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

**RETURN TO: Department of Health and Human Services, Central Procurement**
**ATTN: Carrie Olson & Jennifer Crouse**
**301 Centennial Mall South**
**Lincoln, NE 68509**
**402-471-6484**

| SOLICITATION NUMBER | RELEASE DATE |
|---|---|
| RFP 111104 O3 | March 9th, 2022 |
| **OPENING DATE AND TIME** | **PROCUREMENT CONTACT** |
| April 18th , 2022 2:00 p.m. Central Time | Carrie Olson & Jennifer Crouse |

## PLEASE READ CAREFULLY!

## SCOPE OF SERVICE

The State of Nebraska (State), Department of Health and Human Services (DHHS), is issuing this Request for Proposal (RFP) Number 111104 O3 for the purpose of selecting a qualified bidder to provide phlebotomy and laboratory services for DHHS Lincoln Regional Center Facility (LRC) located at 801 W. Prospector Place, Lincoln, NE 68522 and laboratory services for LRC Whitehall Facility located at 5900 Walker Avenue, Lincoln, NE, 68507. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar services from other sources now or in the future.

The term of the contract will be two (2) years commencing upon execution of the contract by the State and the Contractor. The Contract includes the option to renew for one (1) additional two (2) year period 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 PROPOSAL CAN BE FOUND ON THE INTERNET AT: **http://das.nebraska.gov/materiel/purchasing.html**.

**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 solicitation, and the successful awarded bidder's proposal and response will be posted to a public website managed by DAS, which can be found at http://statecontracts.nebraska.gov And** https://www.nebraska.gov/das/materiel/purchasing/contract_search/index.php**.**

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 solicitation will be posted to the State Purchasing Bureau public website.

**These postings will include the entire proposal or response. Bidder must request that proprietary information be excluded from the posting. The Bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION". The Bidder should 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 State 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 solicitation 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 solicitation, specifically waives any copyright or other protection the contract, proposal, or response to the solicitation may have; and, acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a proposal or response to this solicitation, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the solicitation being found non-responsive and rejected.**

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

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# GLOSSARY OF TERMS

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

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

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

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

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

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

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

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

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

**Best and Final Offer (BAFO):** In a competitive proposal, the final offer submitted which contains the contractor's most favorable terms for price.

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

**Bidder:** A vendor who submits a proposal in response to a written solicitation.

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

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

**Business Day:** 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 or contract without expectation of conducting or performing it at a later time.

**Change Order**: Document that provides an addendum and/or 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 administration 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:** An individual or entity lawfully conducting business in the State, or licensed to do so, who seeks to provide goods or services under the terms of a written solicitation.

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

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

**Customer Service**: The process of ensuring customer satisfaction by providing assistance and advice on those products or services provided by 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 contractor'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 proposals (offers made in response to written solicitations).

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

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

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

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

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

**Invalid Proposal:** A proposal that does not meet the requirements of the solicitation or cannot be evaluated against the other proposals.

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

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

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

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

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

**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.

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

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

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

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

**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:** Bidder's response to a written solicitation

**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 solicitation or resultant contract, brought by a bidder who has submitted a proposal response by the opening date and time in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

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

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

**Responsible Contractor:** A contractor 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 proposal which conforms to all requirements of the solicitation document.

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

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

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

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

**Subcontractor:** Individual or entity with whom the 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 sub-contractors or agents, and their employees. It shall not include any entity

or person who is an interested Party to the contract or agreement.

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

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

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

**Vendor Performance Report:** A report completed by the using agency and submitted to State Purchasing Bureau documenting products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications.

**Vendor:** An individual or entity lawfully conducting business with the State.

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

**Work Day:** See Business Day.

# ACRONYM LIST

**ARO** – After Receipt of Order

**BAFO** – Best and Final Offer

**COI** – Certificate of Insurance

**DAS** – Department of Administrative Services

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

**LRC** – Lincoln Regional Center

**RFP** – Request for Proposal

**SPB** – State Purchasing Bureau

## I. PROCUREMENT PROCEDURE

### A. GENERAL INFORMATION

The solicitation is designed to solicit proposals from qualified bidders who will be responsible for providing phlebotomy and laboratory services for the DHHS Lincoln Regional Center Facility (LRC) and laboratory services for LRC Whitehall Facility at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Proposal instructions, and Cost Proposal Requirements may be found in Sections II through IV.

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

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

Procurement responsibilities related to this solicitation reside with Department of Health and Human Services. The point of contact (POC) for the procurement is as follows:

Name: Carrie Olson & Jennifer Crouse
Agency: Department of Health and Human Services, Central Procurement
Address: 301 Centennial Mall S
Lincoln, NE 68509

Telephone: 402-471-6484

E-Mail: Dhhs.rfpquestions@nebraska.gov

From the date the solicitation 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 solicitation. The POC will issue any answers, clarifications or amendments regarding this solicitation in writing. Only the SPB or awarding agency can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this solicitation.

The following exceptions to these restrictions are permitted:

**1.** Contact made pursuant to pre-existing contracts or obligations;
**2.** Contact required by the schedule of events or an event scheduled later by the solicitation 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. 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 Solicitation | March 9, 2022 |
| 2. | Last day to submit written questions | March 23, 2022 |
| 3. | State responds to written questions through Solicitation "Addendum" and/or "Amendment" to be posted to the Internet at: http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html | April 6, 2022 |
| 4. | Proposal Opening:<br><br>**Join from the meeting link**<br>https://sonvideo.webex.com/sonvideo/j.php?MTID=m29ab9bff15061f0d2e4249d24cc9f2e0<br><br>**Join by meeting number**<br>Meeting number (access code): 2499 225 9697<br><br>Meeting password: 111104<br><br>**Tap to join from a mobile device (attendees only)**<br>+1-408-418-9388,,24992259697##<br>United States Toll<br><br>**Join by phone**<br>+1-408-418-9388 United States Toll<br>Global call-in numbers<br><br>**Join from a video system or application**<br>Dial 24992259697@sonvideo.webex.com<br><br>You can also dial 173.243.2.68 and enter your meeting number.<br><br>Location for mailed/hand delivered response:<br>Department of Health and Human Services<br>301 Centennial Mall S., 3rd Floor<br>Lincoln, NE 68509 | April 18, 2022<br>2:00 PM<br>Central Time |
| 5. | Review for conformance to solicitation requirements | May 4, 2022 |
| 6. | Evaluation period | May 11-16, 2022 |
| 7. | Post "Notification of Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html | May 30, 2022 |
| 8. | Contract finalization period | June 13, 2022 |
| 9. | Contract award | June 27, 2022 |
| 10. | Contractor start date | July 1, 2022 |

**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to Department of Health and Human Services, Central Procurement, ATTN Carrie Olson & Jennifer Crouse and clearly marked "RFP Number 111104 O3; Phlebotomy and Laboratory services for DHHS Lincoln Regional Center Facility (LRC) and LRC Whitehall Facility Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

Contractors should present, as questions, any assumptions upon which the bidder's proposal is or might be developed. Any proposal containing assumptions may be deemed non-responsive. Non-responsive proposals may be rejected by the State. Proposals will be evaluated without consideration of any known or unknown assumptions of a bidder. The contract will not incorporate any known or unknown assumptions of a bidder.

It is preferred that questions be sent via e-mail to 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.

| Solicitation Section Reference | Solicitation Page Number | Question |
|---|---|---|
| | | |

Written answers will be posted at http://das.nebraska.gov/materiel/purchasing.html per the Schedule of Events.

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

All bidders 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.

**F. ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject proposals, withdraw an award or 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 proposal, or prejudice the State.

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

Contractor 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 awarded bidder and their subcontractors.

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

The requirements contained in the solicitation (Sections II thru VI) become a part of the terms and conditions of the contract resulting from this solicitation. Any deviations from the solicitation in Sections II 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 solicitation, requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this solicitation, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this solicitation. The State discourages deviations and reserves the right to reject proposed deviations.

**H. SUBMISSION OF PROPOSALS**

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

1. For bidders submitting electronic responses:
   a. Bidders submitting electronically can upload the response via ShareFile here:
      i. SHARE FILE LINK
      https://nebraskastategov.sharefile.com/share/getinfo/r80cac3fcca1a44b4830f707a2e02894e

      ii. ShareFile works with Firefox, Internet Explorer and Chrome. It does not work with Microsoft Edge.

   b. The Cost Proposal and Proprietary information should be uploaded as separate and distinct files. 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.

   c. ELECTRONIC PROPOSAL FILE NAMES
   The bidder should clearly identify the uploaded RFP proposal files. To assist in identification please use the following naming convention:

      i. RFP 111104 O3 ABC Company
      ii. If multiple files are submitted for one RFP proposal, add number of files to file names: RFP 111104 O3 ABC Company File 1 of 2.

2. For bidders submitting paper/hard copy responses:

   a. 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 only 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, "Bidder Point of Contact". Proposals must reference the RFP 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, 402-471-6484 should be used. The RFP number should be included in all correspondence.

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

      ATTN: Carrie Olson and Jennifer Crouse
      RFP: 111104 O3
      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: Carrie Olson and Jennifer Crouse
      RFP: 111104 O3
      DHHS - 3rd Floor Reception Desk
      301 Centennial Mall South
      Lincoln, NE 68509

   b. The Cost Proposal and 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 and be referenced in the text by the number within the section, and should be placed as close as possible to the referencing text.

3. Bidder must use the State's Cost Proposal Form.

The State will not furnish packaging and 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 the Department of Health and Human Services, Central Procurement by the date and time of the proposal opening per the Schedule of Events. No late proposals will be accepted.

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

It is the responsibility of the bidder to check the website for all information relevant to this Request for Proposal 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.

Emphasis should be concentrated on conformance to the solicitation instructions, responsiveness to requirements, completeness, and clarity of content. If the bidder'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-responsive.

The State shall not incur any liability for any costs incurred by contractors in replying to this solicitation, or in any other activity related to bidding on this solicitation.

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

## I. PROPOSAL PREPARATION COSTS

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

## J. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL

Violation of the terms and conditions contained in this solicitation 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. Negative Vendor Performance Report(s)
5. Termination of the resulting contract;
6. Legal action; and
7. 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.

## K. PROPOSAL CORRECTIONS

A bidder may correct a mistake in a proposal prior to the time of opening by either:

1. Uploading a revised and completed RFP proposal if the original proposal was electronically submitted.
   a. If a corrected RFP proposal is submitted, the file name(s) date/time stamped with latest date/time stamp will be accepted as final proposal. The corrected RFP file name(s) should be identified as **Corrected** 111104 O3 ABC Company Proposal #1, **Corrected** 111104 O3 ABC Company Proposal #2, etc. or
2. Giving written notice to the State of:
   a. Intent to withdraw the proposal for modification or
   b. To withdraw the proposal completely.

Changing a proposal after opening may be permitted if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

**L. LATE PROPOSALS**

Proposals received after the time and date of the proposal opening will be considered late proposals. Late proposals will be returned unopened, if requested by the bidder and at bidder's expense. The State is not responsible for proposals that are late or lost regardless of cause or fault.

**M. PROPOSAL OPENING**

The opening of proposals will be public and the contractors will be announced. The opening of proposals will be available to view via WebEx at the following link:

https://sonvideo.webex.com/sonvideo/j.php?MTID=m29ab9bff15061f0d2e4249d24cc9f2e0

Monday, April 18th, 2022 2pm | 30 minutes | (UTC-05:00) Central Time (US & Canada)
Meeting number (access code): 2499 225 9697
Meeting password: 111104

Join by phone
+1-408-418-9388 United States Toll
Meeting number (access code): 2499 225 9697

Join from a video system or application
Dial 24992259697@sonvideo.webex.com
You can also dial 173.243.2.68 and enter your meeting number.

Proposals **WILL NOT** be available for viewing by those present at the proposal opening. Proposals will be posted to the State Purchasing Bureau website once an Intent to Award has been posted to the website. Once proposals are opened, they become the property of the State of Nebraska and will not be returned.

**N. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS**

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. The requirements are:

**1.** Original Request for Proposal for Contractual Services form signed manually in ink or by DocuSign;
**2.** Clarity and responsiveness of the proposal;
**3.** Completed Sections II through IV; and any required documentation;
**4.** Completed State Cost Proposal Template.

**O. EVALUATION OF PROPOSALS**

All proposals that are responsive to the solicitation will be evaluated based on the following:

**1.** Cost Proposal

**Neb. Rev. Stat. §81-161 allows the quality of performance of previous contracts to be considered when evaluating responses to competitively bid solicitations in determining the lowest responsible bidder.** Information obtained from any Vendor Performance Report (See Terms & Conditions) may be used in evaluating responses to solicitations for goods and services to determine the best value for the State.

**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 solicitation 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 bidder 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.

## P. BEST AND FINAL OFFER (BAFO)

Bidder should provide the best offer with the original proposal response and should not expect the State to request a best and final offer (BAFO).

Every bidder may not be given the opportunity to submit a BAFO. Any BAFO requested by the State should be submitted by the bidder to be evaluated (using the stated BAFO criteria), scored, and ranked by the Evaluation Committee. The State reserves the right to conduct more than one Best and Final Offer. If requested by the State, the BAFO must be submitted on the BAFO Cost Proposal form. Failure to submit a requested BAFO may result in rejection of the bidder's entire proposal response.

## Q. 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 solicitation, 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.

## R. AWARD

The State reserves the right to evaluate proposals and award contracts 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 solicitation process, the State of Nebraska may take one or more of the following actions:

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

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

**1.** Price;
**2.** Location;
**3.** Quality;
**4.** Delivery time;
**5.** Contractor qualifications and capabilities; and,
**6.** State contract management requirements and/or costs;

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

Any protests must be filed by a contractor within ten (10) business days after the intent to award decision is posted to the Internet. Grievance and protest procedure is available on the Internet at:
http://dhhs.ne.gov/Pages/Grants-and-Contract-Opportunities.aspx

**S. ALTERNATE/EQUIVALENT PROPOSALS**

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

**T. LUMP SUM OR "ALL OR NONE" PROPOSALS**

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

**U. EMAIL SUBMISSIONS**

SPB will not accept proposals by email, voice, or telephone proposals.

**V. REJECTION OF PROPOSALS**

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

**W. RESIDENT BIDDER**

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

## II. TERMS AND CONDITIONS

**Bidders should complete Sections II through IV as part of their proposal**. Bidder should read the Terms and Conditions and should initial either accept, reject, or reject and provide alternative language for each clause. The bidder should also provide an explanation of why the bidder rejected the clause or rejected the clause and provided alternate language. By signing the solicitation, 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 contractor 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 solicitation. The State of Nebraska reserves the right to reject proposals that attempt to substitute the bidder's commercial contracts and/or documents for this solicitation.

The bidders should submit with their proposal any license, user agreement, service level agreement, 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

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

The Contract resulting from this solicitation shall incorporate the following documents:

1. Request for Proposal and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Contractor's proposal (Contractor's response to the solicitation and properly submitted documents); and
5. Amendments and Addendums to the Contract.

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) Amendments and addendums to the executed Contract with the most recent dated amendment or addendum, respectively, having the highest priority, 2) Amendments to solicitation 3) Questions and Answers, 4) the original solicitation 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**

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

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, electronically or mailed. All notices, requests, or communications shall be deemed effective upon receipt.

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. BUYER'S REPRESENTATIVE**

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

The State reserves the right to appoint a Buyer's Representative to manage [or assist the Buyer in managing] the contract on behalf of the State. The Buyer's Representative will be appointed in writing, and the appointment document will specify the extent of the Buyer's Representative authority and responsibilities. If a Buyer's Representative is appointed, the Contractor will be provided a copy of the appointment document, and is expected to cooperate accordingly with the Buyer's Representative. The Buyer's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

**D. GOVERNING LAW (Statutory)**

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

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

**E. BEGINNING OF WORK**

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

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.

**F. AMENDMENT**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within Solicitation Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
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This Contract may be amended in writing, within scope, upon the agreement of both parties.

**G. CHANGE ORDERS OR SUBSTITUTIONS**

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

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the solicitation. 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.

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

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

**H. VENDOR PERFORMANCE REPORT(S)**

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

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

**I. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

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.

**J. BREACH**

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

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 may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach.

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

**K. NON-WAIVER OF BREACH**

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

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.

**L. SEVERABILITY**

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

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.

**M. INDEMNIFICATION**

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

**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.

of warranty by the Contractor, and the State may receive the remedies provided under this solicitation.

**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 (§ 81-8,294), Tort (§ 81-8,209), and Contract Claim Acts (§ 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.

**N. ATTORNEY'S FEES**

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

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 ordered by the court, including attorney's fees and costs, if the other Party prevails.

**O. ASSIGNMENT, SALE, OR MERGER**

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

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.

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

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

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.

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

**Q. FORCE MAJEURE**

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

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.

**R. CONFIDENTIALITY**

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

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.

**S. 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.

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

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

**U. EARLY TERMINATION**

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

The contract may be terminated as follows:

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

**2.** The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar 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.

## V. CONTRACT CLOSEOUT

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

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

**1.** Transfer all completed or partially completed deliverables to the State;
**2.** Transfer ownership and title to all completed or partially completed deliverables to the State;
**3.** Return to the State all information and data, unless the 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 Contactor, person or entity in the assumption of any or all of the obligations of this contract;
**5.** Cooperate with any successor Contactor, person or entity with the transfer of information or data related to this contract;
**6.** Return or vacate any state owned real or personal property; 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.

## III. CONTRACTOR DUTIES

### A. INDEPENDENT CONTRACTOR / OBLIGATIONS

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

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;
**5.** Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
**6.** All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the 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**

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within Solicitation Response (Initial) | NOTES/COMMENTS: |
|---|---|---|---|
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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 solicitation 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 goods and services to be covered by any contract resulting from this solicitation.

**D. COOPERATION WITH OTHER CONTRACTORS**

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

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. PRICES**

Bidder's shall quote an hourly rate for Phlebotomist service and provide a complete list of all laboratory tests by individual price. Bidder's price list(s) shall be quoted net, including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

After award of the contract(s), the Contractor(s) shall supply additional copies of the current price lists used for this RFP for distribution to any requesting state agency at no charge within ten (10) business days of request. Additional price lists may be required and shall be provided without charge. Any price list revisions which occur during the duration of the contract shall be provided upon request without charge.

Prices submitted on the cost proposal form, once accepted by the State, shall remain fixed for the initial term of the contract. Any request for a price increase subsequent to the initial term of the contract shall not exceed three percent (3%) of the price proposed for the first renewal period, and shall not exceed one and one half percent (1.5%) for each of the subsequent renewal periods. Increases shall not be cumulative and will only apply to that period of the contract. The request for a price increase must be submitted in writing to the DHHS a minimum of 120 days prior to the end of the current contract period. Documentation may be required by the State to support the price increase.

New price list(s) will be incorporated into the contract thirty (30) days after receipt by DHHS.

**The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.**

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

**F. COST CLARIFICATION**

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

**G. PERMITS, REGULATIONS, LAWS**

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

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.

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

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

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.

## I. INSURANCE REQUIREMENTS

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

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 two (2) years 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 two (2) years 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 contactors' 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.

| **REQUIRED INSURANCE COVERAGE** (COVERAGES AND THE AMOUNT OF COVERAGE SHOULD BE ADJUSTED BASED ON NATURE OF THE CONTRACT / SERVICE / GOODS/ RISK | |
|---|---|
| **COMMERCIAL GENERAL LIABILITY** | |
| 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 | $10,000 any one person |
| Damage to Rented Premises (Fire) | $300,000 each occurrence |
| Contractual | Included |
| XCU Liability (Explosion, Collapse, and Underground Damage) | Included |
| Independent Contractors | Included |
| Abuse & Molestation | Included |
| ***If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.*** | |
| **WORKER'S COMPENSATION** | |
| Employers Liability Limits | $500K/$500K/$500K |
| Statutory Limits- All States | Statutory - State of Nebraska |
| USL&H Endorsement | Statutory |
| Voluntary Compensation | Statutory |
| **COMMERCIAL AUTOMOBILE LIABILITY** | |
| 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 |
| **UMBRELLA/EXCESS LIABILITY** | |
| Over Primary Insurance | $5,000,000 per occurrence |
| **PROFESSIONAL LIABILITY** | |
| Professional liability (Medical Malpractice) | Limits consistent with Nebraska Medical Malpractice Cap |
| Qualification Under Nebraska Excess Fund | |
| All Other Professional Liability (Errors & Omissions) | $1,000,000 Per Claim / Aggregate |
| **COMMERCIAL CRIME** | |
| Crime/Employee Dishonesty Including 3rd Party Fidelity | $1,000,000 |
| **CONTRACTOR'S POLLUTION LIABILITY** | |
| Each Occurrence/Aggregate Limit | $2,000,000 |
| Includes Non-Owned Disposal Sites | |
| **MANDATORY COI SUBROGATION WAIVER LANGUAGE** | |
| "Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska." | |
| **MANDATORY COI LIABILITY WAIVER LANGUAGE** | |
| "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." | |

**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:

Department of Health and Human Services
Attn: Business Office
Lincoln Regional Center
PO Box 94949
Lincoln NE 68509-4949
DHHS.LRCBusinessoffice@nebraska.gov

These certificates or the cover sheet shall reference the RFP 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.

**J. ANTITRUST**

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

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

**K. CONFLICT OF INTEREST**

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

By submitting a proposal, bidder certifies that no relationship exists between the bidder and any person or entity which either is, or gives the appearance of, a conflict of interest related to this Request for Proposal or project.

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

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

**L. STATE PROPERTY**

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

**M. SITE RULES AND REGULATIONS**

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

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.

**N. ADVERTISING**

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

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods or 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.

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

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

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 delivery of goods and services as specified under the specifications in the contract in the event of a disaster.

**P. DRUG POLICY**

| Accept | Reject | Reject & Provide | NOTES/COMMENTS: |
|---|---|---|---|

| (Initial) | (Initial) | Alternative within Solicitation Response (Initial) | |
|---|---|---|---|
| | | | |

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.

**Q. WARRANTY**

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

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to the State, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse the State all fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

**R. CLEAN AIR ACT**

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

If this Contract involves federal funds and the total value exceeds $150,000, Contractor shall ensure that it in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and the Federal Water Pollution Control Act as amended, 33 U.S.C. §§ 1251--1387. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). (2 CFR 200, Subpart F, Appendix II).

**S. LOBBYING**

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

**1.** No federal or state funds paid under this RFP shall be paid for any lobbying costs as set forth herein.

**2.** Lobbying Prohibited by 31 U.S.C. § 1352 and 45 CFR §§ 93 et seq, and Required Disclosures.

a. Contractor certifies that no federal or state appropriated funds shall be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award for: (a) the awarding of any federal agreement; (b) the making of any federal grant; (c) the

entering into of any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

b. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence: an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with Contractor, Contractor shall complete and submit Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**3.** Lobbying Activities Prohibited under Federal Appropriations Bills.

a. No paid under this RFP shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation of the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government itself.

b. No funds paid under this RFP shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than normal and recognized executive legislative relationships or participation by an agency or officer of an State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

c. The prohibitions in the two sections immediately above shall include any activity to advocate or promote any proposed, pending or future federal, state or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale of marketing, including but not limited to the advocacy or promotion of gun control.

**4.** Lobbying Costs Unallowable Under the Cost Principles. In addition to the above, no funds shall be paid for executive lobbying costs as set forth in 45 CFR § 75.450(b). If Contractor is a nonprofit organization or an Institute of Higher Education, other costs of lobbying are also unallowable as set forth in 45 CFR § 75.450(c).

## T. AMERICAN WITH DISABILITIES ACT

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

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131–12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub.L. 110–325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability by public entities.

## IV. PAYMENT

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

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

**B. TAXES (Statutory)**

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

**C. INVOICES**

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

**1.** Contractor(s) will bill third party payers, Medicare, and other health insurance companies directly. DHHS is the payor of last resort. The Contractor(s) shall submit invoices to DHHS for payment not paid by other sources on a monthly basis. Invoices for payments must be submitted by the Contractor on a monthly basis for services completed the previous month with sufficient detail to support payment as provided in Section IV. C. 3. to the facility requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**2.** Invoices shall be sent to:

**a.** Department of Health and Human Services
ATTN: Business Office Lincoln Regional Center
PO Box 94949
Lincoln NE 68509-4949
DHHS.LRCBusinessoffice@nebraska.gov

**3.** Invoices must include but not limited to the information below and submitted monthly.

**a.** Invoice Date
**b.** Invoice Number
**c.** Cost by type of test(s)
**d.** Description of test(s)
**e.** Date of Service
**f.** Quantity of each test(s) performed
**g.** Facility of test(s) performed
**h.** Patient Name
**i.** Patient ID
**j.** Patient date of birth
**k.** Total Amount Due
**l.** Program name

**D. INSPECTION AND APPROVAL**

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

| | | | |
|---|---|---|---|
| | | | |

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

**E. PAYMENT (Statutory)**

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and 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.

**F. 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).

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

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the 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.

**H. RIGHT TO AUDIT (First Paragraph is Statutory)**

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (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 to enable the State to audit the contract. (Neb. Rev. Stat. §84-304 et seq.) 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.

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

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 (0.5%) 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 (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

## V. PROJECT DESCRIPTION AND SCOPE OF WORK

DHHS is seeking a qualified Contractor(s) to provide phlebotomy and laboratory services for residents' receiving treatment at DHHS Lincoln Regional Center facility. DHHS is seeking laboratory services for residents' receiving treatment at DHHS Lincoln Regional Center-Whitehall facility. DHHS is seeking optional services for all DHHS facilities listed on the cost proposal.

### A. PROJECT OVERVIEW

The purpose of this Contract is to ensure a phlebotomist provides daily scheduled lab draws for residents, pick-up samples, provide needed supplies to collect samples, perform laboratory test(s) along with reporting and documentation. Provide centrifuge machine with monthly and annual centrifuge inspections as required.

### B. SCOPE OF WORK

1. Provide phlebotomy and laboratory services for DHHS LRC Facility residents as referred by the medical staff of DHHS.

2. Provide laboratory services for residents transported to Contractor's laboratory by DHHS LRC Whitehall Facility.
3. Provide a Phlebotomist to DHHS LRC's clinic area to perform daily scheduled lab draws for DHHS LRC Facility residents' Monday through Friday, 7:00 a.m. to 1:00 p.m. C.T. with the exception of the following six major holidays: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas Day. Phlebotomy services are not provided on these holidays.
4. Contractor shall have use of DHHS LRC Facility provided clinic space to perform the services of this Contract.
    a. There shall be no fees charged to the Contractor by DHHS for the use of the DHHS clinic space provided.
    b. All Contractor employees will wear identifying uniforms and/or nametags while on duty within the facility. Proper identification should include the company and employee name.
    c. DHHS will furnish all necessary facility access to the Contractor. Security access/I.D. cards will be provided to the Contractor and must be worn at all times. A service charge may be assessed against the Contractor for the cost of replacing access/I.D. cards lost through neglect by the Contractor or Contractor's employees. The Contractor must report lost cards to DHHS contact immediately.
    d. Contractor shall follow all applicable facility procedures before entering or exiting the facility or while in facility.
5. DHHS LRC Whitehall Facility will transport residents to Contractor's laboratory facilities.

### C. CONTRACTOR QUALIFICATIONS TO INCLUDE THE FOLLOWING

1. Contractor will provide documentation and must meet all applicable standards for CAP (College of American Pathologist) and CLIA (Clinical Laboratory Improvement Amendments) and Joint Commission - accreditation and hereby warrants that it is licensed as a clinical reference laboratory under applicable laws and regulations. Documentation will be included in proposal submission.
2. The Contractor will provide documentation and must be enrolled as a provider for Medicare and Medicaid programs. Documentation will be included in proposal submission.
3. On as needed basis, provide training related to phlebotomy and laboratory protocols to DHHS to help maintain Joint Commission and Centers for Medicare & Medicaid Services (CMS) standards.

## D. CONTRACTOR SPECIMEN SCHEDULE AND SUPPLIES

1. Contractor shall pack specimens in individual biohazard bags. Provide pick-up of specimens from DHHS LRC at no extra charge on a daily basis, Monday through Friday until 5:00PM. C.T.
2. DHHS LRC Facility pick-up schedule will be at 9:30 a.m. C.T., with delivery of specimens to the Contractor's laboratory by 11:30 a.m. C.T., and call-ins until 5:00 p.m. C.T., Monday through Friday with the exception of the following six major holidays: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas Day. Phlebotomy services are not provided on these holidays.
3. Contractor shall provide on-call personnel for specimen pickups until 5:00 p.m. C.T. for DHHS LRC location for Contractor's laboratory delivery. On-call exception for the following six major holidays: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas Day. Phlebotomy services are not provided on these holidays.
4. The Contractor must be available to answer questions or give reports via telephone, twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year.
5. Provide at no additional cost any supplies needed to collect samples, which includes but is not limited to supplies of tubes, pap smear supplies, culturettes, sputum cups, biohazard bags, and twenty-four (24) hour urine containers

## E. CONTRACTOR REPORTING REQUIREMENTS

1. Provide a list to DHHS stating the location of each Contractor's laboratory performing the test, the type of tests performed at each location, and the frequency that these tests are performed. Contractor shall provide to DHHS on a quarterly basis no longer than forty-five (45) days past the end of the calendar quarter.
2. Results of routine tests listed on Form B Cost Proposal must be reported within twenty-four (24) hours.
3. Non-routine report results, such as microbiology cultures and reference laboratory tests, must be reported when completed.
4. Report emergency procedures and abnormal test results to DHHS immediately upon completion of the test by phone to designated DHHS employee.
5. All of LRC and LRC Whitehall facility residents' laboratory tests and report results shall be provided to only designated DHHS employees. Any online access for LRC and LRC Whitehall facility residents' laboratory tests and report results shall be granted for only designated DHHS employees.
6. Provide instructions detailing specimen collection requirements for all laboratory tests.
7. Provide documentation of Performance Improvement/Quality Assurance reports on the following:
    a) Residents' satisfaction survey results, and resolution/action taken regarding any unsatisfactory survey responses.
    b) Quarterly lab turnaround time data, and action taken if unsatisfactory turnaround times are documented.
    c) Quarterly reports on the evaluation of the performance of the Contractor's lab technician related to lab sample satisfaction.

## F. CONTRACTOR EQUIPMENT AND MAINTENANCE

1. Contractor shall provide DHHS LRC facility with centrifuge machine(s) and any other equipment needed for the performance of services within contract.
2. Contractor shall provide full-replacement for non-working centrifuge machines and necessary equipment needed to perform contract services within twenty-four (24) hours.
3. All data within Contractor provided centrifuge machines belongs exclusively to the State of Nebraska. All data shall be submitted to DHHS upon request within seven (7) calendar days.
4. Monthly and annual centrifuge inspections must be completed by the Contractor to include the following:
    a) Monthly checks must include cleaning tube carriers and the interior and exterior of the centrifuge with Sani Wipes.
    b) Documentation of monthly maintenance must be completed on the Centrifuge Maintenance Log. Appendix form at the DHHS laboratory site
    c) Annual checks must include speed and timer checks with documentation of all readings on the Centrifuge Maintenance Log. Appendix form at the DHHS laboratory site.
    d) An annual electrical hazard check must be done which encompasses an outlet check to include line voltage measurement, proper wiring of hot and neutral, and the presence of a third wire earth ground with a UL approved outlet tester. Satisfactory testing must be identified with a stick-on label containing the test date and the initials of the person performing the test.

e) All Contractor provided laboratory instruments and appliances requiring AC wall current must be checked with a test box verifying correct plug and line cord wiring. All tested units (except those that are double insulated) must be tested with a UL approved digital meter during operation for current leakage into the third wire ground. Leakage current shall not exceed 5 mA. The plug and cord must be visually checked for wear and damage. Satisfactory testing of the unit must be identified with a stick-on label indicating test date and the initials of the person who conducted the test.
f) All Contractor provided laboratory instruments and appliances must be grounded and checked for current leakage before initial use, after repair and when a problem is suspected.
g) Replace or repair any faulty electrical Contractor provided laboratory equipment on the DHHS laboratory sites.

## G. DELIVERABLES

Please see cost proposal. Prices quoted shall include, but not limited to phlebotomy services, travel specimen pick-ups, centrifuge machine and all necessary equipment for the performance of services within the contract.

DHHS is seeking Phlebotomy and Laboratory as optional services for all DHHS facilities listed on the cost proposal.

# Form A
# Bidder Proposal Point of Contact
## Request for Proposal Number 111104 O3

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

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

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

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

## REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

BIDDER MUST COMPLETE THE FOLLOWING

By signing this Request for Proposal for Contractual Services form, the bidder guarantees compliance with the procedures stated in this Solicitation, and agrees to the terms and conditions unless otherwise indicated in writing and certifies that bidder maintains a drug free work place.

Per Nebraska's Transparency in Government Procurement Act, Neb. Rev Stat § 73-603 DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

_____ NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this Solicitation.

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

_____ I hereby certify that I am a blind person licensed by the Commission for the Blind & Visually Impaired in accordance with Neb. Rev. Stat. §71-8611 and wish to have preference considered in the award of this contract.

**FORM MUST BE SIGNED MANUALLY IN INK OR BY DOCUSIGN**

| | |
|---|---|
| FIRM: | |
| COMPLETE ADDRESS: | |
| TELEPHONE NUMBER: | |
| FAX NUMBER: | |
| DATE: | |
| SIGNATURE: | |
| TYPED NAME & TITLE OF SIGNER: | |