of visit, (i.e. how many nurse and/or physician reviewers are needed).
3. Available reviewers/consultants will respond to the email request.
4. Reviewers are selected by DHHS based on:
  - a. Which Trauma Regions the qualified reviewers/consultants may come from.
  - b. Dates and times that the hospital has requested and reviewer availability.
  - c. Number of reviewers/consultants needed and their qualifications (i.e. nurse or physician, years of experience, which level of trauma center employed at, distance travelled)
  - d. Reviewers are selected based on the oldest review they have conducted.
5. All qualified reviewers/consultants will be sent an email notifying reviewers and alternates selected for the review.

The process will not include a bid for service as the reviewer/consulting fees are set by DHHS.

### III. PROCUREMENT PROCEDURE

#### A. GENERAL INFORMATION

The RFQ is designed to solicit proposals from qualified bidders who will be responsible for providing Trauma or General Surgeons and Trauma Coordinator or Manager Registered Nurses to Department of Health and Human Services (DHHS). Proposals that do not conform to the mandatory items as indicated in the RFQ will not be considered.

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

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

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

Procurement responsibilities related to this RFQ reside with DHHS Procurement. The point of contact (POC) for the procurement is as follows:

Name: Jennifer Crouse and Rene Botts  
Agency: DHHS Central Procurement Services  
Address: 301 Centennial Mall South  
Lincoln, NE 68508  
Telephone: 402-471-0524  
E-Mail: dhhs.rfpquestions@nebraska.gov

From the date the RFQ is issued until the Intent to Award is issued, communication from the Bidder is limited to the POC listed above. After the Intent to Award is issued, the Bidder may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this RFQ. The POC will issue any clarifications or opinions regarding this RFQ in writing. Only the buyer can modify the RFQ, answer questions, render opinions, and only DHHS can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this RFQ.

The following exceptions to these restrictions are permitted:

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

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

#### C. QUALIFICATION REQUIREMENTS - INDIVIDUAL

The proposals will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Proposals not meeting the requirements may be rejected as non-responsive. If the bidder is an individual, the bidder should provide the following information in response to this RFQ:

1. Attachment 1 - Request for Qualification for Contractual Services Form
2. Attachment 2 – Trauma Reviewer And Consultant Qualifications – Individual
3. Supporting Documentation for Attachment 2
4. Proof of insurance per section V.G
1. Response to sections IV through VI, if bidder takes any exception
5. Complete a [Vendor Application](#), if not already a registered vendor with the State of Nebraska

#### D. QUALIFICATION REQUIREMENTS – FIRM

The proposals will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Proposals not meeting the requirements may be rejected as non-responsive. If the bidder is a firm, the bidder should provide the following information in response to this RFQ:

2. Attachment 1 - Request for Qualification for Contractual Services Form
3. Attachment 3 – Trauma Reviewer And Consultant Qualifications – Firm



4. Supporting Documentation for Attachment 3
5. Proof of insurance per section V.H
6. Response to sections IV through VI, if bidder takes any exception
7. Complete a [Vendor Application](#), if not already a registered vendor with the State of Nebraska

**E. SCHEDULE OF EVENTS**

The State expects to adhere to the procurement schedule shown below, but all dates are approximate and subject to change.

ACTIVITY		DATE/TIME
1.	Release RFQ	September 29, 2021
2.	Last day to submit written questions	October 13, 2021
3.	State responds to written questions through RFQ "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html">http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html</a>	October 19, 2021
4.	Initial Proposal Opening  WebEx  <a href="https://sonvideo.webex.com/sonvideo/j.php?MTID=m2ee3fb0bd1c14d207d34c5b02c853584">https://sonvideo.webex.com/sonvideo/j.php?MTID=m2ee3fb0bd1c14d207d34c5b02c853584</a>	December 3, 2021 2:00 PM Central Time
6.	Initial Evaluation period	December 4, 2021 though December 30, 2021
7.	Post "Intent to Award" to Internet at: <a href="http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html">http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html</a>	Continuous
8.	Contract finalization period	Continuous
9.	Contract award	Continuous
10.	Contractor start date	Continuous

**F. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any RFQ provision must be submitted in writing to the State Purchasing Bureau and clearly marked "RFQ Number 109205 O3; Trauma or General Surgeons and Trauma Coordinator or Manager Registered Nurses Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

It is preferred that questions be sent via e-mail to [dhhs.rfpquestions@nebraska.gov](mailto:dhhs.rfpquestions@nebraska.gov), but may be delivered by hand or by U.S. Mail. It is recommended that Bidders submit questions using the following format.

RFQ Reference	Section	RFQ Number	Page	Question

Written answers will be posted at [http://das.nebraska.gov/materiel/purchase\\_bureau/vendor/agency-rfp.html](http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html) per the Schedule of Events.

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

All Contractors must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The bidder who is the recipient of an Intent to Award may be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the contract.

**H. ETHICS IN PUBLIC CONTRACTING**

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

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;

3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity;
4. Submitting a proposal on behalf of another Party or entity; and
5. Collude with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the bid, or prejudice the State.

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

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

#### **I. DEVIATIONS FROM THE REQUEST FOR QUALIFICATIONS**

The requirements contained in the RFQ become a part of the terms and conditions of the contract resulting from this RFQ. Any deviations from the RFQ in Sections IV through VI must be clearly defined by the bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the RFQ, requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this RFQ, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this RFQ. The State discourages deviations and reserves the right to reject proposed deviations.

#### **J. SUBMISSION OF PROPOSALS**

The State is accepting either electronically submitted responses or hard copy, paper responses for this RFQ.

1. For bidders submitting electronic responses:

Bidders submitting electronically can upload the response via ShareFile here:

- i. <https://nebraska.sharefile.com/r-r04ce20c9cca64c708e37ab3dfdf6f663>
- ii. ShareFile works with Firefox, Internet Explorer and Chrome. It does not work with Microsoft Edge.

If multiple proposals are submitted, the State will retain only the most recently submitted response. It is the bidder's responsibility to submit the proposal by the date and time indicated in the Schedule of Events. Electronic proposals must be received by DHHS by the date and time of the proposal opening per the Schedule of Events. No late proposals will be accepted.

##### **ELECTRONIC PROPOSAL FILE NAMES**

The bidder should clearly identify the uploaded RFQ proposal files. To assist in identification please use the following naming convention:

- i. RFQ 109205 O3 ABC Company
- ii. If multiple files are submitted for one RFQ proposal, add number of files to file names: RFQ 109205 O3 ABC Company File 1 of 2.
- iii. If multiple RFQ proposals are submitted for the same RFQ, add the proposal number to the file names: RFQ 109205 O3 ABC Company Proposal 1 File 1 of 2.

2. For bidders submitting paper/hard copy responses:

Bidders who are submitting a paper response should submit one proposal marked on the first page: "ORIGINAL". If multiple proposals are submitted, the State will retain one copy marked "ORIGINAL" and destroy the other copies. The bidder is solely responsible for any variance between the copies submitted. Proposal responses should include the completed Form A, "Contractor Proposal Point of Contact". Proposals must reference the RFQ number and be sent to the specified address. Please note that the address label should appear as specified in Section I B. on the face of each container or contractor's proposal response packet. If a recipient phone number is required for delivery purposes, 402-471-0524 should be used. The RFQ number should be included in all correspondence. The State will not furnish packaging and sealing materials. It is the contractor's responsibility to ensure the solicitation is received in a sealed envelope or container and submitted by the date and time indicated in the Schedule of Events. Sealed proposals must be received by DHHS by the date and time of the proposal opening per the Schedule of Events. No late proposals will be accepted.

United States Postal Services (USPS) delivered proposal responses shall be mailed to:

ATTN: Jennifer Crouse  
DHHS - Central Procurement Services

PO BOX 94926  
Lincoln, NE 68509

Hand delivered proposal responses or responses delivered by Federal Express (FedEx), United Parcel Service (UPS), etc. shall be delivered to:

ATTN: Jennifer Crouse  
DHHS - 3rd Floor Reception Desk  
301 Centennial Mall South  
Lincoln, NE 68509

Proprietary Information should be presented in separate sections (loose-leaf binders are preferred) on standard 8 ½" x 11" paper, except that charts, diagrams and the like may be on fold-outs which, when folded, fit into the 8 ½" by 11" format. Pages may be consecutively numbered for the entire proposal, or may be numbered consecutively within sections. Figures and tables should be numbered consecutively within sections. Figures and tables should be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

3. The State will not furnish packaging or sealing materials. It is the bidder's responsibility to ensure the solicitation is received either electronically or in a sealed envelope or container and submitted by the date and time indicated in the Schedule of Events. Sealed proposals must be received in by DHHS by the date and time of the proposal opening per the Schedule of Events.

The Request for Qualification form must be manually signed in an indelible manner or by DocuSign and returned by the proposal opening date and time along with the contractor's Request for Qualification along with any other requirements as stated in the Request for Qualification document in order for the contractor's Request for Qualification response to be evaluated.

It is the responsibility of the contractor to check the website for all information relevant to this Request for Qualification to include addenda and/or amendments issued prior to the opening date. Website address is as follows: [http://das.nebraska.gov/materiel/purchase\\_bureau/vendor/agency-rfp.html](http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html).

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

By signing the "Request for Qualification for Contractual Services" form, the contractor guarantees compliance with the provisions stated in this solicitation.

**K. BID PREPARATION COSTS**

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

**L. FAILURE TO COMPLY WITH REQUEST FOR QUALIFICATION**

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

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

**M. EVALUATION COMMITTEE**

Proposals are evaluated by members of an Evaluation Committee(s). The Evaluation Committee(s) will consist of individuals selected at the discretion of the State. Names of the members of the Evaluation Committee(s) will not be published prior to the intent to award.

Any contact, attempted contact, or attempt to influence an evaluator that is involved with this RFQ may result in the rejection of this proposal and further administrative actions.

## **N. EVALUATION OF PROPOSALS**

All proposals that are responsive to the RFQ will be evaluated to verify if the bidder will be accepted into the Contractor Pool. The State will conduct a fair, impartial, and comprehensive evaluation of all proposals in accordance with the criteria set forth herein. Evaluation will be based on information provided in Attachment 2 – Trauma Reviewer And Consultant Qualifications – Individual or Attachment 3 – Trauma Reviewer And Consultant Qualifications – Firm, as applicable. To qualify for the Contractor Pool, Bidders must pass each qualification for Trauma Reviewer as applicable. DHHS reserves the right to reject or accept the proposal from a Firm based on the responses from questions 4 - 8 on Attachment 3.

**Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran 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.**

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a proposal in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the RFQ 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:

1. Documentation from the United States Armed Forces confirming service;
2. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
3. 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
4. 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.

## **O. REFERENCE AND CREDIT CHECKS**

The State reserves the right to conduct and consider reference and credit checks. The State reserves the right to use third parties to conduct reference and credit checks. By submitting a proposal in response to this RFQ, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients. Reference and credit checks may be grounds to reject a proposal, withdraw an intent to award, or rescind the award of a contract.

## **P. ESTABLISHMENT OF CONTRACTOR POOL**

The State reserves the right to evaluate proposals and establish a Contractor pool in a manner utilizing criteria selected at the State's discretion and in the State's best interest. After evaluation of the proposals, or at any point in the RFQ process, the State of Nebraska may take one (1) or more of the following actions:

1. Amend the RFQ;
2. Extend the time of or establish a new proposal opening time;
3. Waive deviations or errors in the State's RFQ process and in bidder proposals that are not material, and do not compromise the RFQ process or a bidder's proposal;
4. Accept or reject a one or more vendors;
5. Accept or reject all vendors in the pool;
6. Withdraw the RFQ;
7. Elect to rebid the RFQ;

The RFQ does not commit the State to award a contract to perform any services but only serves notice as a desire to be considered for requests for quotes. Once a Contractor pool has been determined, it will be posted to the Internet at:

[http://das.nebraska.gov/materiel/purchase\\_bureau/vendor/agency-rfp.html](http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html)

Throughout the term of the RFQ, the Contractor shall be responsible for notifying the State of changes to their contact information, as well as sending the State written notification requesting they no longer be included in the Contractor Pool. The State shall not be held responsible for a Contractor not receiving communications due to a Contractor neglecting to notify the State with updated contact information.

Grievance and protest procedure is available on the Internet at:

<http://dhhs.ne.gov/Documents/DHHS%20Grievance%20Protest%20Procedures%20for%20Vendors%2020180320.pdf#search=protest>

Any protests of the rejection of a bidder's proposal to join the Contractor pool must be filed by a bidder within ten (10) business days after the intent to award decision is posted to the Internet.

#### IV. TERMS AND CONDITIONS

**Bidders should complete Sections IV through VI as part of their proposal.** Bidder is expected to read the Terms and Conditions. Any Bidders that takes exception to any Terms and Condition must do so in writing and should provide alternative language for each clause. The bidder should also provide an explanation of why the bidder rejected the clause or rejected the clause and provided alternate language. By signing the RFQ, bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language. If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State of Nebraska is soliciting proposals in response to this RFQ. The State of Nebraska reserves the right to reject proposals that attempt to substitute the bidder's commercial contracts and/or documents for this RFQ.

The bidders should submit with their proposal any license, certification, or similar documents that the bidder wants incorporated in the Contract. The State will not consider incorporation of any document not submitted with the bidder's proposal as the document will not have been included in the evaluation process. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

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

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

##### A. GENERAL

The contract resulting from this RFQ shall incorporate the following documents:

1. Amendment to Contract Award with the most recent dated amendment having the highest priority;
2. Contract Award and any attached Addenda;
3. Bidder's response (RFQ and properly submitted documents);
2. Amendments to the RFQ;
3. Questions and Answers;
6. Original RFQ document and any Addenda.

These documents constitute the entirety of the contract.

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

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

##### B. NOTIFICATION

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

Contractor Contract Manager
Contractor
Contractor Street Address
Contractor City, State, Zip

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

**C. GOVERNING LAW (Statutory)**

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

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

**D. BEGINNING OF WORK**

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

**E. CHANGE ORDERS**

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the RFQ. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

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

**F. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

**G. BREACH**

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

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

**H. NON-WAIVER OF BREACH**

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

**I. SEVERABILITY**

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

**J. INDEMNIFICATION**

**1. GENERAL**

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

**2. PERSONNEL**

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

**3. SELF-INSURANCE**

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

**4.** The Parties acknowledge that Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

**K. ATTORNEY'S FEES**

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

**L. ASSIGNMENT, SALE, OR MERGER**

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

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**M. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS**

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.



**N. FORCE MAJEURE**

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

**O. CONFIDENTIALITY**

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

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

**P. OFFICE OF PUBLIC COUNSEL (Statutory)**

If it provides, under the terms of this contract and on behalf of the State of Nebraska, health and human services to individuals; service delivery; service coordination; or case management, Contractor shall submit to the jurisdiction of the Office of Public Counsel, pursuant to Neb. Rev. Stat. §§ 81-8,240 et seq. This section shall survive the termination of this contract.

**Q. LONG-TERM CARE OMBUDSMAN (Statutory)**

Contractor must comply with the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 et seq. This section shall survive the termination of this contract.

**R. EARLY TERMINATION**

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day’s written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor’s assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support of the deliverable; and,
  - i. In the event funding is no longer available.

**S. CONTRACT CLOSEOUT**

Upon contract closeout for any reason the Contractor shall within thirty (30) days, unless stated otherwise herein:

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

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

## V. CONTRACTOR DUTIES

### A. INDEPENDENT CONTRACTOR / OBLIGATIONS

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

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

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

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

All personnel assigned by the Contractor to the contract shall be employees of the Contractor or a subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

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

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

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the bidder's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

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

Contractor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this contract.

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

### B. EMPLOYEE WORK ELIGIBILITY STATUS

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

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

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>
2. The completed United States Attestation Form should be submitted with the RFQ response.

3. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
4. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

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

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

**D. COOPERATION WITH OTHER CONTRACTORS**

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

**E. PERMITS, REGULATIONS, LAWS**

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

**F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES**

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

The State shall own and hold exclusive title to any deliverable developed as a result of this contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

**G. INSURANCE REQUIREMENTS – INDIVIDUAL**

1. The Contractor must possess a valid driver's license if the Contractor drives to or from any location to provide services under this Contract. If the Contractor does drive to or from any location to provide services under this Contract, the Contractor shall carry auto liability insurance which, at a minimum, conforms to the statutory minimums as required by Nebraska law; and

The Contractor shall not commence work under this Contract until all the insurance required hereunder has been obtained. The Contractor shall maintain required insurance for the life of this Contract.

2. **EVIDENCE OF COVERAGE**

The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

Attn: DHHS Contracts Administrator  
301 Centennial Mall South, Lower Level  
Lincoln, NE 68508

These certificates or the cover sheet shall reference the RFQ number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to the contract manager as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

#### H. INSURANCE REQUIREMENTS - FIRM

The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Acord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor must, throughout the term of the contract, either:

1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;
2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any subcontractor to commence work until the subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within one (1) year of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and one (1) year following termination or expiration of the contract.

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

Notwithstanding any other clause in this Contract, the State may recover up to the liability limits of the insurance policies required herein.

##### 1. WORKERS' COMPENSATION INSURANCE

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

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

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

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

<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$5,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
Independent Contractors	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$1,000,000 per occurrence
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

If the mandatory COI subrogation waiver language or mandatory COI liability waiver language on the COI states that the waiver is subject to, condition upon, or otherwise limit by the insurance policy, a copy of the relevant sections of the policy must be submitted with the COI so the State can review the limitations imposed by the insurance policy.

**3. EVIDENCE OF COVERAGE**

The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

Attn: DHHS Contracts Administrator  
301 Centennial Mall South, Lower Level  
Lincoln, NE 68508

These certificates or the cover sheet shall reference the RFQ number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to the contract manager as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

**4. DEVIATIONS**

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contractor.

**I. ANTITRUST**

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

**J. CONFLICT OF INTEREST**

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

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

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

The Parties shall not knowingly, for a period of two years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the RFQ or project, or who had any influence on decisions affecting the RFQ or project.

**K. STATE PROPERTY**

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

**L. SITE RULES AND REGULATIONS**

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

**M. ADVERTISING**

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

**N. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)**

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

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

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

**P. DRUG POLICY**

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

## **VI. PAYMENT**

### **A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)**

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

### **B. TAXES (Statutory)**

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

### **C. INSPECTION AND APPROVAL**

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

### **D. PAYMENT**

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section 73-506(1)) Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

### **E. LATE PAYMENT (Statutory)**

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

### **F. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS**

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

### **G. RIGHT TO AUDIT (First Paragraph is Statutory)**

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

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



## VII. BUSINESS ASSOCIATES PROVISIONS

1. **BUSINESS ASSOCIATE.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the party in this Contract, shall mean Contractor.
2. **COVERED ENTITY.** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this Contract, shall mean DHHS.
3. **HIPAA RULES.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
4. **OTHER TERMS.** The following terms shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
5. **THE CONTRACTOR** shall do the following:
  - 5.1. Not use or disclose Protected Health Information other than as permitted or required by this Contract or as required by law. Contractor may use Protected Health Information for the purposes of managing its internal business processes relating to its functions and performance under this Contract. Use or disclosure must be consistent with DHHS' minimum necessary policies and procedures.
  - 5.2. Implement and maintain appropriate administrative, physical, and technical safeguards to prevent access to and the unauthorized use and disclosure of Protected Health Information. Comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for in this Contract and assess potential risks and vulnerabilities to the individual health data in its care and custody and develop, implement, and maintain reasonable security measures.
  - 5.3. To the extent Contractor is to carry out one or more of the DHHS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to DHHS in the performance of such obligations. Contractor may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by DHHS.
  - 5.4. In accordance with 45 CFR §§ 164.502(E)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agents and subcontractors that create, receive, maintain, or transmit Protected Health Information received from DHHS, or created by or received from the Contractor on behalf of DHHS, agree in writing to the same restrictions, conditions, and requirements relating to the confidentiality, care, custody, and minimum use of Protected Health Information that apply to the Contractor with respect to such information.
  - 5.5. Obtain reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.
  - 5.6. Within fifteen (15) days:
    - 5.6.1. Make available Protected Health Information to DHHS as necessary to satisfy DHHS' obligations under 45 CFR § 164.524;
    - 5.6.2. Make any amendment(s) to Protected Health Information as directed or agreed to by DHHS pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy DHHS' obligations under 45 CFR § 164.526;
    - 5.6.3. Maintain and make available the information required to provide an accounting of disclosures to DHHS as necessary to satisfy DHHS' obligations under 45 CFR § 164.528.
  - 5.7. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Contractor on behalf of the DHHS available to the Secretary for purposes of determining compliance with the HIPAA rules. Contractor shall provide DHHS with copies of the information it has made available to the Secretary.
  - 5.8. Report to DHHS within fifteen (15) days, any unauthorized use or disclosure of Protected Health Information made in violation of this Contract, or the HIPAA rules, including any security incident that may put electronic Protected Health Information at risk. Contractor shall, as instructed by DHHS, take immediate steps to mitigate any harmful effect of such unauthorized disclosure of Protected Health Information pursuant to the conditions of this Contract through the preparation and completion of a written Corrective Action Plan subject to the review and approval by DHHS. The Contractor shall report any breach to the individuals affected and to the Secretary as required by the HIPAA rules.
6. **TERMINATION.**
  - 6.1. DHHS may immediately terminate this Contract and any and all associated contracts if DHHS determines that the Contractor has violated a material term of this Contract.
  - 6.2. Within thirty (30) days of expiration or termination of this Contract, or as agreed, unless Contractor requests and DHHS authorizes a longer period of time, Contractor shall return or at the written direction of DHHS destroy all Protected Health Information received from DHHS (or created or received by Contractor on behalf of DHHS) that

Contractor still maintains in any form and retain no copies of such Protected Health Information. Contractor shall provide a written certification to DHHS that all such Protected Health Information has been returned or destroyed (if so instructed), whichever is deemed appropriate. If such return or destruction is determined by the DHHS be infeasible, Contractor shall use such Protected Health Information only for purposes that makes such return or destruction infeasible and the provisions of this Contract shall survive with respect to such Protected Health Information.

- 6.3. The obligations of the Contractor under the Termination Section shall survive the termination of this Contract.

## GLOSSARY OF TERMS

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

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

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

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

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

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

**Award:** All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the RFQ. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

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

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

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

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

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

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

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

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

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

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

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

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

**Contract Award:** Occurs upon execution of the State document titled "Service Contract Award" by the proper authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Proposal:** See Bid/Proposal.

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

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

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

**Renewal Period:** Optional contract periods subsequent to the original Contract Period for a specified duration with

previously agreed to terms and conditions. Not to be confused with Extension.

**Request for Qualification (RFQ):** A written solicitation utilized for obtaining qualification offers.

**Request for Quote:** A written solicitation utilized for obtaining quotes from the qualified Contractor pool.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Work Day:** See Business Day.

## ACRONYM LIST

**BAA** – Business Associate Agreement

**COI** – Certificate of Insurance

**DHHS** – Department of Health and Human Services

**FedEx** – Federal Express

**F.O.B.** – Free on Board

**HIPPA** – Health Insurance Portability and Accountability Act

**PHI** – Protected Health Information

**RFQ** – Request for Qualifications

**SPB** – State Purchasing Bureau

**UPS** – United Parcel Service

**USPS** – United States Postal Service

## LIST OF ATTACHMENTS

### Attachments:

1. Request for Qualification for Contractual Services Form
2. DHHS Trauma Reviewer And Consultant Qualifications – Individual
3. DHHS Trauma Reviewer And Consultant Qualifications – Firm
4. Example Reports
5. HIPAA Compliance BAA